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A

A CRITICAL STUDY OF LIBERALISM

by

ROBERT B. TALISSE

A dissertation submitted to the Graduate Faculty in Philosophy
in partial fulfillment of the requirements for the degree of Doctor of Philosophy.
The City University of New York

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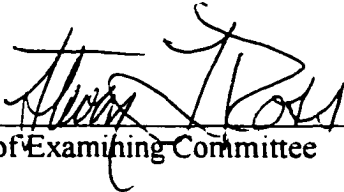
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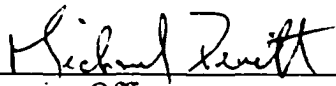
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CHAPTER ONE WHAT LIBERALISM IS

'Liberalism' in Political Discourse

It is not uncommon today to hear liberalism identified with the political commitments characteristic of the Democratic party in the United States. The liberal, in this sense of the term, is one who favors social principles emphasizing the need of federal intervention for establishing and maintaining a just distribution of wealth, healthcare, education, and other social goods. The liberal is opposed to the conservative, who is in turn often associated with the political programs characteristic of the Republican party in the United States. Conservatism is marked by a trust in the principles of free-market economics—competition among providers of goods, individual initiative, non-intervention at the federal level, and decentralization—as sufficient means to social justice.

The conservative thus sees the liberal political program as excessive. According to the conservative, the governmental agencies and institutional apparatus necessary to secure the envisioned distribution of social goods pose a threat to freedom. Hence Robert Nozick, a rather extreme type of conservative, has argued that the scheme of taxation necessary to fund liberal social programs is “on a par with forced labor” (Nozick 1974, 169), as it “sieve[s] some of a man’s leisure (forced labor) for the purposes of serving the needy” (Nozick 1974, 170). Nozick thus argues that mandatory taxation is intrusive, an unjust interference with individual liberty.

Liberals, by contrast, argue that individual liberty can be secured only under certain social conditions. For any reasonable set of individual liberties, liberals maintain, there is a corresponding set of political and economic conditions whose existence is necessary for their exercise. Moreover, they maintain that the free market is insufficient for liberty; the conditions necessary for liberty prevail only in the presence of the kind of redistributive interventions disparaged by conservatives. A striking example of this position is developed by Henry Shue, who argues for an extensive set of “basic rights” to healthcare, education, and financial security, on the grounds that a certain degree of health, education, and wealth is necessary for the full exercise of one’s political rights (Shue 1980). A state which does not engage in activity designed to compensate for inequalities obstructs liberty, for it fails to create and sustain conditions necessary for individual freedom.

Of course, the above contrast between liberalism and conservatism is exaggerated due to the fact that I have intentionally drawn my examples from thinkers who advance extreme versions of the general positions they represent. Conservatives do not generally oppose taxation, although they are generally wary of redistributive efforts and try to minimize governmental regulation in the private sector. Likewise, liberals are not generally committed to extensive social planning and regulation, although they do tend to promote certain forms of social programming aimed towards maintaining what they consider the minimal conditions for fairness and equality. Though the more moderate forms of liberalism and conservatism tend to prevail in contemporary discourse in

America, there is still room for considerable disagreement. Familiar disputes regarding the reformation of health insurance, public funding for private education in the form of vouchers, and the use of gender or race as criteria in hiring and academic admissions decisions tend to divide cleanly along the liberal / conservative dichotomy.

Liberalism Defined: Five Basic Principles

The foregoing remarks are mostly by way of preface, for “liberalism” shall herein be employed in a way which is different from that of colloquial parlance and contemporary political discourse. “Liberalism,” as the term shall here be used, denotes a distinctive collection of philosophical claims about politics rather than the platform of some political party or a set of social policy preferences. Although, as we shall discover, there is disagreement among liberal theorists regarding the principal tenets of their view, Martha Nussbaum has recently offered a concise statement which seems to capture nicely the central elements of liberalism and at a level of generality that can, I believe, command wide assent. Nussbaum writes,

Liberalism holds that the flourishing of human beings taken one by one is both analytically and normatively prior to the flourishing of the state or the nation or the religious group; analytically, because such unities do not really efface the separate reality of individual lives; normatively because the recognition of that separateness is held to be a fundamental fact for ethics, which should recognize each separate entity as an end and not as a means to the ends of others. (Nussbaum 1997, 62)¹

¹ See also Buchanan 1989, 854.

As Nussbaum's remark suggests, liberalism has as its core two powerful insights which are related in a specific way. The first, and logically primary, insight may be called the Principle of Individuality, and formulated thus:

The Principle of Individuality. The individual person is the fundamental element of analysis in political theorizing.

There is considerable dispute among contemporary liberals regarding the character of this principle. For example, it can be read as the metaphysical claim that as parts are ontologically prior to wholes, so individual persons are analytically prior to social associations; alternatively, the Principle of Individuality can be understood as a prudential or practical suggestion that, for purposes of political philosophy, the individual person is to be regarded as basic.² In any case, however, it follows from the Principle of individuality I that no social relation or association could completely contain, capture, or exhaust the nature of the individual; the individual remains always at a certain distance from its associations.³ Despite the fact that we often identify ourselves with various social groups, religious, political, and familial, these connections to others never fully reach the ultimate nature of the self; they cannot "efface the separate reality of individual lives." For liberalism, it is the separateness of selves, not their relatedness, which is analytically primary, and thus basic to political theorizing.

² For suggestions of the former interpretation, see Nozick, who emphasizes "the fact of our separate existences" (Nozick 1974, 33); Brian Barry, who speaks of "individual autonomous units" (Barry 1973, 166); and Bruce Ackerman, for whom political theory begins with "asocial monads" (Ackerman 1980, 100). The recent work of John Rawls is the main source of the practical reading of The Principle of Individuality; see, for example, Rawls 1985, 403ff.

³ On this point, see Sandel 1982, 55.

Although Nussbaum does not specify the precise nature of the implication, she contends that the “recognition” of the Principle of Individuality entails a further claim, the Principle of the Good:

The Principle of the Good. The good of each individual is morally prior to the good of groups of individuals.

Again, the character of this claim is widely disputed. A predominant interpretation, evoked by Nussbaum, derives from Immanuel Kant and states that as individual persons embody a special value, which Kant called “dignity” (Kant 1785, 51-52), the individual is an “end in itself,” and thus can never rightly be used solely as a means to the ends of others, individually or collectively (Kant 1785, 45). Alternatively, one can advance an interpretation which eschews any such “metaphysical” claims about persons, as Rawls does when he promotes The Principle of Good on the basis of the “basic intuitive idea,” prominent “within the tradition of democratic thought,” that citizens are to be regarded as free and equal (Rawls 1985, 397). In any case, the Principle of the Good implies that as the purposes, aims, and objectives of social groups are subordinate to the good of the individual, the individual can never justly be required to promote a collective good. As Rawls succinctly states the idea, the individual self is “prior to the ends which are affirmed by it” (Rawls 1999a, 491).⁴ Of course, individuals may choose to commit their time, energy and resources to the advancement of the good of some association such as a church or political party, and they may do so even at the expense of their own good. The

⁴ Citations to Rawls’s *A Theory of Justice* will be keyed to the Revised Edition of 1999. The original edition was published in 1971.

point of the principle is that no one is ever *required* to do so; such commitments must be voluntarily adopted and not the products of coercion.

Humans are creatures capable of formulating and adopting what may be called a “conception of the good.” That is, our lives are informed and guided by some more or less systematic set of beliefs about what is valuable, what is worthy of pursuit, what is good, and what kind of person one should be.⁵ Although this conception is subject to fluctuation and revision over time, each of us at every particular instant harbors some such conception.⁶ In light of this, it is often thought to follow from the Principle of Individuality and the Principle of the Good that the project of identifying, selecting, and pursuing a conception of the good is a job properly left to the individual.⁷ Presuming this implication holds, it follows that the liberal state must refrain from trying to establish and promote a particular conception of the good among its citizens. Instead, the state must indirectly promote the good of each individual by establishing and maintaining the conditions under which each may pursue his own good without undue interference.

These principles are made explicit by John Stuart Mill in his *On Liberty*.

The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual. (Mill 1859, 17)

⁵ Rawls has employed the term “comprehensive doctrine” to describe what I am here calling a conception of the good. See Rawls 1993, 13ff.

⁶ Rawls 1993, xix; Rawls 1993, 12; and Rawls 1993, 140.

⁷ In fact, many have claimed that the freedom of each to select and pursue his own conception of the good is the essence of liberty itself, as Mill does in the quotation below. Liberals need not take so strong a view.

One finds a comparable expression in Kant,

No man can compel me to be happy after his fashion. . . . Instead, everybody may pursue his happiness in the manner that seems best to him, provided he does not infringe on other people's freedom to pursue similar ends. . . . (Kant 1793, 74)

And Rawls articulates a similar idea,

[I]ndividuals find their good in different ways, and many things may be good for one person that would not be good for another. . . . In a well ordered society, then, the plans of life of individuals are different in the sense that these plans give prominence to different aims, and persons are left free to determine their good (Rawls 1999a, 393)

In more recent work, Rawls puts the point thus: "citizens as free and equal are to be at liberty to take charge of their lives," that is, they are to be at liberty to select some conception of the good and pursue it; he adds, "The only restriction on plans of life is their being compatible with the public principles of justice" (Rawls 1993, 189-190).

From this view about the nature of individual liberty, a view about the purpose and scope of the state follows: ". . . the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill 1859, 14). That is, state interference is justified only in cases where it is necessary to prevent one individual from obstructing another's efforts to pursue his own good. The good of the individual "is not sufficient warrant" for interference with his activity.

He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. (Mill 1859, 14)

In short, "Over himself, over his own body and mind, the individual is sovereign" (Mill

1859, 14). It is the liberal state's function to protect this sovereignty against encroachment from other individuals and other states. Consequently, the liberal state itself cannot rightfully ordain and promote any particular conception of the good for individuals: its policies must be "so far as possible, independent of any particular conception of the good life, or of what gives value to life" (Dworkin 1978, 127). For in a liberal state, "Everyone is assured an equal liberty to pursue whatever plan of life he pleases as long as it does not violate what justice demands" (Rawls 1999a, 81). The use of state power to enforce an official conception of the good would necessarily involve coercion, oppression, and thus injustice. State action and policy must therefore be neutral, or impartial, with regard to different conceptions of the good life which citizens may rightfully adopt.

Hence we may derive a third principle of liberalism. With a suitable nod to Mill, we cite the Principle of Liberty:

The Principle of Liberty. It is properly the prerogative of the individual to identify, select, and pursue a conception of the good.

As this principle sets certain constraints upon the rightful scope and exercise of the coercive power of the state, we can articulate a fourth principle, the Principle of

Obstruction:

The Principle of Obstruction. The state is justified in obstructing an individual in his pursuit of his conception of the good only in cases where his action interferes with another's pursuit of the good.

The Principle of Liberty also constrains state action in establishing policy, hence the Principle of Neutrality:

The Principle of Neutrality. State action and policy must be neutral among the various conceptions of the good which citizens may rightfully adopt.⁸

These three further principles are, again, subject to various interpretations.

According to a prudential reading, these further principles of liberalism simply commend good sense in light of the risks attendant on granting a state too much influence. Mill apparently has this type of account in mind when he writes that “Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest” (Mill 1859, 17).⁹ Or, one may wish to advance a metaphysical interpretation; this would require a demonstration that the three further principles can be deduced from the first two.¹⁰

These five principles may be said, then, to constitute liberalism as a political doctrine. It is the mission of the liberal political philosopher to articulate a *theory* of liberalism: that is, the liberal philosopher must determine the precise nature of these principles, construct schema according to which they may be organized and prioritized, and devise arguments in support of the principles and the proposed system of interpretation and prioritization.

⁸ This idea lies at the heart of current debate. Although several prominent liberals advance some version of this principle, there are others, such as Joseph Raz, who explicitly deny that the liberal state must be neutral. For other expressions of neutralism, see Nozick 1974; Ackerman, 1980; Kymlicka 1989a; and Nagel 1987 and 1991 (Ch. 14). The concept of state neutrality is widely criticized; see, for example, Beiner 1992 (Ch. 2); Barber 1984 (Part 1); Sandel 1982, 1984a, 1984b, and 1996; and Sher 1997.

⁹ Cf. Mill 1859, 121ff. Elsewhere, Mill claims that the principle that “each is the only safe guardian of his own rights and interests” is “one of those elementary maxims of prudence” (Mill 1861b, 245).

¹⁰ This is, essentially, Kant’s project; see Kant 1793 and 1788.

Liberalism Contrasted with Aristotelianism

We now see that the familiar differences regarding social policy discussed in the first section of this chapter are disputes occurring *within* the domain of liberal political philosophy. Disputes among libertarians, socialists, and moderates of various stripes seldom concern the validity of the basic principles of liberalism, but rather how these principles are to be understood and prioritized. As liberalism tends to contain the various positions which constitute the spectrum of most popular political discussion, we may think of liberalism as an “inertial frame” of political analysis; that is to say, liberalism provides the framework within which political discussion is typically conducted.¹¹ As the principles of liberalism underlie most political deliberations, they are not often identified and scrutinized. To dramatize the point, liberalism is invisible because of its ubiquity.

It therefore may be instructive to examine briefly an antiliberal position. A number of important philosophers have advanced political theories which oppose the principles of liberalism, and perhaps the most notable among these is Aristotle.¹² Aristotle famously argued in the first book of his *Politics* that certain kinds of political association, such as the family, the village, and the city, *polis*, are not extrinsic to the nature of individuals, but logically necessary to personhood. According to Aristotle, the

¹¹ I borrow the term ‘inertial frame’ from Benjamin Barber, who uses it in a way which differs somewhat from my own use. Barber writes, “An inertial frame is a frame of reference against which a theory’s development can be charted, a starting or rest position from which a theorist launches his arguments and to which he can safely return when a given philosophical voyage of discovery fails or is aborted” (Barber 1984, 26-27).

¹² Hegel and Heidegger are often named in this connection as well. See, for example, Taylor 1979, Ch. 2; and Bell 1993, *passim*.

human being is metaphysically so constituted as to have well-being, *eudaimonia*, as its natural state of completion, *entelechia* (*NE* 1095a15).¹³ As the good, *agathos*, of each thing is identical to its completion or its aim, *telos* (*NE* 1094a1), the good of human beings is thus well-being (*NE* 1097b20-30). However, this good cannot be attained without proper upbringing and proper laws (*NE* 1180a15), and these are the concerns of the *polis*, which exists “for the sake of living well” (*P* 1252b27). Accordingly, the *polis*—and the other social institutions it implies—exists “by nature” (*P* 1252b30), for that which is necessary to the achievement of a natural state of completion itself exists by nature and is not artificial.¹⁴

Aristotle therefore would not accept the Principle of Individuality. Rather, he maintains that “The *polis* is by nature prior to the household and to each one of us taken singly” (*P* 1253a18). The priority of the *polis* is for Aristotle a metaphysical truth: “For the whole is necessarily prior to the part” (*P* 1253a19), and human beings are by nature parts of a *polis*—any creature that is not of a nature to require the *polis* for its completion is *ipso facto* not a man, but “either of a depraved sort or better than a human being” (*P* 1253a1-5). Consequently, the fundamental subject matter of political philosophy is not, as liberalism holds, the individual, but rather the *polis*, its laws, and its organization.

