# Contention

#### U.S. discourse on gun ownership has international impacts

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Moreover, although the gun ownership discourse was once strictly a national debate, focused on U.S. domestic concerns, the debate has long since internationalized. American politics carries influence far past the U.S. border, and many countries follow the lead of American democracy in unseen ways. The domestic discourse inside the United States influences the agenda in many domestic discourses around the world, and in a world of globalization and international commerce, the availability of guns in one national jurisdiction always impacts activities in many neighboring jurisdictions.

#### Freedom from guns is a key right and aspec

Kocsis 15 summarizes the argument, Michael. (Queen's University) Volume 16 Issue 2 Philosophy & Gun Control. Essays in Philosophy, Article 2. 7-7-2015.Gun Ownership and Gun Culture in the United States of America. commons.pacificu.edu/cgi/viewcontent.cgi?article=1530&context=eip NP 3/20/16.

Those who would restrict gun ownership envision society through the lens of public safety. It is not freedom to own guns, but freedom from guns, that marks this side of the debate. To clarify the vision, we can describe gun safety in the terminology of “public goods.” I will suggest below that safety from gun violence is a public good which, although somewhat obscure and difficult to defend, lends Against Gun Bans | Kocsis 170 credence to the gun-restricting platform. Ultimately it is rooted in a proposition mentioned previously: If freedom to own guns is dangerous to public safety, gun ownership should be regulated to a degree that effectively affirms public safety. Again, the social costs of gun ownership become the central issue in the regulation of deadly weapons” (Cook and Ludwig 2006). The notion of “public good” is wide enough to include both natural and human-created resources: clean air and water; public services like electricity; minerals and topsoil; high literacy; democratic competence and national feeling. All such goods are valuable to the community as a whole and their cultivation is itself a public good justified by its benefit the community as a whole. One can find countless public goods distributed unevenly across the world’s existing regions, and one can envision many other public goods which have yet to be achieved. A parallel way to think about public goods is to think in terms of “common resources”. Public spaces like parks and wildlife preserves can be conceptualized as common resources and so can clean air and water, which are among the most essential global resources still remaining but not yet owned. Access to natural resources, on this view, is conceived as a trust wherein the authorities are tasked to manage and maintain them for the benefit of the community. We can think of others in terms of the creation and development of common public resources. Of course, as American ecologist Garrett Hardin (1915- 2003) once argued,iv common resources are susceptible to private exploitation. Hardin’s famous example of a small community of shepherds reveals a dangerous social tendency; in any such community, individual shepherds see the obvious benefit of increasing their private herds while Essays in Philosophy 16(2) 171 the community as a whole fails to foresee the threat posed by over-exploitation of their essential grazing pasture. Indeed, Hardin claimed, even the existence of the shepherd community is in jeopardy due to the individual decisions of so many shepherds. Public goods are concerned with common resources, and they are effectively managed only when they bring about positive social outcomes. It is part of our notion of common resources and public goods that restrictions will be necessary to protect the resource from excessive use. But the restrictions need not be onerous, and their benefit is shared universally. Public goods require a degree of state control, but in many instances such control is justifiable and to the advantage of all. A few might prefer unlimited freedom of action, but we undeniably benefit as a whole from the restrictions imposed by coercive governing authorities. It seems clear that Hardin’s example exaggerates the necessity of this social dynamic. He simply accepts that communities are doomed to fall into the same selfinterested pattern of behaviour. But as we know, many successful communities have learned to manage the dynamic; promoting and protecting a common resource depends on mutual trust and bonds of social affection, and where these virtues are present, the value of the public good is seen as outweighing the problematic constraints. Thinking specifically about the public good of safety from gun violence, we can develop three related lines of argument. (1) First, high levels of gun ownership are empirically related to high gun mortality. Such an argument would draw upon from scientific and social-scientific studies of American society, several of which point decisively to grave and unintended consequences force us Against Gun Bans | Kocsis 172 to re-think rates of production of at least of new firearms. “Gun ownership is positively related to gun-related suicides and homicides; there is evidence that guns do not merely serve as substitutes for other means of killing, but increase the overall rates of suicide and homicide” (Stroebe 2013: 1). Similarly, Cook and Ludwig focus on the “negative externalities of gun ownership”. Their study is designed to shows that “under certain reasonable assumptions, the average annual marginal social cost of household gun ownership is in the range of $100 to $1800” (Cook and Ludwig 2006: 379). Others claim to have found “positive externalities” of gun ownership. It is claimed, for example, that “one million times each year homeowners and storekeepers protect their property and lives using firearms; often this occurs without a shot being fired. The mere sight of a gun often is enough to send a robber running.” “The peace that arises from this disinclination or inability to commit another crime is a positive externality of gun ownership” (Kell 1991). In other words, one should not presume that gun safety is only or necessarily brought about by restrictions, other than protections, around gun ownership. (2) Secondly, by drawing on a comparison with Canadian society we can begin to understand why the public good of gun safety can be achieved with little sacrifice to personal liberty. It must be acknowledged that the Canadian comparison is sometime misleading; the two jurisdictions have different legal traditions and different regimes of regulation. But one assertion can be asserted with utmost confidence: Canada’s consistently enforced regulation of the firearms industry, and of the practices of hunters and collectors, have promoted the public good of gun safety without appreciably diminishing the right to own firearms. Essays in Philosophy 16(2) 173 In Canada, restrictions on gun ownership have been set in a balance; gun safety is protected from overuse by restrictions balanced with benefits shared universally. If I speak as a Canadian citizen, one who takes pride in the level of gun safety we have managed to collectively achieve, it may become clear why I consider gun safety to be a public good par excellence. Although statistics suggest that Canadian society is increasingly adopting a permissive set of policies with respect to gun ownership, and although many gun owners argue passionately for greater gun freedom, it must be said that gun violence in Canada is regulated in ways that benefit all Canadians. Canadian citizens enjoy the public good of safety from deadly firearms because we have accepted minor restrictions on gun freedom as individuals. Despite the comparison, the gun-restricting camp has neither expressed nor defended it in a manner that emphasizes the importance of this public good. In order to be successful, a vision of gun freedom must be exposed to public authorization among the American people. Bringing this vision of American society into being calls for unified activism over time, perhaps over multiple generations. (3) A third line of argument expands the reasoning of the American political philosopher John Rawls (1921-2002). In his Theory of Justice, v Rawls developed a series of nowfamous arguments about political justice which together provide a powerful method for reasoning about public dilemmas in a democratic state. In effect, Rawls offers a test of legitimacy in which a group of imaginary citizens deliberates and ultimately determines the governing institutions of the society they would later inhabit. The key constraint is what Rawls calls the “veil of ignorance.” Those who are chosen to determine society’s Against Gun Bans | Kocsis 174 social institutions are barred from reasoning from a biased position. They are required to reason about social institutions as neutral citizens—that is, citizens unaware of personal markers such as gender, age, class, race and religion. Passing Rawls’s test allows us to say that a policy is legitimate; that it receives decisive sanction, not by the citizenry as a whole, but by an imaginary jury whose reasoning parallels as much as possible the mentality of the “perfect citizen.” Rawls’s argument reveals something unique about the American social contract; it seeks to penetrate the rhetoric and partisanship that too often hinders political discourse. At the deepest and most fundamental level, Rawls’s argument suggests that the expectations of individual citizens can be anticipated through the lens of a few central questions about the relationship between states and citizens. The most important conclusion according to Rawls is that those constrained by the veil of ignorance would insist on basic political rights and basic provision of resources for society’s disadvantaged members. Those behind the veil of ignorance would demand that all positions in society—even those of lower ranks on the social hierarchy—remain safe and dignified. Each of us has but one life to live, Rawls argued, and thus we are unlikely to expose ourselves to serious risks. Rawls’s conclusion may be debatable, but his rationale has inescapable implications. If it is true that perfectly neutral citizens would strongly favour a given policy, the policy is presumptively legitimate. When the issue of gun ownership is our application, we need simply to ask; would those behind Rawls’s veil of ignorance be convinced by the platform of the gun supporters, or would they instead endorse the arguments of gun ownership restrictors? Answers to this question bring Essays in Philosophy 16(2) 175 us to the centre of the gun ownership dilemma, and if a decisive answer is be found, from here we might begin to see the path towards future reconciliation. All the lines of argument canvassed above would be reasonable threads for Rawls’s imaginary jurors to contemplate. Each would be “on the table”, as it were; permitted within the constraints of Rawls’s veil of ignorance. On can visualize, for example, Rawls’s hypothetical jurors contemplating in an unbiased way the capacity of guns as instruments of personal liberty, and the importance to citizens’ identity of pervasive social roles. But we must also consider how they would insist on restrictions for reasons of public safety. Regarding the pivotal question about whether those behind Rawls’s veil of ignorance would affirm or deny substantive rights of gun ownership, I don’t believe it is absolutely clear how we should answer. One thing we should acknowledge is that Rawls’s jurors would be disposed to prefer gun safety—that is, freedom from guns, as that argument was spelled out above. Rawls himself maintained that those behind the veil of ignorance have only one life to live; their reasoning on public matters would tend towards prudence, caution and conservatism in relation to the risks of maximum social freedom.

#### We should focus on what our ideal gun laws would look like rather than getting bogged down in present political realities

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In my humble estimation, too much of the current gun debate is focused on where we are now with guns and too little on what the ideal role of guns would be if we could start afresh. It’s true we have roughly 300 million guns in circulation, and it’s true we have a Second Amendment (2A) that has been interpreted by the Supreme Court to give citizens broad rights in acquiring and keeping guns. But surely most could agree, whether Republican or Democrat, that America today is far from ideal when it comes to the consequences of our current gun policies and laws. No sane person wants approximately 10,000 gun related fatalities each year in this country. But perhaps those deaths are simply the necessary cost of our ideal laws. Or, perhaps those deaths are a completely unnecessary cost of maintaining our far from ideal gun laws. Thus, it seems what we need is some sort of clearer picture of what ideal gun laws and policies in the United States would look like. And, of course, this is where I believe social contract theory could be of use. I have never heard of Rawls’s veil of ignorance thought experiment being utilized for the purpose of finding ideal gun control laws and policies, but there seems to be nothing in his theory that would preclude it from profitably doing so.

#### Constitutionality should not prevent us from desiring better gun laws – the question is whether or not we should amend the constitution

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Of course, these are only the results of my own, brief dalliance with guns and the veil of ignorance. Certainly others would reach their own, different conclusions. I do believe, however, that any honest and persuasive assessment of Rawls’s thought experiment would likely mandate gun laws, restrictions, and reacquisitions (buyback programs?) that would run afoul of the Second Amendment. But that does not mean we should discard the ideal. Rather, it means that it may be time to discard the Second Amendment. The Supreme Court has already spoken as to its interpretation of 2A. However, our founding fathers have also already spoken as to what the American people can, and perhaps should, do when the document they (the founding fathers) created no longer serves the purpose of good and just governance. The founding fathers left us, in the Constitution itself, the means by which to amend it.

