



## Justice as Fairness: Political not Metaphysical

John Rawls

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JOHN RAWLS

Justice as Fairness:  
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In this discussion I shall make some general remarks about how I now understand the conception of justice that I have called "justice as fairness" (presented in my book *A Theory of Justice*).<sup>1</sup> I do this because it may seem that this conception depends on philosophical claims I should like to avoid, for example, claims to universal truth, or claims about the essential nature and identity of persons. My aim is to explain why it does not. I shall first discuss what I regard as the task of political philosophy at the present time and then briefly survey how the basic intuitive ideas drawn upon in justice as fairness are combined into a political conception of justice for a constitutional democracy. Doing this will bring out how and why this conception of justice avoids certain philosophical and metaphysical claims. Briefly, the idea is that in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines. Thus, to formulate such a conception, we apply the principle of toleration to philosophy itself: the public conception of justice is to be political, not metaphysical. Hence the title.

I want to put aside the question whether the text of *A Theory of Justice* supports different readings than the one I sketch here. Certainly on a

Beginning in November of 1983, different versions of this paper were presented at New York University, the Yale Law School Legal Theory Workshop, the University of Illinois, and the University of California at Davis. I am grateful to many people for clarifying numerous points and for raising instructive difficulties; the paper is much changed as a result. In particular, I am indebted to Arnold Davidson, B. J. Diggs, Catherine Elgin, Owen Fiss, Stephen Holmes, Norbert Hornstein, Thomas Nagel, George Priest, and David Sachs; and especially to Burton Dreben who has been of very great help throughout. Indebtedness to others on particular points is indicated in the footnotes.

1. Cambridge, MA: Harvard University Press, 1971.

number of points I have changed my views, and there are no doubt others on which my views have changed in ways that I am unaware of.<sup>2</sup> I recognize further that certain faults of exposition as well as obscure and ambiguous passages in *A Theory of Justice* invite misunderstanding; but I think these matters need not concern us and I shan't pursue them beyond a few footnote indications. For our purposes here, it suffices first, to show how a conception of justice with the structure and content of justice as fairness can be understood as political and not metaphysical, and second, to explain why we should look for such a conception of justice in a democratic society.

## I

One thing I failed to say in *A Theory of Justice*, or failed to stress sufficiently, is that justice as fairness is intended as a political conception of justice. While a political conception of justice is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions. In particular, justice as fairness is framed to apply to what I have called the "basic structure" of a modern constitutional democracy.<sup>3</sup> (I shall use "constitutional

2. A number of these changes, or shifts of emphasis, are evident in three lectures entitled "Kantian Constructivism in Moral Theory," *Journal of Philosophy* 77 (September 1980). For example, the account of what I have called "primary goods" is revised so that it clearly depends on a particular conception of persons and their higher-order interests; hence this account is not a purely psychological, sociological, or historical thesis. See pp. 526f. There is also throughout those lectures a more explicit emphasis on the role of a conception of the person as well as on the idea that the justification of a conception of justice is a practical social task rather than an epistemological or metaphysical problem. See pp. 518f. And in this connection the idea of "Kantian constructivism" is introduced, especially in the third lecture. It must be noted, however, that this idea is not proposed as Kant's idea: the adjective "Kantian" indicates analogy not identity, that is, resemblance in enough fundamental respects so that the adjective is appropriate. These fundamental respects are certain structural features of justice as fairness and elements of its content, such as the distinction between what may be called the Reasonable and the Rational, the priority of right, and the role of the conception of the persons as free and equal, and capable of autonomy, and so on. Resemblances of structural features and content are not to be mistaken for resemblances with Kant's views on questions of epistemology and metaphysics. Finally, I should remark that the title of those lectures, "Kantian Constructivism in Moral Theory," was misleading; since the conception of justice discussed is a political conception, a better title would have been "Kantian Constructivism in Political Philosophy." Whether constructivism is reasonable for moral philosophy is a separate and more general question.

3. *Theory*, Sec. 2, and see the index; see also "The Basic Structure as Subject," in *Values and Morals*, eds. Alvin Goldman and Jaegwon Kim (Dordrecht: Reidel, 1978), pp. 47-71.

democracy” and “democratic regime,” and similar phrases interchangeably.) By this structure I mean such a society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation. Whether justice as fairness can be extended to a general political conception for different kinds of societies existing under different historical and social conditions, or whether it can be extended to a general moral conception, or a significant part thereof, are altogether separate questions. I avoid prejudging these larger questions one way or the other.

It should also be stressed that justice as fairness is not intended as the application of a general moral conception to the basic structure of society, as if this structure were simply another case to which that general moral conception is applied.<sup>4</sup> In this respect justice as fairness differs from traditional moral doctrines, for these are widely regarded as such general conceptions. Utilitarianism is a familiar example, since the principle of utility, however it is formulated, is usually said to hold for all kinds of subjects ranging from the actions of individuals to the law of nations. The essential point is this: as a practical political matter no general moral conception can provide a publicly recognized basis for a conception of justice in a modern democratic state. The social and historical conditions of such a state have their origins in the Wars of Religion following the Reformation and the subsequent development of the principle of toleration, and in the growth of constitutional government and the institutions of large industrial market economies. These conditions profoundly affect the requirements of a workable conception of political justice: such a conception must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies.

Finally, to conclude these introductory remarks, since justice as fairness is intended as a political conception of justice for a democratic society, it tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation. Justice as fairness is a political conception in part because it starts from within a certain political tradition. We hope that this political conception of justice may at least be supported by what we may call an “overlapping consensus,” that is, by a consensus that includes all the opposing philosophical and religious

4. See “Basic Structure as Subject,” *ibid.*, pp. 48–50.

doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society.<sup>5</sup>

## II

There are, of course, many ways in which political philosophy may be understood, and writers at different times, faced with different political and social circumstances, understand their work differently. Justice as fairness I would now understand as a reasonably systematic and practicable conception of justice for a constitutional democracy, a conception that offers an alternative to the dominant utilitarianism of our tradition of political thought. Its first task is to provide a more secure and acceptable basis for constitutional principles and basic rights and liberties than utilitarianism seems to allow.<sup>6</sup> The need for such a political conception arises in the following way.

There are periods, sometimes long periods, in the history of any society during which certain fundamental questions give rise to sharp and divisive political controversy, and it seems difficult, if not impossible, to find any shared basis of political agreement. Indeed, certain questions may prove intractable and may never be fully settled. One task of political philosophy in a democratic society is to focus on such questions and to examine whether some underlying basis of agreement can be uncovered and a mutually acceptable way of resolving these questions publicly established. Or if these questions cannot be fully settled, as may well be the case, perhaps the divergence of opinion can be narrowed sufficiently so that political cooperation on a basis of mutual respect can still be maintained.<sup>7</sup>

5. This idea was introduced in *Theory*, pp. 387f., as a way to weaken the conditions for the reasonableness of civil disobedience in a nearly just democratic society. Here and later in Secs. VI and VII it is used in a wider context.

6. *Theory*, Preface, p. viii.

