

Justice as Fairness

A RESTATEMENT

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PART I

Fundamental Ideas

§1. Four Roles of Political Philosophy

1.1. We begin by distinguishing four roles that political philosophy may have as part of a society's public political culture. Consider first its practical role arising from divisive political conflict and the need to settle the problem of order.

There are long periods in the history of any society during which certain basic questions lead to deep and sharp conflict and it seems difficult if not impossible to find any reasoned common ground for political agreement. To illustrate, one historical origin of liberalism is the Wars of Religion in the sixteenth and seventeenth centuries following the Reformation; these divisions opened a long controversy about the right of resistance and liberty of conscience, which eventually led to the formulation and often reluctant acceptance of some form of the principle of toleration. The views in Locke's *Letter on Toleration* (1689) and Montesquieu's *The Spirit of Laws* (1748) have a long prehistory. Hobbes's *Leviathan* (1652)—surely the greatest work of political philosophy in English—is concerned with the problem of order during the turmoil of the English civil war; and so also is Locke's *Second Treatise* (also 1689). To illustrate in our own case how divisive conflict may lead to political philosophy, recall the extensive debates between Federalists and Anti-Federalists in 1787–88 over ratification of the Constitution, and how the question of the extension of slavery in the years before the Civil War called forth fundamental discussions of that institution and of the nature of the union between the states.

We suppose, then, that one task of political philosophy—its practical role, let's say—is to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered. Or if such a basis of agreement cannot be found, perhaps the divergence of philosophical and moral opinion at the root of divisive political differences can at least be narrowed so that social cooperation on a footing of mutual respect among citizens can still be maintained.

To fix ideas, consider the conflict between the claims of liberty and the claims of equality in the tradition of democratic thought. Debates over the last two centuries or so make plain that there is no public agreement on how basic institutions are to be arranged so as to be most appropriate to the freedom and equality of democratic citizenship. There is a divide between the tradition derived from Locke, which stresses what Constant called "the liberties of the moderns"—freedom of thought and liberty of conscience, certain basic rights of the person and of property, and the rule of law—and the tradition derived from Rousseau, which stresses what Constant called "the liberties of the ancients"—the equal political liberties and the values of public life.¹ This overstylized contrast brings out the depth of the conflict.

This conflict is rooted not only in differences of social and economic interests but also in differences between general political, economic, and social theories about how institutions work, as well as in different views about the probable consequences of public policies. Here we focus on another root of the conflict: the different philosophical and moral doctrines that deal with how the competing claims of liberty and equality are to be understood, how they are to be ordered and weighed against each other, and how any particular way of ordering them is to be justified.

1.2. I note briefly three other roles of political philosophy which we consider further as we proceed. One is that political philosophy may contribute to how a people think of their political and social institutions as a whole, and their basic aims and purposes as a society with a history—a nation—as opposed to their aims and purposes as individuals, or as members of families and associations. Moreover, the members of any civilized society

1. See "Liberty of the Ancients Compared with That of the Moderns" (1819), in Benjamin Constant, *Political Writings*, trans. and ed. Biancamaria Fontana (New York: Cambridge University Press, 1988). Constant's dates: 1767–1830. The phrase "liberties of the ancients" refers to the liberties of native-born male citizens specified by the rights of political participation in the Athenian democracy at, say, the time of Pericles.

need a conception that enables them to understand themselves as members having a certain political status—in a democracy, that of equal citizenship—and how this status affects their relation to their social world.

This need political philosophy may try to answer, and this role I call that of orientation.² The idea is that it belongs to reason and reflection (both theoretical and practical) to orient us in the (conceptual) space, say, of all possible ends, individual and associational, political and social. Political philosophy, as a work of reason, does this by specifying principles to identify reasonable and rational ends of those various kinds, and by showing how those ends can cohere within a well-articulated conception of a just and reasonable society. Such a conception may offer a unified framework within which proposed answers to divisive questions can be made consistent and the insights gained from different kinds of cases can be brought to bear on one another and extended to other cases.

1.3. A third role, stressed by Hegel in his *Philosophy of Right* (1821), is that of reconciliation: political philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood from a philosophical point of view, are rational, and developed over time as they did to attain their present, rational form. This fits one of Hegel's well-known sayings: "When we look at the world rationally, the world looks rationally back." He seeks for us reconciliation—*Versöhnung*—that is, we are to accept and affirm our social world positively, not merely to be resigned to it.

We shall be concerned with this role of political philosophy in several respects. Thus I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive, doctrine. The fact of reasonable pluralism which characterizes a society with free institutions makes this impossible.³ This is the fact of profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life. But this fact is not always easy to accept,

2. The term and its meaning is suggested by Kant's use of it in his essay "Was Heisst: Sich im Denken orientieren?" *Kant's gesammelte Schriften*, Preußischen Akademie der Wissenschaften, vol. 8 (Berlin, 1912). For him, reason is similarly the faculty of orientation as very briefly characterized in the text.

3. For the meaning of "reasonable" as used in the text, see §§2, 11, 23.

and political philosophy may try to reconcile us to it by showing us the reason and indeed the political good and benefits of it.

Again, political society is not, and cannot be, an association. We do not enter it voluntarily. Rather we simply find ourselves in a particular political society at a certain moment of historical time. We might think our presence in it, our being here, is not free. In what sense, then, can citizens of a democracy be free? Or as we shall ask eventually, what is the outer limit of our freedom (§26)?

One can try to deal with this question by viewing political society in a certain way, namely, as a fair system of cooperation over time from one generation to the next, where those engaged in cooperation are viewed as free and equal citizens and normal cooperating members of society over a complete life. We then try to formulate principles of political justice such that if the basic structure of society—the main political and social institutions and the way they fit together as one scheme of cooperation—satisfies those principles, then we can say without pretense and fakery that citizens are indeed free and equal.⁴

1.4. The fourth role is a variation of the previous one. We view political philosophy as realistically utopian: that is, as probing the limits of practicable political possibility. Our hope for the future of our society rests on the belief that the social world allows at least a decent political order, so that a reasonably just, though not perfect, democratic regime is possible. So we ask: What would a just democratic society be like under reasonably favorable but still possible historical conditions, conditions allowed by the laws and tendencies of the social world? What ideals and principles would such a society try to realize given the circumstances of justice in a democratic culture as we know them? These circumstances include the fact of reasonable pluralism. This condition is permanent as it persists indefinitely under free democratic institutions.

The fact of reasonable pluralism limits what is practicably possible under the conditions of our social world, as opposed to conditions in other historical ages when people are often said to have been united (though perhaps they never have been) in affirming one comprehensive conception.

4. The idea of political philosophy as reconciliation must be invoked with care. For political philosophy is always in danger of being used corruptly as a defense of an unjust and unworthy status quo, and thus of being ideological in Marx's sense. From time to time we must ask whether justice as fairness, or any other view, is ideological in this way; and if not, why not? Are the very basic ideas it uses ideological? How can we show they are not?

Eventually we want to ask whether the fact of reasonable pluralism is a historical fate we should lament. To show that it is not, or that it has its very considerable benefits, would be to reconcile us in part to our condition. Of course, there is a question about how the limits of the practicable are discerned and what the conditions of our social world in fact are; the problem here is that the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions, and much else. However, I shall not pursue this deep question here.

§2. Society as a Fair System of Cooperation

2.1. As I said above, one practicable aim of justice as fairness is to provide an acceptable philosophical and moral basis for democratic institutions and thus to address the question of how the claims of liberty and equality are to be understood. To this end we look to the public political culture of a democratic society, and to the traditions of interpretation of its constitution and basic laws, for certain familiar ideas that can be worked up into a conception of political justice. It is assumed that citizens in a democratic society have at least an implicit understanding of these ideas as shown in everyday political discussion, in debates about the meaning and ground of constitutional rights and liberties, and the like.⁵

Some of these familiar ideas are more basic than others. Those we use to organize and to give structure to justice as fairness as a whole I count as fundamental ideas. The most fundamental idea in this conception of justice is the idea of society as a fair system of social cooperation over time from one generation to the next (*Theory*, §1: 4). We use this idea as the central organizing idea in trying to develop a political conception of justice for a democratic regime.

This central idea is worked out in conjunction with two companion fundamental ideas. These are: the idea of citizens (those engaged in cooperation) as free and equal persons (§7); and the idea of a well-ordered society, that is, a society effectively regulated by a public conception of justice (§3).