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A third line of argument expands the reasoning of the American political philosopher John Rawls (1921-2002). In his Theory of Justice, v Rawls developed a series of now famous arguments about political justice which together provide a powerful method for reasoning about public dilemmas in a democratic state. In effect, Rawls offers a test of legitimacy in which a group of imaginary citizens deliberates and ultimately determines the governing institutions of the society they would later inhabit. The key constraint is what Rawls calls the “veil of ignorance.” Those who are chosen to determine society’s social institutions are barred from reasoning from a biased position. They are required to reason about social institutions as neutral citizens—that is, citizens unaware of personal markers such as gender, age, class, race and religion. Passing Rawls’s test allows us to say that a policy is legitimate; that it receives decisive sanction, not by the citizenry as a whole, but by an imaginary jury whose reasoning parallels as much as possible the mentality of the “perfect citizen.” **Rawls’s argument** reveals something unique about the American social contract; it **seeks to penetrate the rhetoric and partisanship that too often hinders political discourse.** At the deepest and most fundamental level, Rawls’s argument suggests that the expectations of individual citizens can be anticipated through the lens of a few central questions about the relationship between states and citizens. The most important conclusion according to Rawls is that those constrained by the veil of ignorance would insist on basic political rights and basic provision of resources for society’s disadvantaged members. **Those behind the veil of ignorance would demand that all positions in society—**even those of lower ranks on the social hierarchy—**remain safe and dignified. Each of us has but one life to live,** Rawls argued, **and thus we are unlikely to expose ourselves to serious risks.** Rawls’s conclusion may be debatable, but his rationale has inescapable implications. If it is true that perfectly neutral citizens would strongly favour a given policy, the policy is presumptively legitimate. When the issue of gun ownership is our application, we need simply to ask; would those behind Rawls’s veil of ignorance be convinced by the platform of the gun supporters, or would they instead endorse the arguments of gun ownership restrictors? Answers to this question bring us to the centre of the gun ownership dilemma, and if a decisive answer is be found, from here we might begin to see the path towards future reconciliation. All the lines of argument canvassed above would be reasonable threads for Rawls’s imaginary jurors to contemplate. Each would be “on the table”, as it were; permitted within the constraints of Rawls’s veil of ignorance. On can visualize, for example, Rawls’s hypothetical jurors contemplating in an unbiased way the capacity of guns as instruments of personal liberty, and the importance to citizens’ identity of pervasive social roles. But we must also consider how they would insist on restrictions for reasons of public safety. Regarding the pivotal question about whether those behind Rawls’s veil of ignorance would affirm or deny substantive rights of gun ownership, I don’t believe it is absolutely clear how we should answer. One thing we should acknowledge is that **Rawls’s jurors would be disposed to prefer gun safety—that is, freedom from guns,** as that argument was spelled out above. Rawls himself maintained **that those behind the veil of ignorance have only one life to live; their reasoning on public matters would tend towards prudence, caution and conservatism in relation to the risks of maximum social freedom.**

# Framework

## Nagel

#### Property rights are not a priori – entitlement to property is constrained by rules of a just system

Nagel, Thomas. Rawls and Liberalism. Cambridge Companions Online http://universitypublishingonline.org/cambridge/companions/ The Cambridge Companion to Rawls Edited by Samuel Freeman Book DOI: http://dx.doi.org/10.1017/CCOL0521651670 Online ISBN: 9780511998850 Hardback ISBN: 9780521651677 Paperback ISBN: 9780521657068 Chapter 1 - Rawls and Liberalism pp. 62-85 Chapter DOI: http://dx.doi.org/10.1017/CCOL0521651670.002 Cambridge University Press. NP 3/20/16.

Rawls will have none of this. Entitlement to what one has earned or otherwise legally acquired has a completely different status in his theory from free speech, freedom of worship, or freedom to choose one’s employment. Economically significant property rights are val- ued not as an essential part of individual liberty but as indispens- able features of the economic system without which the reliable expectations and security that are essential for long-term planning, investment, production, and capital accumulation would not be pos- sible. Reliance on contract, salary agreements, the payment of divi- dends, and so forth is economically essential, and it is only the jus- tification of the whole system that provides the moral support for ￼Downloa om Cambridge Companions Online © Cambridge University Press, 2016 C a m b rid g e C o m p a n i o n s O n l i n e © C a m b r id g e U n iv e r si t y P r e s s , 2 0 06 d ed fr C am b rid g eC o m p a n io ns O n l in e by IP 1 http://dx.doi.org/10.1017/CCOL0521651670.002 2 8.5 9 .2 22 .1 2 on W e d M a r 1 6 1 8 :0 4 : 29 G MT 2016. ￼ 68 thomas nagel an individual’s entitlement to what he earns or otherwise acquires through the actions he and others take in accordance with its rules. What he is entitled to is determined by the rules, and what the rules should be, including the rules of taxation and redistribution, is determined by which overall system would be most just in its results, taken as a whole. In Rawls’s theory individual property rights are the consequence, and not the foundation, of the justice of eco- nomic institutions. In theories of a libertarian tendency the reverse is the case. This rejection of economic freedom as a value in itself is one feature of Rawls’s view that has attracted opposition along with the closely related rejection of individual desert as a fundamental polit- ical value. For the purposes of political theory, at least, Rawls holds that people deserve the product of their efforts only in the sense that if they are entitled to it under the rules of a just system, then they have a legitimate expectation that they will get it. This view is, I think, more uncompromising than would be accepted even by most of those who would describe themselves as liberals. There are cer- tainly those who would maintain that, even preinstitutionally, peo- ple deserve what they gain by their own efforts and that this should be allowed to have some effect on the form of a just economic system. That might be expressed by some modification in the interpretation of Rawls’s first principle, to admit a measure of economic freedom as a protected right.

Nagel, Thomas. Rawls and Liberalism. Cambridge Companions Online http://universitypublishingonline.org/cambridge/companions/ The Cambridge Companion to Rawls Edited by Samuel Freeman Book DOI: http://dx.doi.org/10.1017/CCOL0521651670 Online ISBN: 9780511998850 Hardback ISBN: 9780521651677 Paperback ISBN: 9780521657068 Chapter 1 - Rawls and Liberalism pp. 62-85 Chapter DOI: http://dx.doi.org/10.1017/CCOL0521651670.002 Cambridge University Press. NP 3/20/16

Still, the debate over the proper form of equal opportunity is much less divisive than that over whether a just society should go beyond this to strive for equality of results. That brings us finally to the second part of the second principle – the difference principle – which is Rawls’s most strikingly egalitarian requirement and one of his most contested claims. It says, to repeat, that social and economic inequalities “are to be to the greatest benefit of the least advantaged members of society.” One can conceive of an even more egalitarian principle, one which favored greater equality even if it would lower everyone’s level of welfare, including that of the worst off. But this does not hold much appeal outside the tradition of utopian socialism and is in any case probably the reflection of something else – the idea that strict equality of possessions would promote a universal level of self-esteem and mutual respect that is impossible in a socially and economically stratified society. That is the appeal of the perennial fantasy of the abolition of all hierarchy. But Rawls’s difference princi- ple is still very egalitarian, and it can be contrasted with several alter- natives that command support within the spectrum of liberal views.

#### Social structures that permit inequality of opportunity must be rejected

Nagel, Thomas. Rawls and Liberalism. Cambridge Companions Online http://universitypublishingonline.org/cambridge/companions/ The Cambridge Companion to Rawls Edited by Samuel Freeman Book DOI: http://dx.doi.org/10.1017/CCOL0521651670 Online ISBN: 9780511998850 Hardback ISBN: 9780521651677 Paperback ISBN: 9780521657068 Chapter 1 - Rawls and Liberalism pp. 62-85 Chapter DOI: http://dx.doi.org/10.1017/CCOL0521651670.002 Cambridge University Press. NP 3/20/16

Rawls’s difference principle is based on the intuitively appealing moral judgment that all inequalities in life prospects dealt out to people by the basic structure of society and for which they are not responsible are prima facie unfair; these inequalities can only be jus- tified if the institutions that make up that structure are the most effective available in achieving an egalitarian purpose – that of mak- ing the worst-off group in the society as well off as possible. This is an egalitarian aim because it blocks the pursuit of further equality only if that would make everyone worse off. This may be a radical position, but it should be kept in mind that it applies only to deep structural inequalities that affect statistically large numbers of people in the different social categories. It does not apply to the countless inequalities among individuals that will in- evitably arise as people make choices and interact, and succeed or fail in their efforts, in the context of any socioeconomic structure, how- ever just. If the broad structure of society satisfies the principles of justice in its large-scale statistical effects on the life prospects of dif- ferent groups, then, according to Rawls, any individual inequalities that emerge from its operation will be ipso facto just. That is what he means by calling it a system of pure procedural justice: The broad design of the system confers legitimacy on the specific outcomes, whatever they are. Nevertheless, the difference principle means that the broad design of the system is supposed to be evaluated by its success in eliminating those inequalities that are not needed to provide maximum benefit to the worst off. And this imperative depends on the moral claim that it is unfair if people suffer or benefit differentially because of differences between them that are not their fault. A society that does not try to reduce such differentials is not just, and that applies whether the differences in question are racial, sexual, or religious or disparities in the fortunes of birth, such as being born rich or poor, or being born with or without unusual natural abilities. It is this last point, the unfairness of society’s systematically re- warding or penalizing people on the basis of their draw in the natural or genetic lottery, that underpins the difference principle. Even under ideal conditions of fair equality of opportunity, such inequalities will ￼Downloa om Cambridge Companions Online © Cambridge University Press, 2016 C a m b rid g e C o m p a n i o n s O n l i n e © C a m b r id g e U n iv e r si t y P r e s s , 2 0 06 d ed fr C am b rid g eC o m p a n io ns O n l in e by IP 1 http://dx.doi.org/10.1017/CCOL0521651670.002 2 8.5 9 .2 22 .1 2 on W e d M a r 1 6 1 8 :0 4 : 29 G MT 2016. ￼ 72 thomas nagel arise from the normal operation of a competitive market economy in which there is bidding for scarce productive skills. According Rawls those inequalities are unjust unless supplemental policies ensure that the system works to the maximum benefit of the worst off. People do not deserve their place in the natural lottery any more than they deserve their birthplace in the class structure, and they therefore do not automatically deserve what “naturally” flows from either of those differences. One other point about the second principle deserves attention: the priority of the first of its conditions over the second. Rawls holds that fair equality of opportunity may not be sacrificed even if this would benefit the worst-off group in a society. It may be difficult to imagine how that might be so, but I mentioned earlier in this section the devi- ation from equality of opportunity represented by affirmative action, and it is perhaps possible that, even in the absence of the historical legacy of slavery or a caste system, someone might favor an ongo- ing program of preference in assignment of desirable positions to the less talented, or perhaps some randomization of assignment, in order to prevent the development of a hereditary meritocracy. That kind of reversal of priority between equality of opportunity and equality of results would represent a more radically egalitarian position than Rawls’s, and also one that was in a sense more anti-individualistic. This brief survey of the alternatives shows that in putting forward his two principles of justice, Rawls has not only expressed a distinc- tive position but provided a framework for identifying the morally crucial differences among a whole range of views on the main ques- tions of social justice. I now want to go more deeply into the justifi- cations for the most controversial features of his view – its pluralism and its egalitarianism.