7. *Ibid.*, pp. 582f. On the role of a conception of justice in reducing the divergence of opinion, see pp. 44f., 53, 314, and 564. At various places the limited aims in developing a conception of justice are noted: see p. 364 on not expecting too much of an account of civil disobedience; pp. 200f. on the inevitable indeterminacy of a conception of justice in specifying a series of points of view from which questions of justice can be resolved; pp. 89f. on the social wisdom of recognizing that perhaps only a few moral problems (it would have been better to say: problems of political justice) can be satisfactorily settled, and thus of framing institutions so that intractable questions do not arise; on pp. 53, 87ff., 320f. the need to accept simplifications is emphasized. Regarding the last point, see also "Kantian Constructivism," pp. 560–64.

The course of democratic thought over the past two centuries or so makes plain that there is no agreement on the way basic institutions of a constitutional democracy should be arranged if they are to specify and secure the basic rights and liberties of citizens and answer to the claims of democratic equality when citizens are conceived as free and equal persons (as explained in the last three paragraphs of Section III). A deep disagreement exists as to how the values of liberty and equality are best realized in the basic structure of society. To simplify, we may think of this disagreement as a conflict within the tradition of democratic thought itself, between the tradition associated with Locke, which gives greater weight to what Constant called “the liberties of the moderns,” freedom of thought and conscience, certain basic rights of the person and of property, and the rule of law, and the tradition associated with Rousseau, which gives greater weight to what Constant called “the liberties of the ancients,” the equal political liberties and the values of public life. This is a stylized contrast and historically inaccurate, but it serves to fix ideas.

Justice as fairness tries to adjudicate between these contending traditions first, by proposing two principles of justice to serve as guidelines for how basic institutions are to realize the values of liberty and equality, and second, by specifying a point of view from which these principles can be seen as more appropriate than other familiar principles of justice to the nature of democratic citizens viewed as free and equal persons. What it means to view citizens as free and equal persons is, of course, a fundamental question and is discussed in the following sections. What must be shown is that a certain arrangement of the basic structure, certain institutional forms, are more appropriate for realizing the values of liberty and equality when citizens are conceived as such persons, that is (very briefly), as having the requisite powers of moral personality that enable them to participate in society viewed as a system of fair cooperation for mutual advantage. So to continue, the two principles of justice (mentioned above) read as follows:

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

Each of these principles applies to a different part of the basic structure; and both are concerned not only with basic rights, liberties, and opportunities, but also with the claims of equality; while the second part of the second principle underwrites the worth of these institutional guarantees.<sup>8</sup> The two principles together, when the first is given priority over the second, regulate the basic institutions which realize these values.<sup>9</sup> But these details, although important, are not our concern here.

We must now ask: how might political philosophy find a shared basis for settling such a fundamental question as that of the most appropriate institutional forms for liberty and equality? Of course, it is likely that the most that can be done is to narrow the range of public disagreement. Yet even firmly held convictions gradually change: religious toleration is now accepted, and arguments for persecution are no longer openly professed; similarly, slavery is rejected as inherently unjust, and however much the aftermath of slavery may persist in social practices and unavowed attitudes, no one is willing to defend it. We collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent conception of justice. We can regard these convictions as provisional fixed points which any conception of justice must account for if it is to be reasonable for us. We look, then, to our public political culture itself, including its main institutions and the historical traditions of their interpretation, as the shared fund of implicitly recognized basic ideas and principles. The hope is that these ideas and principles can be formulated clearly enough to be combined into a conception of political justice congenial to our most firmly held convictions. We express this by saying that a political conception of justice, to be acceptable, must be in accordance with our considered convictions, at all levels of generality, on due reflection (or in what I have called "reflective equilibrium").<sup>10</sup>

The public political culture may be of two minds even at a very deep

8. The statement of these principles differs from that given in *Theory* and follows the statement in "The Basic Liberties and Their Priority," *Tanner Lectures on Human Values*, Vol. III (Salt Lake City: University of Utah Press, 1982), p. 5. The reasons for the changes are discussed at pp. 46–55 of that lecture. They are important for the revisions made in the account of the basic liberties found in *Theory* in the attempt to answer the objections of H.L.A. Hart; but they need not concern us here.

9. The idea of the worth of these guarantees is discussed *ibid.*, pp. 40f.

10. *Theory*, pp. 20f., 48–51, and 120f.

level. Indeed, this must be so with such an enduring controversy as that concerning the most appropriate institutional forms to realize the values of liberty and equality. This suggests that if we are to succeed in finding a basis of public agreement, we must find a new way of organizing familiar ideas and principles into a conception of political justice so that the claims in conflict, as previously understood, are seen in another light. A political conception need not be an original creation but may only articulate familiar intuitive ideas and principles so that they can be recognized as fitting together in a somewhat different way than before. Such a conception may, however, go further than this: it may organize these familiar ideas and principles by means of a more fundamental intuitive idea within the complex structure of which the other familiar intuitive ideas are then systematically connected and related. In justice as fairness, as we shall see in the next section, this more fundamental idea is that of society as a system of fair social cooperation between free and equal persons. The concern of this section is how we might find a public basis of political agreement. The point is that a conception of justice will only be able to achieve this aim if it provides a reasonable way of shaping into one coherent view the deeper bases of agreement embedded in the public political culture of a constitutional regime and acceptable to its most firmly held considered convictions.

Now suppose justice as fairness were to achieve its aim and a publicly acceptable political conception of justice is found. Then this conception provides a publicly recognized point of view from which all citizens can examine before one another whether or not their political and social institutions are just. It enables them to do this by citing what are recognized among them as valid and sufficient reasons singled out by that conception itself. Society's main institutions and how they fit together into one scheme of social cooperation can be examined on the same basis by each citizen, whatever that citizen's social position or more particular interests. It should be observed that, on this view, justification is not regarded simply as valid argument from listed premises, even should these premises be true. Rather, justification is addressed to others who disagree with us, and therefore it must always proceed from some consensus, that is, from premises that we and others publicly recognize as true; or better, publicly recognize as acceptable to us for the purpose of establishing a working agreement on the fundamental questions of political justice. It goes without saying that this agreement must be in-

formed and uncoerced, and reached by citizens in ways consistent with their being viewed as free and equal persons.<sup>11</sup>

Thus, the aim of justice as fairness as a political conception is practical, and not metaphysical or epistemological. That is, it presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons. This agreement when securely founded in public political and social attitudes sustains the goods of all persons and associations within a just democratic regime. To secure this agreement we try, so far as we can, to avoid disputed philosophical, as well as disputed moral and religious, questions. We do this not because these questions are unimportant or regarded with indifference,<sup>12</sup> but because we think them too important and recognize that there is no way to resolve them politically. The only alternative to a principle of toleration is the autocratic use of state power. Thus, justice as fairness deliberately stays on the surface, philosophically speaking. Given the profound differences in belief and conceptions of the good at least since the Reformation, we must recognize that, just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state's infringement of basic liberties. Philosophy as the search for truth about an independent metaphysical and moral order cannot, I believe, provide a workable and shared basis for a political conception of justice in a democratic society.