As indicated above, these fundamental intuitive ideas are viewed as being

5. The exposition of justice as fairness starts with these familiar ideas. In this way we connect it with the common sense of everyday life. But because the exposition begins with these ideas does not mean that the argument for justice as fairness simply assumes them as a basis. Everything depends on how the exposition works out as a whole and whether the ideas and principles of this conception of justice, as well as its conclusions, prove acceptable on due reflection. See §10.

familiar from the public political culture of a democratic society. Even though such ideas are not often expressly formulated, nor their meanings clearly marked out, they may play a fundamental role in society's political thought and in how its institutions are interpreted, for example, by courts and in historical or other texts regarded as being of enduring significance. That a democratic society is often viewed as a system of social cooperation is suggested by the fact that from a political point of view, and in the context of the public discussion of basic questions of political right, its citizens do not regard their social order as a fixed natural order, or as an institutional structure justified by religious doctrines or hierarchical principles expressing aristocratic values. Nor do they think a political party may properly, as a matter of its declared program, work to deny any recognized class or group its basic rights and liberties.

2.2. The central organizing idea of social cooperation has at least three essential features:

- (a) Social cooperation is distinct from merely socially coordinated activity—for example, activity coordinated by orders issued by an absolute central authority. Rather, social cooperation is guided by publicly recognized rules and procedures which those cooperating accept as appropriate to regulate their conduct.
- (b) The idea of cooperation includes the idea of fair terms of cooperation: these are terms each participant may reasonably accept, and sometimes should accept, provided that everyone else likewise accepts them. Fair terms of cooperation specify an idea of reciprocity, or mutuality: all who do their part as the recognized rules require are to benefit as specified by a public and agreed-upon standard.
- (c) The idea of cooperation also includes the idea of each participant's rational advantage, or good. The idea of rational advantage specifies what it is that those engaged in cooperation are seeking to advance from the standpoint of their own good.

Throughout I shall make a distinction between the reasonable and the rational, as I shall refer to them. These are basic and complementary ideas entering into the fundamental idea of society as a fair system of social cooperation. As applied to the simplest case, namely to persons engaged in cooperation and situated as equals in relevant respects (or symmetrically, for short), reasonable persons are ready to propose, or to acknowledge when

proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation. Reasonable persons also understand that they are to honor these principles, even at the expense of their own interests as circumstances may require, provided others likewise may be expected to honor them. It is unreasonable not to be ready to propose such principles, or not to honor fair terms of cooperation that others may reasonably be expected to accept; it is worse than unreasonable if one merely seems, or pretends, to propose or honor them but is ready to violate them to one's advantage as the occasion permits.

Yet while it is unreasonable, it is not, in general, not rational. For it may be that some have a superior political power or are placed in more fortunate circumstances; and though these conditions are irrelevant, let us assume, in distinguishing between the persons in question as equals, it may be rational for those so placed to take advantage of their situation. In everyday life we imply this distinction, as when we say of certain people that, given their superior bargaining position, their proposal is perfectly rational, but unreasonable all the same. Common sense views the reasonable but not, in general, the rational as a moral idea involving moral sensibility.⁶

2.3. The role of the principles of justice (as part of a political conception of justice) is to specify the fair terms of social cooperation (*Theory*, §1). These principles specify the basic rights and duties to be assigned by the main political and social institutions, and they regulate the division of benefits arising from social cooperation and allot the burdens necessary to sustain it. Since in a democratic society citizens are regarded from the point of view of the political conception as free and equal persons, the principles of a democratic conception of justice may be viewed as specifying the fair terms of cooperation between citizens so conceived.

By way of these specifications, the principles of justice provide a response to the fundamental question of political philosophy for a constitutional democratic regime. That question is: what is the most acceptable po-

6. This kind of distinction between the reasonable and the rational was made by W. M. Sibley in "The Rational versus the Reasonable," *Philosophical Review* 62 (October 1953): 554-560. The text connects the distinction closely with the idea of cooperation among equals and specifies it accordingly for this more definite idea. From time to time we come back to the distinction between the reasonable and the rational. See §23.2 and §23.3. It is of central importance in understanding the structure of justice as fairness, as well as T. M. Scanlon's general contractualist moral theory. See his "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982).

litical conception of justice for specifying the fair terms of cooperation between citizens regarded as free and equal and as both reasonable and rational, and (we add) as normal and fully cooperating members of society over a complete life, from one generation to the next? This question is fundamental because it has been the focus of the liberal critique of monarchy and aristocracy and of the socialist critique of liberal constitutional democracy. It is also the focus of the present conflict between liberalism and conservative views over the claims of private property and the legitimacy (as opposed to the effectiveness) of social policies associated with the so-called welfare state.⁷

In using the conception of citizens as free and equal persons we abstract from various features of the social world and idealize in certain ways. This brings out one role of abstract conceptions: they are used to gain a clear and uncluttered view of a question seen as fundamental by focusing on the more significant elements that we think are most relevant in determining its most appropriate answer. Unless explicitly stated otherwise, we do not try to answer any question except the fundamental question stated above.

§3. The Idea of a Well-Ordered Society

3.1. As stated in §2.1, the fundamental idea of a well-ordered society—a society effectively regulated by a public conception of justice—is a companion idea used to specify the central organizing idea of society as a fair system of cooperation. Now to say that a political society is well ordered conveys three things:

First, and implied by the idea of a public conception of justice, it is a society in which everyone accepts, and knows that everyone else accepts, the very same political conception of justice (and so the same principles of political justice). Moreover, this knowledge is mutually recognized: that is, people know everything they would know if their acceptance of those principles were a matter of public agreement.

Second, and implied by the idea of effective regulation by a public conception of justice, society's basic structure—that is, its main political and social institutions and the way they hang together as one system of coopera-

7. I say "so-called welfare state" because Part IV distinguishes between a property-owning democracy and a capitalist welfare state and maintains that the latter conflicts with justice as fairness.

tion—is publicly known, or with good reason believed, to satisfy those principles of justice.

Third, and also implied by the idea of effective regulation, citizens have a normally effective sense of justice, that is, one that enables them to understand and apply the publicly recognized principles of justice, and for the most part to act accordingly as their position in society, with its duties and obligations, requires.

In a well-ordered society, then, the public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another.

3.2. The idea of a well-ordered society is plainly a very considerable idealization. One reason we form this idea is that an important question about a conception of justice for a democratic society is whether, and how well, it can serve as the publicly recognized and mutually acknowledged conception of justice when society is viewed as a system of cooperation between free and equal citizens from one generation to the next. A political conception of justice that could not fulfill this public role must be, it seems, in some way seriously defective. The suitability of a conception of justice for a well-ordered society provides an important criterion for comparing political conceptions of justice. The idea of a well-ordered society helps to formulate that criterion and to specify further the central organizing idea of social cooperation.

The idea of a well-ordered society has two meanings. Its general meaning is given above in §3.1: a well-ordered society is a society effectively regulated by some public (political) conception of justice, whatever that conception may be. But the idea has a particular meaning when we refer to the well-ordered society of a particular conception of justice, as when we say that all members of society accept and know that all the others accept the same political conception of justice, for example, a particular natural rights doctrine, or a form of utilitarianism, or justice as fairness. Note that, given the fact of reasonable pluralism, a well-ordered society in which all its members accept the same comprehensive doctrine is impossible. But democratic citizens holding different comprehensive doctrines may agree on political conceptions of justice. Political liberalism holds that this provides a sufficient as well as the most reasonable basis of social unity available to us as citizens of a democratic society.

§4. The Idea of the Basic Structure

4.1. Another fundamental idea is the idea of the basic structure (of a well-ordered society). This idea is introduced so as to formulate and present justice as fairness as having an appropriate unity. Along with the idea of the original position (§6), it is needed to complete other ideas and to order them into a perspicuous whole. The idea of the basic structure may be seen in that light.

As indicated above in §3, the basic structure of society is the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time (*Theory*, §2: 6). The political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy (for example, as a system of competitive markets with private property in the means of production), as well as the family in some form, all belong to the basic structure. The basic structure is the background social framework within which the activities of associations and individuals take place. A just basic structure secures what we may call background justice.

4.2. One main feature of justice as fairness is that it takes the basic structure as the primary subject of political justice (*Theory*, §2). It does so in part because the effects of the basic structure on citizens' aims, aspirations, and character, as well as on their opportunities and their ability to take advantage of them, are pervasive and present from the beginning of life (§§15–16). Our focus is almost entirely on the basic structure as the subject of political and social justice.

Since justice as fairness starts with the special case of the basic structure, its principles regulate this structure and do not apply directly to or regulate internally institutions and associations within society.⁸ Firms and labor unions, churches, universities, and the family are bound by constraints arising from the principles of justice, but these constraints arise indirectly from just background institutions within which associations and groups exist, and by which the conduct of their members is restricted.