Rawls tries to resolve conflicting ethical vaues b looking to principles grounded in right, prior to individual conceptions of good

Nagel, Thomas. Rawls and Liberalism. Cambridge Companions Online http://universitypublishingonline.org/cambridge/companions/ The Cambridge Companion to Rawls Edited by Samuel Freeman Book DOI: http://dx.doi.org/10.1017/CCOL0521651670 Online ISBN: 9780511998850 Hardback ISBN: 9780521651677 Paperback ISBN: 9780521657068 Chapter 1 - Rawls and Liberalism pp. 62-85 Chapter DOI: http://dx.doi.org/10.1017/CCOL0521651670.002 Cambridge University Press. NP 3/20/16

Rawls emphasizes that public reason is not to be thought of as an effective decision procedure, guaranteed to produce agreement, but rather as a special kind of disagreement, argument, and counterargu- ment, which tries to use mutually recognized methods of evaluation and evidence, whether these produce consensus or not. Even if we are not convinced by an opponent’s arguments about distributive jus- tice, for example, we can recognize them as offering grounds that he thinks would be reasonable for us to accept, simply in virtue of the reasoning capacity that we all share. The same cannot be said for appeals to faith or revelation.

Whether an argument constitutes an appeal to public reason is itself likely to be a contested issue (think of the question of the per- missibility of abortion). But the concept of public reason is not put forward by Rawls as a mechanical test for the admissibility of argu- ments but rather as a characterization of what we should be looking for in an admissible ground for the design of basic institutions. In applying the concept there will be higher-order disagreements, just as there are conflicting arguments within the domain of public rea- son. But the sense of justice should lead us to try, in good faith, to offer to our fellow citizens grounds for the exercise of collective power that we believe they, from their point of view as fellow rea- soners, have reason to accept – even if they do not actually do so. To invoke only our private convictions is, according to Rawls, a viola- tion of the requirement of reciprocity that applies to members of a just society.

In addition to these problems of definition there is the big prob- lem of justification. How can we put aside some of our deepest con- victions – convictions about the ultimate ends of life – in decidinghow our society should be arranged? It can seem like a betrayal of our values to deliberately refuse, if we have the power, to put everyone on what we believe to be the true religious path to salvation, or on the contrary the true secular path of individual autonomy and self-realization, through the design of the political, social, and edu- cational systems. To base political values on something less than our most comprehensive transcendent values can seem both morally wrong and psychologically incoherent. For how can these narrower political values have the leverage to hold in check transcendent reli- gious values, for example – particularly when the latter are concerned not just with my own interests but with what I take to be the most important interests of everyone, and therefore of my fellow citizens, whatever their own convictions may be? The same question arises about individualistic secular values, which would seem to justify political opposition to orthodox religion.

This is a difficult question of moral theory, lying at the foundation of the idea of individual rights and therefore at the foundation of a lib- eralism based on rights. The central issue is whether a requirement of mutual respect, operating in the context of the exercise of collec- tive power over the individual members of a society, is strong enough to hold in check not only the unlimited pursuit of the self-interest of the majority at the expense of the minority but also the unlimited pursuit of the ostensibly transcendent values of the majority against the will of the minority who do not share them. Skeptics answer that to base our principles of political right and wrong on something less than our full system of values is to accord those values only superfi- cial importance by comparison with an abstract, almost contentless universality.

**R**awls’s attempt to answer the question by grounding liberal toler- ation and freedom on principles of right that are prior to conceptions of the good is one of his most significant contributions. The diffi- culty of the task is considerable, and the suspicion remains on the part of many critics that such views are a kind of liberal camouflage for much more partisan arguments – that the proposed ecumenical appeal of liberalism is hollow. Some of these critics are themselves liberals who believe it is better to defend liberal ideals by appealing to an explicitly liberal conception of the human good.

#### Strictly negative conceptions of freedom are insufficient since they don't actually grant equality of opportunity – the existence of social structures requires responsibility to rectify inequality

Nagel, Thomas. Rawls and Liberalism. Cambridge Companions Online http://universitypublishingonline.org/cambridge/companions/ The Cambridge Companion to Rawls Edited by Samuel Freeman Book DOI: http://dx.doi.org/10.1017/CCOL0521651670 Online ISBN: 9780511998850 Hardback ISBN: 9780521651677 Paperback ISBN: 9780521657068 Chapter 1 - Rawls and Liberalism pp. 62-85 Chapter DOI: http://dx.doi.org/10.1017/CCOL0521651670.002 Cambridge University Press. NP 3/20/16

This is only a first step, however, because people are no more responsible for the socioeconomic status of the family into which they are born than they are for their race or sex. Yet a system which guarantees only negative equality of opportunity permits class in- equalities to develop and accumulate without doing anything to counteract the enormous differences they generate in the opportu- nities for individuals to acquire the training and background needed to develop their abilities and so to compete for formally open positions. Negative equality of opportunity is therefore not full equality of opportunity. It must be supplemented by positive provision of the resources that will permit each potential competitor to develop his natural abilities and therefore to be in a position to take advantage of his opportunities. That is what Rawls means by fair equality of opportunity. The same reasoning leads him further. Even under a regime of fair equality of opportunity, undeserved inequalities would continue to arise. Fair equality of opportunity, to the extent that it can be realized, guarantees only that persons of equal natural ability will have roughly equal chances to prosper. But people are not equal in natural ability, and their natural or genetic differences will continue to affect the benefits they gain from interaction with the social and economic order. Yet this too is morally arbitrary, for people are no more responsible for their genetic endowment than for their race or the economic status of their parents. Consequently a just society will counter these undeserved differences in benefit to the extent that it can do so without hurting the very people whose arbitrary penalization it is most concerned to rectify, namely, those who come in last in the socioeconomic race. Hence, the difference principle. Despite the persuasiveness of these analogies, not everyone is con- vinced that there is anything unfair about people’s benefitting differ- entially from the employment of their own natural abilities even though they have done nothing to deserve those abilities. Even if they have done nothing to deserve it, their genetic makeup is part of their identity, and it can seem like an assault on the independence of persons to say that they have no right to the benefits which flow from that identity, except insofar as this also benefits others. Such reactions have seized on Rawls’s striking remark that “the difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be.”7 The issue identifies a fundamental cleavage in the liberal tradition between those who identify justice with the fight against any kind of Downloa om Cambridge Companions Online © Cambridge University Press, 2016 C a m b rid g e C o m p a n i o n s O n l i n e © C a m b r id g e U n iv e r si t y P r e s s , 2 0 06 d ed fr C am b rid g eC o m p a n io ns O n l in e by IP 1 http://dx.doi.org/10.1017/CCOL0521651670.002 2 8.5 9 .2 22 .1 2 on W e d M a r 1 6 1 8 :0 4 : 29 G MT 2016. 80 thomas nagel undeserved inequalities that the design of the social system can ame- liorate and those who believe the scope of justice is narrower – that society is exempt from responsibility for certain forms of “natural” difference, even if they are in a nonpolitical sense unfair. In this more limited conception, a just society should provide a framework, with fair equality of opportunity and a decent social minimum, in which people can rise by their own efforts to the level to which their natural abilities and efforts are able to take them. The moral significance of the choice between this vision and Rawls’s is quite difficult to characterize. Both are interpretations of the vague idea of relations of mutual respect and cooperation among the separate, autonomous individuals that make up a society. We do not own one another and we want to interact on equal or reciprocal terms in some sense. But in Rawls’s conception, we should not want the collectively sustained system of which we are all equally mem- bers to allow us to reap benefits on the basis of lucky accidents of fate which we do not deserve, at the expense of others less fortunate who also do not deserve their fate. The fact that one’s draw in the natural lottery is undeserved communicates itself morally to what flows from it through the operation of the economy. As Rawls says in another memorable formulation, “In justice as fairness, men agree to share one another’s fate.”8 The opposite view is that we retain more independence than this of the claims of others when we enter a society and do not even metaphorically hand ourselves over to it. Just as basic personal free- dom remains protected by liberal equality, so does the right to benefit from one’s efforts and one’s talents. Our responsibility for one an- other, as fellow members of a society, is substantial but nevertheless definitely limited by our continued independence. The moral key to Rawls’s more expansive position is in the idea that, because of the essential role of the state, the law, and the con- ventions of property in making possible the extraordinary produc- tivity and accumulations of a modern economy, we bear collective responsibility for the general shape of what results from the sum of individual choices within that framework. We are therefore re- sponsible for large-scale inequalities that would not have arisen in an alternative framework, and if they are morally arbitrary, we have reason to want to alter the system to reduce them. There is simply something repellent about a joint enterprise in which rewards are Downloa om Cambridge Companions Online © Cambridge University Press, 2016 C a m b rid g e C o m p a n i o n s O n l i n e © C a m b r id g e U n iv e r si t y P r e s s , 2 0 06 d ed fr C am b rid g eC o m p a n io ns O n l in e by IP 1 http://dx.doi.org/10.1017/CCOL0521651670.002 2 8.5 9 .2 22 .1 2 on W e d M a r 1 6 1 8 :0 4 : 29 G MT 2016. Rawls and Liberalism 81 apportioned in accordance with genetic endowment – unless there is some further instrumental justification for this apportionment, as there is when an inequality satisfies the difference principle. Among those who would agree with Rawls in accepting society’s responsibility for all outcomes that it permits, and not only for those that it produces deliberately, there is still room for disagreement with the strong egalitarianism of the difference principle. The strict pri- ority given to improvements in the situation of the worst off, in preference even to greater individual and aggregate improvements to the situation of those better off, seems unreasonable – particularly to those drawn to utilitarianism. Utilitarians might agree that social inequalities require justification but that they may be justified be- cause they contribute to the general welfare, not just to the benefit of the worst off.