Aristotle also rejects the Principle of the Good. In fact, one could argue that

¹³ Citations to Aristotle will employ the Bekker numbers, prefaced by abbreviations indicating the name of the work from which the citation is drawn. *NE* indicates the *Nicomachean Ethics* (Aristotle 1962); *P* indicates the *Politics* (Aristotle 1997). I shall leave the word *polis* untranslated as Ostwald’s rendering (“state”) is different from Simpson’s (“city”).

¹⁴ On these points, see Simpson 1998, 21f. and Miller 1995, Ch. 2.

Aristotle would find unintelligible the idea that the individual good could be separated from the good of the *polis*: according to Aristotle, the aim of the *polis* is the good for the individual (i.e., *eudaimonia*), and the individual cannot attain *eudaimonia* without the *polis*. In this sense, the individual good and the good of the *polis* are identical: however, Aristotle maintains,

Even if the good is the same for the individual and the *polis*, the good of the *polis* clearly is the greater and more perfect thing to attain and to safeguard. The attainment of the good for one man alone is, to be sure, a source of satisfaction; yet to secure it for a nation and for *poleis* is nobler and more divine. (NE 1094b6-10)

Moreover, the good of the individual consists in sharing in the *polis*: an individual's good exists within his role in the *polis*. Thus, the individual's good is subordinate to that of the *polis*.

With the grounds for Aristotle's rejection of the Principle of Individuality and the Principle of the Good in view, it is easy to anticipate Aristotle's reactions to the remaining liberal principles. As the *polis* exists for the sake of living well, and as it aims at this through its laws, it is clear that Aristotle would reject the Principle of Neutrality: for it is the job of the *polis* to promote excellence, *arete*, in its citizens, and this requires that legislation be non-neutral among competing conceptions of the good. Any *polis* which aimed at neutrality with regard to the good would be a *polis* in name only, since it would not be performing the proper job, *ergon*, of a *polis* (P 1280b29-1281a10).

Similarly, Aristotle would reject the Principle of Obstruction: the reach of the *polis* extends beyond the minimal scope designated by liberal theorists. As the *polis* is

not a voluntary association, but a natural association necessary to and existing for the sake of living well, its job is that of habituating its citizens to excellence. The *polis* habituates the citizens to excellence by means of its laws. However, laws alone are not sufficient for the task of promoting excellence, for these will affect only those of a “generous mind” who are already well-disposed to excellence (*NE* 1079b7). As most people are controlled by passion rather than what is good, the *polis* must therefore employ force to secure the correct habits (*NE* 1080a15-25). Accordingly, the influence of the *polis* extends far beyond that of the liberal state. The *polis* does not stand aloof in all but those cases in which interference is necessary to prevent one from causing harm to others, it rather plays an active and pervasive role in shaping the characters of the citizens: it is the *polis* that is to make the citizens good.¹⁵

Of course, Aristotle must also reject the Principle of Liberty. The good is not a matter of individual selection, and almost no individual can attain the good without the support of the *polis*. Again, a *polis* which leaves the pursuit of the good life up to citizens individually fails to be a *polis* in the proper sense. Persons living in such a *polis* will lack the proper habits and thus pursue a deficient conception of the good; consequently, they will live unnatural, depraved lives.

These remarks, though brief, are enough to evoke adversity in the liberal mind. To liberal ears, Aristotle’s proposal sounds inherently unjust, and perhaps even dangerous. At least one liberal philosopher has gone so far as to claim that oppression

¹⁵ See Simpson 1990, 160-162.

and injustice are the *only* means by which one could realize Aristotle's ideal of a large group of persons embodying and sharing a single conception of the good.¹⁶ Is Aristotle not sanctioning oppression on the order of a Stalinist, Maoist, or Medieval theocratic regime?¹⁷ Is he not endorsing a totalitarian politics in which individuals and their lives vanish in the shadow of the omnipotent state and its needs?

Considered against the background of Aristotle's view, liberalism "offers a powerful liberating vision" (Sandel 1996, 12) of autonomy and independence. According to liberalism, each of us is at liberty to "take charge" of his own life (Rawls 1993, 189). We are not instruments of a state or of some antecedently given *telos*; we are not bound to ends and purposes set for us by nature or tradition or God. Rather, liberalism maintains that we are *agents* in the fullest sense; we are autonomous choosers of our ends and purposes, and these ends and purposes are valid simply in virtue of their being chosen by us. As Rawls would have it, individuals are "self-authenticating sources of valid claims" (Rawls 1993, 32).

Moreover, liberalism provides a strong basis for social equality. Unlike Aristotle, who held that some persons were by nature subordinate to others (*P* 1254b11-19), the liberal theorist's vision of the individual as a center of autonomous choice, a source of valid claims, renders morally irrelevant certain differences between persons. As the "self

¹⁶ Rawls writes, "... a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained *only* by the oppressive use of state power" (emphasis added). He calls this the "fact of oppression" (Rawls 1993, 37).

¹⁷ Turning again to Rawls, "In the society of the Middle Ages, more or less united in affirming the Catholic faith, the Inquisition was not an accident; its suppression of heresy was needed to preserve that shared religious belief" (Rawls 1993, 37).

is prior to the ends which are affirmed by it" (Rawls 1999a, 491), differences of race, religion, class, ethnicity, and gender fail to capture anything essential about individuals. Therefore, discrimination or partiality on the basis of such features is morally suspicious; for these are differences which do not, in fact, *make* a difference. According to liberalism, "Our social position and class, our sex and race should not influence deliberations made from a moral point of view" (Rawls 1975, 268). As the kind of selves that liberalism postulates, we are equal.

Finally, a community based upon the liberal vision of free and equal individuals will necessarily be *tolerant* of the differences that will inevitably arise among citizens. On the liberal view, ideological, philosophical, theological, and moral differences among persons are not to be quashed or suppressed, for they are the natural outcome of "the work of free practical reason within the framework of free institutions" (Rawls 1993, 37). Indeed, deep differences among citizens regarding matters of ultimate concern are often celebrated by liberalism in the name of "diversity."¹⁸

It is thus often said that the virtues of a liberal state are liberty, equality, and toleration. Given this, it might seem that liberalism is a political philosophy that is especially well-suited to democracy. Indeed, antiliberalism tends typically to accompany opposition to democracy, as in Plato, Aristotle, Nietzsche, Carl Schmitt, and Leo Strauss.¹⁹ Conversely, the tradition of liberal philosophy tends to converge with the

¹⁸ See, for example, chapter three of Mill's *On Liberty*, "Of Individuality, As One of the Elements of Well-Being," for a most spirited defense of diversity and social toleration of diverse "experiments of living" as "not an evil, but a good" (Mill 1859, 62).

¹⁹ On the antiliberalism of the latter two, see Holmes, chs. 2 and 3.

tradition of democratic philosophy, as in John Locke, John Stuart Mill, and Isaiah Berlin. This coincidence should not be taken too strictly, however. There has recently arisen a series of formidable criticisms of liberalism that propose to show that liberalism “lacks the civil resources to sustain self-government” (Sandel 1996, 6), that liberalism and democracy do not complement each other as well as it might seem. Hence, a question central to current political theory is, Can a society based upon liberal principles generate and sustain the conditions necessary for effective democracy? This question drives the present study.

Liberalism and Antiliberalism

Opponents of liberalism fall into two classes: those who reject democracy and those who support democracy. Examination of antidemocratic antiliberalism lies beyond the scope of our discussion. Although I shall have occasion to formulate and promote a certain conception of democracy in the coming chapters, the validity of democratic forms of government is presupposed.²⁰ We therefore shall focus upon democratic antiliberalism.

It is unfortunate that academic debate concerning liberalism has been named the “liberal-communitarian debate”; for it is conceded that this title is unsatisfactory as it understates the variety of views at work in the dispute.²¹ For our purposes, it is necessary

²⁰ What is being presupposed is the validity of government that “rests upon the freely given consent of the governed” (Hook 1938, 285).

²¹ Lamentations over the term ‘communitarianism’ are legion. See, for example, Sandel 1998b; Beiner 1992, 28f.; and MacIntyre 1998, 243-246.

to distinguish two varieties of democratic antiliberalism which are sometimes run together under the name “communitarianism.” Keeping with the current nomenclature, I shall distinguish “communitarianism” from “civic republicanism.”

The communitarian variety of democratic antiliberalism is composed mostly of sociologists, political scientists, and politicians concerned with the disturbing trends of isolation, non-participation, and apathy in liberal societies, especially the United States.²² Communitarians advance proposals for repairing a fragmented public sphere; they tend to be politically active, advocating political legislation that is designed to restore community, cooperation, and a sense of belonging among citizens.²³

Civic republicanism, by contrast, tends to focus upon the theoretical underpinnings of liberalism. Civic republicans particularly criticize liberalism’s emphasis upon negative liberty, insisting that freedom does not consist in the absence of interference, but rather in the positive capacity to be self-governing (Sandel 1996, 5) and not subject to the domination of others (Pettit 1997, 21f.). Civic republican freedom thus requires the rejection of the familiar liberal commitment to state neutrality; to realize the true freedom of self-government, the state must undertake the “formative” project of cultivating in its citizens the “qualities of character that self-government requires” (Sandel 1996, 6).

Very often, however, civic republicans remain at the theoretical level of analysis,

²² See Elshtain 1995a; Barber 1984; and especially Robert Putnam 1995.

²³ See Etzioni, ed. 1998 for communitarian perspectives on the family, public space, crime, and education. See also Etzioni 1993; Etzioni 1996; Bellah, et al., 1991; Bellah, et al. 1985; and Galston 1990.

leaving questions of actual policy to the side: it is “one thing to criticize liberalism as a philosophical theory and quite another thing to engage in conflict with contemporary liberal politics” (MacIntyre 1998, 244). Indeed, liberals often wonder what the theoretical differences between liberals and republicans amount to in the practical realm of social policy. Will Kymlicka, for example, has characterized the debate between left-leaning liberals, like himself, and left-leaning civic republicans, such as Sandel, as “internecine.” “unnecessary,” and “counterproductive”; he continues,

People on the left who agree on 95 percent of the actual issues confronting our society spend all of their time arguing with each other about the 5 percent of issues we disagree about, rather than fighting alongside each other for the 95 percent of issues we have in common. (Kymlicka 1998, 134)

The perceived similarity on issues of policy have led liberals to conceive of civic republicanism as a corrective to liberal politics, a way of avoiding the excesses to which liberalism may tend, but not strictly speaking an alternative political theory. “The worthy challenge” posed by civic republicanism “is not to replace liberal justice, but to improve it” (Gutmann 1985, 136).²⁴

It is therefore tempting to cast the distinction I am pressing between communitarians and civic republicans as a difference between the main focus of their respective critiques of liberalism. One could argue with some justification that communitarians target perceived defects in liberal society and liberal policy whereas civic republicans aim to undermine liberal theory. This way of construing the distinction is

²⁴ It is important to note here that, in the article just cited, Gutmann refers to the “communitarian” critique of liberalism. She is, however, discussing the work of Sandel, whom I have characterized as a civic republican, and not a communitarian in the sense I am employing the term.

generally helpful, but it should not suggest that the communitarian and civic republican projects are strictly exclusive; as indicated above, these distinct varieties of democratic antiliberalism sometimes run together. The policies endorsed by communitarians are sometimes shared by those espousing a civic republican political philosophy; moreover, communitarians are typically driven to address the philosophical foundations of liberalism, and are often found advancing civic republican arguments. Again, the streams diverge also; many civic republicans explicitly distance themselves from communitarianism, and some derive liberal policies from civic republican theory.²⁵

It is more useful to characterize the distinction between communitarians and civic republicans as a difference regarding the relation between theory and practice, or, to cast the distinction another way, between philosophy and politics. Communitarians tend to begin with troubling social phenomena: they then typically contrive policies which they surmise will improve the current state of affairs, and formulate a theoretical basis for their proposals *ex post facto* and *ad hoc*. The result is often a sweeping and comprehensive vision of society rich with policy proposals, but weak on theory, and consequently vulnerable to misinterpretation and obvious objections.

Amitai Etzioni is a communitarian who provides a clear example of these tendencies. Etzioni begins a recent book outlining the essentials of his communitarian politics with the identification of some important social ills: “the deterioration of private

²⁵ Note that the main philosophers associated with the communitarian side of the liberal-communitarian debate—Sandel, Taylor, Walzer, MacIntyre—have not elected to add their signatures to Amitai Etzioni’s “Responsive Communitarian Platform” (Etzioni, ed. 1998, xxv-xxxix).

and public morality, the decline of the family, high crime rates, and the swelling of corruption in government” (Etzioni 1993, 2). He then offers his diagnosis: it is the “self-centered, me-istic orientations” (Etzioni 1993, 24) prevalent in contemporary society which have generated our problems. He proposes that society is “suffering from a severe case of deficient we-ness and the values that only communities can properly uphold”; consequently, “restoring communities and their moral voices are what our current conditions require” (Etzioni 1993, 26). He advises us to “return to the language of social virtue” (Etzioni 1993, 7), and to “raise our moral voice a decibel or two” (Etzioni 1993, 36) in order to “shore up our moral foundations” (Etzioni 1993, 11).

What Etzioni does not make explicit is *how* following these prescriptions will result in lower crime rates, less corruption, more cooperation, and stronger families; he fails to do the theoretical work of showing how restoring communities will solve social problems. With this work undone, Etzioni is open to the objection that his apotheosized “we-ness” is a recipe for a more intolerant, oppressive, and unjust society. With the community understood as the source and repository of the moral values which we are supposed to “shore up” and “transmit” (Etzioni 1993, 12), we run the familiar risk of majority tyranny. Certainly, the prevailing moral voice of the community will simply be the voice of the majority, and history has unfortunately done us the service of providing many compelling proofs that majorities are capable of sanctioning and perpetrating acts of severe evil.

When he is forced to confront this objection, Etzioni finds himself without the

theoretical resources necessary for a plausible reply. Despite the fact that he has placed the source of morality within the community, he must also maintain that there are certain “higher-order values” which “no community has a right to violate” (Etzioni 1993, 37). We discover in Etzioni’s recent writings that these “overarching values” are identified in the Bill of Rights, and the liberties and protections specified there are “exempt from majority rule” (Etzioni 1995b, 23). Of course, this appeal does not answer the objection, it simply delays it. If Etzioni is asked, What is the *justification* for the “higher-order values” specified in the Bill of Rights?, he must either appeal to majority consensus or to some other source of legitimacy. If he appeals to majority consensus, he has not responded to the objection; if he identifies some other source of legitimacy, he will have to admit some community-independent source of valid moral principles.²⁶ If he admits a community-independent source of valid moral principles, he will have thereby surrendered an essential feature of his communitarianism.