8. This seems obvious in most cases. Clearly the two principles of justice (§13) with their political liberties are not supposed to regulate the internal organization of churches and universities. Nor is the difference principle to govern how parents are to treat their children or to allocate the family's wealth among them. See Part IV, §50, on the family.

For example, while churches can excommunicate heretics, they cannot burn them; this constraint is to secure liberty of conscience. Universities cannot discriminate in certain ways: this constraint is to help to establish fair equality of opportunity. Parents (women equally with men) are equal citizens and have equal basic rights including the right of property; they must respect the rights of their children (which the latter have as prospective citizens) and cannot, for instance, deprive them of essential medical care. Moreover, to establish equality between men and women in sharing the work of society, in preserving its culture and in reproducing itself over time, special provisions are needed in family law (and no doubt elsewhere) so that the burden of bearing, raising, and educating children does not fall more heavily on women, thereby undermining their fair equality of opportunity.

One should not assume in advance that principles that are reasonable and just for the basic structure are also reasonable and just for institutions, associations, and social practices generally. While the principles of justice as fairness impose limits on these social arrangements within the basic structure, the basic structure and the associations and social forms within it are each governed by distinct principles in view of their different aims and purposes and their peculiar nature and special requirements. Justice as fairness is a political, not a general, conception of justice: it applies first to the basic structure and sees these other questions of local justice and also questions of global justice (what I call the law of peoples) as calling for separate consideration on their merits.

The principles of justice to be followed directly by associations and institutions within the basic structure we may call principles of local justice.⁹ Altogether then we have three levels of justice, moving from inside outward: first, local justice (principles applying directly to institutions and associations); second, domestic justice (principles applying to the basic structure of society); and finally, global justice (principles applying to international law). Justice as fairness starts with domestic justice—the justice of the basic structure. From there it works outward to the law of peoples and inward to local justice. The law of peoples has been discussed elsewhere.¹⁰ No attempt will be made here to deal systematically with local justice. In general, principles for the basic structure constrain (or

9. I follow here Jon Elster's illuminating work, *Local Justice* (New York: Russell Sage Foundation, 1992).

10. See Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

limit), but do not determine uniquely, the suitable principles of local justice.

4.3. Note that our characterization of the basic structure does not provide a sharp definition, or criterion, from which we can tell what social arrangements, or aspects thereof, belong to it. Rather, we start with a loose characterization of what is initially a rough idea. As indicated above, we must specify the idea more exactly as seems best after considering a variety of particular questions. With this done, we then check how the more definite characterization coheres with our considered convictions on due reflection.

The role of a political conception of justice, however, is not to say exactly how these questions are to be settled, but to set out a framework of thought within which they can be approached. Were we to lay down a definition of the basic structure that draws sharp boundaries, not only would we go beyond what that rough idea could reasonably contain but we would also risk wrongly prejudging what more specific or future conditions may call for, thus making justice as fairness unable to adjust to different social circumstances. For our judgments to be reasonable, they must usually be informed by an awareness of those more specific circumstances.¹¹

Finally, to anticipate, since justice as fairness presents itself as a possible focus of a reasonable overlapping consensus (§11), and since the basic structure is the primary subject of justice, the boundaries and aspects of this structure must eventually be drawn and specified in ways that, if possible, at least permit, if not encourage, such a consensus. So generally stated, it is not evident what this condition requires; but these matters we try to answer as we take up a wider range of questions.

§5. Limits to Our Inquiry

5.1. Before discussing the other fundamental ideas of justice as fairness, let us note some limits to our inquiry. The first limit, as has been indicated, is that we must fix on the basic structure as the primary subject of political justice and leave aside questions of local justice. We view justice as fairness not as a comprehensive moral doctrine but as a political conception to apply to that structure of political and social institutions.

¹¹. I am indebted to Erin Kelly for discussion on the points in this and the preceding paragraph.

The second limit is that we are concerned for the most part with the nature and content of justice for a well-ordered society. Discussion of this case is referred to in justice as fairness as ideal, or strict compliance, theory. Strict compliance means that (nearly) everyone strictly complies with, and so abides by, the principles of justice. We ask in effect what a perfectly just, or nearly just, constitutional regime might be like, and whether it may come about and be made stable under the circumstances of justice (*Theory*, §22), and so under realistic, though reasonably favorable, conditions. In this way, justice as fairness is realistically utopian: it probes the limits of the realistically practicable, that is, how far in our world (given its laws and tendencies) a democratic regime can attain complete realization of its appropriate political values—democratic perfection, if you like.

We focus on ideal theory because the current conflict in democratic thought is in good part a conflict about what conception of justice is most appropriate for a democratic society under reasonably favorable conditions. This is clear from what, for our purposes, we called the fundamental question of political philosophy (§2.3). Nevertheless, the idea of a well-ordered society should also provide some guidance in thinking about nonideal theory, and so about difficult cases of how to deal with existing injustices. It should also help to clarify the goal of reform and to identify which wrongs are more grievous and hence more urgent to correct.

A third limit to our inquiry, mentioned before, is that we shall not here discuss the important question of the just relations between peoples, nor how the extension of justice as fairness to these relations illustrates the way in which it is suitably universal. I assume Kant's view ("Perpetual Peace" (1795)) is correct and that a world government would be either an oppressive global despotism or a fragile empire torn by frequent civil wars as separate regions and cultures tried to win their political autonomy.¹² A just world order is perhaps best seen as a society of peoples, each people maintaining a well-ordered and decent political (domestic) regime, not necessarily democratic but fully respecting basic human rights.¹³

In justice as fairness the question of justice between peoples is postponed until we have an account of political justice for a well-ordered democratic society. Observe, though, that beginning with the justice of the basic

12. As Robert A. Dahl puts it in *Dilemmas of Pluralist Democracy* (New Haven: Yale University Press, 1982), p. 16: "today no unit smaller than a country can provide the conditions necessary for a good life, while no unit larger than a country is likely to be as democratically governed as a modern polyarchy."

13. This larger topic is discussed at length in *The Law of Peoples*.

structure does not imply that we cannot revise our account for a democratic society (domestic justice) in view of what justice between peoples turns out to require. The two parts of a more complete political conception—the justice of domestic society as well as of the relations between societies—can be adjusted to each other in the course of working them out.

5.2. Finally, I stress a point implicit in what we have said: namely, that justice as fairness is not a comprehensive religious, philosophical, or moral doctrine—one that applies to all subjects and covers all values. Nor is it to be regarded as the application of such a doctrine to the basic structure of society, as if this structure were merely another subject to which that comprehensive view is to be applied. Neither political philosophy nor justice as fairness is, in that way, applied moral philosophy. Political philosophy has its own distinctive features and problems. Justice as fairness is a political conception of justice for the special case of the basic structure of a modern democratic society. In this respect it is much narrower in scope than comprehensive philosophical moral doctrines such as utilitarianism, perfectionism, and intuitionism, among others. It focuses on the political (in the form of the basic structure), which is but a part of the domain of the moral.

§6. The Idea of the Original Position

6.1. So far we have discussed three fundamental ideas introduced in *Theory*, §§1–2, the idea of a society as a fair system of cooperation and the idea of a well-ordered society, and the idea of the basic structure of society. Next we discuss two other fundamental ideas, introduced in *Theory*, §§3–4. One is the idea of the original position; the other is the idea of citizens as free and equal persons. The sixth fundamental idea, that of public justification, is discussed in §§9–10.

Let us begin with how we might be led to the original position and the reasons for using it. The following line of thought might lead us to it: we start with the organizing idea of society as a fair system of cooperation between free and equal persons. Immediately the question arises as to how the fair terms of cooperation are specified. For example: Are they specified by an authority distinct from the persons cooperating, say, by God's law? Or are these terms recognized by everyone as fair by reference to a moral order of values,¹⁴ say, by rational intuition, or by reference to what some

14. This order I assume to be viewed as objective as in some form of moral realism.

have viewed as “natural law”? Or are they settled by an agreement reached by free and equal citizens engaged in cooperation, and made in view of what they regard as their reciprocal advantage, or good?

Justice as fairness adopts a form of the last answer: the fair terms of social cooperation are to be given by an agreement entered into by those engaged in it. One reason it does this is that, given the assumption of reasonable pluralism, citizens cannot agree on any moral authority, say a sacred text or a religious institution or tradition. Nor can they agree about a moral order of values or the dictates of what some view as natural law. So what better alternative is there than an agreement between citizens themselves reached under conditions that are fair for all?