#### Reconciliation of conflicting ethical views is only possible by adopting a common institutional framework that accepts plurality of beliefs

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The importance of liberal rights depends precisely on the fact that there are things people care about more than the political order but with respect to which a plurality of beliefs and commitments is in- evitable. The only way to live together on terms of equality with oth- ers with whom we disagree fundamentally about the ends of life, in a framework that imposes its basic shape on all our lives, is to adopt principles for the evaluation of the framework that can be accepted by as many of us as possible. Their basis must therefore be com- patible with a wide range of reasonable but mutually incompatible comprehensive views. That means that some comprehensive views are not reasonable because they do not permit their own subordination to the require- ment of reciprocity, that is, to the aim of seeking a collectively acceptable basis of cooperation. Fanatical movements which sub- ordinate the individual to the community depend on comprehensive values that are unreasonable in this sense. But Rawls believes that a wide range of views, forming the plurality typical of a free society, are reasonable and can support the common institutional framework. That is what he means by an “overlapping consensus.” Overlapping consensus does not mean the derivability of common principles of justice from all the comprehensive views in the pluralistic bouquet but rather the compatibility of each of those comprehensive views with a free-standing political conception that will permit them all to coexist. There are many forms of liberalism, and there will continue to be. And while the liberal tradition is now in the ascendant politi- cally in economically advanced countries and making considerable inroads elsewhere, it continues to be the object of attack not only from apologists for tyranny and fanaticism but from many others who cannot accept its severe restraints on the legitimate use of gov- ernment power – its insistence that the end, however worthy, does not justify the means. Rawls’s advocacy of a specific liberal position and his deep exploration of its foundations in ethical and political theory constitute an enduring contribution to this tradition.

## Tampio

#### Utilitarianism can’t account for our moral convictions

Tampio 7, Nicholas. (teacher of political theory at Hamilton College. Researches the legacy of the enlightenment in contemporary political theory). Rawls and the Kantian Ethos. Polity . Volume 39, Number 1 . January 2007 r 2007 Northeastern Political Science Association 0032-3497/07 $30.00 www.palgrave-journals.com/polity. faculty.fordham.edu/tampio/Tampio%20-%20Rawls%20and%20the%20Kantian%20Ethos.pdf. NP 3/20/16.

If Rawls’s general problem is how to formulate a political conception of justice, his specific problem is how to distinguish it from two prominent contemporary alternatives: the utilitarianism of J. S. Mill, J. C. Harsanyi, and R. B. Brandt (TJ, 20n), and the rational intuitionism of Henry Sidgwick, G. E. Moore, and W. D. Ross (TJ, 30n; KC, 343). Although each of these thinkers postdates Kant, the parallel with Kant’s distinction between empiricist and rationalist heteronomous moral doctrines is clear. On the question of foundations, Rawls is closer to empiricism than to rational intuitionism. From A Theory of Justice on, Rawls has recast Kantian ideas and procedures ‘‘within the scope of an empirical theory’’ (TJ, 227). **Despite his theoretical agreement with many of the presuppositions of empiricism, Rawls opposes** the prevalent form that empiricism has taken in contemporary ethics, that is, **utilitarianism. The problem with utilitarianism,** for Nicholas Tampio 85 Rawls, **is that it cannot account for our ‘‘common sense convictions’’ that all rational human beings possess certain basic rights and liberties** (TJ, 24–25). According to Rawls, **any** **satisfactory political doctrine in the contemporary world must model our belief in the priority of the right to the good** (TJ, 25).

Kantian moral philosophy does not answer the right questions

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The second main contemporary moral doctrine that Rawls considers— rational intuitionism—seems better equipped to construct a conception of justice that respects the rights of the person. According to Rawls, however, rational intuitionism has not gotten any closer to solving the priority problem (TJ, 36–40). Rawls emphasizes that Kant’s relevance for constructing a political conception of justice decreases at precisely those moments when he embraces rational intuitionism.12 For a contemporary theory of justice to be morally defensible, as well as pragmatically viable, it must serve different purposes than the one Kant envisioned (PL, 99–107). First, it must articulate a political conception of justice rather than a comprehensive moral view. We need to find a political conception that is both moral and able to command the assent of an overlapping consensus of reasonable comprehensible doctrines. This requires a conception of justice that does not require everyone to endorse the ideals of constitutive autonomy or believe that the only appropriate conceptions of the person or society for political morality originate from transcendental idealism. Rawls is not indifferent or skeptical to Kant’s doctrine of morality, but he thinks that it is undesirable (and impossible) to expect widespread assent to it. Finally, Rawls believes that we need a new understanding of reasonable faith.

Rawl’s reappropriation of Kantianism best solves for present day issues political theory aims to resolve

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Political liberalism, once again, does not address the problems of Enlightenment liberalism. Rawls sees limits to how much contemporary political philosophy can learn from authors writing in the comparatively slow-paced, homogeneous world of eighteenth-century Europe. Yet Rawls appropriates themes from Kant as he formulates the problem of political liberalism (PL, 93– 101). First, Rawls believes the content of political justice may be represented as the outcome of a procedure of construction (though both the content and the structure should be described differently). Second, Rawls thinks the procedure of construction should be based on practical, not theoretical, reason (though Rawls has a different conception of pure practical reason than Kant does). Third, Rawls argues that the relevant conception of the person for moral philosophy must be relatively complex (though this conception now draws on the fundamental ideas in the public political culture rather than on transcendental idealism). Finally, Rawls thinks that moral philosophy should assume the task of defending reasonable faith (though this is now faith in the ‘‘possibility of a just constitutional regime’’). Rawls, in short, reactivates Enlightenment liberalism by reconceptualizing its problems.

#### Rawls reinterprets Kant’s idea of standing above our own desires – we must critique what we find to be intuitive by stepping beyond our own inclinations

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Why does Rawls think philosophy ought to ‘‘step behind’’ common sense? The main reason is that ‘‘there is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert’’ (TJ, 273). There are traces here of Kant’s critique of hedonism in Part I of the Groundwork. For both Kant and Rawls, human beings have a natural tendency to rationalize their desires even if those desires are immoral or unfair. Rawls observes that wealthy and fortunate individuals often justify their good wealth and fortune on the basis of desert. Conservative common sense asserts platitudes such as, ‘‘Justice is happiness according to virtue’’ (TJ, 273). Rawls contends, however, ‘‘the initial endowment of natural assets and the contingencies of their growth and nurture in early life are arbitrary from a moral point of view’’ (TJ, 27). Rawls aims to strengthen democratic common sense and weaken conservative common sense, to take, in sum, an active role in ‘‘the conflict between liberalism and conservatism at the present time’’ (PL, 22). Rawls differs from Kant as well in how he conceives the relationship between moral philosophy and common sense. For Kant, as noted above, the sphere of pure moral philosophy transcends the field of common sense. For Kant, the sphere of pure moral philosophy has authority over the field of common sense because it alone is grounded on pure practical reason and not on a ‘‘marvelous mixture’’ of sentiments and desires.16 Rawls—influenced by Hume, Hegel, and Dewey—aims to overcome these dualisms in Kant’s moral philosophy (TJ, 226; KC, 304). Rawls thinks practical philosophy must go back and forth between 16. Kant, Groundwork, 4:410, 64. Nicholas Tampio 89 analyzing common sense and constructing philosophical concepts (TJ, 18–19; PL, 8–9). To think about justice, according to Rawls, we ought to ‘‘work from both ends,’’ that is, alternate excavating common sense and considering philosophical ideas. We seek reflective equilibrium in which our judgments and principles coincide. We aspire to ‘‘wide’’ reflective equilibrium in which we have considered a broad array of common sense convictions and philosophical theories. Reflective equilibrium, for Rawls, is a provisional accomplishment: we will always encounter new developments in academia and the world. Interminability, for Rawls, is the price a Kantian philosophy in an empiricist framework must pay.

Framework arguments to answer

-empiricism bad

-empiricism and kant = irreconcilable

#### The conception of identity stems from everyday language and can not preclude empirical realities

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The leading idea of political constructivism, as before, is to draw a connection between a conception of the person, a procedure of construction, and the principles of justice (PL, 93). The relevant conception of the person for political constructivism is that of ‘‘the citizen.’’ This conception is implicit in the tradition of democratic thought; it can be found by anyone who reflects upon our ‘‘everyday [political] conception of persons as the basic units of thought, deliberation, and responsibility’’ (PL, 18). It is important for Rawls that a political conception of the person not be drawn from any particular metaphysical doctrine (PL, 29). Kant, for example, might have based his moral doctrine on a conception of the vernu ̈nftige Wesen u ̈berhaupt so that the doctrine applies to God and angels as well as human beings (TJ, 226); political liberalism seeks to avoid such controversial claims, at least on questions of constitutional essentials.18 According to Rawls, the idea of the citizen can be found in a natural way, by thinking about how we use the idea in ‘‘everyday speech’’ (PL, 48). Citizens, we say, are persons who are both reasonable and rational. The term ‘‘rational’’ represents the capacity a citizen has for a conception of the good (PL, 19, 50–51). We assert that a person is rational when he or she is capable of identifying his or her particular ends and interests and the best means to attain or advance them. Rational is not a synonym for egoistic; rational agents may have affections for persons and attachments to communities. Yet a merely rational person does not necessarily observe the fair terms of cooperation that a just society requires. Rather, the term ‘‘reasonable’’ represents the capacity a citizen has for a sense of justice (PL, 19, 48–50). A reasonable person, we think, willingly proposes and honors the fair terms of cooperation and acknowledges the burdens of judgment and accepts their consequences. ‘‘Reasonable persons, we say, are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept’’ (PL, 50).

#### Reason can not preclude empirical realities

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Rawls, like Kant, constructs the content of a political conception of justice by laying out a certain procedure of reasoning. The idea, again, is to uncover the concepts and principles implicit in our (political) conceptualization of the person as rational and reasonable. For both Rawls and Kant, the aim is ‘‘to formulate a procedural representation in which, so far as possible, all the relevant criteria of correct reasoning . . . are incorporated and open to view. Judgments are reasonable and sound if they result in following the correct procedure correctly and rely only on true premises’’ (PL, 102). The major difference between the constructivisms of Rawls and Kant concerns their characterization of ‘‘pure’’ practical reason. Kant often speaks as if pure practical reason were a faculty that transcends the natural world and historical contingency. Kant maintains that pure practical reason provides each reasonable and rational being with identical concepts and principles in all circumstances. Early Rawls thinks that we can characterize the reasonable better in ‘‘a theory of the moral sentiments’’ than in the doctrine of transcendental idealism (TJ, 44). Late Rawls holds the more chastened position that there are many acceptable ways to characterize the reasonable and that an appeal to everyday speech is simply the best way for public reason to proceed. In either case, Rawls aims to construct a non- metaphysical conception of justice (and the reasonable) that all citizens can share.