Civic republicans, by contrast, tend to place theory prior to practice. Maintaining that “to engage in a political practice is already to stand in relation to theory” (Sandel 1984, 12), civic republicans see the defects of liberal politics as the outcome of a deficient theory. This is not to say that all citizens harbor a philosophical theory of society in their daily lives, nor is it to say that liberal political philosophers have

²⁶ Etzioni sometimes claims that the source of the “higher-order” principles is the “convictions held by many Americans” (Etzioni 1998, xv); however, he also has indicated that “the deontological position is most satisfactory” as a ground for higher-order values (Etzioni 1985b, 20). It is not clear that Etzioni can with consistency appeal to deontology and maintain his communitarianism.

persuaded citizens of contemporary democracies to adopt a liberal political theory.²⁷ It is rather to say that our political practice is informed by a specific, though perhaps tacit, theory which is implicit in our practice; liberalism provides the theoretical and conceptual vocabulary by means of which current democratic politics gets done. It “sets the terms of political discourse and describes the self-understandings implicit in our political and constitutional practices” (Sandel 1998c, 320).

Civic republicans seek to address liberalism as a philosophical theory and eventually to replace it with an alternate theory they believe more congenial to healthy democratic politics. To the charge that civic republican political philosophy is insufficiently suggestive of specific policies, civic republicans may reply that once the conditions requisite for a flourishing democracy are in place, the policy decisions should be left to the people. Such a response certainly affirms the envisioned relationship between political theory and practice; however, it also leaves open the question of whether a civic republican politics can in practice avoid the troubling policy implications associated with communitarianism.

A Test Case: Pornography and Obscenity

The distinctions I have been pressing between liberal, communitarian, and civic republican political philosophy may be further illuminated by means of a brief

²⁷ For a discussion of these possible misunderstandings, and an examination of the relation of theory to practice, see Beiner 1998, 10-13.

examination of a particular social question which have exercised liberal and antiliberal thinkers alike. The cluster of questions concerning the proper stance of a democratic society towards pornography and other modes of obscene expression provides a convenient position from which to launch an exploration of the different styles of political analysis. As the objective of such an examination is not to compare the policies endorsed by the theorists to be discussed, but rather to illustrate the differences in analytical approach, I shall focus attention upon the different ways in which the theorists frame the *question* regarding pornography.

Given the commitment to the Principle of Obstruction, liberal discussions concerning legal bans on pornographic material tend to focus upon questions regarding the competing rights involved. On the one hand, pornography seems to be protected in the United States by the First Amendment, which disallows the abridgement of free speech. On the other hand, some argue that pornography is causally linked to acts of violence against women and to the existence of socially pervasive attitudes about women and sexuality which promote practices that are dangerous to women; pornography, it is alleged, therefore constitutes a violation of the civil rights of women. The relevant questions for the liberal, then, are, (1) Does the production and distribution of pornography constitute a violation of anyone's rights?, and (2) Does the prohibition of pornography constitute a violation of anyone's rights? As the First Amendment provides a *prima facie* case for answering the second question affirmatively, the liberal who would support a ban on pornography must show that the harm of pornography is sufficiently

extreme as to override the pornographer's rights to expression.

The liberal mode of political analysis is exhibited clearly in a round of debates concerning a controversial amendment proposed to the Minneapolis Civil Rights Ordinance in 1983—later proposed in 1984 to the City Council of Indianapolis—claiming that pornography “is a form of discrimination on the basis of sex” and thus should be subject to extensive legal regulation.²⁸ In support of the ordinance, Catherine MacKinnon argues,

The harm of pornography, broadly speaking, is the harm of the civil inequality of the sexes made invisible as harm because it has become accepted as the sex difference. (MacKinnon 1987, 63)

Supporting MacKinnon's position, Rae Langton writes,

Women are apparently disadvantaged by the permissive policy [regarding pornography], and therefore have a prima facie cause for complaint. Some women feel deeply distressed and insulted by it, and it is probable that the existence of such pornography reinforces and perpetuates attitudes and beliefs that undermine the well-being of women and undermines sexual equality; it probably contributes, for example, to an environment in which sexual abuse is more likely to occur. (Langton 1990, 106-107)

Ronald Dworkin, who maintains that the proposed Indianapolis ordinance is unconstitutional, argues,

Lawyers who defend the Indianapolis ordinance argue that society does have a further justification for outlawing pornography: that it causes great harm as well as offence to women. But their arguments mix together claims about different kinds of harm, and it is necessary to distinguish these. They argue, first, that some forms of pornography significantly increase the danger that women will be raped or physically assaulted. If that were true, and the danger were clear and present, then it would indeed justify censorship of those forms In fact,

²⁸ The ordinance was drafted by Catherine MacKinnon and Andrea Dworkin in 1983, and is reprinted in the Appendix to Dwyer 1995. The ordinance was vetoed by the mayor of Minneapolis, and ruled unconstitutional by the district court of Indianapolis (a ruling upheld by the Supreme Court in 1986).

however, though there is some evidence that exposure to pornography weakens people's critical attitudes towards sexual violence, there is no persuasive evidence that it causes more actual incidents of assault. (Dworkin 1993, 117)

In each case, one finds that the relevant consideration in determining the status of a prohibition on the production and distribution of pornography is the degree to which pornography constitutes harm. Those who support anti-pornography legislation argue that pornography does harm women and in a way sufficient to warrant legal prohibition. Those who reject anti-pornography legislation deny that pornography harms sufficiently to require special action. This is not to say, however, that those who support the rights of pornographers and consumers of pornographic material believe that pornography is morally unproblematic. On a liberal analysis, the question of the moral value of pornography is irrelevant. For the liberal, the issue turns not upon the moral effects of exposure to pornography on the characters of those who consume it, or the morality of participation in the industry which produces pornography; the liberal's commitment to the Principle of Neutrality requires that policies are, insofar as possible, neutral with regard to questions of the good. The determining consideration is simply whether the production and distribution of pornography violates anyone's rights.

Communitarians, such as Etzioni, take a different approach. Noting that "there is a gap between rights and rightness" (Galston 1991, 8), communitarians maintain that the legal right to free expression does not entail the moral rightness of every instance of free expression. Arguing that anti-obscenity laws treat "symptoms" rather than the "disease," Etzioni offers a "nonlegal" (Etzioni 1993, 200-201) analysis of questions concerning

questionable modes of expression which relies less upon the coercive apparatus of the state and more upon “community-based mechanisms” (Etzioni 1996, 29) of approval and disapproval. In a passage attending particularly to obscene speech, Etzioni writes:

While respecting the legal right of individuals to engage in obscene and inflammatory speech, a community is fully entitled, in effect called upon, to inform those who spout venom that it is deeply offended by their speech. Members of the community are well within their rights when they seek to dissociate themselves from people who speak that way. (Etzioni 1995, 30)

As this quotation indicates, the relevant question for Etzioni is not whether anti-pornography legislation would violate the rights of those who produce and consume it; rather he is concerned to articulate a strategy for dealing with what he considers an obvious social evil. Apparently, we as a community should recognize rights to free expression, even in cases of obscenity, but undertake community action designed to encourage pornographers and others who choose to engage in acts of obscene expression to “put their First Amendment rights to better use” (Etzioni 1993, 204).

The philosophical difficulties that this proposal invites need not concern us at this point. Instead, it is important to note that Etzioni’s concerns are strictly practical. He shows no doubt that pornography and other forms of obscene expression are bad for society, and that curbing obscene expression would be a positive good. Moreover, Etzioni rejects attempts to control obscenity by legal means not because of any special dedication to the First Amendment, but rather because he is convinced that such legal measures are bound to fail. The solution, again, lies within the “moral voice” of the community (Etzioni 1993, 7).

Civic republicans such as Sandel pose the question regarding pornography in a way which differs from that of both the liberal and the communitarian. Whereas the liberal is strictly concerned with striking the correct balance between the conflicting rights, and the communitarian seeks to empower the community's moral voice, the civic republican rejects both approaches, maintaining that the question regarding the legality of pornography turns upon the *moral* character of the practices in question.

We may begin with Sandel's rejection of the communitarian approach. As our examination of Etzioni's analysis, the communitarian opposes pornography on the grounds that such expression offends the community's values. According to Etzioni, the problem regarding obscenity is generated by the weakening of the moral voice of the community; the appropriate response, then, is that of reasserting the community's values through community action designed to express group disapproval. Civic republicans reject the majoritarianism implicit in the communitarian analysis and strategy. On the civic republican view, there is nothing sacrosanct about the moral standards and shared understandings of a given community as such: "The mere fact that certain practices are sanctioned by the traditions of a particular community is not enough to make them just" (Sandel 1998b, xi). What is missing from the communitarian analysis is a mechanism by which the community's shared values may be evaluated; the civic republicans demand an "independent, external standard that sheds light on whether identity-constituting communities confer worth upon their members beyond the bare fact of possessing something shared" (Beiner 1992, 29).

The civic republican response to the liberal analysis is more nuanced. As was indicated in our examination above, the liberals' commitment to the Principle of Neutrality requires that their deliberations concerning the legality of pornography and other forms of obscene expression cannot presume or favor or privilege or disallow any particular conception of the good life that citizens may rightfully adopt. The liberals aspire to neutrality in their policies, and therefore propose to leave aside questions about the good for purposes of public deliberation. This aspiration may be characterized as that of placing the right prior to the good, as it attempts to derive a conception of justice from premises which make no reference to any particular conception of the human good.

Sandel rejects the liberal conception of the relation of the right to the good, he denies that the principles of justice can be derived independently of any consideration of the human good.²⁹ According to the civic republican view,

. . . principles of justice depend for their justification on the moral worth or intrinsic good of the ends they serve. . . the case of recognizing a right depends on showing that it honors or advances some important human good. (Sandel 1998b, xi)

The question concerning the legality of obscene forms of expression turns upon a moral judgment regarding the content of the expression. For civic republicans like Sandel, this moral judgment rests upon a conception of the character traits citizens must embody if they are to be competent participants in a self-governing community of citizens. The question, then, is not, Does pornography violate individual rights?, but rather, Does free

²⁹ Sandel 1996 is an extended argument which attempts to demonstrate through an analysis of legal decisions the folly of trying to place the right prior to the good. See also Sandel 1989 for a similar argument focusing on abortion and sodomy legislation.

expression in cases of pornography serve human ends which are sufficiently good and important to warrant protection? Sandel does not offer a decisive response to this question, for his civic republicanism is not offered as an instrument for advocating certain policies, but rather as an alternative framework of political philosophy, one which recognizes the dangers of divorcing political theorizing and political discourse from “substantive engagement” with controversial “moral and cultural” questions (Sandel 1998c, 329).³⁰

By means of these contrasts we have further clarified the distinctions I have drawn between the liberal, communitarian, and civic republican modes of political theorizing. The liberal approach involves an analysis of competing rights claims and a bracketing off of questions about the good. The communitarian approach subordinates concerns about individual rights to those of the communal good, but does so in a way which places the community’s moral voice beyond moral evaluation. The civic republican approach likewise places the good prior to the right but replaces the majoritarianism of the communitarians for a stance which may be characterized as “teleological” or “perfectionist”(Sandel 1998b, xi). That is, civic republicans attack the liberal strategy of trying to derive principles of justice independently of considerations of the good. They instead argue for a conception of justice and a political theory which attends especially to the kind of questions that liberalism seeks to ignore. Of course, liberals press the worry that the perfectionism of civic republicanism holds little advantage in practice over the

³⁰ For a civic republican examination of the First Amendment, see Sunstein 1993. Sunstein characterizes his position as “Madisonian.”

communitarians' majoritarianism; liberals argue that the civic republican's conception of virtue or the proper ends human life will be merely a philosophical elaboration of the attitudes and prejudices prevailing in a given community.

The Next Step

In the present study, I shall adopt the civic republican view of the relation of theory to practice. That is, I aim to evaluate liberalism primarily on theoretical grounds; or, put another way, I aim to examine liberal philosophy. As was indicated earlier, I understand liberal philosophy to consist not only in the affirmation of the five principles delineated above, but also in the project of interpreting, prioritizing, demonstrating, and defending those principles. I am concerned to discover whether it is possible to articulate a liberal theory which is both plausible and able to support a healthy democratic politics.

Liberal philosophy has a history. Although it is maintained by some philosophers that philosophical ideas cannot be properly understood apart from the historical circumstances under which they are formulated, my objectives here are not especially historical. I shall not attempt to determine why certain philosophers advanced certain varieties of liberalism; nor shall I link the rise of liberalism with the occurrence of particular historical events or cultural episodes of the past. Such projects are better left to historians. Instead, I shall in the next chapter trace the philosophical articulation of the key ideas of liberalism through a series of dialectical maneuvers as can be found in the

tradition of liberal philosophy. Specifically, I want to show that the tradition of liberal philosophy is marked by a tension endemic to liberalism between the philosophical desire for thick theoretical foundations and the political aspiration to neutrality, diversity, and toleration. Of course, the dialectical narrative will reflect a certain chronological progression; however, the historical aspects are not my primary focus.

CHAPTER TWO TRADITIONAL APPROACHES TO LIBERAL PHILOSOPHY

The Idea of a Liberal Philosophy

In the preceding chapter, I identified five fundamental principles which constitute liberalism as an inertial frame of political analysis. They are as follows.

1. The Principle of Individuality

The individual person is the fundamental element of political theorizing.

2. The Principle of the Good

The good of each individual is morally prior to the good of groups of individuals.

3. The Principle of Liberty

It is properly the prerogative of the individual to identify, select, and pursue a conception of the good.

4. The Principle of Obstruction

The state is justified in obstructing an individual in his pursuit of his conception of the good only in cases where his action interferes with another's pursuit of the good.

5. The Principle of Neutrality

State action and policy must be neutral among the various conceptions of the good which citizens may rightfully adopt.

I further indicated that by liberal political philosophy, or liberal theory, I understand the project of interpreting, prioritizing, and demonstrating the principles of liberalism. It is to be hoped, then, that a theory of liberalism would embody the most basic virtues we think are characteristic of good theories generally. For example, it is certainly the case that a proposed philosophy of liberalism should offer an interpretation of the principles that is *systematic*: that is, a theory of liberalism should make clear the logical and normative relations between the various principles. A further and obvious virtue is that a liberal theory propose a systematic interpretation that is *consistent*; it

should seek to avoid an interpretation which renders one principle inconsistent with another. Similarly, a liberal theory should not interpret principles in a way which makes any subset of them mutually unrealizable. Finally, we might say that a philosophical account of liberalism should be *applicable*, and by this I mean two things. In the first place, a theory of liberalism should take into account as many facts about human beings as possible. This is simply to say that it must be sensitive to the psychological and social realities of human life. One could propose a liberal philosophy for a community of saints or a collection of Platonic philosopher kings, for example, but we should expect a liberal theory to address itself to *us*. In the second place, a liberal philosophy should be applicable in the sense that it can *inform* and *guide* our actual political activities. Again, one could formulate a liberal theory on a level of abstraction such as to imply no specific policy principles; such impracticality should be avoided.