We try, then, to leave aside philosophical controversies whenever possible, and look for ways to avoid philosophy's longstanding problems. Thus, in what I have called "Kantian constructivism," we try to avoid the problem of truth and the controversy between realism and subjectivism about the status of moral and political values. This form of constructivism neither asserts nor denies these doctrines.<sup>13</sup> Rather, it recasts ideas from the tradition of the social contract to achieve a practicable conception of objectivity and justification founded on public agreement in judgment on due reflection. The aim is free agreement, reconciliation through public reason. And similarly, as we shall see (in Section V), a conception of the person in a political view, for example, the conception of citizens as

11. *Ibid.*, pp. 580–83.

12. *Ibid.*, pp. 214f.

13. On Kantian constructivism, see especially the third lecture referred to in footnote 2 above.

free and equal persons, need not involve, so I believe, questions of philosophical psychology or a metaphysical doctrine of the nature of the self. No political view that depends on these deep and unresolved matters can serve as a public conception of justice in a constitutional democratic state. As I have said, we must apply the principle of toleration to philosophy itself. The hope is that, by this method of avoidance, as we might call it, existing differences between contending political views can at least be moderated, even if not entirely removed, so that social cooperation on the basis of mutual respect can be maintained. Or if this is expecting too much, this method may enable us to conceive how, given a desire for free and uncoerced agreement, a public understanding could arise consistent with the historical conditions and constraints of our social world. Until we bring ourselves to conceive how this could happen, it can't happen.

### III

Let's now survey briefly some of the basic ideas that make up justice as fairness in order to show that these ideas belong to a political conception of justice. As I have indicated, the overarching fundamental intuitive idea, within which other basic intuitive ideas are systematically connected, is that of society as a fair system of cooperation between free and equal persons. Justice as fairness starts from this idea as one of the basic intuitive ideas which we take to be implicit in the public culture of a democratic society.<sup>14</sup> In their political thought, and in the context of public discussion of political questions, citizens do not view the social order as a fixed natural order, or as an institutional hierarchy justified by religious or aristocratic values. Here it is important to stress that from other points of view, for example, from the point of view of personal morality, or from the point of view of members of an association, or of one's religious or philosophical doctrine, various aspects of the world and one's relation to it, may be regarded in a different way. But these other points of view are not to be introduced into political discussion.

We can make the idea of social cooperation more specific by noting three of its elements:

14. Although *Theory* uses this idea from the outset (it is introduced on p. 4), it does not emphasize, as I do here and in "Kantian Constructivism," that the basic ideas of justice as fairness are regarded as implicit or latent in the public culture of a democratic society.

1. Cooperation is distinct from merely socially coordinated activity, for example, from activity coordinated by orders issued by some central authority. Cooperation is guided by publicly recognized rules and procedures which those who are cooperating accept and regard as properly regulating their conduct.
2. Cooperation involves the idea of fair terms of cooperation: these are terms that each participant may reasonably accept, provided that everyone else likewise accepts them. Fair terms of cooperation specify an idea of reciprocity or mutuality: all who are engaged in cooperation and who do their part as the rules and procedures require, are to benefit in some appropriate way as assessed by a suitable benchmark of comparison. A conception of political justice characterizes the fair terms of social cooperation. Since the primary subject of justice is the basic structure of society, this is accomplished in justice as fairness by formulating principles that specify basic rights and duties within the main institutions of society, and by regulating the institutions of background justice over time so that the benefits produced by everyone's efforts are fairly acquired and divided from one generation to the next.
3. The idea of social cooperation requires an idea of each participant's rational advantage, or good. This idea of good specifies what those who are engaged in cooperation, whether individuals, families, or associations, or even nation-states, are trying to achieve, when the scheme is viewed from their own standpoint.

Now consider the idea of the person.<sup>15</sup> There are, of course, many aspects of human nature that can be singled out as especially significant depending on our point of view. This is witnessed by such expressions as *homo politicus*, *homo oeconomicus*, *homo faber*, and the like. Justice as fairness starts from the idea that society is to be conceived as a fair

15. It should be emphasized that a conception of the person, as I understand it here, is a normative conception, whether legal, political, or moral, or indeed also philosophical or religious, depending on the overall view to which it belongs. In this case the conception of the person is a moral conception, one that begins from our everyday conception of persons as the basic units of thought, deliberation and responsibility, and adapted to a political conception of justice and not to a comprehensive moral doctrine. It is in effect a political conception of the person, and given the aims of justice as fairness, a conception of citizens. Thus, a conception of the person is to be distinguished from an account of human nature given by natural science or social theory. On this point, see "Kantian Constructivism," pp. 534f.

system of cooperation and so it adopts a conception of the person to go with this idea. Since Greek times, both in philosophy and law, the concept of the person has been understood as the concept of someone who can take part in, or who can play a role in, social life, and hence exercise and respect its various rights and duties. Thus, we say that a person is someone who can be a citizen, that is, a fully cooperating member of society over a complete life. We add the phrase "over a complete life" because a society is viewed as a more or less complete and self-sufficient scheme of cooperation, making room within itself for all the necessities and activities of life, from birth until death. A society is not an association for more limited purposes; citizens do not join society voluntarily but are born into it, where, for our aims here, we assume they are to lead their lives.

Since we start within the tradition of democratic thought, we also think of citizens as free and equal persons. The basic intuitive idea is that in virtue of what we may call their moral powers, and the powers of reason, thought, and judgment connected with those powers, we say that persons are free. And in virtue of their having these powers to the requisite degree to be fully cooperating members of society, we say that persons are equal.<sup>16</sup> We can elaborate this conception of the person as follows. Since persons can be full participants in a fair system of social cooperation, we ascribe to them the two moral powers connected with the elements in the idea of social cooperation noted above: namely, a capacity for a sense of justice and a capacity for a conception of the good. A sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation. The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue a conception of one's rational advantage, or good. In the case of social cooperation, this good must not be understood narrowly but rather as a conception of what is valuable in human life. Thus, a conception of the good normally consists of a more or less determinate scheme of final ends, that is, ends we want to realize for their own sake, as well as of attachments to other persons and loyalties to various groups and associations. These attachments and loyalties give rise to affections and devotions, and therefore the flourishing of the persons and associations who are the objects of these sentiments is also part of our con-

16. *Theory*, Sec. 77.

ception of the good. Moreover, we must also include in such a conception a view of our relation to the world—religious, philosophical, or moral—by reference to which the value and significance of our ends and attachments are understood.

In addition to having the two moral powers, the capacities for a sense of justice and a conception of the good, persons also have at any given time a particular conception of the good that they try to achieve. Since we wish to start from the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be normal and fully cooperating members of society. This does not imply that no one ever suffers from illness or accident; such misfortunes are to be expected in the ordinary course of human life; and provision for these contingencies must be made. But for our purposes here I leave aside permanent physical disabilities or mental disorders so severe as to prevent persons from being normal and fully cooperating members of society in the usual sense.