#### Justice as fairness requires that reasonable views form the basis of our ethical codes – we ought to imagine what principles of justice could form the basis of society

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One way to construct the content of a political conception of justice, according to Rawls, is to follow the sequence of the six conceptions of the good in justice as fairness (JF, 141–42; PL, 173–211).19 By doing this, we gain insight into how citizens of a democratic constitutional regime may pursue their conceptions of the good within the constraints of the right (JF, 141–42). In other words, justice as fairness models the conviction of citizens in a well-ordered democratic society that the rational, though essential to our lives, must be framed by and subordinated to the reasonable. The first conception of the good is that of ‘‘goodness as rationality.’’ This conception accounts for our conviction that all citizens have an intuitive plan of life and an idea of how best to achieve it. Any political conception of justice, according to Rawls, must assume that human existence and the fulfillment of basic human needs and purposes are good. The second conception of the good is that of ‘‘primary goods.’’ Primary goods identify what all citizens need (rather than desire or prefer) in order to be free and equal persons living a complete life. Primary goods are the things that all citizens require in order to develop their moral powers and pursue their determinate conceptions of the good: the basic rights and liberties, freedom of movement, the powers and prerogatives of governance, income and wealth, and the social bases of self-respect. The idea of primary goods, though not a moral concept as such, helps us think about questions of civic and economic equality. The third conception is that of ‘‘permissible conceptions of the good.’’ In order to determine whether our conception of the good is permissible, we need to test it by the principles of justice as fairness. The way to perform this test is to use the model conception of the original position. The conception of the original position, in brief, asks us to imagine what principles of justice for the basic structure of society would be chosen by rational persons behind a veil of ignorance, that is by persons who do not know what place they will have in the adjusted social world the enactment of their principles helps create. The device of the original position, according to Rawls, produces two principles: one positing equality in the assignment of basic rights and duties, the other stating that social and economic inequalities are permitted only if offices and positions are open to all under conditions of fair equality of opportunity and only if social and economic inequalities are to the benefit of the least-advantaged members of society (JF, 42– 43). The idea of permissible conceptions of the good helps us conceptualize what ways of life a democracy ought to permit and, if possible, encourage. The fourth idea of the good in justice as fairness is that of the ‘‘political virtues.’’ The political virtues specify the ideal of a good citizen of a democratic state. The political virtues identify the ways that a good citizen, who also has a determinate conception of the good, embodies such characteristics as civility, tolerance, reasonableness, and a sense of fairness. The fifth and sixth conceptions of the good identify the social world that citizens ought to try to realize. The fifth conception is that of a ‘‘well-ordered society.’’ This is a social world where citizens respect, and act from, the principles of justice as fairness. Finally, the sixth conception is that of ‘‘a social union of social unions.’’ This is a world in which each citizen is just and happy, as each person benefits from the individual and communal excellences fostered by a just and stable society. Lest the analogy with Kant go unnoticed, Rawls points out that his construction of a sequence of ideas of the good ‘‘has a parallel in the way Kant can be seen to construct six ideas of the good in his moral view’’ (PL, 207).

#### Objectivity is characterized by reasonableness

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What status does Rawls assign his political conception of justice? Like Kant, Rawls seeks to call his conception of justice ‘‘objective’’ (PL 110–29). Unlike Kant, Rawls seeks to characterize the objective without recourse to an independent order of values. Rawls identifies several features of objectivity that any political conception of justice must have. An objective political conception must establish a public framework of thought sufficient to aid our judgment. It must specify a concept of a correct judgment (either true or reasonable) made from its point of view. It must specify an order of reasons that override other reasons that citizens may have for performing an action. It must distinguish the objective from the subjective point of view and assign priority to the former. It must be able to explain how rational and reasonable people can come to an agreement in judgment. Finally, it must also be able to explain how rational and reasonable people who share an objective conception of justice may reasonably disagree. Rawls thinks that justice as fairness meets all of these criteria. Why, one might ask, should the Kantian, rational intuitionist, or citizen of faith accept this conception of objectivity? The response, according to Rawls, must focus on the limited scope of political constructivism. Political constructivism is not an account of moral values generally, but only of the values that characterize the domain of the political. To say that a political conception is objective is only to say that it is sufficient to convince other citizens that it is reasonable. A political conception of justice does not offer the ‘‘full story’’ about its validity. Different reasonable comprehensive doctrines, Rawls trusts, will offer different explanations for why justice as fairness should be considered objective.

Rawls’ recontextualization of practical reason best coheres with the reality of justification

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Kant’s legacy to the tradition of moral philosophy, according to Rawls, includes an account of authentication (TK, 532). This remark, from Rawls’s 1989 essay on Kant, seems paradoxical. Kant addresses the question, ‘‘What kind of authentication has the moral law?’’ Rawls thinks this question is inappropriate for political liberalism. Rawls opts to rework Kant’s account of authentication, however, rather than preserve it in its original form.20 Kant’s attempts to justify (or ‘‘authenticate’’) the moral law, according to Rawls, can be divided into two phases (TK, 517–23). Before the Critique of Practical Reason, Kant sought to prove the moral law’s objective and universal validity through a deduction. This deduction took several forms, each one problematic from a Kantian perspective. First, in his notebooks from the 1770s, Kant sought to ground the moral law in theoretical reason. The difficulty with this strategy, however, is that practical reason—that is, our capacity to produce objects in accordance with a conception of those objects—differs from theoretical reason—that is, our capacity to know objects given to us in sensible experience. Kant concludes that it is impossible to derive insights into the reasonable from reflecting on the rational. Second, in the Critique of Pure Reason, Kant entertains the possibility of providing a transcendental deduction for the moral law resembling the one given for the categories. That is, Kant considers the argument that the moral law is presupposed in our moral consciousness in the same way the categories are presupposed in our sensible experience of objects. This argument, however, collapses moral consciousness into sensible experience, in which case several conceptions of the moral law could fit our moral experience. Kant determines that we need to maintain a sharp distinction between moral consciousness—which can produce objects the world has never seen—and sensible experience—which cannot. Third, Kant, in parts of the Critique of Pure Reason and the Critique of Practical Reason, seems to outline another transcendental argument for the moral law, this time positing that just as the categories are necessarily presupposed in our unified public experience of objects, so too the moral law must be presupposed if we are to have a unified public order of conduct for a plurality of persons. The difficulty, once again, is that it is possible to conceptualize a unified public order of conduct in diverse ways. Kant has not yet proven the superiority of his moral doctrine to that of utilitarianism, perfectionism, or intuitionism. Finally, in Section III of the Groundwork, Kant tries to derive the moral law from the idea of freedom. The difficulty here is that it is impossible to have an intellectual intuition of freedom. All of these arguments, and their respective flaws, lead Kant to surmise that the moral law cannot be given a deduction. In the Critique of Practical Reason, Kant expounds another strategy of authentication that holds more promise for his purpose and ours (according to Rawls). The basis of a ‘‘coherentist account’’ of authentication is to show the place and role of each form of reason in the constitution of reason as a whole. Within this overarching framework, each form of reason has a different authentication. The categories of the understanding are authenticated because they make possible our experience of objects in space and time. Pure speculative reason is authenticated by its role in regulating the understanding and organizing our empirical knowledge into a unity. Empirical practical reason is authenticated by its role in regulating our desires and inclinations into a conception of happiness. Pure practical reason, finally, is authenticated by the ‘‘fact of reason.’’ This is the fact that in our common moral consciousness we recognize and affirm that the moral law is ‘‘supremely authoritative and immediately directive’’ for us. Pure practical reason also gains a ‘‘credential’’ by its role as the ratio cognoscendi of freedom. The doctrine of the fact of reason has often been criticized as a regress into intuitionism or dogmatism. Rawls’s position, however, is that a ‘‘coherentist doctrine of practical reason is not without strengths as a possible view’’ (TK, 523). Rawls abjures the idea, just as late Kant did, that practical philosophy can justify a theory of justice through a theoretical deduction. ‘‘I do not claim for the principles of justice proposed that they are necessary truths or derivable from such truths. A conception of justice cannot be deduced from self-evident premises or conditions on principles’’ (TJ, 19). Rawls also rejects the idea that a theory of justice should be grounded on a moral fact able to command the assent of all reasonable and rational citizens. That would be a step into dogmatism, especially given the fact of reasonable pluralism in modern democratic societies. Rawls, instead, articulates an idea of public justification that can be shared by all reasonable comprehensive doctrines (JF, 26–29). What can this idea draw from Kant? Rawls terms his naturalized Kantian account of authentication the idea of reflective equilibrium.21 Rawls defends his theory of justice because it ‘‘best fits all our considered convictions on reflection and organizes them into a coherent view’’ (JF, 31; see also TJ, 18). The key philosophical difference between Rawls and Kant, once again, is how to conceive of the dualism between our sensible and our vernu¨nftige (reasonable/rational) natures. Kant’s view is that this dualism is deep, and that moral philosophy should appeal strictly to reason. Kant thinks that an explanation of the unity of reason suffices to authenticate the moral law to all rational beings. Rawls, we have seen, seeks to overcome Kant’s dualism between our sensible and rational natures. Kant’s approach, for Rawls, lacks ‘‘explicable connections with human conduct’’ (TJ, 226). Rawls believes that our sensible and rational natures intertwine and that the idea of public justification should be conceived of accordingly. Rawls describes the process of reflective equilibrium as follows (JF, 29–32). We begin by gathering together ‘‘considered political judgments at all levels of generality,’’ including judgments about particular actions, individuals, institutions, and social policies. Although these political judgments are considered, in the sense that they are at least proto-rational, they issue, so to speak, from the heart. An example of such a judgment is Abraham Lincoln’s belief that ‘‘if slavery is not wrong, nothing is wrong.’’ Next, we find a conception of political justice that makes the fewest revisions in our initial political judgments. At this point, we are in ‘‘narrow’’ reflective equilibrium. Our (primarily sensible) judgments and our (primarily rational) concepts and principles of justice cohere between and among themselves. The problem with narrow reflective equilibrium is that it is premised upon ignorance of available theoretical options. The subsequent step in the process, therefore, is to seek ‘‘wide’’ reflective equilibrium. This occurs when we examine alternate ideas of justice and possibly revise our preferred political conception of justice. When we attain or approach a state of wide reflective equilibrium, we believe that our political conception of justice is the most reasonable one for us. This belief is supported if we trust other citizens could share this conception and thus help society attain ‘‘general’’ or ‘‘full’’ reflective equilibrium. According to Rawls, justice as fairness best characterizes our position in wide and general reflective equilibrium. Justice as fairness, alone among contemporary alternatives, ‘‘meets the need for a basis of public justification on questions of political justice’’ (JF, 32).

#### Only looking to public reason – i.e. principles that free and equal citizens could accept – can ground justice

Tampio 7 summarizes Rawls, Nicholas. (teacher of political theory at Hamilton College. Researches the legacy of the enlightenment in contemporary political theory). Rawls and the Kantian Ethos. Polity . Volume 39, Number 1 . January 2007 r 2007 Northeastern Political Science Association 0032-3497/07 $30.00 www.palgrave-journals.com/polity. faculty.fordham.edu/tampio/Tampio%20-%20Rawls%20and%20the%20Kantian%20Ethos.pdf. NP 3/20/16.