As there are several ways of construing the meanings, relations, and grounds for the principles of liberalism, several liberal theories have been proposed throughout the history of political philosophy. I aim in the present chapter to survey some of the more influential of these theories. Therefore I shall have occasion to discuss views associated with key liberal figures such as John Locke, Immanuel Kant, and John Stuart Mill, but I am not proposing to offer comprehensive analyses of their texts. My interest instead lies in examining the varied kinds of liberal theory to be found in their works, and in evaluating the arguments advanced in their support. My principal objective is to demonstrate that the career of liberal theory is marked by increasing deflationism with regard to the philosophical foundations for the liberal principles. I aim to employ this

result in the subsequent examination of whether liberalism, as an inertial frame of political analysis, is capable of supporting a healthy democratic politics.

The Status of Liberal Philosophy

As was suggested in the preceding chapter, there are different ways of understanding the precise philosophical nature of the principles of liberalism: some theorists take liberalism to imply or presume robust normative or metaphysical claims, whereas others deny this. Similarly, there are different ways of understanding the philosophical status of liberal theories. That is, as different theorists advance different interpretations of the liberal principles (e.g., metaphysical, moral, prudential, practical), so there are differences with regard to the precise philosophical character of liberal theory itself. For example, some theorists argue that their favored variety of liberal theory follows from some more general, “background” theory of, for example, human nature or metaphysics. According to such theorists, liberalism finds its ground and justification in another philosophical theory. Liberalism is therefore not entirely separate from the presupposed background theory: the success of the proposed liberal theory will depend in part upon the strength of the background theory upon which it rests. If a proposed theory of liberalism finds its ground in a suspect or false background theory, exposing the background view will constitute a suitable challenge to the liberal theory in question.

Keeping with the terminology currently used, we may call theorists who attempt to ground liberalism with some other philosophical theory “comprehensive” liberals. The

political theories of comprehensive liberals may be thought of as species of “comprehensive liberalism.”¹ The comprehensive liberal is to be contrasted with what we may call the “noncomprehensive” liberal.² Unlike the comprehensive liberal, who takes his liberal theory to rest upon or follow from some comprehensive philosophical doctrine, the noncomprehensive liberal takes his liberal theory to be, as Rawls says, “freestanding” (Rawls 1989, 474).³ That is, a liberal theory that is noncomprehensive “offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself” (Rawls 1993, 10); it “stays on the surface, philosophically speaking,” seeking to “leave aside philosophical controversies whenever possible,” and to “avoid philosophy’s longstanding problems” (Rawls 1985, 395). In Rawls’s own noncomprehensive liberalism, which is called “political liberalism,” liberal theorists should not attempt to devise a robust philosophical proof of liberalism from some fundamental theory; rather, they must begin “from within a certain political tradition” drawing “solely upon basic intuitive ideas” that are “embedded in the political institutions” of that tradition (Rawls 1985, 390). As one sympathetic commentator has

¹ John Rawls introduced the idea of a “comprehensive” liberalism in his “Justice as Fairness: Political, Not Metaphysical” (Rawls 1985, 408). The term has since become standard as a classification of a certain kind of liberal theory. See Hampton 1993, 292-296; Gutmann 1985, 126; and especially Mulhall and Swift 1996, 249-258. It is important, however, to distinguish Rawls’s term “comprehensive doctrine” from the idea of a “comprehensive liberalism”: a comprehensive doctrine is a theory of “what is of value in human life” which includes “ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole” (Rawls 1993, 13).

² There is a variety of noncomprehensive liberal theories presently on offer; the most popular of these is Rawls’s “political liberalism” (Rawls 1985, 1993). In Chapter Five of the present study we shall encounter Rorty’s noncomprehensive liberalism, which I have called “antifoundationalist liberalism.” Note that Sandel employs the term “minimalist” to characterize noncomprehensive views (Sandel 1996, 17-24).

³ Cf. Rawls 1993, 10, 12, 140, 145.

put it, the political liberal “puts democratic politics first, and philosophy second” (Rorty 1988, 191).

Any proposed theory of liberalism will be either comprehensive or noncomprehensive. We shall discover in the discussion to come that although the liberal tradition has consisted mostly in comprehensive theories, the liberal commitment to neutrality coupled with the increasing degree of pluralism and diversity within contemporary democratic states has led some recent theorists to abandon the aspiration for a philosophical ground of liberalism altogether.

We shall put to each kind of liberal theorist a question. We ask of the comprehensive liberal whether it is possible to articulate a liberal theory at once consistent with and cognizant of the plurality of conceptions of the good which liberal-democratic citizens may adopt. Is it possible to be a comprehensive liberal and maintain the Principle of Neutrality? To put the question more generally, Is a consistent comprehensive liberalism possible? To the noncomprehensive liberal, we put the question of whether and in what sense a liberal democracy can get along without philosophical foundations. Richard Rorty doubts that “there is any sense in which liberal democracy ‘needs’ philosophical justification at all” (Rorty 1988, 178). Is it true that liberalism can “stay on the surface, philosophically speaking” (Rawls 1985, 395) and remain coherent? In the present chapter, we shall examine three of the most influential kinds of comprehensive theory in the tradition of liberalism. As noncomprehensive liberalism is a recent strategy, launched by Rawls in 1985, it shall be addressed in subsequent chapters.

Comprehensive Liberalism: Three Traditional Approaches

How might the liberal principles be established? As the quotation from Martha Nussbaum cited in the preceding chapter indicates, liberal theorists take the Principle of Individuality to be logically primary in their list of commitments.⁴ So, it is often the case that liberal philosophers begin with some description or definition of individuals which confers upon them the logical priority to which Nussbaum alludes. With this established, it is then the liberal philosopher's objective to demonstrate the remaining four principles.

1. A Theological Basis for Liberalism

One might begin constructing a liberal philosophy with the claim that individuals are logically basic to political theorizing due to certain theological truths. For an interpretation of this sort, we may recall a familiar passage from the American

Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing powers in such form, as to them shall seem most likely to effect their Safety and Happiness. (Jefferson, et al., 601)

Cast in the Lockean terms which inspired it, this passage can be understood as claiming that, in creating mankind, God has ordained a certain natural order which confers upon

⁴ See, for example, John Locke: "To understand political power right, and derive it from its original, we must consider what state all men are naturally in" (Locke 1689a, sec. 4).

individuals “unalienable” or natural rights. As God has created individuals to be “equal and independent” (Locke 1689a, sec. 6), no individual is rightfully subordinate to another or any group of others (hence the equality), and no individual is *defined* by his relations to others (hence the independence). Consequently, social associations, such as a government, are artificial insofar as they are, when just, generated from a decision on the part of individuals to “mutually enter into one community, and make one body politic” (Locke 1689a, sec. 14). As social associations are generated by individual decision, the individual is therefore analytically basic to political theory.

With the analytic basicity of the individual in place, the kind of theory under consideration may easily move towards establishing the remaining principles. As God fashioned each individual to be equal and independent, each individual bears *rights* to equality and independence. Such rights are not contingent upon nor conferred by a political organization, and are therefore “natural” and normatively basic. The argument may run as follows. Political associations come to be only through the consent of individuals who are to join them. Individuals consent to political association for the purpose of the protection of their natural rights and interests.⁵ It is the purpose, therefore, of political associations such as the state to protect and promote the rights and interests of each individual associate in so far as possible. Indeed, any state which fails at this is *ipso facto* illegitimate and may rightfully be dissolved.⁶ As political associations exist for the

⁵ Hence Locke, “The great and chief end therefore of men uniting into commonwealths and putting themselves under governments . . . is the mutual preservation of their lives, liberties, and estates, which I call by the general name property” (Locke 1689a, sec. 124).

⁶ Note the “right to revolution” clause in the *Declaration*: when government ceases to serve the interests of those governed, the governed have a right to abolish it and contract for a new government.

purpose of protecting individuals, the good of individuals is normatively prior to that of associations; for the good of the latter consists in its capacity to serve the good of the former. The Principle of the Good is established.

Although the foregoing argument assigns to the state the purpose of protecting—and thereby promoting—the good of individuals, the state’s role is greatly constrained by the natural rights of individuals. As is suggested by the device of the social contract, societies are based upon an original agreement which individuals undertake for the purpose of mutual advantage. Locke maintained that in the state of nature—a presocial position in which individuals live without a mutual authority to enforce the law of nature—the natural liberty of each individual is in jeopardy.⁷ Individuals contract to form a state for the purpose of establishing a “common judge” to adjudicate disputes between them, and to punish transgressions of the natural law (Locke 1689a, sec. 19).

In this way, the role and scope of the state is clearly circumscribed. States exist for the purpose of enforcing the law of nature: that is, a state’s job is to protect the natural rights of individuals. Among the natural rights of individuals are rights to “life, liberty, and the pursuit of happiness” (Jefferson, et al., 601), it is thus the mark of liberty within a political context to be able to “follow [one’s] own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man” (Locke 1689a, sec. 22). Accordingly, the project of identifying,

⁷ Here Locke’s position is to be distinguished from that of Thomas Hobbes. Whereas Hobbes maintained that liberty in the state of nature is precarious due to the competitive nature of Man (Hobbes, I.13), Locke takes a more moderate view. According to Locke, individual liberty is in jeopardy in the state of nature because there is no neutral, objective party to which one may appeal to settle disputes (Locke 1689a, sec. 19-21).

selecting, and pursuing a conception of the good is left to each individual. By reasoning such as this, the Principle of Liberty is established.

Given its scope and purpose, the state must therefore be as non-interventionist as is consistent with its protective function. Whereas the state may create laws which constrain individual action, and enforce them with its coercive power, such laws cannot aim at anything beyond what is necessary to the protection of individual rights, which Locke calls the "public good" (Locke 1689a, sec. 3). Hence, the state may exercise its coercive power against a citizen only in cases where such intervention is necessary to the public good. Unless a citizen is endangering or hindering the rights of another, the state must not obstruct him. The Principle of Obstruction is established.

The Principle of Neutrality follows easily. Since the state may employ its power to obstruct or constrain the activity of an individual only in cases where the individual poses a threat to the rights of others, and as state policies and laws constrain individual action, such policies and laws must not privilege any particular conception of the good that may be rightfully pursued by citizens. A conception of the good may *rightfully* be pursued insofar as such pursuit does not involve the violation of others' rights. Hence, the liberal state may enact policies which prohibit, for example, theft. Although such a prohibition clearly constrains the individual and disallows conceptions of the good which promote thievery, it does not violate The Principle of Neutrality since theft violates the rights of those whose property is stolen. Accordingly, a conception of the good which promotes a life of thievery is not one that citizens may *rightfully* pursue. By contrast, the state may not legislate, for example, that all citizens read the daily newspaper, for the

pursuit of a conception of the good which does not recognize the value of political participation and information does not violate anyone's rights. A policy requiring newspaper reading would constitute a violation of the Principle of Neutrality, as it would criminalize certain conceptions of the good which individuals may rightfully pursue.

We now have before us a theory which attempts to establish the liberal principles on the basis of theological claims. Does this theory meet the criteria stated in the first section of this chapter? Is the theological account of liberalism systematic, consistent, and applicable?

It is clear that the theory is systematic—the principles of liberalism follow from its theological first principles almost deductively. However, the theological approach fails the consistency and applicability conditions. Difficulties arise for the theological account of liberalism once it is acknowledged that the proposed theological truths which constitute its foundation are controversial, and, contrary to what Jefferson may have thought, not self-evident. What can theological liberalism say to a non-believer, or to one who believes in a God that is not a Creator?

The Principle of Neutrality demands that the state neither endorse nor privilege any particular conception of the good that citizens may rightfully adopt. In the current literature, a distinction is made between “neutrality of effects” and “neutrality of justification.”⁸ Of course, state policies will tend to have the *effect* of promoting certain ways of life. However, the neutrality that the liberal endorses is that of *justification*: that is, the state's policies should be justifiable in terms which do not presume a particular

⁸ See Mulhall and Swift 1992, 30; Kymlicka 1989b; Rawls 1988, 192-193; Nagel 1987.

conception of the good. Clearly a liberalism which rests upon the claim that natural rights were conferred upon individuals by God in His act of creation is not neutral in justification. As Locke admits in his *Letter Concerning Toleration*, “The taking away of God, though but even in thought, dissolves all” (Locke 1689b, 313); the theological claim plays an essential justificatory role.⁹ The liberal theorist taking this approach must then argue that all conceptions of the good which are non-theological or which otherwise deny his specific theological claims somehow constitute a violation of the rights of others. This strategy does not seem especially promising.

Were one developing a liberal theory for a society of Christians, the aforementioned problem of neutrality would not arise. A liberal theory grounded in theology is applicable only to a theologically homogeneous society. However, it must be recognized that the Lockean/Jeffersonian account sketched above presumes a very specific theology, one that is not accepted by all religious believers. Unless the theological-liberal state is to place restrictions upon the theological doctrines individuals may adopt (and thereby reject The Principle of the Good), it must permit disagreement at the level of theological essentials. Any society that wants to allow such disagreement will have to develop a case for liberalism that is either independent of any particular theology, or theological, but sufficiently general as to be compatible with every theology. The second horn of the dilemma seems impossible to satisfy; how could one produce a theological basis for liberalism which is equally compatible with all theist and atheist

⁹ Note that Locke argues that “those are not at all to be tolerated who deny the being of a God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist” (Locke 1689b, 313).

theological perspectives? In what sense could such a basis be “theological”? The remaining option, i.e., that of abandoning theology, must be taken.

2. A Metaphysical Basis for Liberalism

Perhaps the proper response of the liberal theorist to the problems with the theological account is to weaken slightly his philosophical commitments. It could be argued that the theological liberal was mistaken in thinking that he needed a divine ground for liberalism; perhaps theology could be left to the side and a purely metaphysical case for liberalism developed. Such a case would avoid claims about the origin of Man, and would thus avoid the view that the individual’s logical and normative basicity rest upon a divine act of creation. A metaphysical theory would instead argue that the principles of liberalism follow from certain metaphysical truths about individuals. The classic source of such a view is Immanuel Kant.