Now the conception of persons as having the two moral powers, and therefore as free and equal, is also a basic intuitive idea assumed to be implicit in the public culture of a democratic society. Note, however, that it is formed by idealizing and simplifying in various ways. This is done to achieve a clear and uncluttered view of what for us is the fundamental question of political justice: namely, what is the most appropriate conception of justice for specifying the terms of social cooperation between citizens regarded as free and equal persons, and as normal and fully cooperating members of society over a complete life. It is this question that has been the focus of the liberal critique of aristocracy, of the socialist critique of liberal constitutional democracy, and of the conflict between liberals and conservatives at the present time over the claims of private property and the legitimacy (in contrast to the effectiveness) of social policies associated with the so-called welfare state.

#### IV

I now take up the idea of the original position.<sup>17</sup> This idea is introduced in order to work out which traditional conception of justice, or which variant of one of those conceptions, specifies the most appropriate prin-

17. *Ibid.*, Sec. 4, Ch. 3, and the index.

ciples for realizing liberty and equality once society is viewed as a system of cooperation between free and equal persons. Assuming we had this purpose in mind, let's see why we would introduce the idea of the original position and how it serves its purpose.

Consider again the idea of social cooperation. Let's ask: how are the fair terms of cooperation to be determined? Are they simply laid down by some outside agency distinct from the persons cooperating? Are they, for example, laid down by God's law? Or are these terms to be recognized by these persons as fair by reference to their knowledge of a prior and independent moral order? For example, are they regarded as required by natural law, or by a realm of values known by rational intuition? Or are these terms to be established by an undertaking among these persons themselves in the light of what they regard as their mutual advantage? Depending on which answer we give, we get a different conception of cooperation.

Since justice as fairness recasts the doctrine of the social contract, it adopts a form of the last answer: the fair terms of social cooperation are conceived as agreed to by those engaged in it, that is, by free and equal persons as citizens who are born into the society in which they lead their lives. But their agreement, like any other valid agreement, must be entered into under appropriate conditions. In particular, these conditions must situate free and equal persons fairly and must not allow some persons greater bargaining advantages than others. Further, threats of force and coercion, deception and fraud, and so on, must be excluded.

So far so good. The foregoing considerations are familiar from everyday life. But agreements in everyday life are made in some more or less clearly specified situation embedded within the background institutions of the basic structure. Our task, however, is to extend the idea of agreement to this background framework itself. Here we face a difficulty for any political conception of justice that uses the idea of a contract, whether social or otherwise. The difficulty is this: we must find some point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between free and equal persons can be reached. The original position, with the feature I have called "the veil of ignorance," is this point of view.<sup>18</sup> And the reason why the original position must

18. On the veil of ignorance, see *ibid.*, Sec. 24, and the index.

abstract from and not be affected by the contingencies of the social world is that the conditions for a fair agreement on the principles of political justice between free and equal persons must eliminate the bargaining advantages which inevitably arise within background institutions of any society as the result of cumulative social, historical, and natural tendencies. These contingent advantages and accidental influences from the past should not influence an agreement on the principles which are to regulate the institutions of the basic structure itself from the present into the future.

Here we seem to face a second difficulty, which is, however, only apparent. To explain: from what we have just said it is clear that the original position is to be seen as a device of representation and hence any agreement reached by the parties must be regarded as both hypothetical and nonhistorical. But if so, since hypothetical agreements cannot bind, what is the significance of the original position?<sup>19</sup> The answer is

19. This question is raised by Ronald Dworkin in the first part of his very illuminating, and to me highly instructive, essay "Justice and Rights" (1973), reprinted in *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977). Dworkin considers several ways of explaining the use of the original position in an account of justice that invokes the idea of the social contract. In the last part of the essay (pp. 173–83), after having surveyed some of the constructivist features of justice as fairness (pp. 159–68) and argued that it is a right-based and not a duty-based or a goal-based view (pp. 168–77), he proposes that the original position with the veil of ignorance be seen as modeling the force of the natural right that individuals have to equal concern and respect in the design of the political institutions that govern them (p. 180). He thinks that this natural right lies as the basis of justice as fairness and that the original position serves as a device for testing which principles of justice this right requires. This is an ingenious suggestion but I have not followed it in the text. I prefer not to think of justice as fairness as a right-based view; indeed, Dworkin's classification scheme of right-based, duty-based and goal-based views (pp. 171f.) is too narrow and leaves out important possibilities. Thus, as explained in Sec. II above, I think of justice as fairness as working up into idealized conceptions certain fundamental intuitive ideas such as those of the person as free and equal, of a well-ordered society and of the public role of a conception of political justice, and as connecting these fundamental intuitive ideas with the even more fundamental and comprehensive intuitive idea of society as a fair system of cooperation over time from one generation to the next. Rights, duties, and goals are but elements of such idealized conceptions. Thus, justice as fairness is a conception-based, or as Elizabeth Anderson has suggested to me, an ideal-based view, since these fundamental intuitive ideas reflect ideals implicit or latent in the public culture of a democratic society. In this context the original position is a device of representation that models the force, not of the natural right of equal concern and respect, but of the essential elements of these fundamental intuitive ideas as identified by the reasons for principles of justice that we accept on due reflection. As such a device, it serves first to combine and then to focus the resultant force of all these reasons in selecting the most appropriate principles of justice for a democratic society. (In doing this the force of the natural right of equal

implicit in what has already been said: it is given by the role of the various features of the original position as a device of representation. Thus, that the parties are symmetrically situated is required if they are to be seen as representatives of free and equal citizens who are to reach an agreement under conditions that are fair. Moreover, one of our considered convictions, I assume, is this: the fact that we occupy a particular social position is not a good reason for us to accept, or to expect others to accept, a conception of justice that favors those in this position. To model this conviction in the original position the parties are not allowed to know their social position; and the same idea is extended to other cases. This is expressed figuratively by saying that the parties are behind a veil of ignorance. In sum, the original position is simply a device of representation: it describes the parties, each of whom are responsible for the essential interests of a free and equal person, as fairly situated and as reaching an agreement subject to appropriate restrictions on what are to count as good reasons.<sup>20</sup>

Both of the above mentioned difficulties, then, are overcome by viewing the original position as a device of representation: that is, this position models what we regard as fair conditions under which the representatives

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concern and respect will be covered in other ways.) This account of the use of the original position resembles in some respects an account Dworkin rejects in the first part of his essay, especially pp. 153f. In view of the ambiguity and obscurity of *Theory* on many of the points he considers, it is not my aim to criticize Dworkin's valuable discussion, but rather to indicate how my understanding of the original position differs from his. Others may prefer his account.