The idea of public reason, as noted above, identifies the way that citizens of a well-ordered society can justify their political conception of justice to one another. This idea reconstructs an idea formulated by Kant in the essay ‘‘What is 98 RAWLS AND THE KANTIAN ETHOS Enlightenment?’’ For Kant, public reason is ‘‘the use which someone makes of it as a scholar before the entire public world of readers.’’22 Kant uses the idea of public reason, presumably, as part of his overall project of justifying Enlightenment liberalism to all citizens of the world. For Rawls, on the other hand, public reason identifies ‘‘the kinds of reasons [citizens] may reasonably give one another when fundamental political questions are at stake’’ (IP, 574). In an inversion of Kant’s project, Rawls seeks to take comprehensive doctrines of truth or right out of the public sphere.23 For Rawls, the idea of public reason places limits on how citizens—most importantly, government officials—can publicly justify a political conception of justice to one another. Three criteria, according to Rawls, constrain public reason (IP, 575). First, the target of public reason may only be the reason of free and equal citizens (as opposed to their prejudices). Second, the subject of public reason may only be constitutional essentials and matters of basic justice. Third, the nature and content of public reason must themselves be public. All citizens must, if they wish, be able to discover how the political conception of justice is justified. What makes a liberal political conception of justice better able than alternatives to satisfy the criteria of public reason? It alone can be ‘‘worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime’’ (IP, 584). Only a liberal conception of justice—of which justice as fairness is an example—can be publicly justified without recourse to comprehensive moral doctrines. Rawls introduces the idea of an overlapping consensus in order to help us think further about how citizens in a well-ordered society could conceive of the idea of public justification. The idea of an overlapping consensus helps ‘‘make the idea of a well-ordered society more realistic and to adjust it to the historical and social conditions of democratic societies’’ (JF, 32). Kant’s hope, in his time, was to achieve a consensus of reasonable and rational beings on the objectivity and validity of his comprehensive moral doctrine. Several facts make this and similar hopes [is] unreasonable for us (JF, 33–36). The most important is the fact of reasonable pluralism. This is the fact that the free exercise of human reason in a free democratic society leads to a diversity of conflicting and irreconcilable, though reasonable, comprehensive doctrines. Another is the fact of oppression. This is the fact that in any modern society a consensus on any one comprehensive moral doctrine can only be achieved through the use of state oppression. Next, there is the fact that any enduring and secure democratic regime must be supported by a majority of its citizens. This support could not be guaranteed if the officially sanctioned conception of justice were based on a sectarian moral doctrine. Finally, there is the fact that many people are beginning to see the real possibility of a society that is both just and pluralistic. All of these facts emerge from and reinforce our awareness that the burdens of judgment preclude agreement among reason- able and rational people on a single comprehensive moral doctrine. What is Rawls’s hope, then, in introducing the idea of an overlapping consensus? This idea helps reconcile us to the fact that a democratic society cannot be a community as Kant and others once envisioned (JF, 3). More positively, this idea is ‘‘realistically utopian’’ (JF, 4). The idea of an overlapping consensus helps us imagine how a well-ordered society faced with the fact of reasonable pluralism may be unified and stable. Our dreams, for Rawls, differ from Kant’s.

## Freeman

#### Constructivism necessitates acting on principles accepted by free and equal moral persons. This means acting under conditions in which nature is the decisive determining element - which demands the original position. Only the original position presents conditions under which we can accept principles as free and equal moral persons.

Freeman 3, Samuel. "7 Congruence and the Good of Justice." The Cambridge Companion to Rawls (2003): 277.

**According to** the “Kantian interpretation” of justice as fairness (TJ, Sec. 40), and what Rawls later calls “**Kantian Constructivism**,”30 **justice is construed as those principles that would be justified** to, **and accepted by, everyone under conditions that characterize them as “free and equal** moral **persons”** (or “free and equal rational beings,” in Theory, p. 252/222 rev.). **The original position specifies these conditions**; it is a “procedural interpretation” of our nature as free and equal rational beings (TJ, p. 256/226 rev.).31 Rawls says that, **by acting from** the **principles that would be chosen from this standpoint, persons express their nature as free and equal rational beings subject to** the **general conditions of human life.** For **to express one’s nature as a being of a particular kind is to act on** the **principles that would be chosen if this nature were the decisive determining element....** One reason for [acting from the principles of justice], for persons who can do so and want to, is to give expression to one’s nature. (TJ, pp. 252–3/222 rev., emphases added) Conjoining this conception of the person with the formal account of rationality and the Aristotelian principle, we can identify the focal points of Rawls’s Kantian argument for congruence as follows:32 1. On the basis of the Kantian interpretation, persons seen as moral agents are by their nature free and equal rational beings (TJ, p. 252/222 rev.) (or, the same idea in Theory, “free and equal moral persons” TJ, p. 565/495 rev.)33 **Rational agents** in a well-ordered society (WOS) **conceive of themselves** in this way **“as primarily moral persons”** (TJ, p. 563/493 rev.).34 2. Rational members of a WOS **[who] “desire to express** their **nature as free and equal moral persons,”** (TJ, pp. 528/462–3 rev., 572/501 rev.). (Rawls evidently sees this as a nonarbitrary rational desire.) Combined with the formal account of a persons’s good under the thin theory, this implies, 3. Members of a WOS **[and] desire to have a** rational **plan of life consistent with** their **nature;** which implies, in turn, a “fundamental preference ... for conditions that enable [them] to frame a mode of life that expresses [their] nature as free and equal rational beings” (TJ, p. 561/491 rev.). 4. **Having a plan of life compatible with** the **desire to express** their **nature as free and equal rational beings requires that persons act from principles that “would be chosen if this nature were the decisive determining element”** (TJ, 253/222 rev.).This is the original position: it specifies conditions that characterize or “represent” individuals as free and equal moral persons in the Kantian interpretation (TJ, pp. 252, 515, 528/221, 452, 462–3 rev.).35 5. In its standard interpretation, **the original position is designed to “make vivid to ourselves** the **restrictions that it seems reasonable to impose on arguments for principles of justice”** (TJ, p. 18/16 rev.). **It embodies fair conditions of equality that you and I (presumably) find appropriate for an agreement on principles to regulate the basic structure of society.** 6. The normally effective desire to apply and act upon principles that would be agreed to from an original position of equality is the sense of justice (TJ, pp. 312/275 rev., 478/418 rev.). 7. Taken together, 4–6 suggest that the desire to act in ways that “express one’s nature” as a free and equal rational being is “practically speaking” the same desire as the desire to act upon principles of justice acceptable from an original position of equality (TJ, p. 572/501 rev.).36 8. Thus, for individuals in a WOS to achieve their desire to realize their nature as free and equal rational beings requires that they act on, and from, their sense of justice (TJ, p. 574/503 rev.). 9. By the Aristotelian principle, it is rational to realize one’s nature by affirming the sense of justice. “From the Aristotelian Principle it follows that this expression of their nature is a fundamental element of [the] good” of individuals in a well-ordered society (TJ, p. 445/390 rev.).37 10. The sense of justice is, by virtue of its content (what it is a desire for) a supremely regulative disposition: it requires giving first priority to the principles of right and justice in one’s deliberations and actions (TJ, p. 574/503 rev.). 11. To affirm the sense of justice is to recognize and accept it as supreme by adopting it as a highest-order regulative desire in one’s rational plan.38 12. **To have justice as a highest-order end is the most adequate expression of our nature as free and equal rational beings and is to be autonomous** (cf. TJ, p. 515/452 rev.). **Autonomy is** then **an intrinsic good for free and equal moral persons.**

#### Our moral power constitutes our nature as moral persons, unifying our life through adoption of a rational plan of life; purely naturalistic understandings of humanity fail.

Freeman 3, Samuel. "7 Congruence and the Good of Justice." The Cambridge Companion to Rawls (2003): 277.

The crucial question then is, Why does Rawls contend that the sense of justice “belongs to our nature,” and what does this obscurity mean? In Theory Rawls adopts Kant’s position, that **persons are, by** their **nature, free, equal and rational** and that in a WOS they publicly conceive of themselves in this way. **The “nature” of free, equal, and rational beings is** their **“moral personality”** (TJ, Sections 77, 85). Moral personality is **defined by** the moral powers, which are in effect the **capacities for practical reasoning as applied to matters of justice.** These capacities include (a) a capacity for a sense of justice (the ability to understand, to apply, and to act on and from requirements and principles of justice) as well as (b) a capacity for a conception of the good (to form, to revise, and to pursue a rational plan of life).40 Why are these capacities so important? Rawls’s idea is that, from a practical point of view**, when acting as agents** (and especially in cooperative contexts) **we** normally **see ourselves and** each **other[s] not just in terms of** our **particular identities, ends, and commitments;** more fundamentally **we conceive** of ourselves and othersas **free moral agents capable of determining** our **actions, adjusting** our **wants, and shaping** our **ends –** all according to the requirements of practical principles. And, “**since we view persons as capable of mastering and adjusting** their wants and **desires, they are** held **responsible** for doing so.”41 Now the **bases for** people’s **conception of themselves as free and responsible** moral **agents** and as equals **are the moral powers.**42 A person without these capacities is not recognized by others as answerable for his or her acts or ends (morally or legally) or deemed capable of taking an active part in social cooperation.43 Moreover, we do not see our lives as a matter of happenstance simply imposed on us by our situations. Instead, within the limits of the circumstances we confront, **we** normally **see our actions and** our **lives as under our control**. It is **by virtue of** the **capacities for moral personality** that **we are able to** decide whatends and activities we should pursue and can **fashion** these **ends into a** coherent and cooperative life **plan that accords with principles of** rational **choice and** principles of **justice.** So **it is by virtue of** the **moral powers as capacities to act upon rational and moral principles that we are able to give “unity” to** our **lives, and** so to our **selves,** by adopting and pursuing a rational plan of life.44 It is because of their central role in making possible our agency that Rawls says that the moral powers “constitute our nature” as moral persons. “Moral person” and “moral personality,” terms found in both Locke and Kant, are to be taken here in the seventeenth- and eighteenth-century sense; they refer to agents and their capacities for agency. To say these powers “constitute our nature” means that, when we think of ourselves practically as agents engaged in planning our pursuits in the context of social cooperation, then **what is most important to our being an agent** for these purposes **are the moral powers. Contrast thinking of oneself purely naturalistically as a physical organism or object whose behavior is determined by a combination of forces. This is not how we see ourselves in practical contexts** (though some might occasionally think of themselves in this way from a purely naturalistic point of view). **That persons are free and responsible** agentscapable of controlling their wants and answering for their actions is something we just go on from a practical standpoint.45 This belief **provides our orientation in the realm of human activity.** And it is hard to see how it could be any other way. For otherwise we must see ourselves and one another as natural objects beyond the realm of responsibility.46

#### To act autonomously requires acting from the original position free from contingency

Freeman 3, Samuel. "7 Congruence and the Good of Justice." The Cambridge Companion to Rawls (2003): 277.