One may begin with the observation that the metaphysical essentialism and teleology of Aristotle has allegedly been discredited by modern advances in the natural sciences associated with, among others, Copernicus and Newton. As we saw in our earlier discussion, the Aristotelian rejects the Principle of Individuality—and thus liberalism—on the basis of a metaphysical view according to which it is part of the essence of a human being to live in a *polis*. This view entails the further principle that the *polis* is logically prior to the individual—since part of *what it is to be*¹⁰ a man is to be a

¹⁰ “What it is to be” (*to ti en einai*) is a technical term in Aristotle indicating the essence or essential nature of a thing.

member of a *polis*, the *polis* is logically prior to the man.

Among the most significant outcomes associated with the Enlightenment was the overturning of Aristotelian metaphysics and philosophy of nature. With the metaphysical doctrine of essence discarded, the entire Aristotelian system of teleology, function, and purpose collapses. With the collapse of the Aristotelian system of natural ends, Aristotle's argument for the primacy of the *polis* dissolves as well. In the absence of a metaphysics of natural teleology, the idea that wholes are prior to parts—and that actuality or completion (*entelechia*) is prior to power or potentiality (*dunamis*)—is implausible. In contrast to the Aristotelian picture, individuals of the Enlightenment are, like Newtonian particles, truly "individual"; not bound to any antecedent and natural aims or purposes, each is self-sufficient *qua* individual (Taylor 1985a, 189f.).¹¹ The logical priority of the individual is established on metaphysical grounds.

With the primacy of the individual established, one may next observe that the human individual is endowed with a rational faculty in virtue of which he can recognize and act upon categorical principles.¹² According to Kant, it is in virtue of this faculty that individuals embody a special value, "dignity," which is inviolable (Kant 1785, 51). The dignity of the individual entails that no one may rightfully be used only as a means to the ends of others. Hence the "end-in-itself" formulation of the Categorical Imperative.

¹¹ On this, see Kant 1784.

¹² Cf. Kant, "Everything in nature works according to laws. Only a rational being has the capacity of acting according to the *conception* of laws (i.e., according to principles)" (Kant 1785, 29).

Now, I say, man and, in general, every rational being exists as an end in himself and not merely as a means to be arbitrarily used by this or that will. In all his actions, whether they are directed toward himself or toward other rational beings, he must always be regarded at the same time as an end. (Kant 1785, 45)

No individual therefore is simply an instrument of the state or of some other social association or group, each is entitled to treatment which acknowledges and respects his dignity. Any collectivity which subordinates the individual to the life, interests, and good of the group is *ipso facto* illegitimate. The Principle of the Good is established.

It is also in virtue of the individual's rational faculty that the Principle of Liberty follows. It is precisely our ability to reason that makes humans capable of freedom. We are not simply creatures of inclination, habit, and instinct, we are creatures capable of *autonomy*, of acknowledging universal moral principles and acting on them simply *because* they are universal moral principles. Insofar as our actions are determined by reason and not by an empirical contingency or external force, we are autonomous and therefore free. Freedom, in both the metaphysical and political senses, consists in the ability to be the rational *source* and *author* of one's actions, to be unhindered by external influence, to be uncoerced.

On this view, then, the value of a given conception of the good derives in part from its having been freely chosen by a creature capable of autonomy: because one is able to rationally choose a conception of the good, one has a right to do so without external interference. As Kant observes, "No man can compel me to be happy after his fashion." thus each individual "may pursue his happiness in the manner that seems best to him" so long as in doing so he "does not infringe upon the freedom of others" (Kant 1793, 74).

As we each have “different views on the empirical end of happiness and what it consists of,” any government which attempted to promote a particular conception of the good would be “the greatest conceivable *despotism*” (Kant 1793, 73-74). No social group may impose a particular vision of the good life upon a human being without violating the individual’s autonomy and dignity. The Principle of Liberty is established.

Whereas it is the prerogative of the individual to select and pursue a conception of the good, the state is concerned strictly with the right. Each individual is free to pursue his own idea of the good, and no state is permitted to violate the dignity of the individual by restricting his autonomy except in cases where interference is necessary to uphold the “universal law” of protecting the rights of others:

If my action or my situation in general can co-exist with the freedom of everyone in accordance with a universal law, anyone who hinders me in either does me an injustice. (Kant 1797, 133)

The state is thus required not for the purposes of living well, but rather to maintain and enforce laws which protect individual rights and autonomy. The scope of the state is thus defined, and the Principle of Obstruction is established:

A constitution allowing the *greatest possible human freedom* in accordance with laws which ensure *that the freedom of each can co-exist with the freedom of all the others* (not one designed to provide the greatest possible happiness, as this will in any case follow automatically), is at all events a necessary idea which must be made the basis not only of the first outline of a political constitution but of all laws as well. (Kant 1781, 191)

The foregoing case for the Principle of Obstruction presumes that the right is definable in terms that are independent of all ideas of the good. Indeed, this is precisely Kant’s idea.

But the whole concept of an external right is derived entirely from the concept of *freedom* in the mutual external relationships of human beings, and has nothing to do with the end which all men have by nature (i.e., the end of achieving happiness) or with the recognized means of attaining this end. And thus the latter end must on no account interfere as a determinant with the laws governing external right. (Kant 1793, 73)

The state, then, must not allow considerations of the good to tarnish its determinations regarding the right, for the latter concept is logically independent of the former and the former belongs not to the proper realm of politics, but to each individual alone:

Men have different views on the empirical end of happiness and what it consists of, so that as far as happiness is concerned, their will cannot be brought under any common principle nor thus under any external law harmonizing with the freedom of everyone. (Kant 1793, 73-74)

As it is the job of the state to “harmonize the freedom of everyone” by means of its laws, and as this cannot be done when the state legislates with a view to promoting a particular conception of happiness or the good, the state must be neutral. The Principle of Neutrality is established.

We now have before us a metaphysical theory of liberalism. We ask whether this theory embodies the virtues of systematicity, consistency, and applicability. Again, the theory is systematic; it begins from the metaphysical claims that individuals are prior to groups and that humans are possessed of a rational faculty. It is important to note that, like the theological account, the metaphysical approach countenances presocial, natural individual rights which it is the primary function of the state to protect; however, unlike the theological view, which maintains that these rights are conferred by a deity in the act of creation, the metaphysical theory attempts to deduce natural rights from the very concept of rational agency. Put another way, the theological view grounds natural rights

in the empirical fact of divine creation whereas the metaphysical account proceeds from strictly *a priori* considerations. On the metaphysical view, natural rights are indeed not conferred by God, they are demonstrated to belong to individuals as a matter of *a priori* and metaphysical necessity.

There are two problems to be raised here. One concerns the metaphysical strategy employed by the Kantian. We note that the metaphysical view sketched above makes use of what Kant called a “transcendental” argument. That is, one argues that the very possibility of certain undeniable features of human experience requires that certain metaphysical claims be true. The fact that we are morally responsible for our actions requires that we are metaphysically free and autonomous. Hence, the individual’s freedom and autonomy follows from the empirical fact of his responsibility as its *a priori* ground. However, this mode of argument, and the metaphysical system of transcendental idealism upon which it depends, has been subject to severe criticism by a variety of eminent thinkers, beginning with Hegel.

As was indicated earlier, a comprehensive liberalism derives its logical force from the background theory upon which it rests. From the point of view of contemporary philosophy, Kant’s transcendental idealism belongs more to intellectual-historical curiosity than to the field of live options in metaphysics. With Kantian metaphysics discredited, the theory of liberalism which depends upon it is rendered suspect. One may thus respond to the Kantian in exactly the same way that the Kantian responded to the Aristotelian: Kantian liberalism rests upon an implausible metaphysics, and may on that ground be dismissed. Recognizing this, modern-day followers of Kantian liberalism seek

to detach the political substance of Kantian liberalism—especially the concept of inviolable individual rights, the importance of respecting individual dignity, and the priority of the right to the good—from the metaphysical foundations from which Kant built his theory. Rawls thus confesses that “in order to work out a Kantian conception of justice,” one must “detach the structure of Kant’s doctrine from its background in transcendental idealism” and recast Kantian liberalism within the terms of “a reasonable empiricist framework” (Rawls 1993, 285).

Rawls’s attempts to reinstate a roughly Kantian theory of liberalism will be examined in the next chapter. Here, I should like to raise a second problem with the Kantian approach which draws from an argument associated with Robert Paul Wolff’s case for a position he calls “philosophical anarchism” (R. P. Wolff 1970, xxviii). It is to be noted that Wolff takes himself to be a strict Kantian, at least in moral philosophy. He admits that his argument presumes the truth of “an entire ethical theory” (R. P. Wolff 1970, xviii), and the presumed moral theory to which he alludes is decidedly Kantian. Although Wolff argues for a distinctive variety of anarchism, one which has been subject to decisive criticism,¹³ I here appeal to Wolff in the service of a different conclusion. I shall use Wolff’s argument as a *reductio ad absurdum* of Kantian liberalism.

Not unlike the Aristotelian, the Kantian begins from a metaphysical claim about the nature of the individual. According to the Kantian, it is the true nature of individuals to be autonomous, and it is in virtue of this that individuals have special protections against others and the state in the form of rights. Autonomy is, of course, a power of

¹³ See Reiman 1972 and Dahl 1989, 42-51. For his response to Reiman, see R. P. Wolff 1976.

individuals which may or may not be exercised at a given time; any creature capable of reason may *achieve* autonomy, or fail to do so. An action is properly called autonomous when it is the expression of a prior mental act of self-legislation. An agent is self-legislating in the degree to which he acts on principles which he gives to himself and holds to be categorically binding. Hence, my action, x, is autonomous if it is caused by a prior act of deliberation which concluded that x is what *ought* to be done, without qualification. The autonomous agent, then, is one whose actions follow from his own reasoned deliberations about the correct principles of morality. When an autonomous agent acts, he does so *because* he has found that his action accords with a categorically valid moral principle.

The autonomous agent therefore never *obeys* the commands of another. Strictly speaking, to *obey* the command of another is to act in accordance with the command *simply because* it has been commanded (R. P. Wolff 1970, 9). Of course, an autonomous agent may act in accordance with the commands of another, but he never acts *simply because* he has been commanded to do so (R. P. Wolff 1970, 14). Autonomous agency is thus incompatible with obedience.

An individual may forfeit his autonomy; that is, he may obey the dictates of his community, government, or tradition. However, one cannot forfeit *responsibility* for one's actions, for individual responsibility follows from the *capacity* for autonomous agency, and every rational creature is capable of achieving autonomy (R. P. Wolff 1970, 14-15). Since we are by nature rational creatures who thus are able to achieve autonomy and are responsible for our actions, each has an obligation to achieve autonomy

“wherever and whenever possible” (R. P. Wolff 1970, 17).

Now, if we understand the state to be a body which is rightfully endowed with the power to coerce individuals to comply with its laws,¹⁴ there arises a difficulty which might be intractable. If it is the principal obligation of the individual to realize autonomy and thus refuse to be obedient, and if it is the primary role of the state to use force, or the threat of force, to win obedience, then it seems that there could be no such thing as a legitimate or *de jure* state. The autonomy of the individual is incompatible with the legitimate authority of the state (R. P. Wolff 1970, 18).

Democracy is traditionally taken to provide the resolution to the conflict between autonomy and authority. However, Wolff argues persuasively that popular forms of democratic theory—representative democracy and majoritarian democracy—involve forfeiture of individual autonomy, as they will inevitably require non-majority constituents to obey laws which they would not have autonomously adopted. The only theoretically sufficient response to the problem is “unanimous direct democracy” (R. P. Wolff 1970, 22-23); that is, a democracy which does not employ any scheme of representation—viz., “every person votes on every issue” (R. P. Wolff 1970, 23)—and which adopts a rule of unanimity for its decisions—viz., every decision must be unanimously approved. Accordingly, a unanimous direct democracy would not involve obedience since every law would be an expression of the will of each individual.

Although unanimous direct democracy provides a sufficient theoretical resolution

¹⁴ Cf. Kant. “the right entails the authority to apply coercion to anyone who infringes it” (Kant 1797, 134).

to the incompatibility of autonomy and authority, it is, as Wolff admits, impracticable at the level of a modern state (R. P. Wolff 1970, 26).¹⁵ His proposal is thus “philosophical anarchism,” the denial of the possibility of a *de jure* state and the correlative assertion that the individual may rightfully disobey the commands of any *de facto* authority.

I canvass Wolff’s argument not for the purpose of endorsing his conclusions. Instead, I take Wolff to have identified a defect in the Kantian-metaphysical approach to liberalism. If we ground liberalism in a metaphysics which maintains on *a priori* grounds that the individual is an essentially autonomous bearer of inviolable negative rights, we shall have to confront problems concerning the conflict between individual autonomy and political authority. I accept Wolff’s position that this conflict cannot be resolved by any practicable system of politics; however, I take this result to signal a defect in the terms in which the argument is posed. That is, I take Wolff to have shown a contradiction in Kantian liberalism: it is a liberal theory which renders all states, including liberal states, illegitimate.

The extent to which every theory of liberalism which, like Kant’s, countenances and follows from a metaphysical assertion of individual autonomy and rights founders on the conflict between autonomy and state authority is debatable. Benjamin Barber, a democratic antiliberal, claims that the “disposition” towards anarchism is a permanent feature of liberalism. According to Barber, the liberal emphasis upon an “absolutist conception of individual rights” inhibits sociality, dilutes the constitutive bonds between

¹⁵ Note that Kant acknowledges that his “kingdom of ends,” which is the analogue of Wolff’s unanimous direct democracy, is “certainly only an ideal” (Kant 1785, 50).

persons, and engenders hostility to political power. Hence liberalism involves a disposition towards “antipolitics” (Barber 1984, 6), and constitutes an “obstacle” to a “strong,” participatory democracy (Barber 1984, 11).

Barber may have overstated the case, and I certainly would not like at this point to endorse his view fully. It is interesting, however, that Robert Nozick recognizes the tendency of rights-based liberal theory to gravitate towards anarchism. In a passage reminiscent of Wolff, Nozick writes,

Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state? (Nozick 1974, ix)

Nozick’s claim about status and scope of individual rights of course resounds with a Kantian timbre. Rights are not conferred by a state or a deity, but belong to individuals *as such* and essentially are valid claims and entitlements *against* certain kinds of treatment. The strength and scope of these individual entitlements exist in an inverse proportion to the legitimate authority and scope of the state. Consequently, a “strong” and “far-reaching” set of individual rights will greatly constrain and limit the state, perhaps to the point of total dissolution. Nozick thus acknowledges,

The fundamental question of political philosophy, one that precedes questions about how the state should be organized, is whether there should be a state at all. Why not have anarchy? (Nozick 1974, 4)

Nozick is no philosophical anarchist. He contends that a “minimal state,” by which he means a state “limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on” (Nozick 1974, ix), is compatible with

individual rights, and thus legitimate.¹⁶ Nonetheless, he does acknowledge that the robust sense of individual rights characteristic of and presumed by Kantian approaches to liberalism threatens state legitimacy in roughly the way Wolff has indicated.