6.2. Now this agreement, like any other, must be entered into under certain conditions if it is to be a valid agreement from the point of view of political justice. In particular, these conditions must situate free and equal persons fairly and must not permit some to have unfair bargaining advantages over others. Further, threats of force and coercion, deception and fraud, and so on must be ruled out. So far, so good. These considerations are familiar from everyday life. But agreements in everyday life are made in determinate situations within the background institutions of the basic structure; and the particular features of these situations affect the terms of the agreements reached. Clearly, unless those situations satisfy the conditions for valid and fair agreements, the terms agreed to will not be regarded as fair.

Justice as fairness hopes to extend the idea of a fair agreement to the basic structure itself. Here we face a serious difficulty for any political conception of justice that uses the idea of contract, whether or not the contract is social. The difficulty is this: we must specify a point of view from which a fair agreement between free and equal persons can be reached; but this point of view must be removed from and not distorted by the particular features and circumstances of the existing basic structure. The original position, with the feature I have called the “veil of ignorance” (*Theory*, §24), specifies this point of view. In the original position, the parties are not allowed to know the social positions or the particular comprehensive doctrines of the persons they represent. They also do not know persons’ race and ethnic group, sex, or various native endowments such as strength and intelligence, all within the normal range. We express these limits on information figuratively by saying the parties are behind a veil of ignorance.¹⁵

15. [See Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 24–25.]

One reason why the original position must abstract from the contingencies—the particular features and circumstances of persons—within the basic structure is that the conditions for a fair agreement between free and equal persons on the first principles of justice for that structure must eliminate the bargaining advantages that inevitably arise over time within any society as a result of cumulative social and historical tendencies. “To persons according to their threat advantage” (or their de facto political power, or wealth, or native endowments) is not the basis of political justice. Contingent historical advantages and accidental influences from the past should not affect an agreement on principles that are to regulate the basic structure from the present into the future.¹⁶

6.3. The idea of the original position is proposed, then, as the answer to the question of how to extend the idea of a fair agreement to an agreement on principles of political justice for the basic structure. That position is set up as a situation that is fair to the parties as free and equal, and as properly informed and rational. Thus any agreement made by the parties as citizens’ representatives is fair. Since the content of the agreement concerns the principles of justice for the basic structure, the agreement in the original position specifies the fair terms of social cooperation between citizens regarded as such persons. Hence the name: justice as fairness.

Observe that, as stated in *Theory*, the original position generalizes the familiar idea of the social contract (*Theory*, §3). It does so by making the object of agreement the first principles of justice for the basic structure, rather than a particular form of government, as in Locke. The original position is also more abstract: the agreement must be regarded as both hypothetical and nonhistorical.

- (i) It is hypothetical, since we ask what the parties (as described) could, or would, agree to, not what they have agreed to.
- (ii) It is nonhistorical, since we do not suppose the agreement has ever,

16. This is an essential feature of justice as fairness as a form of the contract doctrine. It differs from Locke’s view in this respect, and also from the contract views of Robert Nozick in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), of James Buchanan in *The Limits of Liberty* (Chicago: University of Chicago Press, 1975), and of David Gauthier in *Morals by Agreement* (Oxford: Oxford University Press, 1986). In these three works citizens’ basic rights, liberties, and opportunities, as secured by the basic structure, depend on contingencies of history, and social circumstance and native endowment, in ways excluded by justice as fairness. We come back to this in §16.1.

or indeed ever could actually be entered into. And even if it could, that would make no difference.

The second point (ii) means that what principles the parties would agree to is to be decided by analysis. We characterize the original position by various stipulations—each with its own reasoned backing—so that the agreement that would be reached can be worked out deductively by reasoning from how the parties are situated and described, the alternatives open to them, and from what the parties count as reasons and the information available to them. We return to this in Part III.

6.4. Here there may seem to be a serious objection: since hypothetical agreements are not binding at all, the agreement of the parties in the original position would appear to be of no significance.¹⁷ In reply, the significance of the original position lies in the fact that it is a device of representation or, alternatively, a thought-experiment for the purpose of public- and self-clarification. We are to think of it as modeling two things:

First, it models what we regard—here and now—as fair conditions under which the representatives of citizens, viewed solely as free and equal persons, are to agree to the fair terms of cooperation whereby the basic structure is to be regulated.

Second, it models what we regard—here and now—as acceptable restrictions on the reasons on the basis of which the parties, situated in fair conditions, may properly put forward certain principles of political justice and reject others.

Thus if the original position suitably models our convictions about these two things (namely, fair conditions of agreement between citizens as free and equal, and appropriate restrictions on reasons), we conjecture that the principles of justice the parties would agree to (could we properly work them out) would specify the terms of cooperation that we regard—here and now—as fair and supported by the best reasons. This is because, in that case, the original position would have succeeded in modeling in a suitable

17. This question is discussed by Ronald Dworkin in §1 of his critical review entitled "Justice and Rights," *University of Chicago Law Review* (1973), reprinted in *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), as chap. 6. I have discussed his interpretation briefly in "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14 (Summer 1985): 236f., n. 19; reprinted in Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), 400f., n. 19.

manner what we think on due reflection are the reasonable considerations to ground the principles of a political conception of justice.

6.5. To illustrate regarding fair conditions: the parties are symmetrically situated in the original position. This models our considered conviction that in matters of basic political justice citizens are equal in all relevant respects: that is, that they possess to a sufficient degree the requisite powers of moral personality and the other capacities that enable them to be normal and fully cooperating members of society over a complete life (§7). Thus, in accordance with the precept of formal equality that those equal (similar) in all relevant respects are to be treated equally (similarly), citizens' representatives are to be situated symmetrically in the original position. Otherwise we would not think that position fair to citizens as free and equal.

To illustrate regarding appropriate restrictions on reasons: if we are reasonable, it is one of our considered convictions that the fact that we occupy a particular social position, say, is not a good reason for us to accept, or to expect others to accept, a conception of justice that favors those in that position. If we are wealthy, or poor, we do not expect everyone else to accept a basic structure favoring the wealthy, or the poor, simply for that reason. To model this and other similar convictions, we do not let the parties know the social position of the persons they represent. The same idea is extended to other features of persons by the veil of ignorance.

In short, the original position is to be understood as a device of representation. As such it models our considered convictions as reasonable persons by describing the parties (each of whom is responsible for the fundamental interests of a free and equal citizen) as fairly situated and as reaching an agreement subject to appropriate restrictions on reasons for favoring principles of political justice.

§7. The Idea of Free and Equal Persons

7.1. To this point we have simply used the idea of free and equal persons; we must now explain its meaning and role. Justice as fairness regards citizens as engaged in social cooperation, and hence as fully capable of doing so, and this over a complete life. Persons so regarded have what we may call "the two moral powers," explained as follows:

- (i) One such power is the capacity for a sense of justice: it is the capacity

to understand, to apply, and to act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social cooperation.

(ii) The other moral power is a capacity for a conception of the good: it is the capacity to have, to revise, and rationally to pursue a conception of the good. Such a conception is an ordered family of final ends and aims which specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life. The elements of such a conception are normally set within, and interpreted by, certain comprehensive religious, philosophical, or moral doctrines in the light of which the various ends and aims are ordered and understood.

7.2. In saying that persons are regarded as having the two moral powers, we are saying that they have the requisite capacities not only to engage in mutually beneficial social cooperation over a complete life but also to be moved to honor its fair terms for their own sake. In *Theory*, these two powers are taken as defining "moral persons" and "moral personality" (*Theory*, §§3-4). What is meant, though, by saying that persons are free and equal?

Here it is important to keep in mind that justice as fairness is a political conception of justice: that is, it is designed for the special case of the basic structure of society and is not intended as a comprehensive moral doctrine. Therefore, the idea of the person, when specified into a conception of the person, belongs to a political conception. (A fundamental idea becomes a conception if we specify its elements in a particular way.) This means that the conception of the person is not taken from metaphysics or the philosophy of mind, or from psychology; it may have little relation to conceptions of the self discussed in those disciplines. It must of course be compatible with (one or more) such philosophical or psychological conceptions (so far as they are sound), but that is another story. The conception of the person itself is meant as both normative and political, not metaphysical or psychological.

As noted earlier (§2.1-2), the conception of the person is worked up from the way citizens are regarded in the public political culture of a democratic society, in its basic political texts (constitutions and declarations of human rights), and in the historical tradition of the interpretation of those texts. For these interpretations we look not only to courts, political parties, and statesmen, but also to writers on constitutional law and jurisprudence,

and to the more enduring writings of all kinds that bear on a society's political philosophy.