20. The original position models a basic feature of Kantian constructivism, namely, the distinction between the Reasonable and the Rational, with the Reasonable as prior to the Rational. (For an explanation of this distinction, see "Kantian Constructivism," pp. 528–32, and *passim*.) The relevance of this distinction here is that *Theory* more or less consistently speaks not of rational but of reasonable (or sometimes of fitting or appropriate) conditions as constraints on arguments for principles of justice (see pp. 18f., 20f., 120f., 130f., 138, 446, 516f., 578, 584f.). These constraints are modeled in the original position and thereby imposed on the parties: their deliberations are subject, and subject absolutely, to the reasonable conditions the modeling of which makes the original position fair. The Reasonable, then, is prior to the Rational, and this gives the priority of right. Thus, it was an error in *Theory* (and a very misleading one) to describe a theory of justice as part of the theory of rational choice, as on pp. 16 and 583. What I should have said is that the conception of justice as fairness uses an account of rational choice subject to reasonable conditions to characterize the deliberations of the parties as representatives of free and equal persons; and all of this within a political conception of justice, which is, of course, a moral conception. There is no thought of trying to derive the content of justice within a framework that uses an idea of the rational as the sole normative idea. That thought is incompatible with any kind of Kantian view.

of free and equal persons are to specify the terms of social cooperation in the case of the basic structure of society; and since it also models what, for this case, we regard as acceptable restrictions on reasons available to the parties for favoring one agreement rather than another, the conception of justice the parties would adopt identifies the conception we regard—*here and now*—as fair and supported by the best reasons. We try to model restrictions on reasons in such a way that it is perfectly evident which agreement would be made by the parties in the original position as citizens' representatives. Even if there should be, as surely there will be, reasons for and against each conception of justice available, there may be an overall balance of reasons plainly favoring one conception over the rest. As a device of representation the idea of the original position serves as a means of public reflection and self-clarification. We can use it to help us work out what we now think, once we are able to take a clear and uncluttered view of what justice requires when society is conceived as a scheme of cooperation between free and equal persons over time from one generation to the next. The original position serves as a unifying idea by which our considered convictions at all levels of generality are brought to bear on one another so as to achieve greater mutual agreement and self-understanding.

To conclude: we introduce an idea like that of the original position because there is no better way to elaborate a political conception of justice for the basic structure from the fundamental intuitive idea of society as a fair system of cooperation between citizens as free and equal persons. There are, however, certain hazards. As a device of representation the original position is likely to seem somewhat abstract and hence open to misunderstanding. The description of the parties may seem to presuppose some metaphysical conception of the person, for example, that the essential nature of persons is independent of and prior to their contingent attributes, including their final ends and attachments, and indeed, their character as a whole. But this is an illusion caused by not seeing the original position as a device of representation. The veil of ignorance, to mention one prominent feature of that position, has no metaphysical implications concerning the nature of the self; it does not imply that the self is ontologically prior to the facts about persons that the parties are excluded from knowing. We can, as it were, enter this position any time simply by reasoning for principles of justice in accordance with the enu-

merated restrictions. When, in this way, we simulate being in this position, our reasoning no more commits us to a metaphysical doctrine about the nature of the self than our playing a game like Monopoly commits us to thinking that we are landlords engaged in a desperate rivalry, winner take all.<sup>21</sup> We must keep in mind that we are trying to show how the idea of society as a fair system of social cooperation can be unfolded so as to specify the most appropriate principles for realizing the institutions of liberty and equality when citizens are regarded as free and equal persons.

## V

I just remarked that the idea of the original position and the description of the parties may tempt us to think that a metaphysical doctrine of the person is presupposed. While I said that this interpretation is mistaken, it is not enough simply to disavow reliance on metaphysical doctrines, for despite one's intent they may still be involved. To rebut claims of this

21. *Theory*, pp. 138f., 147. The parties in the original position are said (p. 147) to be theoretically defined individuals whose motivations are specified by the account of that position and not by a psychological view about how human beings are actually motivated. This is also part of what is meant by saying (p. 121) that the acceptance of the particular principles of justice is not conjectured as a psychological law or probability but rather follows from the full description of the original position. Although the aim cannot be perfectly achieved, we want the argument to be deductive, "a kind of moral geometry." In "Kantian Constructivism" (p. 532) the parties are described as merely artificial agents who inhabit a construction. Thus I think R. B. Brandt mistaken in objecting that the argument from the original position is based on defective psychology. See his *A Theory of the Good and the Right* (Oxford: Clarendon Press, 1979), pp. 239–42. Of course, one might object to the original position that it models the conception of the person and the deliberations of the parties in ways that are unsuitable for the purposes of a political conception of justice; but for these purposes psychological theory is not directly relevant. On the other hand, psychological theory is relevant for the account of the stability of a conception of justice, as discussed in *Theory*, Pt. III. See below, footnote 33. Similarly, I think Michael Sandel mistaken in supposing that the original position involves a conception of the self "... shorn of all its contingently-given attributes," a self that "assumes a kind of supra-empirical status, ... and given prior to its ends, a pure subject of agency and possession, ultimately thin." See *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), pp. 93–95. I cannot discuss these criticisms in any detail. The essential point (as suggested in the introductory remarks) is not whether certain passages in *Theory* call for such an interpretation (I doubt that they do), but whether the conception of justice as fairness presented therein can be understood in the light of the interpretation I sketch in this article and in the earlier lectures on constructivism, as I believe it can be.

nature requires discussing them in detail and showing that they have no foothold. I cannot do that here.<sup>22</sup>

I can, however, sketch a positive account of the political conception of the person, that is, the conception of the person as citizen (discussed in Section III), involved in the original position as a device of representation. To explain what is meant by describing a conception of the person as political, let's consider how citizens are represented in the original position as free persons. The representation of their freedom seems to be one source of the idea that some metaphysical doctrine is presupposed. I have said elsewhere that citizens view themselves as free in three respects, so let's survey each of these briefly and indicate the way in which the conception of the person used is political.<sup>23</sup>

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 of themselves, they view themselves as inevitably tied to the pursuit of the particular con-

22. Part of the difficulty is that there is no accepted understanding of what a metaphysical doctrine is. One might say, as Paul Hoffman has suggested to me, that to develop a political conception of justice without presupposing, or explicitly using, a metaphysical doctrine, for example, some particular metaphysical conception of the person, is already to presuppose a metaphysical thesis: namely, that no particular metaphysical doctrine is required for this purpose. One might also say that our everyday conception of persons as the basic units of deliberation and responsibility presupposes, or in some way involves, certain metaphysical theses about the nature of persons as moral or political agents. Following the method of avoidance, I should not want to deny these claims. What should be said is the following. If we look at the presentation of justice as fairness and note how it is set up, and note the ideas and conceptions it uses, no particular metaphysical doctrine about the nature of persons, distinctive and opposed to other metaphysical doctrines, appears among its premises, or seems required by its argument. If metaphysical presuppositions are involved, perhaps they are so general that they would not distinguish between the distinctive metaphysical views—Cartesian, Leibnizian, or Kantian; realist, idealist, or materialist—with which philosophy traditionally has been concerned. In this case, they would not appear to be relevant for the structure and content of a political conception of justice one way or the other. I am grateful to Daniel Brudney and Paul Hoffman for discussion of these matters.