3. An Empirical Basis for Liberalism

Though perhaps it is not the case that all rights-based liberal theories succumb to anarchism, it does seem that a strictly Kantian liberalism does generate an irresolvable tension between individual autonomy and state authority. Perhaps the proper response, then, is to abandon the metaphysical project and develop a liberalism from ordinary empirical and scientific considerations about persons. Such a theory would, of course, have none of the necessity and *a priori* force of a strictly metaphysical theory, but it would perhaps avoid the predicament of incompatible political commitments. We turn to the classic utilitarianism of Jeremy Bentham and John Stuart Mill for such a theory.

Utilitarians begin their analysis with the claim that the only objects of intrinsic value are certain psychological states. Specifically, the utilitarian maintains that pleasure is intrinsically good and pain is intrinsically bad; all other goods are good insofar as they produce pleasure and prevent or mitigate pain.¹⁷ This thesis concerning value, which is called *hedonism*, is intended to be a strictly empirical, psychological fact about humans. As Mill argues in his much maligned “proof” of utilitarianism, we *in fact* desire what

¹⁶ Nozick claims that the minimal state is “inspiring as well as right” (Nozick 1974, ix).

¹⁷ Cf. Bentham, “*Evil* is pain, or the cause of pain. *Good* is pleasure, or the cause of pleasure” (Bentham 1789, 685).

Mill calls “happiness”—viz., “pleasure and the absence of pain” (Mill 1861a, 137)—above all else and for its own sake (Mill 1861a, 169). This empirical fact is taken by Mill to be sufficient to prove that pleasure and the absence of pain is *valuable*, and intrinsically so. Hedonism is therefore an empirical theory of value. Hence a utilitarian theory of liberalism, which rests upon hedonism, is a strictly empirical theory.

With hedonism in place, the utilitarian next argues that an action is right in the degree to which it maximizes that which is of positive intrinsic value. Hence Mill’s formulation of the “Greatest Happiness Principle”: “actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness” (Mill 1861a, 137). Since happiness is good, and unhappiness bad, wherever and to whomever it occurs, one ought to act so as to bring about the greatest balance of pleasure over pain *for as many persons as possible*. Even staunch opponents of utilitarianism such as Rawls have conceded that this move has “deep intuitive appeal” (Rawls 1999a, 22)¹⁸ since it seems to follow common sense: more good in the world is better than less good, right action thus consists in producing as much good as one’s circumstances allow. The utilitarian next asserts that what holds for individual action holds also for public policy and the official actions of governments and legislators. Hence Bentham writes, “The Public Good ought to be the object of the legislator; General Utility ought to be the foundation of his reasonings” (Bentham 1789, 685). The action of an individual agent is right in the degree to which it maximizes general happiness; similarly, the action of a

¹⁸ To avoid confusion, it is worth pointing out here that citations to Rawls’s *A Theory of Justice* will be keyed to the Revised Edition of 1999; *A Theory of Justice* was originally published in 1971.

state in the form of law or policy is legitimate in the degree to which it promotes or sustains the happiness of every individual it affects.

Such is the background of utilitarian liberalism in its classical formulation. Let us turn to the utilitarian demonstration of the liberal principles. As it is the purpose of politics to maximize the general good, and as the psychological states which are the sole objects of intrinsic value occur within individual persons, individuals are logically basic to political theory. The Principle of Individuality is established.

Moreover, since the good is ultimately defined in terms of the psychological states of individuals, the "general good" can mean nothing more than "the total sum happiness" (Bentham 1789, 685) of the individuals that constitute society. That is, on the utilitarian analysis, the "general" or "public" good is reducible to the good of the individuals in society; to promote the "public good" is simply to produce a state of affairs in which the number of happy individuals is maximized. There is ultimately no "good" apart from individual satisfaction, and thus no good apart from the happiness of each individual. Thus there is no "good of society" *qua* society, the "good" of a collection of individuals is identical to the aggregate good of the individuals constituting the group.

The utilitarian thus asserts the Principle of the Good, but under an interesting interpretation. Unlike the Kantian, whose case for the Principle of the Good rests upon the claim that individuals embody a special kind of value in virtue of their rational powers which is violated if the Principle is denied, the utilitarian asserts the normative basicity of the individual simply because he does not recognize any "public" or "social" goods which are not, ultimately, individual goods. According to the utilitarian, the good

of society consists in the maximization of aggregate individual happiness. The individual is normatively basic because there is no good that is not ultimately the good of some individual or some group of individuals *qua* individuals.

Since what is ultimately good for an individual is what brings him pleasure and the absence of pain, and since pleasure and pain are psychological states to which the individual alone has direct access, each individual is the best judge of what things he should pursue, and "Each is the proper guardian of his own health, whether bodily, or mental and spiritual" (Mill 1859, 17). It is for this reason that Mill contends that the freedom "of pursuing our own good in our own way" is the only freedom "which deserves the name" (Mill 1859, 17). Since the individual is the best judge of what brings him happiness, he is most likely to achieve happiness under conditions in which he can freely choose his own way of life. The freedom to determine one's way of life, to conduct "experiments in living" (Mill 1859, 63ff.), is thus freedom in its highest sense. Without this freedom, life would certainly be less happy and thus less good.

Since the best life is one in which the individual freely chooses his own way of living, the best political arrangement is the one which maximizes the opportunity of the individual to discover the way of life that suits him best. Mill writes,

Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest. (Mill 1859, 17)

That is, Mill asserts The Principle of Liberty on empirical and utilitarian grounds. It is properly the job of each individual to select the way of life that is best for him because, as an empirical matter, each person will wind up with a happier life if everybody is at liberty

to decide for himself how to live.

Of course, Mill recognizes that the freedom of each individual to live as he thinks best cannot be unconditional. What can be said to the person who decides that a life of tyrannizing others is for him best? Since it is the concern of the state to maximize *general* happiness, there must be certain constraints placed upon individuals with regard to the ways of living they may elect to practice. That is, each individual is to be as free as is consistent with an equal degree of liberty for every other individual. Since it is not the case that everybody can enjoy a purely unfettered liberty, there must be limitations placed upon individual liberty. Where shall these limits be drawn? Mill gives a clear answer in the form of "one very simple principle":

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. (Mill 1859, 14)

We note that Mill's "harm principle" does not rest upon any metaphysical considerations about the *a priori* conditions of freedom and the status of rights, but is entirely empirical. Since pain is intrinsically bad, and it is the job of the state to promote the general good by establishing and maintaining the conditions under which most persons can achieve maximal happiness, the state has no business obstructing an individual except where interference is necessary to prevent the individual from harming (causing pain in) others. The state may interfere only where interference is required for the promotion of the general good understood as general pleasure and the absence of general pain. The Principle of Obstruction is established.

The Principle of Neutrality follows from the fact that, as “good” and “bad” ultimately refer to psychological states, and as each individual is the best judge of the character of his own psychological states, the individual is the best judge of what is good for him. If the individual is the best judge of what is good for him, and if the state exists for the purpose of promoting the general good, the state must not prescribe any particular way of life to its citizens. Mill argues that, as a matter of empirical fact, any state which attempts to promote a particular way of life it deems good will fail to maximize general happiness; “the interference of the public with purely personal conduct” is such that “when it does interfere, the odds are that it interferes wrongly, and in the wrong place” (Mill 1859, 92). The state thus performs its function best when it adopts a neutral stance with regard to the ways of life and conceptions of the good adopted by its citizens.

The empirical theory of liberalism is now complete. For purposes of evaluation, it is important to examine the ways in which it differs from the Kantian view developed previously. As was already noted, the empirical theory presumes no metaphysics, and attempts to derive the principles of liberalism from (1) an empirical theory of value, and (2) empirical generalizations about how that which is intrinsically good can be maximized within a political context. Hence, Mill’s thesis in *On Liberty* can be accurately summarized as follows: general happiness is in fact maximized under a liberal state: illiberal states are less capable of maximizing general happiness. *On Liberty* is intended to demonstrate that liberal policies and institutions, such as those regarding freedom of expression and opinion, *in fact* contribute to the general happiness of society.

This obvious difference between Kantian and Millian liberalism suggests a further

difference which is particularly significant. Whereas the Kantian liberal begins from a metaphysical conception of the individual from which he derives a set of rights which belong to the individual *as such* and are thus, for political purposes, prior to and independent of considerations about the good, the utilitarian forgoes "any advantage which could be derived. . . from the idea of abstract right" and derives his concept of political rights from considerations about the general good (Mill 1859, 15). Put more simply, the Kantian liberal places the right prior to the good, and the utilitarian liberal places the good prior to the right.¹⁹ It is for this reason that utilitarianism cannot generate a theory of inviolable and natural rights. Hence Mill,

To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility. (Mill 1861a, 189)

Political rights will always be viewed by the utilitarian as empirical generalizations concerning the best means of maximizing general happiness. Accordingly, individual rights will always be contingent upon considerations about how best to maximize the good in society.

Here, then, is the worry concerning an empirical liberalism. On an empirical view, the principles and institutions of a liberal political arrangement are at best efficient *means* to the production of good. There is thus no *necessary* justification of liberalism, no strictly deductive proof of the liberal principles. Rather, the justification of liberalism is always *contingent* upon actual political conditions and how they might be manipulated to maximize the good.

¹⁹ See Sandel 1982, 2-7; 1984b, 13-14; 1996, 8-10. Cf. Rawls 1999a, 21-23.

The liberalism of the empirical liberal is therefore tentative. The empirical liberal can offer no guarantee that political conditions will not tomorrow change sufficiently to require that one abandon the principles of liberalism for those of tyranny. Could it be shown that happiness would be maximized by instituting theocratic rule or slavery, the utilitarian would have to renounce liberalism altogether. The liberal utilitarian will respond that the calculation of pleasure and pain will never sanction extremely illiberal practices. To take the case of slavery, the utilitarian will want to maintain that the pain of the enslaved persons will always outweigh the pleasure generated by the institution of slavery in the free persons. However, this cannot be established with necessity. Since individual rights are, for the utilitarian, means to the maximization of the good, consistency demands that the utilitarian admit that at least under certain conditions, the institution of slavery would be permissible and even right. The utilitarian cannot therefore maintain that slavery is *necessarily* or *intrinsically* unjust.

The empirical basis for liberalism hence turns out to be only contingently liberal, and the empirical approach to liberalism could just as easily sanction an illiberal political theory. Consequently, no empirical liberal could be fully committed to liberal political arrangements and policies, as these are merely means to securing certain ends. The empirical basis for liberalism, then, seems precarious.

The empirical liberal may respond that his contingent defense of liberal politics is perhaps unfortunate, but simply the best one can do in political theory. The Kantian aspiration for a universally valid liberalism based upon necessary first principles is, after all, overly ambitious. An empirical liberal theory and a contingent endorsement of

liberalism is the most that can be accomplished.

There is some plausibility to this rejoinder. However, once it is realized that the empirical liberal must not only endorse illiberal practices in extreme counterfactual scenarios, but also promote real policies under existing conditions that may be cause for concern, one will be tempted to agree with Rawls that although it may be true that one cannot do better than a roughly utilitarian liberalism, we ought nonetheless to *try* to do better (Rawls 1999a. xviii).

The kind of problematic policies I have in mind are considered by Mill in his *Considerations on Representative Government*. There, Mill is forced to reckon with issues regarding the value of democratic processes for maximizing the general good. A prominent objection to democracy since Plato's *Republic*—one recapitulated by modern thinkers—is that most persons lack the necessary intellectual endowments for responsible self-rule. As democracy places legislative power in the hands of the unwise majority, one should expect unwise and irrational policy and election decisions in democratic states. This has led modern theorists to endorse some moderate version of Plato's view, which involves giving full rule to a special class of "guardians" who are expert in political matters. Hence Walter Lippmann and Joseph Schumpeter endorse some variety of what has been called the "elitist" theory of democracy. According to the elitist view, democracy is to be understood not as self-government, but as an arrangement by which politicians "acquire the power to decide by means of a competitive struggle for the people's vote" (Schumpeter, 83); that is, democracy is a system in which the general populace chooses its rulers from among a collection of elites and experts.

Mill is compelled to endorse a variety of elitism. His conception of utility, which he says is the “ultimate appeal on all ethical questions” (Mill 1859, 15), requires that he endorse whatever policies will most likely maximize the general good. Like his endorsement of liberalism, then, Mill’s endorsement of democracy will rest upon the judgement that democratic institutions are in fact most likely to maximize the general good. But this estimation of democracy is vulnerable to the Platonic objection—there is good reason to think that democratic arrangements will, in fact, *not* lead to the best policy decisions and thus will *not* tend to maximize general happiness. Mill thus admits,

No one but a fool . . . feels offended by the acknowledgment that there are others whose opinion, and even whose wish, is entitled to a greater amount of consideration than his. (Mill 1861b, 335)

Mill then attempts to give this principle institutional force in the democratic process.

The only thing which can justify reckoning one person’s opinion as equivalent to more than one is individual mental superiority; and what is wanted is some approximate means of ascertaining that. (Mill 1861b, 336)

Mill suggests that those who are well-educated (“graduates of universities”) and that are employed in occupations which require that they “labour with [their] head[s]” may be given “two or more votes” at the polls (Mill 1861b 336). He thus advocates public testing to determine the weight each individual’s political opinion should carry; he says that “in this direction lies the true ideal of representative government” (Mill 1861b, 337).

Of course, it must be acknowledged that Mill does not endorse policies that *withhold* suffrage from anybody. he is only suggesting that some especially intelligent persons be awarded more than a single vote. However, does Mill’s suggestions really amount to anything different from restricting the vote to the most intelligent, and thus

endorsing Plato's view in its most relevant aspects? Could Mill consistently maintain that the most unwise, irresponsible, uninformed, and unintelligent citizens should nevertheless have a vote? Supposing he could, one would still want to object that the practice of giving certain individuals voting power greater than that of a single vote is, in effect, equivalent to withholding suffrage from those awarded the power of only a single vote, and is thus a significant departure from democracy. So again, we find that utilitarian liberalism harbors illiberal potentialities.

I have thus far taken utilitarianism as a paradigm of empirical liberalism, and it may be objected that there are other possible forms of empirical liberal theory. I contend, however, that any empirical case for liberalism will necessarily involve the kind of contingency and tentativeness found in the utilitarian view. Any strictly empirical theory will have to endorse liberalism on *instrumental* grounds, and thus will have to admit, at least as a theoretical possibility, that under certain conditions liberalism will have to be abandoned and some variety of illiberalism be endorsed.

Conclusion

Our examination of three dominant versions of comprehensive liberalism can be seen as a dialectical progression towards philosophical minimalism. Beginning with the robust theological doctrine employed by Locke and Jefferson, which promoted a divine justification for liberalism, liberal theory has been forced by its own commitments to retreat to a more modest theoretical ground. However, this dialectic is not historical,

even if it manifested itself historically. It exists *within* the aspirations of comprehensive liberalism itself. It seems to be the case that every comprehensive theory of liberalism will be torn between two aims which conflict. On the one hand, a liberal theory should be thick enough to provide a strong justification for liberalism. On the other hand, a liberal theory should be thin enough to not produce conflicts with the liberal principles. The former requirement drives the liberal theorist to adopt robust philosophical foundations; the latter pushes in the opposite direction, forcing the liberal theorist to try to get along with as little philosophy as possible.