7.3. In what sense are citizens regarded as equal persons? Let's say they are regarded as equal in that they are all regarded as having to the essential minimum degree the moral powers necessary to engage in social cooperation over a complete life and to take part in society as equal citizens. Having these powers to this degree we take as the basis of equality among citizens as persons (*Theory*, §77): that is, since we view society as a fair system of cooperation, the basis of equality is having to the requisite minimum degree the moral and other capacities that enable us to take part fully in the cooperative life of society. Thus the equality of citizens is modeled in the original position by the equality of their representatives: that is, by the fact that these representatives are symmetrically situated in that position and have equal rights in its procedure for reaching agreement.

I note that in taking the moral powers as the basis of equality we in effect distinguish between a political society and the many associations within it and across it. The latter are associations that cross political boundaries, such as churches and scientific societies. Some of these associations are communities: churches and scientific societies again illustrate this; but universities and other cultural institutions are also communities. The members of a community are united in pursuing certain shared values and ends (other than economic) that lead them to support the association and in part bind them to it. In justice as fairness a democratic political society has no such shared values and ends apart from those falling under or connected with the political conception of justice itself. The citizens of a well-ordered society affirm the constitution and its political values as realized in their institutions, and they share the end of giving one another justice, as society's arrangements require.

The significance of this distinction between a democratic society and the communities within it will become evident later and rests on a number of its special features. For example, we are born into society, and while we may be born into communities also, into religions and their distinctive cultures, only society with its political form of government and its law exercises coercive power. While we can leave communities voluntarily (the constitutional liberties guarantee this: apostasy is not a crime), there is a sense in which we cannot leave our political society voluntarily (§26). Also a community can reward or single out its members in proportion to their contribution to its shared values and ends; but a democratic society has no such shared val-

ues and ends (falling under the good) by which its citizens can be distinguished.¹⁸ All who can be fully cooperating members of political society count as equals and can be treated differently only as the public political conception of justice allows.

It is a serious error not to distinguish between the idea of a democratic political society and the idea of community. Of course, a democratic society is hospitable to many communities within it, and indeed tries to be a social world within which diversity can flourish in amity and concord; but it is not itself a community, nor can it be in view of the fact of reasonable pluralism. For that would require the oppressive use of government power which is incompatible with basic democratic liberties. From the start, then, we view a democratic society as a political society that excludes a confessional or an aristocratic state, not to mention a caste, slave, or a racist one. This exclusion is a consequence of taking the moral powers as the basis of political equality.

7.4. In what sense are citizens free? Here again we must keep in mind that justice as fairness is a political conception of justice for a democratic society. The relevant meaning of free persons is to be drawn from the political culture of such a society and may have little or no connection, for example, with freedom of the will as discussed in the philosophy of mind. Following up this idea, we say that citizens are regarded as free persons in two respects.

First, citizens are free in that they conceive of themselves and of one another as having the moral power to have a conception of the good. This is not to say that, as part of their political conception, they view themselves as inevitably tied to the pursuit of the particular conception of the good which they affirm at any given time. Rather, as citizens, they are seen as capable of revising and changing this conception on reasonable and rational grounds, and they may do this if they so desire. As free persons, citizens claim the right to view their persons as independent from and not identified with any particular conception of the good, or scheme of final ends. Given their moral power to form, to revise, and rationally to pursue a conception of the good, their public or legal identity as free persons is not affected by changes over time in their determinate conception of the good.

For example, when citizens convert from one religion to another, or no

18. On this point see "The Basic Structure as Subject," in Rawls, *Political Liberalism*, lect. VII, §8, pp. 279ff.

longer affirm an established religious faith, they do not cease to be, for questions of political justice, the same persons they were before. There is no loss of what we may call their public, or legal, identity—their identity as a matter of basic law. In general, they still have the same basic rights and duties, they own the same property and can make the same claims as before, except insofar as these claims were connected with their previous religious affiliation. We can imagine a society (indeed history offers numerous examples) in which basic rights and recognized claims depend on religious affiliation and social class. Such a society has a different political conception of the person. It may not have a conception of citizenship at all; for this conception, as we are using it, goes with the conception of society as a fair system of cooperation for reciprocal advantage between free and equal citizens.

There is another sense of identity specified by reference to citizens' deeper aims and commitments. Let's call it their nonlegal or moral identity.¹⁹ Now citizens usually have both political and nonpolitical aims and commitments. Thus they affirm the values of political justice and want to see them embodied in political institutions and social policies. They also work for the other nonpolitical values and ends of the associations to which they belong. These two aspects of their moral identity citizens must adjust and reconcile. It can happen that in their personal affairs, or in the internal life of their associations, citizens may regard their final ends and attachments very differently from the way the political conception supposes. They may have, and often do have at any given time, affections, devotions, and loyalties that they believe they would not, indeed could and should not, stand apart from and evaluate objectively. They may regard it as simply unthinkable to view themselves apart from certain religious, philosophical, and moral convictions, or from certain enduring attachments and loyalties.

These two kinds of commitments and attachments—political and nonpolitical—specify moral identity and give shape to a person's way of life, what one sees oneself as doing and trying to accomplish in the social world. If we suddenly lost them, we would be disoriented and unable to carry on. In fact, there would be, we might think, no point in carrying on. Our conceptions of the good may and often do change over time, however, usually slowly but sometimes rather suddenly. When these changes are sudden, we are particularly likely to say that we are no longer the same person. We

19. I am indebted to Erin Kelly for the distinction between the two kinds of aims that characterize citizens' moral identities as described in this and the next paragraph.

know what this means: we refer to a profound and pervasive shift, or reversal, in our final ends and commitments; we refer to our different moral (which includes our religious) identity. On the road to Damascus Saul of Tarsus becomes Paul the Apostle. Yet such a conversion implies no change in our public or legal identity, nor in our personal identity as this concept is understood by some writers in the philosophy of mind. And in a well-ordered society supported by an overlapping consensus, citizens' (more general) political values and commitments, as part of their noninstitutional, or moral, identity are roughly the same.

7.5. A second respect in which citizens view themselves as free is that they regard themselves as self-authenticating sources of valid claims. That is, they regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good (provided these conceptions fall within the range permitted by the public conception of justice). These claims citizens regard as having weight of their own apart from being derived from duties and obligations specified by a political conception of justice, for example, from duties and obligations owed to society. Claims that citizens regard as founded on duties and obligations based on their conception of the good and the moral doctrine they affirm in their own life are also, for our purposes here, to be counted as self-authenticating. Doing this is reasonable in a political conception of justice for a constitutional democracy, for provided the conceptions of the good and the moral doctrine citizens affirm are compatible with the public conception of justice, these duties and obligations are self-authenticating from a political point of view.

When we describe the way in which citizens regard themselves as free, we are relying on how citizens tend to think of themselves in a democratic society when questions of political justice arise. That this aspect belongs to a particular political conception is clear from the contrast with a different political conception in which the members of society are not viewed as self-authenticating sources of valid claims. In this case their claims have no weight except insofar as they can be derived from the duties and obligations owed to society, or from their ascribed roles in a social hierarchy justified by religious or aristocratic values.

To take an extreme case, slaves are human beings who are not counted as sources of claims, not even claims based on social duties or obligations, for slaves are not counted as capable of having duties or obligations. Laws that prohibit the abuse and maltreatment of slaves are not founded on claims

made by slaves in their own behalf, but on claims originating either from slaveholders or from the general interests of society (which do not include the interests of slaves). Slaves are, so to speak, socially dead: they are not recognized as persons at all.²⁰ This contrast with a political conception of justice that allows slavery makes clear why conceiving of citizens as free persons in virtue of their moral powers and their having a conception of the good goes with a particular political conception of the justice.

7.6. I emphasize that the conception of the person as free and equal is a normative conception: it is given by our moral and political thought and practice, and it is studied by moral and political philosophy and by the philosophy of law. Since ancient Greece, both in philosophy and in law, the concept of the person has been that of someone who can take part in, or play a role in, social life, and hence who can exercise and respect its various rights and duties. In specifying the central organizing idea of society as a fair system of cooperation, we use the companion idea of free and equal persons as those who can play the role of fully cooperating members. As suits a political conception of justice that views society as a fair system of cooperation, a citizen is someone who can be a free and equal participant over a complete life.

This conception of the person is not to be mistaken for the conception of a human being (a member of the species *homo sapiens*) as the latter might be specified in biology or psychology without the use of normative concepts of various kinds, including, for example, the concepts of the moral powers and of the moral and political virtues. Moreover, to characterize the person, we must add to these concepts those used to formulate the powers of reason, inference, and judgment. These are essential companion powers to the two moral powers and are required for their exercise and for the practice of the virtues.