There is one final claim to consider (12 in Section III), and the congruence argument is complete. What does it mean to realize the conception of the person as a free and equal rational being in one’s rational plan? Rawls says, Kant held, I believe, that **a person is acting autonomously when** the **principles of** his **action are chosen** by him **as the most adequate** possible **expression of** his **[their] nature as a free and equal** rational **being.** (TJ, p. 252/222 rev.; cf. TJ, p. 584/511) In the Kantian interpretation of justice as fairness, Rawls assumes that **citizens in a well-ordered society “regard** moral **personality ... as** the **fundamental** aspect of the self” (TJ, p. 563/493 rev.); as a result **they desire to be fully autonomous** agents. **Autonomy,** in Rawls’s Kantian account, **requires acting for the sake of principles that we accept,** not because of our particular circumstances, talents, or ends, or due to allegiance to tradition, authority, or the opinion of others, but **because** these **principles give expression to our** common **nature as free and equal** rational beings(TJ, p. 252/222 rev., p. 515–16/452 rev.). **By affirming their sense of justice, members** of a well-ordered society **accomplish their conception of themselves as** free, that is, asmoral **agents** who are **free from** the **eventualities of their circumstances,** their upbringing, **and** their **social position** “Acting from this precedence [of the sense of justice] **[this] expresses** our **freedom from contingency** and happenstance” (TJ, p. 574/503 rev.). And **this is what it is to be autonomous.** So, “**When** the **principles of justice ... are affirmed and acted upon** by equal citizens in society, **citizens then act with full** autonomy.”50 Full autonomy (as opposed to simply “rational autonomy”) is then the ultimate consequence of persons realizing their nature by making the sense of justice a highest-order desire in their rational plans. And this means, given the rest of Rawls’s argument, that autonomy is an intrinsic good. So Rawls concludes: “[T]his sentiment [of justice] reveals what the person is, and to compromise it is not to achieve for the self free reign but to give way to the contingencies and accidents of the world” (TJ, p. 575/503 rev.). It reveals “what the person is” practically, as a moral agent, and so to compromise it is to compromise one’s free agency.

#### Rawl's theory of overlapping consensus: takes out skep and relativism

Freeman 3, Samuel. "7 Congruence and the Good of Justice." The Cambridge Companion to Rawls (2003): 277.

**Overlapping consensus means that people in a well-ordered society will** normally **act justly for** many **different reasons.** Given reasonable pluralism, what primarily motivates citizens in a well-ordered society to comply with public principles of justice is not a desire for autonomy or the intrinsic good of justice itself (though many may act justly for these reasons); rather it is the many different values implicit in different comprehensive (or partially comprehensive) doctrines people subscribe to in a well-ordered society. Overlapping consensus is in effect a hypothesis about the kinds of conceptions of the good that will be fostered by a well-ordered society. It extends the reasoning behind the principles of reciprocity underlying development of the sense of justice from Theory (Chap. 8) so that it applies to reasonable comprehensive doctrines and individuals’ conceptions of the good.60 The crucial assumption is that, **as individuals tend to develop a desire to support just institutions that benefit them** and those they care for, **so too will they incorporate this desire**, in some form, **into their conception of the good.** This means that, **from among the many possible religious, philosophical, and ethical doctrines, those that will** gain adherents and **thrive in a well-ordered society will be reasonable and** will **endorse** (or at least will be compatible with) **the public principles of justice, each for their own specific reasons. Unreasonable, irrational,** or mad **doctrines will not muster sufficient support** to gain sizable adherence. There will then be no widely accepted comprehensive view that rejects liberal principles of justice or which assigns an insignificant position to considerations of justice in its scheme of beliefs, values, or moral principles. Assuming that this conjecture holds true in a well-ordered society, **all will have sufficient reason to comply with liberal principles of justice for their own specific reasons. Justice will then be rational for each** – instrumentally or intrinsically, **depending on their** particular **conception of the good – and society will evince internal stability “**for the right reasons” (PL, p. 388n.). Overlapping consensus does not address all of the issues the original congruence argument set out to. It does not claim, for example, that justice as fairness is true or objective according to universal epistemological criteria or that it will be publicly recognized as such. Given different philosophical views, such issues cannot be argued out on the basis of public reasons or resolved as part of the public conception of justice. They are part of ongoing, nonpublic moral and political debate among conflicting comprehensive philosophical views. The important point is that, if an overlapping consensus exists, such disputes should have little effect on the stability of a liberal conception of justice. For **whether or not all citizens see liberal principles of justice as objective or true** (moral skeptics do not, and they will always be present),all reasonable **citizens** nonetheless **should find these principles the most reasonable principles of justice for persons who conceive of themselves as free and equal moral persons. Moral skepticism and relativism are then effectively neutralized as threats to stability.**

Overlapping consensus also does not imply that justice is supremely rational or even an intrinsic good. So far as overlapping consensus goes, justice may be no more than an instrumental good for many people and hence subject to compromise when it conflicts with their final ends. Rawls’s thought here may be that, since justice nonetheless occupies a significant position in each person’s view, even if only as an instrumental good for many, whatever conflicts with their final ends there are will not be so frequent and entrenched as to undermine stability. So in a well-ordered society it seems there is no assurance after all that justice will occupy a supremely regulative position in each person’s conception of the good. This does not however deprive justice of its finality; rather it shifts finality to a more restricted domain, the political domain of public reasons. Reasons of justice no longer may override all reasons within everyone’s conception of the good, but they do override all reasons within the public political domain

## Cohen

Cohen, Joshua. For A Democratic Society. Freeman. The Cambridge Companion to Rawls Edited by Samuel Freeman. Cambridge University Press.

I begin (Section 2) by explaining three ways in which justice as fairness is a conception for a democratic society. The three ways are connected to three ideas of democracy: a democratic political regime, which means a political arrangement with rights of partici- pation, elections, and surrounding rights of association and expres- sion designed to make participation informed and effective; a demo- cratic society, which means a society whose members are understood in the political culture as free and equal persons; and deliberative democracy, which means a political society in which fundamental political argument appeals to reasons suited to cooperation among free and equal persons, and the authorization to exercise collective power traces to such argument. Justice as fairness is “for a democratic society,” then, first because it assigns to individuals an equal right to participate and thus requires a democratic regime as a matter of basic justice. Second, it is addressed to a society of equals, and the content of its principles are shaped by that public understanding. Finally, it is intended to guide the political reasoning and judgment of the members of a democratic society in their exercise of their political rights.

## O’Neill

#### Here’s how constructivism do

O’Neill. Onora O’neill. 9 Constructivism in Rawls and Kant1. The Cambridge Companion to Rawls Edited by Samuel Freeman. NP 3/21/16. 348-9. NP 3/21/16.

Antirealism comes in many forms in ethical and political theory, and much of it is not constructivist. Constructivisms are distinctive among antirealist ethical positions, not only in claiming that ethi- cal principles or claims may be seen as the constructions of human agents but in two further respects. They also claim that construc- tive ethical reasoning can be practical – it can establish practical prescriptions or recommendations which can be used to guide ac- tion – and that it can justify those prescriptions or recommendations: objectivity in ethics is not illusory. Ethical constructivists reject not only those nonrealist positions which give up on the entire project of justification (e.g., emotivism) but also those which deploy severely restricted conceptions of justification which are too weak to support strong claims about objectivity in ethics (e.g., relativism, communi- tarianism, social constructionism applied to ethical beliefs). Constructivist approaches to ethics are therefore distinctive and ambitious. They hold that, although realist underpinnings are unobtainable, (some) objective, action-guiding ethical prescriptions can be justified. The challenge is to see whether and how this combination of ambitions can be sustained.

#### The existence of shared values in the original position makes public life posssible

O’Neill. Onora O’neill. 9 Constructivism in Rawls and Kant1. The Cambridge Companion to Rawls Edited by Samuel Freeman. NP 3/21/16. 348-9.

Rawls has consistently advocated a particular constructive proce- dure, the original position (OP), as the way to justify principles of justice. However, as his work developed he has changed his views of the range of ethical principles that can be constructed, of the justification of OP itself, and of the audiences who can be given reasons to accept OP. Broadly speaking, he has taken an increasingly refined and restricted view of all three. In his earlier work, and in particular in A Theory of Justice,5 Rawls hoped that it might prove possible to justify not only OP, and thereby principles of justice, but also other ethical principles; he offered a coherentist justification of OP, claiming that the principles of justice it endorses are in reflective equilibrium with ‘our’ considered judgements; and he views this approach as providing reasons for action for a loosely specified ‘us’, perhaps for anybody. In Political Liberalism6 Rawls qualifies all three claims: he takes a narrower view of the range of claims that can be justified, makes more limited claims about the sharing of justifications, and takes a narrower view about the range of agents who can reason about justice. In the first place, while he still maintains that the construc- tive procedure of OP can be used to identify principles of justice, he concludes that other moral principles cannot be given a justification that is accessible to all.7 There can be, and in free societies there will be, a plurality of reasonable comprehensive moral views. Secondly, he holds that the fundamental justifications for OP, and thereby for principles and institutions of justice, can be offered by individuals with varying comprehensive moral views and may vary widely: OP is seen as the object of a contingent, overlapping consensus among those with varying fundamental views which do not guarantee any convergence on reasons for affirming those views.8 Thirdly, **Rawls claims** that **a total lack of shared reasons for accepting OP would undermine political life** but that **citizens** in democratic polities **can rely on a more limited range of shared justificatory strategies, which are political rather than fundamental. Justice as fairness,** he argues in his later work, should be seen as a ‘free-standing’ conception, which is in reflective equilibrium not only with various comprehensive moral views but with the central ideas within a public democratic culture within which a form of public reason may be shared by (and possibly only by) fellow citizens. This conception of public reason provides the common coin used in arguments about justice among fellow citizens, but it provides no universal currency: “Those who reject constitutional democracy . . . will of course reject the very idea of public reason.”9

#### Ethical questions mst be resolved by arbitrating between competing conceptions of the good – shared co-operation and ability to accept other’s principles is the basis of reasonableness

O’Neill. Onora O’neill. 9 Constructivism in Rawls and Kant1. The Cambridge Companion to Rawls Edited by Samuel Freeman. NP 3/21/16. 348-9.