The ideal liberal theory, then, will have to somehow coordinate these seemingly incompatible aims. That is, an ideal comprehensive theory will attempt to locate and employ philosophical foundations which are at once thick enough to provide a justification for liberalism stronger and more secure than that supplied by the utilitarian view, and general enough to win the assent of free persons who harbor a plurality of diverse and incommensurable philosophical, moral, and theological doctrines. The stage has been set for an examination of contemporary liberal philosophy, and especially the work of John Rawls, whose theory of "justice as fairness" attempts to derive a roughly Kantian liberalism directly from the choice-theoretic concept of a rational agent.

CHAPTER THREE FROM COMPREHENSIVE TO POLITICAL LIBERALISM

The Fundamental Tension in Liberalism

The preceding survey of traditional comprehensive theories exposed a fundamental tension within liberalism. Liberalism's central commitments pull in opposing theoretical directions. Whereas the liberal's strong sense of individual rights drives him to adopt a robust philosophical theory by which the inviolability of the individual and the other liberal principles can be firmly established, his commitment to diversity, neutrality, and toleration compels him to eschew thick and contestable philosophical premises. The comprehensive liberal must therefore endeavor to construct a firm theoretical foundation for liberalism from the weakest philosophical premises available. This is perhaps an impossible task.

In our previous discussion, this tension emerged across a dialectical progression from Locke to Mill. In the present chapter, the tension will manifest itself within the work of a single liberal theorist, John Rawls. In what follows, I shall argue that the comprehensive theory Rawls developed in his influential *A Theory of Justice* fails to resolve the tension. This failure leads Rawls in later work to reject the project of comprehensive liberalism altogether and adopt a noncomprehensive view that he calls a "political" liberalism. The basic features of Rawls's political liberalism are addressed at the end of this chapter, and its adequacy will be challenged in the next chapter.

John Rawls and the Return of Liberal Philosophy

It is a familiar story that prior to the publication of John Rawls's 1971 book, *A Theory of Justice*,¹ systematic political philosophy lay in a nearly moribund state.² The dominant approach to politics throughout most of the twentieth century, utilitarianism, recast the traditional philosophical questions about political justice into empirical questions about the aggregation of individual satisfaction. A utilitarian political theory leaves little for a philosopher to do; on a utilitarian view, the important questions about justice are to be settled by social scientists, economists, and rational choice theorists, not philosophers. In the decades prior to Rawls, philosophers working in the areas of ethical and political theory turned away from substantive questions of justice and occupied themselves with debates concerning the merits and deficiencies of two metaethical theories: emotivism and intuitionism. According to the former, the terms of moral evaluation were disguised forms of emotive ejaculation such as "hooray!" and "boo!"; according to the latter, moral judgements expressed the perceptions of a mysterious faculty of direct moral intuition. Despite important differences, both theories denied that deep philosophical conflicts of value could be settled by any rational process. Philosophers had theorized themselves into obsolescence.

Rawls is often credited by supporters and opponents alike with singlehandedly restoring and reinvigorating the enterprise of political philosophy. It is often said that A

¹ Citations to *A Theory of Justice* will be keyed to the 1999 Revised Edition.

² See, for example, Kukathas and Pettit, who claim that prior to Rawls, political philosophy "had all but withered" (Kukathas and Pettit 1990, 4); less dramatically, R. P. Wolff cites an "impasse" in ethical theory which Rawls's work confronts (R. P. Wolff 1977, 11).

Theory of Justice marks a return to grand-scale philosophical analysis of substantive questions of political theory: within its pages are developed systematic accounts of distributive justice, the grounds of political legitimacy, and the relation of political rights to individual goods which are not only philosophically rigorous, but also attentive to important developments in related disciplines such as economics and decision theory. Jonathan Wolff's claim that "before Rawls there were only two options in political philosophy: utilitarianism, or no theory at all" (J. Wolff 1998, 120) captures nicely what seems to be the general opinion among contemporary political philosophers.³

Despite its broad currency, the accuracy of this popular story is debatable.⁴ It is nonetheless worth noting that Rawls himself endorses this general account of the condition of political philosophy prior to his work. In *A Theory of Justice*, Rawls states that "During much of modern moral philosophy, the predominant systematic theory has been some form of utilitarianism"; he further contends that although the utilitarians have been duly criticized for various ambiguities in their doctrine, there has not yet been produced a "workable and systematic" alternative theory (Rawls 1999a, xvii). Rawls's objective in *A Theory of Justice* is to "offer an alternative systematic account of justice

³ Brian Barry has claimed that since Sidgwick's death, "nobody until Rawls has produced anything that represents a continuation of the cannon of political thought, traditionally conceived" (Barry 1996, 537); Thomas Nagel contends that Rawls is "the most important political philosopher of the twentieth century" (Nagel 1999, 36). Robert Nozick has registered the now famous compliment, "Political philosophers now must either work within Rawls' theory or explain why not" (Nozick 1974, 183). Similar assessments are found in Raz 1990, 61; Bell 1993, 2; Mulhall and Swift 1996, 1; Sandel 1998a, 184-185; Berkowitz, 22; Shapiro, 3; and Davion and Wolf, 1.

⁴ Here is one difficulty. If one accepts this story, one must ignore the important work in political philosophy done by Rawls's predecessors such as Bertrand Russell, Jean-Paul Sartre, Karl Popper, Herbert Marcuse, John Dewey, and Hannah Arendt.

that is superior . . . to the dominant utilitarianism of the tradition” (Rawls 1999a, xviii).⁵ The resulting theory is “highly Kantian in nature” (Rawls 1999a, xviii), although neither rooted in nor dependent upon the discredited metaphysics of transcendental idealism. Rawls aims to “detach” Kantian liberalism from its “metaphysical surroundings” (Rawls 1999a, 233) and propose a non-utilitarian theory of justice grounded within a “reasonable empiricist framework” (Rawls 1993, 285) which is “relatively free from objection” (Rawls 1999a, 233; cf. 226).

We saw in last chapter’s survey of traditional liberal theories that the metaphysical underpinnings of Kant’s liberalism generate a series of problems concerning political legitimacy. In his attempt to secure the absolute primacy of the individual, Kant relied too heavily upon a metaphysics of transcendence and created so much distance between persons that no practicable political association could be legitimate. One response to these difficulties is to abandon metaphysics and attempt to ground liberalism upon an empirical theory of human psychology. This effort, classically expressed in Mill’s utilitarian liberalism, gives rise to other difficulties. Specifically, a utilitarian theory cannot provide any *necessary* demonstration of the liberal principles, it can offer only *contingent* and thus *tentative* support of liberalism. According to the utilitarian, utility is “the ultimate appeal on all ethical questions” (Mill 1859, 15); therefore, should utility favor some illiberal political arrangement, the utilitarian must abandon liberalism.

Hence, one may read *A Theory of Justice* as an attempt to satisfy two desiderata. First, Rawls wants to establish liberalism on ground firmer than that supplied by

⁵ Cf. Rawls 1993, xiv-xv.

utilitarianism; that is, he wants a theory of justice which can acknowledge that "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override" (Rawls 1999a, 3), and so can maintain that principles of justice "are not contingent upon existing desires or present social conditions" (Rawls 1999a, 232). Second, Rawls wants to eschew Kantian metaphysics; the inviolability of persons and the non-contingency of the principles of justice are not to rest upon "a priori considerations" (Rawls 1999a, 231), but rather are to follow from "the most general assumptions" (Rawls 1999a, 239) that are "weak and widely held" (Rawls 1999a, 214).

There are *prima facie* reasons to suppose that these desiderata are not mutually satisfiable. What Rawls apparently wants is a non-contingent justification of liberalism which does not invoke the kind of metaphysics which countenances *a priori* and necessary principles. His theory of justice rather will draw upon "the framework of an empirical theory" (Rawls 1999a, 226). However, the best an empirical theory can generate is well-confirmed, but ultimately contingent, hypothetical, and non-necessary conclusions. If one bases a theory of liberalism upon the admittedly weak and general assumptions of an empirical theory of human nature, one cannot expect a degree of justification for the liberal theory that exceeds that of its foundation. Since Rawls's foundation is empirical, and thus contingent, he cannot expect anything more than a contingent theory of liberalism to result. In other words, it seems that the only way to get a justification of liberalism which is non-contingent and which can acknowledge the absolute inviolability of individual rights is to begin from the *a priori* necessary non-empirical principles characteristic of the Kantian metaphysics Rawls disclaims. I shall

return to this consideration after the basics of Rawls's theory have been surveyed.

The Basics of Justice as Fairness

Although the leading features of Rawls's theory of "justice as fairness" are by now well-known, we shall review those aspects of the theory most relevant to our purposes. The following discussion thus is not intended as a comprehensive explication of Rawls's theory, and many of the technical aspects of Rawls's argument will be skipped.⁶

Rawls proposes to restore the contractarian tradition of Locke, Rousseau, and Kant by employing the concept of a social contract at an "order of abstraction" (Rawls 1999a, xviii) higher than that of his predecessors. The heightened abstraction is supposed to allay the standard objections raised against contractarianism. The idea, common to traditional contract theories, that the origin and justification of government rests in a social contract between autonomous and self-interested persons in a presocial state of nature has been criticized at least since Hume for being a mere fiction.⁷ As real political legitimacy cannot emerge from an imagined contract between imaginary persons, critics argue that the device of a social contract is theoretically impotent.

⁶ See R. P. Wolff 1977 and Kukathas and Pettit 1990 for exegetical treatments which aim to be comprehensive. The former is critical of Rawls whereas the latter defends Rawls against critics.

⁷ Hume asks "Where is the mutual agreement or voluntary association so much talked of?" (Hume 1748, 508). Compare Ronald Dworkin: "A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all" (Dworkin 1975, 18).

Rawls employs the idea of the social contract in a way which differs from traditional contractarianism. Rawls raises the contract idea to the level of a thought experiment; the contract is an “expository device” (Rawls 1999a, 19), not an explanation of the origin or justification of government and law. According to Rawls, we are to analyze questions of justice from the point of view of “free and rational” parties “concerned to further their own interests” (Rawls 1999a, 10) who enter into an original contract under conditions specially contrived to ensure that the contract is fair. Should one demonstrate that a given principle of justice would be chosen by such parties contracting under the specified conditions of fairness, one will have thereby demonstrated its correctness (Rawls 1999a, 12).⁸

The claim that the original contract must be established under conditions of fairness constitutes another important deviation from traditional contractarianism. Whereas the earlier theorists postulated a state of nature in which persons, fully aware of their interests and desires, bargained for terms which would best serve their individual advantage, Rawls maintains that questions of justice are to be examined from an “original position” which features a “veil of ignorance” that deprives the contracting parties of information about themselves and their particular desires. In the original position,

No one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. (Rawls 1999a, 11)

Rawls additionally stipulates that the veil deprives the parties of information regarding

⁸ Conversely, were one to show that a principle would *not* be chosen in the original position, one would have demonstrated that the principle in question is *not* a valid principle of justice. See Rawls 1999a, 105-109.

their “conceptions of the good” and their “special psychological propensities” (Rawls 1999a, 11). In this way, the veil corrects for “the arbitrariness of the world” (Rawls 1999a, 122) by guaranteeing that “no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances” (Rawls 1999a, 11). Although the parties in the original position are self-interested, the veil nullifies “the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage” (Rawls 1999a, 118).

Rawls explains further:

Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. (Rawls 1999a, 11)

In short, justice as fairness maintains that any principles of justice that would be agreed to by free, rational, and self-interested parties situated behind a veil of ignorance are *ipso facto* valid principles of justice. Put most generally, according to justice as fairness, any principle agreed to under fair conditions of deliberation is a just principle. Hence the name.

The bulk of *A Theory of Justice* is devoted to demonstrating that, if presented with the task of determining the fundamental rules of distributive justice for the basic structure⁹ of society, free and rational parties situated behind the veil of ignorance and concerned to further their own interests would choose exactly two principles. These two

⁹ This is a somewhat technical term for Rawls, and is used ambiguously in *A Theory of Justice*. In his later work, Rawls writes, “By the basic structure I mean a society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next” (Rawls 1993, 11). See also Lecture VII of Rawls 1993, “The Basic Structure as Subject,” and Rawls 1999a, 6-7.

principles are therefore, on Rawls's view, proper principles of justice for the basic structure of society.

The two principles Rawls believes would be chosen in the original position are given various formulations in *A Theory of Justice*. The final formulations in the book are as follows:

First Principle of Justice

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle of Justice

Social and economic inequalities are to be arranged so that they are both:

(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and

(b) attached to offices and positions open to all under conditions of fair equality of opportunity. (Rawls 1999a, 266)

Rawls argues further that rational parties would agree to two priority rules by which the principles are to be ranked when conflicts arise. Full discussion of these rules lies outside our current objectives. Suffice it to say that the rules establish that the first principle has priority over the second, and the second has priority over considerations of social efficiency.¹⁰ In the original edition of *A Theory of Justice*, Rawls summarized his two principles, along with the appropriate priority rules, into a single-sentence "general conception." Although this concise and indeed general formulation has been curiously omitted from the revised edition of *A Theory of Justice* of 1999, it is especially clear and warrants citation. Rawls writes:

¹⁰ See Rawls 1999a, 266-267 for his statement of the priority rules; see also Rawls 1999a, 36-40 for discussion of the need for priority rules.

All social primary goods—liberty, opportunity, income, and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.¹¹

In later work, Rawls has revised his formulation of the principles. The most recent articulation is as follows:¹²

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; second, they are to be to the greatest benefit of the least advantaged members of society. (Rawls 1993, 5-6)

Commentators have yet to reach consensus on the specific economic and political implications of Rawls's theory of justice. Moreover, the precise meaning of these principles of justice, even in their current and refined formulations, continues to be the source of considerable debate among sympathizers and critics. We shall not review these controversies. It is tempting, nevertheless, to raise the following objection. How are we to suppose that parties in the original position would choose principles that Rawls himself cannot adequately formulate? Presumably, parties to the contract would have to formulate principles and reckon their likely implications for the basic economic and political structure of their society before they could possibly deliberate about them, much less agree to them. Principles ambiguous in both formulation and implication could no

¹¹ See p. 303 of original edition, but compare p. 54 of the revised edition.

¹² Cf. Rawls 1981, 106-107; and Rawls 1985, 392. These revisions are supposed meet the criticisms raised by H. L. A. Hart (in Hart 1973). See Rawls 1993, 5 n.3; and 331-334.

more be agreed to in the original position than principles announced in a foreign language.