§8. Relation between the Fundamental Ideas

8.1. The five fundamental ideas we have discussed so far are closely related when laid out in the sequence by which they were introduced: from society as a fair system of cooperation to the idea of a well-ordered society,

²⁰. For the idea of social death, see Orlando Patterson, *Slavery and Social Death* (Cambridge, Mass.: Harvard University Press, 1982), esp. pp. 5–9, 38–45, 337.

to the idea of the basic structure of such a society, to the idea of the original position, and finally to the idea of citizens, those engaged in cooperation, as free and equal.

In this sequence we start with the organizing idea of society as a fair system of cooperation and then make it more determinate by spelling out what results when this idea is fully realized (a well-ordered society), and what this idea applies to (the basic structure). We then say how the fair terms of cooperation are specified (by the parties in the original position) and explain how the persons engaged in cooperation are to be regarded (as free and equal citizens).

8.2. This spelling out of the central organizing idea of social cooperation is not a deductive argument. The steps starting with that idea and proceeding to the next are not said to follow from, or to be derived from, it. We specify the organizing idea and make it more determinate as we connect it with the other ideas.

To illustrate: there are various ways of specifying the central idea of social cooperation. As we noted, we might say that the fair terms of cooperation are fixed by natural law viewed either as God's law or as given by a prior and independent moral order publicly known by rational intuition. Such ways of fixing those terms have not been excluded by deductive argument: for instance, by showing them to be incompatible with the idea of social cooperation. Instead, they are ruled out by the historical conditions and the public culture of democracy that set the requirements for a political conception of justice in a modern constitutional regime. Among those historical conditions is the fact of reasonable pluralism, which rules out comprehensive doctrines as a basis for a workable political agreement on a conception of justice. Since justice as fairness looks for such a basis, it follows a different course.

8.3. We cannot tell in advance whether the idea of social cooperation, and its two companion ideas, will provide the organizing ideas we need for a workable political conception of justice. The public political culture is not unambiguous: it contains a variety of possible organizing ideas that might be used instead, various ideas of liberty and equality, and other ideas of society. All we need claim is that the idea of society as a fair system of cooperation is deeply embedded in that culture, and so it is not unreasonable to examine its merits as a central organizing idea. The point is that what-

ever idea we select as the central organizing idea cannot be fully justified by its own intrinsic reasonableness,²¹ as its intrinsic reasonableness cannot suffice for that. Such an idea can be fully justified (if at all) only by the conception of political justice to which it eventually leads when worked out, and by how well that conception coheres with our considered convictions of political justice at all levels of generality in what we may call wide (and general) reflective equilibrium (§10). The idea of reflective equilibrium connects with that of public justification, to which we now turn.

§9. The Idea of Public Justification

9.1. So far we have discussed five fundamental ideas beginning with the central organizing idea of society as a fair system of social cooperation. Now we turn to a sixth and last fundamental idea, the idea of public justification, and three other ideas related to it: those of reflective equilibrium (§10),²² of an overlapping consensus (§11), and of free public reason (§26). The aim of the idea of public justification is to specify the idea of justification in a way appropriate to a political conception of justice for a society characterized, as a democracy is, by reasonable pluralism.

The idea of public justification goes with the idea of a well-ordered society, for such a society is effectively regulated by a publicly recognized conception of justice (§3). From the preceding discussion, we see that to fill this role a conception of justice should have three features. These make it a political conception of justice:

(a) While it is, of course, a moral conception, it is worked out for a specific subject, namely, the basic structure of a democratic society. It does not apply directly to associations and groups within society, and only later do we try to extend it to connect it with the principles of local justice and to cover the relations between peoples.

(b) Accepting this conception does not presuppose accepting any particular comprehensive doctrine. A political conception presents itself as a rea-

21. Intrinsic reasonableness, or acceptability, is a difficult idea. It means that a judgment or conviction strikes us as reasonable, or acceptable, without our deriving it from, or basing it on, other judgments. Of course, that a conviction strikes us as reasonable may indeed turn out to depend on our other beliefs and convictions, but that is not how it strikes us. On due reflection we may affirm the conviction as having a certain reasonableness, or acceptability, on its own.

22. See also *Theory*, §§4, 9.

sonable conception for the basic structure alone and its principles express a family of political values that characteristically apply to that structure.

(c) A political conception of justice is formulated so far as possible solely in terms of fundamental ideas familiar from, or implicit in, the public political culture of a democratic society: for example, the idea of society as a fair system of cooperation and the idea of citizens as free and equal. That there are such ideas in their public culture is taken as a fact about democratic societies.

9.2. We saw that in a well-ordered society effectively regulated by a publicly recognized political conception of justice, everyone accepts the same principles of justice. These principles provide, then, a mutually acceptable point of view from which citizens' claims on the main institutions of the basic structure can be adjudicated. An essential feature of a well-ordered society is that its public conception of political justice establishes a shared basis for citizens to justify to one another their political judgments: each cooperates, politically and socially, with the rest on terms all can endorse as just. This is the meaning of public justification.

So understood, justification is addressed to others who disagree with us (*Theory*, §87). If there is no conflict in judgment about questions of political justice—judgments about the justice of certain principles and standards, particular institutions and policies, and the like—there is nothing so far to justify. To justify our political judgments to others is to convince them by public reason, that is, by ways of reasoning and inference appropriate to fundamental political questions, and by appealing to beliefs, grounds, and political values it is reasonable for others also to acknowledge. Public justification proceeds from some consensus: from premises all parties in disagreement, assumed to be free and equal and fully capable of reason, may reasonably be expected to share and freely endorse.

Public justification is not, then, simply valid argument from given premises (though of course it is that). Valid argument is instructive in setting out the relations between statements: it joins basic ideas and general statements with one another and with more particular judgments; it exhibits the overall structure of conceptions of any kind. By connecting the elements of a conception into an intelligible and perspicuous whole, it serves as a mode of exposition. But when the premises and conclusions are not acceptable on due reflection to all parties in disagreement, valid argument falls short of public justification. For justice as fairness to succeed, it must be acceptable, not only to our own considered convictions, but also to those of others, and

this at all levels of generality in more or less wide and general reflective equilibrium (as explained below in §10).

9.3. Of course, it is too much to expect complete agreement on all political questions. The practicable aim is to narrow disagreement at least regarding the more divisive controversies, and in particular those that involve the constitutional essentials (§13.5); for what is of greatest urgency is consensus on those essentials, for example:

(1) the fundamental principles that specify the general structure of government and the political process; the powers of the legislature, executive, and the judiciary; the limits of majority rule; and

(2) the equal basic rights and liberties of citizenship that legislative majorities must respect, such as the right to vote and to participate in politics, freedom of thought and of association, liberty of conscience, as well as the protections of the rule of law.

These and other matters are a complex story; I merely hint at what is meant. The point is that if a political conception of justice covers the constitutional essentials, it is already of enormous importance even if it has little to say about many economic and social issues that legislative bodies must consider. To resolve these it is often necessary to go outside that conception and the political values its principles express, and to invoke values and considerations it does not include. But so long as there is firm agreement on the constitutional essentials, the hope is that political and social cooperation between free and equal citizens can be maintained.

9.4. Clearly one leading aim of public justification is to preserve the conditions of effective and democratic social cooperation on a footing of mutual respect between citizens regarded as free and equal. Such justification depends on an agreement in judgment at least on constitutional essentials; and so, when that agreement is in jeopardy, one task of political philosophy is to try to work out a conception of justice that narrows disagreement on at least the most disputed questions.

Contrast two ideas of public justification on matters political: the first appeals to a political conception of justice, the second appeals to a comprehensive doctrine, religious, philosophical, or moral. Thus a comprehensive moral doctrine tries to show which political judgments are true as specified, say, by rational intuitionism, or by a variant of utilitarianism. Now, so far as possible, political liberalism neither accepts nor rejects any particular comprehensive doctrine, moral or religious. It does allow that it belongs to these doctrines to search for religious, philosophical, and moral truth. Jus-

tice as fairness hopes to put aside long-standing religious and philosophical controversies and to avoid relying on any particular comprehensive view. It uses a different idea, that of public justification, and seeks to moderate divisive political conflicts and to specify the conditions of fair social cooperation between citizens. To realize this aim we try to work up, from the fundamental ideas implicit in the political culture, a public basis of justification that all citizens as reasonable and rational can endorse from within their own comprehensive doctrines. If this is achieved, we have an overlapping consensus of reasonable doctrines (§11), and with it, the political conception affirmed in reflective equilibrium. It is this last condition of reasoned reflection that, among other things, distinguishes public justification from mere agreement.