23. For the first two respects, see "Kantian Constructivism," pp. 544f. (For the third respect, see footnote 26 below.) The account of the first two respects found in those lectures is further developed in the text above and I am more explicit on the distinction between what I call here our "public" versus our "nonpublic or moral identity." The point of the term "moral" in the latter phrase is to indicate that persons' conceptions of the (complete) good are normally an essential element in characterizing their nonpublic (or nonpolitical) identity, and these conceptions are understood as normally containing important moral elements, although they include other elements as well, philosophical and religious. The term "moral" should be thought of as a stand-in for all these possibilities. I am indebted to Elizabeth Anderson for discussion and clarification of this distinction.

ception of the good which they affirm at any given time. Instead, as citizens, they are regarded as capable of revising and changing this conception on reasonable and rational grounds, and they may do this if they so desire. Thus, as free persons, citizens claim the right to view their persons as independent from and as 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 identity as free persons is not affected by changes over time in their conception of the good. For example, when citizens convert from one religion to another, or no 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 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, social class, and so on. 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 mutual advantage between free and equal persons.

It is essential to stress that citizens in their personal affairs, or in the internal life of associations to which they belong, may regard their final ends and attachments in a way very different from the way the political conception involves. Citizens may have, and normally do have at any given time, affections, devotions, and loyalties that they believe they would not, and indeed could and should not, stand apart from and objectively evaluate from the point of view of their purely rational good. 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 convictions and attachments are part of what we may call their “nonpublic identity.” These convictions and attachments help to organize and give shape to a person’s way of life, what one sees oneself as doing and trying to accomplish in one’s social world. We think that if we were suddenly without these particular convictions and attachments we would be disoriented and unable to carry on. In fact, there would be, we might think, no point in carrying on. But

our conceptions of the good may and often do change over time, 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 know what this means: we refer to a profound and pervasive shift, or reversal, in our final ends and character; we refer to our different nonpublic, and possibly moral or religious, identity. On the road to Damascus Saul of Tarsus becomes Paul the Apostle. There is no change in our public or political identity, nor in our personal identity as this concept is understood by some writers in the philosophy of mind.<sup>24</sup>

The second respect in which citizens view themselves as free is that they regard themselves as self-originating sources of valid claims. They think their claims have weight apart from being derived from duties or obligations specified by the 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-originating. Doing this is reasonable in a political conception of justice for a constitutional democracy; for provided the conceptions of the good and the moral doctrines citizens affirm are compatible with the public conception of justice, these duties and obligations are self-originating from the political point of view.

When we describe a way in which citizens regard themselves as free,

24. Here I assume that an answer to the problem of personal identity tries to specify the various criteria (for example, psychological continuity of memories and physical continuity of body, or some part thereof) in accordance with which two different psychological states, or actions (or whatever), which occur at two different times may be said to be states or actions of the same person who endures over time; and it also tries to specify how this enduring person is to be conceived, whether as a Cartesian or a Leibnizian substance, or as a Kantian transcendental ego, or as a continuant of some other kind, for example, bodily or physical. See the collection of essays edited by John Perry, *Personal Identity* (Berkeley, CA: University of California Press, 1975), especially Perry's introduction, pp. 3–30; and Sydney Shoemaker's essay in *Personal Identity* (Oxford: Basil Blackwell, 1984), both of which consider a number of views. Sometimes in discussions of this problem, continuity of fundamental aims and aspirations is largely ignored, for example, in views like H. P. Grice's (included in Perry's collection) which emphasizes continuity of memory. Of course, once continuity of fundamental aims and aspirations is brought in, as in Derek Parfit's *Reasons and Persons* (Oxford: Clarendon Press, 1984), Pt. III, there is no sharp distinction between the problem of persons' nonpublic or moral identity and the problem of their personal identity. This latter problem raises profound questions on which past and current philosophical views widely differ, and surely will continue to differ. For this reason it is important to try to develop a political conception of justice which avoids this problem as far as possible.

we are describing how citizens actually think of themselves in a democratic society should questions of justice arise. In our conception of a constitutional regime, this is an aspect of how citizens regard themselves. That this aspect of their freedom 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-originating sources of valid claims. Rather, their claims have no weight except insofar as they can be derived from their duties and obligations owed to society, or from their ascribed roles in the social hierarchy justified by religious or aristocratic values. Or 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 on their own behalf, but on claims originating either from slaveholders, or from the general interests of society (which does not include the interests of slaves). Slaves are, so to speak, socially dead: they are not publicly recognized as persons at all.<sup>25</sup> Thus, the contrast with a political conception which 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 person. This conception of persons fits into a political conception of justice founded on the idea of society as a system of cooperation between its members conceived as free and equal.

The third respect in which citizens are regarded as free is that they are regarded as capable of taking responsibility for their ends and this affects how their various claims are assessed.<sup>26</sup> Very roughly, the idea is that, given just background institutions and given for each person a fair index of primary goods (as required by the principles of justice), citizens are thought to be capable of adjusting their aims and aspirations in the light of what they can reasonably expect to provide for. Moreover, they are regarded as capable of restricting their claims in matters of justice

25. For the idea of social death, see Orlando Patterson, *Slavery and Social Death* (Cambridge, MA: Harvard University Press, 1982), esp. pp. 5–9, 38–45, 337. This idea is interestingly developed in this book and has a central place in the author's comparative study of slavery.

26. See "Social Unity and Primary Goods," in *Utilitarianism and Beyond*, eds. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), Sec. IV, pp. 167–70.

to the kinds of things the principles of justice allow. Thus, citizens are to recognize that the weight of their claims is not given by the strength and psychological intensity of their wants and desires (as opposed to their needs and requirements as citizens), even when their wants and desires are rational from their point of view. I cannot pursue these matters here. But the procedure is the same as before: we start with the basic intuitive idea of society as a system of social cooperation. When this idea is developed into a conception of political justice, it implies that, viewing ourselves as persons who can engage in social cooperation over a complete life, we can also take responsibility for our ends, that is, that we can adjust our ends so that they can be pursued by the means we can reasonably expect to acquire given our prospects and situation in society. The idea of responsibility for ends is implicit in the public political culture and discernible in its practices. A political conception of the person articulates this idea and fits it into the idea of society as a system of social cooperation over a complete life.

To sum up, I recapitulate three main points of this and the preceding two sections:

First, in Section III persons were regarded as free and equal in virtue of their possessing to the requisite degree the two powers of moral personality (and the powers of reason, thought, and judgment connected with these powers), namely, the capacity for a sense of justice and the capacity for a conception of the good. These powers we associated with two main elements of the idea of cooperation, the idea of fair terms of cooperation and the idea of each participant's rational advantage, or good.

Second, in this section (Section V), we have briefly surveyed three respects in which persons are regarded as free, and we have noted that in the public political culture of a constitutional democratic regime citizens conceive of themselves as free in these respects.

Third, since the question of which conception of political justice is most appropriate for realizing in basic institutions the values of liberty and equality has long been deeply controversial within the very democratic tradition in which citizens are regarded as free and equal persons, the aim of justice as fairness is to try to resolve this question by starting from the basic intuitive idea of society as a fair system of social cooperation in which the fair terms of cooperation are agreed upon by citizens themselves so conceived. In Section IV, we saw why this approach leads to the idea of the original position as a device of representation.