In Kantian Constructivism Rawls sees Kant’s work as closely cognate and deplores the failure of earlier writers to see that Kant offered a constructive rather than a minimally formalist approach to ethics.17 However, here and elsewhere, he recognises that his con- structivism is Kantian but that it is not Kant’s. The main difference in method, as Rawls sees it in Kantian Constructivism, is that his ￼Downloa om Cambridge Companions Online © Cambridge University Press, 2016 C a m b rid g e C o m p a n i o n s O n l i n e © C a m b r id g e U n iv e r si t y P r e s s , 2 0 06 d ed fr C am b rid g eC o m p a n io ns O n l in e by IP 1 http://dx.doi.org/10.1017/CCOL0521651670.010 2 8.5 9 .2 22 .1 2 on W e d M a r 1 6 1 8 :0 8 : 01 G MT 2016. ￼ 352 onora o’neill position assigns “primacy to the social” and specifically that it is designed for citizens, whereas Kant’s “account of the Categorical Imperative applies to the personal maxims of sincere and consci- entious persons in everyday life” (KC, p. 339)18: the OP procedure is quite distinct from the more individualist Categorical Imperative (CI) procedure. Rawls sees this difference in method as explaining why he and Kant reach different ranges of substantive ethical claims. While Kant hoped to provide a quite general method for addressing ethical issues, including questions of justice, Rawls came to the conclusion that his Kantian constructivism could build an account only of justice: we can construct a reasoned account of the right, but not of the good; of justice, but not of virtue: Justice as fairness, as a constructivist view, holds that not all the moral questions we are prompted to ask in everyday life have answers. (KC, p. 350) This emphasis on the limits of his constructivism became even more prominent in Rawls’s later writings, where he frequently insists that, since we cannot give a reasoned account of the good, we are bound to be neutral between competing “conceptions of the good” unless they conflict with justice. Constructivism does not provide a comprehensive moral theory, nor do constructive arguments reach all possible audiences: they are based on the shared conceptions of citizens, so provide reasons for action only for those whose most basic commitments they presuppose. The limits of Rawls’s later constructivism are most clearly etched in Political Liberalism, whose aim is specifically to “bring out the bases of the principles of right and justice in practical reason” (PL, p. xxx). The conception of practical reason or reasonableness which Rawls advances here is specifically a conception of public reason: Persons are reasonable **when** . . . they are ready to propose principles and stan- dards as fair terms of co-operation and to abide by them willingly, given the assurance that others will likewise do so. (PL, p. 49) The others who may share a commitment to “govern their con- duct by a principle from which they and others can reason in common” (PL, 49n) are once again envisaged as fellow citizens – specifically as fellow citizens of a democratic society: ￼ [P]ublic reason is characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship...[it is] public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public . . . (PL, p. 213; cf. PRR, Part 1)

#### Constructive procedures for justice rely on justifiable procedures that individuals aiming to construct principles can follow – Kant’s entire philosophy is based on this, but he ultimately fails to construct an adequate account of ethics

O’Neill. Onora O’neill. 9 Constructivism in Rawls and Kant1. The Cambridge Companion to Rawls Edited by Samuel Freeman. NP 3/21/16. 348-9.

The deepest questions that can be raised about each version of Rawls’s constructivism are about the conceptions of reasonableness invoked. Constructive procedures for establishing principles of jus- tice cannot build ethical conclusions from nothing: they aim to build them by justifiable procedures which “agents of construction” can follow. We may quite reasonably ask why we should take “reflec- tive equilibrium with our considered judgements,” or “a suitably constructed social point of view that all can accept,” or “the public reason of citizens in a democratic society” as constitutive of reason- ableness. There are other possibilities, including the form of Kantian constructivism, which Kant himself proposes. Although much of Rawls’s work is quite un-Kantian,20 his charac- terisation of his method for establishing principles of justice and of his conclusions as both Kantian and constructivist makes good sense. Yet, as he notes, many commentators have not thought that Kant’s method of establishing ethical principles is constructive at all. Some have thought that Kant, despite his disavowals, peddles one more form of rational intuitionism and is a covert moral realist; others, that he offers only a minimal formalism. If those who see moral re- alism in Kant were right, he and Rawls would share little. If those who see minimal formalism in Kant are right, Rawls’s Kantianism would amount to their shared antirealism, their common aspiration to nonrelativist justification in ethics, and their shared liberal views about justice but would not extend to a common ambition to con- struct a range of ethical conclusions. Nevertheless, there are good reasons for agreeing with Rawls that Kant’s method in ethics is constructive. A background consideration is that Kant combines antirealism with claims to identify objective moral principles: a constructive approach would fit his wider phi- losophy well. More specifically, there are many junctures at which Kant appeals explicitly to constructive procedures, including his ac- counts of the justification of theoretical reason and of mathematical reasoning.21 Finally, and for present purposes most significantly, there are reasons to think that Kant’s conception of ethical justifica- tion is more radically constructive than the one that Rawls proposes. Kant’s method in ethics clearly resembles Rawls’s method in sev- eral negative respects. Like Rawls, Kant proposes procedure(s) for jus- tifying ethically important principles of action by appeal to a concep- tion of practical reasoning that does not build on supposed indepen- dent moral facts or on actual individual preferences. The procedure(s) envisaged – stated in the various CI formulations – are contrasted with the procedures adopted by proponents of heteronomy in ethics who either support perfectionism by invoking the (illusory) indepen- dent values of moral realism or advocate positions such as subjec- tivism, utilitarianism, or preference-based forms of contractarianism by invoking the (unvindicated) value of satisfying preferences. Kant’s commitment to these negative points is easily established. The best-known version of his procedure of construction, the CI, is the formula of universal law,22 which enjoins agents to “act only in accordance with that maxim through which you can at the same time will that it become a universal law”: agents should reject principles of action which (they take it) cannot be adopted by all.23 There is no reference here, or in Kant’s underlying theory of action, either to any given moral reality or to desires or preferences. Still, negative points are not enough to show that Kant, too, takes a constructive approach to ethics. Kant can be read as an ethical con- structivist only by showing that (despite rejecting rational intuition- ism) he proposes a method agents can use to identify specific princi- ples with practical implications and that he justifies this method. For present purposes I shall take it that the CI procedure(s) have practical implications and can identify at least some ethical princi- ples, for example (but perhaps not only) basic principles of justice.24 The more demanding question is whether they can themselves be justified without reintroducing some form of moral realism by the back door. Kant evidently takes it that his constructive procedure for ethics is not arbitrary and that it constitutes the weightier aspect of practical reason, or reasonableness. Just as Rawls insists that the ra- tional and the reasonable are both relevant to justifying principles of justice, but that they are distinct, so Kant insists that the principles of the hypothetical and categorical imperatives are both relevant to justifying ethical principles and that they are mutually irreducible. Yet it is not easy to see why Kant thinks the CI procedures con- stitute requirements of practical reason or reasonableness. It may be that Kant and Rawls may end up with parallel difficulties, that both propose a constructive procedure for identifying specific practi- cal principles, but both fail to show convincingly that this procedure is grounded in or expresses (an adequate conception of) reasonable- ness. Their positions may be constructive in the limited sense that they propose procedures which agents can use to establish princi- ples for guiding action but not in the fuller sense of justifying those procedures and grounding objective normative judgements. If so, nei- ther Rawls nor Kant will justify ethical claims in the stronger sense to which constructivists aspire. However, Kant does more than invoke an ungrounded “supreme principle of practical reason.” He holds that an account of practical reason itself should be susceptible of justification: that ambition is implicit in the very titles of his major works. Critiques of pure and of practical reason are critiques not merely of the deployment of antecedently given uncritically accepted conceptions of reason but of those conceptions of reason. If Kant can do this, he may offer not a merely conditional but a deep vindication of ethical principles based on vindicating a conception of practical reason. If in addition his vindication of reason were constructive, his constructivism would be not only deep but also radical. Rawls explicitly denies this possibility. He holds that Kant does not and cannot offer a constructive justification for his conception of practical reason. In Themes in Kant’s Moral Philosophy he poses and answers two questions: First, in moral constructivism, what is it that is constructed? The answer is: the content of the doctrine . . . A second question is this. Is the CI-procedure itself constructed? No, it is not. Rather, it is simply laid out . . . not everything can be constructed and every construction has a basis, certain materials, as it were, from which it begins. (TKMP, pp. 513–14)25 On Rawls’s view these materials include Kant’s conception of free and equal persons as rational and reasonable, which is “elicited from our moral experience” (TKMP, p. 514). Ethical reasoning builds on the basis of these elicited conceptions; practical reason itself is not justified by any constructive procedure. In the following section of Themes in Kant’s Moral Philosophy Rawls argues that Kant’s conception of practical reason is grounded in his difficult doctrine of the fact of reason, as set out in the Critique of Practical Reason. A quite common view of Kant’s discussion of the fact of reason is that it is to provide the bedrock for all moral reasoning: practical reason, and thereby the CI procedure(s),26 are simply given to human consciousness and hence are not themselves constructed. This reading suggests that (despite himself) Kant fell and back on some form of rational intuitionism and even on (moral) realism.

## Rawls

#### Justice as fairness regards basic social structure

**Rawls 85**, John. Justice as Fairness: Political not Metaphysical John Rawls Philosophy and Public Affairs, Vol. 14, No. 3. (Summer, 1985), pp. 223-251. NP 3/22/16.

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.4 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, Philosophy G Public Affairs doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society.5

#### Lack of moral agreement means we should perceive justice as fairness -- this enables basic institutions to realize values of liberty and equality

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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 111). 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 reahzing the values of liberty and equahty when citizens are conceived as such persons, that is (very briefly), as having the requisite powers of moral personahty 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: I. 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.

Individuals must have equality of opportunity and the worst off must be benefited

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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. 228 Philosophy G Public Affairs 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 equahty; while the second part of the second principle underwrites the worth of these institutional guarantee~.~ The two principles together, when the first is given priority over the second, regulate the basic institutions which realize these values.9 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 wdhng 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 generahty, on due reflection (or in what I have called "reflective eq~hbrium").

#### Political philosophy must be in accordance with our primary moral convictions

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#### Justice must aim to find political solutions to ethical conflicts, rather than metaphysical or epistemological ones

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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 worlung agreement on the fundamental questions of political justice. It goes without saying that this agreement must be in- 230 Philosophy G Public Affairs formed and uncoerced, and reached by citizens in ways consistent with their being viewed as free and equal persons." 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,'= 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 infnngement 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.13 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, reconchation 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 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.

#### The fundamental organizing principle of society is that it is a system of cooperation between free, equal persons

Rawls 85, John. Justice as Fairness: Political not Metaphysical John Rawls Philosophy and Public Affairs, Vol. 14, No. 3. (Summer, 1985), pp. 223-251. NP 3/23/16.

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.14 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: I. 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 mutuahty: 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.

#### I hijack agency warrants – identity is constructed through social relations which means it relies on fair and equal cooperation

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Now consider the idea of the person.Is 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 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.16 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 ception of the good. Moreover, we must also include in such a conception a view of our relation to the world-religious, philosophical, or moralby 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 nonnal 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 sociahst 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.

# Frontlines/Framework Interaction