§10. The Idea of Reflective Equilibrium

10.1. To explain the idea of reflective equilibrium we start from the thought (included in the idea of free and equal persons) that citizens have a capacity for reason (both theoretical and practical) as well as a sense of justice. Under the normal circumstances of human life, these powers gradually develop, and after the age of reason are exercised in many kinds of judgments of justice ranging over all kinds of subjects, from the basic structure of society to the particular actions and character of people in everyday life. The sense of justice (as a form of moral sensibility) involves an intellectual power, since its exercise in making judgments calls upon the powers of reason, imagination and judgment.

We select from our judgments of political justice those we refer to as considered judgments or considered convictions. These are judgments given under conditions in which our capacity for judgment is most likely to have been fully exercised and not affected by distorting influences (*Theory*, §9). Considered judgments are those given when conditions are favorable to the exercise of our powers of reason and sense of justice: that is, under conditions where we seem to have the ability, the opportunity, and the desire to make a sound judgment; or at least we have no apparent interest in not doing so, the more familiar temptations being absent. Some judgments we view as fixed points: ones we never expect to withdraw, as when Lincoln says: "If slavery is not wrong, nothing is wrong."²³ The positions of judges,

²³. Abraham Lincoln, letter to A. G. Hodges, April 4, 1864, *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler (New Brunswick, N.J.: Rutgers University Press, 1953), 7:281-283.

umpires, and referees are designed to include conditions that encourage the exercise of the judicial virtues, among them impartiality and judiciousness, so that their verdicts can be seen as approximating considered judgments, so far as the case allows.

10.2. Not only do our considered judgments often differ from those of other persons, but our own judgments are sometimes in conflict with one another. The implications of the judgments we render on one question may be inconsistent or incongruent with those we render on other questions. This point deserves emphasis. Many of our most serious conflicts are conflicts within ourselves. Those who suppose their judgments are always consistent are unreflective or dogmatic; not uncommonly they are ideologues and zealots. The question arises: how can we make our own considered judgments of political justice more consistent both within themselves and with the considered judgments of others without imposing on ourselves an external political authority?

We approach this problem as follows: we note that we make considered political judgments at all levels of generality, ranging from particular judgments on the particular actions of individuals to judgments about the justice and injustice of particular institutions and social policies, and ending finally at highly general convictions. Among these convictions are those about the restrictions to impose on reasons for favoring principles of justice for the basic structure, and these convictions we model by the idea of the veil of ignorance in the original position (§6).

Justice as fairness regards all our judgments, whatever their level of generality—whether a particular judgment or a high-level general conviction—as capable of having for us, as reasonable and rational, a certain intrinsic reasonableness. Yet since we are of divided mind and our judgments conflict with those of other people, some of these judgments must eventually be revised, suspended, or withdrawn, if the practical aim of reaching reasonable agreement on matters of political justice is to be achieved.

10.3. Focusing now on any one person, suppose we (as observers) find the conception of political justice that makes the fewest revisions in that person's initial judgments and proves to be acceptable when the conception is presented and explained. When the person in question adopts this conception and brings other judgments in line with it we say this person is in narrow reflective equilibrium. The equilibrium is narrow because, while general convictions, first principles, and particular judgments are in line, we

looked for the conception of justice that called for the fewest revisions to achieve consistency, and neither alternative conceptions of justice nor the force of the various arguments for those conceptions have been taken into account by the person in question.

This suggests that we regard as wide reflective equilibrium (still in the case of one person) that reflective equilibrium reached when someone has carefully considered alternative conceptions of justice and the force of various arguments for them. More exactly, this person has considered the leading conceptions of political justice found in our philosophical tradition (including views critical of the concept of justice itself (some think Marx's view is an example)), and has weighed the force of the different philosophical and other reasons for them. In this case, we suppose this person's general convictions, first principles, and particular judgments are in line; but now the reflective equilibrium is wide, given the wide-ranging reflection and possibly many changes of view that have preceded it. Wide and not narrow reflective equilibrium is plainly the important concept (*Theory*, §9, though the terms "narrow" and "wide" are unfortunately not used there).

10.4. Recall that a well-ordered society is a society effectively regulated by a public conception of justice. Think of each citizen in such a society as having achieved wide (versus narrow) reflective equilibrium. But since citizens recognize that they affirm the same public conception of political justice, reflective equilibrium is also general: the same conception is affirmed in everyone's considered judgments. Thus citizens have achieved general and wide, or what we may refer to as full, reflective equilibrium. (The adjective "full" we reserve for features as realized in a well-ordered society.) In such a society not only is there a public point of view from which all citizens can adjudicate their claims, but also this point of view is mutually recognized as affirmed by them all in full reflective equilibrium.

From what we said above (in §10.2), the idea of justification paired with full reflective equilibrium is nonfoundationalist in this way: no specified kind of considered judgment of political justice or particular level of generality is thought to carry the whole weight of public justification. Considered judgments of all kinds and levels may have an intrinsic reasonableness, or acceptability, to reasonable persons that persists after due reflection. The most reasonable political conception for us is the one that best fits all our considered convictions on reflection and organizes them into a coherent view. At any given time, we cannot do better than that.

In justice as fairness, full reflective equilibrium is characterized by its

practical aim, reasoned reflection, and its nonfoundationalist aspect, as described above. In this way it meets the need for a basis of public justification on questions of political justice; for coherence among considered convictions at all levels of generality and in wide and general reflective equilibrium is all that is required for the practical aim of reaching reasonable agreement on matters of political justice. With other ideas of justification specified by certain comprehensive doctrines, coherence of this kind presumably does not suffice. But endorsing other ideas of justification alone will not prevent such doctrines from belonging to an overlapping consensus.

§11. The Idea of an Overlapping Consensus

11.1. The idea of an overlapping consensus is introduced to make the idea of a well-ordered society more realistic and to adjust it to the historical and social conditions of democratic societies, which include the fact of reasonable pluralism. While in a well-ordered society all citizens affirm the same political conception of justice, we do not assume they do so for all the same reasons, all the way down.²⁴ Citizens have conflicting religious, philosophical, and moral views and so they affirm the political conception from within different and opposing comprehensive doctrines, and so, in part at least, for different reasons. But this does not prevent the political conception from being a shared point of view from which they can resolve questions concerning the constitutional essentials.

Thus to formulate a realistic idea of a well-ordered society, given the historical conditions of the modern world, we do not say that its public political conception of justice is affirmed by citizens from within the same comprehensive doctrine. The fact of reasonable pluralism implies that there is no such doctrine, whether fully or partially comprehensive, on which all citizens do or can agree to settle the fundamental questions of political justice. Rather, we say that in a well-ordered society the political conception is affirmed by what we refer to as a reasonable overlapping consensus. By this we mean that the political conception is supported by the reasonable though opposing religious, philosophical, and moral doctrines that gain a significant body of adherents and endure over time from one generation to the next. This is, I believe, the most reasonable basis of political and social unity available to citizens of a democratic society.

24. The phrase is from Nozick's *Anarchy, State, and Utopia*, p. 225, where it is italicized.

11.2. The thought is that citizens in a well-ordered society affirm two distinct although closely related views. One of these is the political conception of justice they² all affirm. The other is one of the opposing comprehensive (or partially comprehensive) doctrines, religious, philosophical, and moral, found in society. For those who hold well-articulated, highly systematic, comprehensive doctrines, it is from within such a doctrine (that is, starting from its basic assumptions) that these citizens affirm the political conception of justice. The fundamental concepts, principles, and virtues of the political conception are theorems, as it were, of their comprehensive views.

Justice as fairness has the three features of a political conception that should help it to gain the support of a reasonable overlapping consensus. Its requirements are limited to society's basic structure, its acceptance presupposes no particular comprehensive view, and its fundamental ideas are familiar and drawn from the public political culture. The three features allow different comprehensive views to endorse it. These include religious doctrines that affirm liberty of conscience and support the basic constitutional freedoms, as well as various liberal philosophical doctrines, such as those of Kant and Mill, that likewise do so.

We need not enumerate further possibilities (of which there are many) except to add that many citizens may not hold any well-articulated comprehensive doctrine at all. Perhaps most do not. Rather, they affirm various religious and philosophical, associational and personal values together with the political values expressed by the political conception. These political values are not derived within any overall, systematic view. People may think that the political values realized by a just basic structure are normally of sufficient weight to override whatever other values are likely come in conflict with them. So while their whole view is comprehensive in that it includes nonpolitical values, it is only partially comprehensive in being neither systematic nor complete. In §58 we shall find that this lack of system and completeness is indeed fortunate, and helps to permit a *modus vivendi* to change over time into an overlapping consensus.