## VI

I now take up a point essential to thinking of justice as fairness as a liberal view. Although this conception is a moral conception, it is not, as I have said, intended as a comprehensive moral doctrine. The conception of the citizen as a free and equal person is not a moral ideal to govern all of life, but is rather an ideal belonging to a conception of political justice which is to apply to the basic structure. I emphasize this point because to think otherwise would be incompatible with liberalism as a political doctrine. Recall that as such a doctrine, liberalism assumes that in a constitutional democratic state under modern conditions there are bound to exist conflicting and incommensurable conceptions of the good. This feature characterizes modern culture since the Reformation. Any viable political conception of justice that is not to rely on the autocratic use of state power must recognize this fundamental social fact. This does not mean, of course, that such a conception cannot impose constraints on individuals and associations, but that when it does so, these constraints are accounted for, directly or indirectly, by the requirements of political justice for the basic structure.<sup>27</sup>

Given this fact, we adopt a conception of the person framed as part of, and restricted to, an explicitly political conception of justice. In this sense, the conception of the person is a political one. As I stressed in the previous section, persons can accept this conception of themselves as citizens and use it when discussing questions of political justice without being committed in other parts of their life to comprehensive moral ideals often associated with liberalism, for example, the ideals of autonomy and individuality. The absence of commitment to these ideals, and indeed to any particular comprehensive ideal, is essential to liberalism as a political doctrine. The reason is that any such ideal, when pursued as a comprehensive ideal, is incompatible with other conceptions of the good, with forms of personal, moral, and religious life consistent with justice and which, therefore, have a proper place in a democratic society. As com-

27. For example, churches are constrained by the principle of equal liberty of conscience and must conform to the principle of toleration, universities by what may be required to maintain fair equality of opportunity, and the rights of parents by what is necessary to maintain their childrens' physical well-being and to assure the adequate development of their intellectual and moral powers. Because churches, universities, and parents exercise their authority within the basic structure, they are to recognize the requirements this structure imposes to maintain background justice.

prehensive moral ideals, autonomy and individuality are unsuited for a political conception of justice. As found in Kant and J. S. Mill, these comprehensive ideals, despite their very great importance in liberal thought, are extended too far when presented as the only appropriate foundation for a constitutional regime.<sup>28</sup> So understood, liberalism becomes but another sectarian doctrine.

This conclusion requires comment: it does not mean, of course, that the liberalisms of Kant and Mill are not appropriate moral conceptions from which we can be led to affirm democratic institutions. But they are only two such conceptions among others, and so but two of the philosophical doctrines likely to persist and gain adherents in a reasonably just democratic regime. In such a regime the comprehensive moral views which support its basic institutions may include the liberalisms of individuality and autonomy; and possibly these liberalisms are among the more prominent doctrines in an overlapping consensus, that is, in a consensus in which, as noted earlier, different and even conflicting doctrines affirm the publicly shared basis of political arrangements. The liberalisms of Kant and Mill have a certain historical preeminence as among the first and most important philosophical views to espouse modern constitutional democracy and to develop its underlying ideas in an influential way; and it may even turn out that societies in which the ideals of autonomy and individuality are widely accepted are among the most well-governed and harmonious.<sup>29</sup>

By contrast with liberalism as a comprehensive moral doctrine, justice as fairness tries to present a conception of political justice rooted in the basic intuitive ideas found in the public culture of a constitutional democracy. We conjecture that these ideas are likely to be affirmed by each of the opposing comprehensive moral doctrines influential in a reasonably just democratic society. Thus justice as fairness seeks to identify the kernel of an overlapping consensus, that is, the shared intuitive ideas which when worked up into a political conception of justice turn out to

28. For Kant, see *The Foundations of the Metaphysics of Morals* and *The Critique of Practical Reason*. For Mill, see *On Liberty*, particularly Ch. 3 where the ideal of individuality is most fully discussed.

29. This point has been made with respect to the liberalisms of Kant and Mill, but for American culture one should mention the important conceptions of democratic individuality expressed in the works of Emerson, Thoreau, and Whitman. These are instructively discussed by George Kateb in his "Democratic Individuality and the Claims of Politics," *Political Theory* 12 (August 1984).

be sufficient to underwrite a just constitutional regime. This is the most we can expect, nor do we need more.<sup>30</sup> We must note, however, that when justice as fairness is fully realized in a well-ordered society, the value of full autonomy is likewise realized. In this way justice as fairness is indeed similar to the liberalism of Kant and Mill; but in contrast with them, the value of full autonomy is here specified by a political conception of justice, and not by a comprehensive moral doctrine.

It may appear that, so understood, the public acceptance of justice as fairness is no more than prudential; that is, that those who affirm this conception do so simply as a *modus vivendi* which allows the groups in the overlapping consensus to pursue their own good subject to certain constraints which each thinks to be for its advantage given existing circumstances. The idea of an overlapping consensus may seem essentially Hobbesian. But against this, two remarks: first, justice as fairness is a moral conception: it has conceptions of person and society, and concepts of right and fairness, as well as principles of justice with their complement of the virtues through which those principles are embodied in human character and regulate political and social life. This conception of justice provides an account of the cooperative virtues suitable for a political doctrine in view of the conditions and requirements of a constitutional regime. It is no less a moral conception because it is restricted to the basic structure of society, since this restriction is what enables it to serve as a political conception of justice given our present circumstances. Thus, in an overlapping consensus (as understood here), the conception of justice as fairness is not regarded merely as a *modus vivendi*.

Second, in such a consensus each of the comprehensive philosophical, religious, and moral doctrines accepts justice as fairness in its own way; that is, each comprehensive doctrine, from within its own point of view, is led to accept the public reasons of justice specified by justice as fairness. We might say that they recognize its concepts, principles, and virtues as theorems, as it were, at which their several views coincide. But this does not make these points of coincidence any less moral or reduce them to mere means. For, in general, these concepts, principles, and virtues are accepted by each as belonging to a more comprehensive philosophical, religious, or moral doctrine. Some may even affirm justice as fairness as

30. For the idea of the kernel of an overlapping consensus (mentioned above), see *Theory*, last par. of Sec. 35, pp. 220f. For the idea of full autonomy, see "Kantian Constructivism," pp. 528ff.

a natural moral conception that can stand on its own feet. They accept this conception of justice as a reasonable basis for political and social cooperation, and hold that it is as natural and fundamental as the concepts and principles of honesty and mutual trust, and the virtues of cooperation in everyday life. The doctrines in an overlapping consensus differ in how far they maintain a further foundation is necessary and on what that further foundation should be. These differences, however, are compatible with a consensus on justice as fairness as a political conception of justice.

## VI

I shall conclude by considering the way in which social unity and stability may be understood by liberalism as a political doctrine (as opposed to a comprehensive moral conception).<sup>31</sup>

One of the deepest distinctions between political conceptions of justice is between those that allow for a plurality of opposing and even incommensurable conceptions of the good and those that hold that there is but one conception of the good which is to be recognized by all persons, so far as they are fully rational. Conceptions of justice which fall on opposite sides of this divide are distinct in many fundamental ways. Plato and Aristotle, and the Christian tradition as represented by Augustine and Aquinas, fall on the side of the one rational good. Such views tend to be teleological and to hold that institutions are just to the extent that they effectively promote this good. Indeed, since classical times the dominant tradition seems to have been that there is but one rational conception of the good, and that the aim of moral philosophy, together with theology and metaphysics, is to determine its nature. Classical utilitarianism belongs to this dominant tradition. By contrast, liberalism as a political doctrine supposes that there are many conflicting and incommensurable conceptions of the good, each compatible with the full rationality of human persons, so far as we can ascertain within a workable political conception of justice. As a consequence of this supposition, liberalism assumes that it is a characteristic feature of a free democratic culture that a plurality of conflicting and incommensurable conceptions of the good are affirmed by its citizens. Liberalism as a political doctrine holds that

31. This account of social unity is found in "Social Unity and Primary Goods," referred to in footnote 27 above. See esp. pp. 160f., 170-73, 183f.

the question the dominant tradition has tried to answer has no practicable answer; that is, it has no answer suitable for a political conception of justice for a democratic society. In such a society a teleological political conception is out of the question: public agreement on the requisite conception of the good cannot be obtained.

As I have remarked, the historical origin of this liberal supposition is the Reformation and its consequences. Until the Wars of Religion in the sixteenth and seventeenth centuries, the fair terms of social cooperation were narrowly drawn: social cooperation on the basis of mutual respect was regarded as impossible with persons of a different faith; or (in the terminology I have used) with persons who affirm a fundamentally different conception of the good. Thus one of the historical roots of liberalism was the development of various doctrines urging religious toleration. One theme in justice as fairness is to recognize the social conditions that give rise to these doctrines as among the so-called subjective circumstances of justice and then to spell out the implications of the principle of toleration.<sup>32</sup> As liberalism is stated by Constant, de Tocqueville, and Mill in the nineteenth century, it accepts the plurality of incommensurable conceptions of the good as a fact of modern democratic culture, provided, of course, these conceptions respect the limits specified by the appropriate principles of justice. One task of liberalism as a political doctrine is to answer the question: how is social unity to be understood, given that there can be no public agreement on the one rational good, and a plurality of opposing and incommensurable conceptions must be taken as given? And granted that social unity is conceivable in some definite way, under what conditions is it actually possible?

In justice as fairness, social unity is understood by starting with the conception of society as a system of cooperation between free and equal persons. Social unity and the allegiance of citizens to their common institutions are not founded on their all affirming the same conception of the good, but on their publicly accepting a political conception of justice to regulate the basic structure of society. The concept of justice is independent from and prior to the concept of goodness in the sense that its principles limit the conceptions of the good which are permissible. A just basic structure and its background institutions establish a framework

32. The distinction between the objective and the subjective circumstances of justice is made in *Theory*, pp. 126ff. The importance of the role of the subjective circumstances is emphasized in "Kantian Constructivism," pp. 540-42.

within which permissible conceptions can be advanced. Elsewhere I have called this relation between a conception of justice and conceptions of the good the priority of right (since the just falls under the right). I believe this priority is characteristic of liberalism as a political doctrine and something like it seems essential to any conception of justice reasonable for a democratic state. Thus to understand how social unity is possible given the historical conditions of a democratic society, we start with our basic intuitive idea of social cooperation, an idea present in the public culture of a democratic society, and proceed from there to a public conception of justice as the basis of social unity in the way I have sketched.

As for the question of whether this unity is stable, this importantly depends on the content of the religious, philosophical, and moral doctrines available to constitute an overlapping consensus. For example, assuming the public political conception to be justice as fairness, imagine citizens to affirm one of three views: the first view affirms justice as fairness because its religious beliefs and understanding of faith lead to a principle of toleration and underwrite the fundamental idea of society as a scheme of social cooperation between free and equal persons; the second view affirms it as a consequence of a comprehensive liberal moral conception such as those of Kant and Mill; while the third affirms justice as fairness not as a consequence of any wider doctrine but as in itself sufficient to express values that normally outweigh whatever other values might oppose them, at least under reasonably favorable conditions. This overlapping consensus appears far more stable than one founded on views that express skepticism and indifference to religious, philosophical, and moral values, or that regard the acceptance of the principles of justice simply as a prudent *modus vivendi* given the existing balance of social forces. Of course, there are many other possibilities.

The strength of a conception like justice as fairness may prove to be that the more comprehensive doctrines that persist and gain adherents in a democratic society regulated by its principles are likely to cohere together into a more or less stable overlapping consensus. But obviously all this is highly speculative and raises questions which are little understood, since doctrines which persist and gain adherents depend in part on social conditions, and in particular, on these conditions when regulated by the public conception of justice. Thus we are forced to consider at some point the effects of the social conditions required by a conception of political justice on the acceptance of that conception itself. Other things

equal, a conception will be more or less stable depending on how far the conditions to which it leads support comprehensive religious, philosophical, and moral doctrines which can constitute a stable overlapping consensus. These questions of stability I cannot discuss here.<sup>33</sup> It suffices to remark that in a society marked by deep divisions between opposing and incommensurable conceptions of the good, justice as fairness enables us at least to conceive how social unity can be both possible and stable.

33. Part III of *Theory* has mainly three aims: first, to give an account of goodness as rationality (Ch. 7) which is to provide the basis for identifying primary goods, those goods which, given the conception of persons, the parties are to assume are needed by the persons they represent (pp. 397, 433f.); second, to give an account of the stability of a conception of justice (Chs. 8–9), and of justice as fairness in particular, and to show that this conception is more stable than other traditional conceptions with which it is compared, as well as stable enough; and third, to give an account of the good of a well-ordered society, that is, of a just society in which justice as fairness is the publicly affirmed and effectively realized political conception of justice (Chs. 8–9 and culminating in Sec. 86). Among the faults of Part III, I now think, are these. The account of goodness as rationality often reads as an account of the complete good for a comprehensive moral conception; all it need do is to explain the list of primary goods and the basis of the various natural goods recognized by common sense and in particular, the fundamental significance of self-respect and self-esteem (which, as David Sachs and Laurence Thomas have pointed out to me, are not properly distinguished), and so of the social bases of self-respect as a primary good. Also, the account of the stability of justice as fairness was not extended, as it should have been, to the important case of overlapping consensus, as sketched in the text; instead, this account was limited to the simplest case where the public conception of justice is affirmed as in itself sufficient to express values that normally outweigh, given the political context of a constitutional regime, whatever values might oppose them (see the third view in the overlapping consensus indicated in the text). In view of the discussion in Secs. 32–35 of Ch. 4 of liberty of conscience, the extension to the case of overlapping consensus is essential. Finally, the relevance of the idea of a well-ordered society as a social union of social unions to giving an account of the good of a just society was not explained fully enough. Throughout Part III too many connections are left for the reader to make, so that one may be left in doubt as to the point of much of Chs. 8 and 9.