11.3. In giving an important place to the idea of an overlapping consensus, we assume the fact of reasonable pluralism to be a permanent condition of a democratic society. Any political conception has a view of the political and social world and relies on certain general facts of political sociology and human psychology. The fact of reasonable pluralism is the first of five such facts that are especially important in justice as fairness.

To elaborate: the diversity of religious, philosophical, and moral doc-

trines found in modern democratic societies is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy. Under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable yet reasonable comprehensive doctrines will come about and persist, should it not already exist. This fact about free societies is what I call the fact of reasonable pluralism.

A second and related general fact is that a continuing shared adherence to one comprehensive doctrine can be maintained only by the oppressive use of state power, with all its official crimes and the inevitable brutality and cruelties, followed by the corruption of religion, philosophy, and science. If we say a political society is a community when it is united in affirming one and the same comprehensive doctrine (recall §7.3), then the oppressive use of state power with these attendant evils is necessary to maintain political community. Let us call this the fact of oppression. In the society of the Middle Ages, more or less united in affirming the Catholic faith, the Inquisition was not an accident; its suppression of heresy was needed to preserve the shared religious belief. The same holds, we suppose, for any comprehensive philosophical and moral doctrine, even secular ones. A society united on a form of utilitarianism, or on the moral views of Kant or Mill, would likewise require the oppressive sanctions of state power to remain so.²⁵

A third general fact is that an enduring and secure democratic regime, one not divided by bitter doctrinal disputes and hostile social classes, must be willingly and freely supported by at least a substantial majority of its politically active citizens. Together with the first general fact, this means that to serve as a public basis of justification for a constitutional regime a conception of justice must be one that can be endorsed by widely different and even irreconcilable comprehensive doctrines. Otherwise the regime will not be enduring and secure. This leads us to introduce the idea of a political conception of justice, as specified in §9.

We add, then, a fourth general fact: that the political culture of a demo-

25. The content and tone of one's conception of justice, political or other, is undoubtedly influenced by dwelling upon certain facts of historical experience. For justice as fairness, important among these facts are the endless oppressions and cruelties of state power and inquisition used to sustain Christian unity beginning as early as St. Augustine and extending into the eighteenth century. Political liberalism begins with the division of Christendom after the Reformation, though that was hardly the Reformers' intent. As Hegel believed, that it occurred was not a misfortune but a good thing for both church and state. See G. F. W. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet and ed. Allen Wood (Cambridge: Cambridge University Press, 1991), §270 (end of the long comment), pp. 301f.

cratic society that has worked reasonably well over a considerable period of time normally contains, at least implicitly, certain fundamental ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime.

11.4. What lies behind these first four general facts? Surely all, and especially the first two (the fact of reasonable pluralism and the fact of oppression), call for explanation. For why should free institutions with their basic rights and liberties lead to diversity; and why should state power be required to overcome it? Why doesn't our sincere and conscientious attempt to reason with one another lead us to agreement? It seems to do so in science, or in natural science anyway, at least in the long run.

There are several possible explanations. We might suppose that most people hold views that advance their own more narrow interests; and since their interests are different, so are their views. Or perhaps people are often irrational and not very bright, and this mixed with logical errors leads to conflicting opinions. But these explanations are too easy, and not the kind we want. We want to know how reasonable disagreement is possible, for we always begin work within ideal theory. Thus we ask: how might reasonable disagreement come about?

An explanation of the right kind is that the sources of reasonable disagreement—what I call the burdens of judgment—among reasonable persons are the many obstacles to the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life. These obstacles include the following:

(a) The evidence—empirical and scientific—bearing on a case may be conflicting and complex, and thus hard to assess and evaluate.

(b) Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments.

(c) To some degree all our concepts, and not only our moral and political concepts, are vague and subject to hard cases. This indeterminacy means that we must rely on judgment and interpretation (and on judgments about interpretations) within some range (not sharply specifiable) where reasonable persons may differ.

(d) The way we assess evidence and weigh moral and political values is shaped (how much so we cannot tell) by our total experience, our whole course of life up to now; and our total experiences surely differ. So in a modern society with its numerous offices and positions, its many divisions

of labor, its many social groups and often their ethnic variety, citizens' total experiences differ enough for their judgments to diverge to some degree on many if not most cases of any significant complexity.

(e) Often there are different kinds of normative considerations of different force on both sides of a question and it is difficult to make an overall assessment.²⁶

A fifth and last general fact may be stated as follows: that many of our most important political judgments involving the basic political values are made subject to conditions such that it is highly unlikely that conscientious and fully reasonable persons, even after free and open discussion, can exercise their powers of reason so that all arrive at the same conclusion.

11.5. This fact must not be understood to imply a philosophical doctrine of skepticism.²⁷ It does not mean that reasonable persons do not agree in political judgment because objective values do not exist, or are subjective; or that what we take as judgments about values are simply historically conditioned opinions giving voice to interests rooted in time and place. It refers instead to the many difficulties in reaching agreement arising with all kinds of judgment. These difficulties are particularly acute in the case of political judgments in view of the very great complexity of the questions raised, the often impressionistic nature of the evidence, and the severity of the conflicts they commonly address.

The burdens of judgment alone can account for the fact of reasonable pluralism (there are of course other reasons); and since we cannot eliminate these burdens, pluralism is a permanent feature of a free democratic culture. We do not deny that vanity and greed, the will to dominate and the desire for glory are prominent in politics and affect the rise and fall of nations. Yet since we cannot as a democracy use state power, with its attendant cruelties and corruptions of civic and cultural life, to eradicate diver-

26. A related point has often been stressed by Isaiah Berlin; namely, that any system of social institutions is limited in the range of values it can accommodate, so that some selection must be made from the full range of moral and political values that might be realized. This is because any system of institutions has, as it were, but a limited social space. In being forced to select among cherished values, we face great difficulties in setting priorities, and face other hard decisions that may seem to have no clear answer. See his statement in "On the Pursuit of the Ideal," in *The Crooked Timber of Humanity*, ed. Henry Hardy (New York: Knopf, 1991).

27. This follows *Theory*, §34: 188, in holding it essential to avoid resting liberty of conscience and toleration on philosophical skepticism and indifference to religion.

sity, we look for a political conception of justice that can gain the support of a reasonable overlapping consensus to serve as a public basis of justification.

11.6. In conclusion, two remarks to prevent misunderstandings of the idea of an overlapping consensus:

First, given the actual comprehensive views existing in society, no matter what their content, there is plainly no guarantee that justice as fairness, or any reasonable conception for a democratic regime, can gain the support of an overlapping consensus and in that way underwrite the stability of its political institutions. Many doctrines are plainly incompatible with the values of democracy. Moreover, political liberalism does not say that the values articulated by a political conception of justice, though of basic significance, outweigh the transcendent values (as people may interpret them)—religious, philosophical, or moral—with which the political conception may possibly conflict. To say that would go beyond the political.

A second remark is that we start from the conviction that a constitutional democratic regime is reasonably just and workable, and worth defending. But given the fact of reasonable pluralism, we try to design our defense of it so as to gain the allegiance of reasonable people and to win wide support. We do not look to the comprehensive doctrines that in fact exist and then frame a political conception that strikes a balance between them expressly designed to gain their allegiance. To do that would make the political conception political in the wrong way (§56).

Instead, we ask how to frame a conception of justice for a constitutional regime that both seems defensible in its own right and is such that those who support, or who might be brought to support, that kind of regime can also endorse that conception. We assume that we know nothing in advance about people's comprehensive views, and we try to put no unnecessary obstacles in the way of their affirming the political conception. This leads to the idea of a political conception of justice that presupposes no particular comprehensive view, and hence may be supported by an enduring overlapping consensus of reasonable doctrines, given good fortune and enough time to gain allegiance to itself.

In Part V we consider whether a well-ordered democratic society is possible, and if so, how its possibility is consistent with human nature and the requirements of workable political institutions. We try to show that the well-ordered society of justice as fairness is indeed possible according to our nature and those requirements. This endeavor belongs to political phi-

losophy as reconciliation; for seeing that the conditions of a social world at least allow for that possibility affects our view of the world itself and our attitude toward it. No longer need it seem hopelessly hostile, a world in which the will to dominate and oppressive cruelties, abetted by prejudice and folly, must inevitably prevail. None of this may ease our loss, situated as we may be in a corrupt society. But we may reflect that the world is not in itself inhospitable to political justice and its good. Our social world might have been different and there is hope for those at another time and place.