This kind of objection is misguided, but instructively so. The objection misconstrues the intended role of the original position in Rawls's theory. We must remember that the original position is not a device of explanation, but of reflection; that is, Rawls is not committed to some empirical hypothesis when he claims that parties situated in the original position would select his principles of justice. He is therefore not vulnerable to the objection. The original position is an imagined vantage point from which we are to evaluate and refine our ideas about justice in a process of moral reflection aiming at what Rawls calls "reflective equilibrium" (Rawls 1999a, 18): one should thus expect continued revisions and refinements of formulation.¹³

We must next examine, in broad outline, Rawls's argument that parties in the original position would in fact choose his two principles. If the principles of justice are to be chosen from a list of alternatives (Rawls 1999a, 105-107), and if the parties to the decision are situated behind a veil of ignorance, and so do not know their conceptions of the good, one might wonder how anything beyond a random selection of principles of justice is possible. The notion of a choice implies that the choosers have some criteria according to which they shall rank and rate the possible selections. More specifically, choice requires that choosers have some conception of what it would be to make a

¹³ This kind of response to the proposed objection has led some to conclude that Rawls's theory is simply too abstract to be of any political use. For this, see R. P. Wolff 1977, 195ff.; Miller, 1974; Barber 1975, 310ff. Pogge tries to draw out the specific policy implication of Rawls's view (Pogge 1989). On Pogge's reading of Rawls, see Crisp and Jamieson 2000.

good choice. If I am choosing what house to buy from a number of options, I must have some idea about what makes a house a *good* house: similarly, if I am to choose basic principles of justice to govern the basic structure of a society, I must have some conception of what it would mean to live under *good* principles of justice. How is rational *choice* possible in the original position?

Rawls recognizes this difficulty and proposes what he calls a “thin theory of the good” (Rawls 1999a, 348) which is held by parties in the original position. He begins with the claim that, despite the parties’ ignorance of their individual conceptions of the good, there are certain “primary goods” which “normally have a use whatever a person’s rational plan of life” (Rawls 1999a, 54). Primary goods are things “that every rational man is presumed to want” (Rawls 1999a, 54), “whatever else he wants” (Rawls 1999a, 79). Among these goods are particular social goods such as “rights, liberties, and opportunities, and income, and wealth” (Rawls 1999a, 54).¹⁴ According to the thin theory of the good, parties in the original position know what the primary social goods are and they “assume that they normally¹⁵ prefer more primary goods rather than less” (Rawls 1999a, 123). Parties want more rather than less of the primary goods because,

With more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be. (Rawls 1999a, 79)

¹⁴ Rawls also acknowledges “natural” primary goods such as “health and vigor, intelligence and imagination” (Rawls 1999a, 54).

¹⁵ Rawls adds the qualifier “normally” because he acknowledges that once the veil is lifted, some may find that “for religious reasons or other reasons” they do not want more primary social goods (Rawls 1999a, 123). Thomas Nagel criticizes Rawls for this, claiming that since “the primary goods are not equally valuable in pursuit of all conceptions of the good,” (Nagel 1973, 9) the veil of ignorance introduces unfairness into the deliberations in the original position.

With the thin theory of the good postulated, Rawls concludes:

Thus even though the parties are deprived of information about their particular ends, they have enough knowledge to rank the [alternative principles of justice]. They know that in general they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever they are. Guided by the theory of the good and the general facts of moral psychology, their deliberations are no longer guesswork. They can make a rational decision in the ordinary sense. (Rawls 1999a, 123)

We now can understand why Rawls takes the theory of justice to be “a part, perhaps the most significant part, of the theory of rational choice” (Rawls 1999a, 15). For Rawls, the entire project of a theory of justice is that of discovering the best solution to a decision game. Rawls accordingly operates with a strictly instrumental conception of rationality; for Rawls, rationality consists in “taking the most effective means to given ends” (Rawls 1999a, 12).¹⁶ The most rational decision strategy the parties in the original position could adopt, Rawls argues, is the “maximin” strategy. That is, Rawls contends that ideally rational parties in the original position would prefer those principles which would maximize the minimum position in society; they would, in other words, select the principles which feature the best worst position.¹⁷ Rawls maintains that his principles would be favored by parties employing the maximin strategy.

¹⁶ See Rawls 1993, 50f. for a slightly broader conception of rationality.

¹⁷ Rawls’s argument for the maximin strategy is the subject of controversy: see, for example, Rawls 1974 and Sen 1975. We cannot here review the debate, but note that one recent commentator has called Rawls’s maximin argument “the single worst argument” in *A Theory of Justice* (Wolf 2000, 104).

Justice as Fairness as a Species of Liberalism

Though admittedly a sketch, the foregoing review of Rawls's theory is sufficient to demonstrate that justice as fairness is a species of liberalism. Indeed, many of the leading features of liberalism are built into the construct of the original position and the characterization of the parties who deliberate there.

To begin, the Principle of Individuality is implied by the very idea of a contract theory, and Rawls's reappropriation of contractarianism does not change this. Rawls begins with mutually disinterested (Rawls 1999a, 12) individuals situated within an asocial context who are to come to a collective agreement about the basic structure of the society they shall later inhabit. The emphasis throughout *A Theory of Justice* is placed squarely upon the rights and interests of the individual rational agent divorced from the contingencies of social life. Rawls is therefore committed to the analytic priority of the individual to the social group.

The Principle of the Good is also built into the fabric of justice as fairness. Rawls claims that any viable theory of justice must acknowledge that "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override" (Rawls 1999a, 3). The thrust of his argument against utilitarianism is that it cannot recognize this inviolability. Justice as fairness aims to establish the priority of the good of the individual to the "welfare of society as a whole." Accordingly, justice as fairness is committed to the normative priority of the individual's good to the good of groups of individuals.

The Principle of Liberty is affirmed by justice as fairness. According to Rawls,

. . . individuals find their good in different ways, and many things may be good for one person that would not be good for another In a well-ordered society, then, the plans of life of individuals are different in the sense that these plans give prominence to different aims, and persons are left free to determine their good, the views of others being counted as merely advisory. (Rawls 1999a, 393)

That Rawls stipulates that the “views of others” about the good are to be taken by an individual as “merely advisory” implies that, according to justice as fairness, it is properly the individual’s prerogative to select and pursue a conception of the good. Rawls argues that the capacity to choose one’s conception of the good is an essential aspect of “moral personality”:

. . . a moral person is a subject with ends *he has chosen*, and his fundamental preference is for conditions that enable him to frame a mode of life that expresses his nature as a free and equal rational being as fully as circumstances permit. (Rawls 1972, 491, emphasis added)

In later work, Rawls claims that the concept of free and equal moral personhood entails the “capacity to form, to revise, and to rationally pursue a conception of the good,” and a corresponding “highest-order” interest to “realize and exercise” this capacity (Rawls 1980, 312).¹⁸

As the task of forming, revising, and pursuing a conception of the good is properly left to the individual, justice as fairness places the standard restrictions on state interference. Since the individual is “assured an equal liberty to pursue whatever plan of life he pleases as long as it does not violate what justice demands” (Rawls 1999a, 81), the state may interfere with an individual only when his pursuit of his conception of the good conflicts with justice. However, as the principles of justice are ordered according to a

¹⁸ Cf. Rawls 1999a, 475; 1974, 228; 1975a, 283; 1975b, 299; 1985, 398.

priority rule which establishes that “liberty can be restricted only for the sake of liberty itself” (Rawls 1999a, 214), the state may intervene only when intervention is necessary for maintaining maximum equal liberty. Hence, Rawls affirms the Principle of Obstruction.

Rawls maintains that “The only restriction on plans of life” which citizens may pursue “is their being compatible with the public principles of justice” (Rawls 1993, 189). Justice as fairness therefore does not “evaluate the relative merits of different conceptions of the good” espoused by citizens (Rawls 1999a, 80-81). Thus a liberal state whose basic structure is organized according to the principles of justice as fairness adopts a neutral stance towards citizens’ conceptions of the good, and even asserts that the “variety in conceptions of the good is a good thing” (Rawls 1999a, 393). The state’s business, on Rawls’s view, is justice, and the principles of justice can be derived independently of considerations of the good (Rawls 1999a, 394-395); consequently, the state does not exist for the purpose of cultivating any particular vision of the good life among citizens. In Rawls’s words, “in justice as fairness the concept of the right is prior to that of the good” (Rawls 1999a, 28); the Principle of Neutrality follows: the state is not in the business of promoting any particular conception of the good.

Rawls’s Liberal Theory: Two Interpretations

As justice as fairness affirms the five principles of liberalism delineated in Chapter One, it is a liberal view. Keeping in mind the distinction between liberalism as a

framework of political principles and liberal theory as the project of giving a philosophical account of liberalism, we now ask what kind of argument for liberalism Rawls's view provides. What *kind* of liberal theory is justice as fairness? What is the *status* of justice as fairness as a liberal philosophy?

Earlier in this chapter, I raised the concern that Rawls's two desiderata may not be mutually satisfiable. Recall that Rawls seeks a theory of liberalism grounded in an empirical theory that provides a necessary ground for the liberal principles. That is, Rawls wants to forge a *via media* between a Kantian liberalism which rests upon a transcendental metaphysics of *a priori* necessary truths, and a utilitarian liberalism which indeed avoids excessive metaphysics, but can provide only a contingent and precarious ground for liberalism. Does justice as fairness satisfy these requirements?

One way to begin to examine this question is to consider the fundamental premise underlying Rawls's contractarian strategy. Rawls formulates this premise as follows:

The choice which rational men would make in this hypothetical situation of equal liberty [i.e., the original position] . . . determines the principles of justice. (Rawls 1999a, 11)

There is a troubling ambiguity in this claim. Suppose for the sake of argument that Rawls's two principles would in fact be chosen in the original position by rational and self-interested parties. Rawls thinks that this fact entails that the two principles are valid principles of *justice*. In other words, Rawls contends that, in the original position, *moral status* is connected to *choiceworthiness*. It is not clear why this should be so. What is the precise nature of this supposed connection?

There are at least two interpretations of the connection, and, in *A Theory of*

Justice. Rawls is unclear as to which he intends to endorse. Consider the following ways of construing the connection between choiceworthiness and justice:

1. The fact that a principle would be chosen in the original position is *constitutive* of its justice.
2. The fact that a principle would be chosen in the original position is *evidence* of its justice.

We may call the former the “constitutive” interpretation since it says that connection between the choiceworthiness of a principle in the original position and the moral status of that principle is an essential connection. In the joint act of choosing a principle in the original position, parties *confer* justice upon it; choiceworthiness in the original position is *constitutive* of the justice of a principle. On the constitutive interpretation, then, a strict *proof* that the parties would choose a given principle is *equivalent* to a *proof* of its justice.

Call the second option the “evidential” interpretation. On this view, the fact that a principle would be chosen in the original position does not strictly *constitute* its justice, but rather provides warrant for accepting that principle as a valid normative principle. According to the evidential interpretation, the likelihood that a principle would be chosen in the original position bears an evidential relation to the justice of that principle: being a choiceworthy principle in the original position is *symptomatic* of being a just principle; that parties would choose a given principle is an *indication* of its justice. The greater the likelihood that the principle would be chosen, the greater the evidence for its justice. Were one able to demonstrate that some given principle would be chosen in the original position, one would have strong evidence of the justice of that principle, and therefore be justified in adopting it.

Hence Rawls must assert either that there is a strong, constitutive connection between choice in the original position and the justice of the chosen principles, or he must assert the weaker, evidential connection. In *A Theory of Justice*, one finds support for both interpretations.

The constitutive interpretation is supported by claims like the one cited above in which Rawls asserts that the parties' choice "determines" the principle of justice (Rawls 1999a, 11). Elsewhere, Rawls more explicitly adopts the constitutive interpretation:

To say that a certain conception of justice would be chosen in the original position is *equivalent* to saying that rational deliberation satisfying certain conditions and restrictions would reach a certain conclusion. (Rawls 1999a, 119-120, my emphasis)

The constitutive interpretation is supported further by Rawls's claim that justice as fairness is based upon "the notion of pure procedural justice" (Rawls 1999a, 118). In a choice situation involving pure procedural justice,

. . . there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, *whatever it is*, provided that the procedure has been followed. (Rawls 1971, 75, my emphasis)

Hence, "The original position is defined in such a way that it is a status quo in which any agreements reached are fair" (Rawls 1999a, 104). Since in justice as fairness, a fair agreement is necessarily just, any agreement in the original position will be just (Rawls 1999a, 118). On the constitutive interpretation, then, "the principles of justice are not thought of as self-evident, but have their justification in the fact that they would be chosen" (Rawls 1999a, 37).

Alternatively, the evidential interpretation is supported by Rawls's description of

the original position as an “intuitive” (Rawls 1999a, 19) device. Rawls explains:

One should not be misled, then, by the somewhat unusual conditions which characterize the original position. The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves. (Rawls 1999a, 16)

The original position thus “collect[s] together into one conception” the “conditions on principles that we are ready upon due consideration to recognize as reasonable” (Rawls 1999a, 19). Hence, the original position serves as a “natural guide to intuition”: it is a “perspective” that “one can at any time adopt” (Rawls 1999a, 120) which conforms to our “considered judgments” (Rawls 1999a, 105) about justice and thus allows us to “envision our objective from afar” (Rawls 1999a, 19). Hence,

The reasoning [in the original position] is informal and *not a proof*, and there is an appeal to intuition as the basis of the theory of justice. (Rawls 1999a, 159. my emphasis)

On the evidential view suggested by these remarks, choice in the original position derives its normative force from the fact that it embodies our intuitive sense of justice. Since certain intuitive normative premises are built into the construct of the original position, the fact that a principle would be chosen there provides evidence of its justice. The original position, on this view, is a heuristic instrument of moral epistemology: it helps us to *see* or *discover* the principles of justice.

Interestingly, these two interpretations of the connection between choice in the original position and justice correspond roughly to the two ways Rawls argues “more systematically” for his principles of justice. On the one hand, Rawls suggests that one may argue that his two principles cohere well with “our considered judgements of

justice.” On the other hand, Rawls claims that “one can also find arguments in their favor that are decisive from the standpoint of the original position” (Rawls 1999a, 132) via the maximin strategy. The former kind of argument suggests the evidential interpretation whereas the latter recommends the constitutive view.

Why Neither Interpretation is Satisfactory

The ambiguity in *A Theory of Justice* with regard to these competing interpretations can be seen as the product of the fundamental tension with which the present chapter began and which I contend is endemic to liberalism. The constitutive view draws upon a tacit but robust philosophical theory of the person whereas the evidential interpretation attempts to circumvent philosophy by appealing strictly to our “intuitive sense” of justice. However, as I shall now argue, neither view satisfies Rawls’s desiderata—Rawls must either make explicit the philosophical justification for his premises, or he must be content with a theory which proffers little advantage over a utilitarian liberalism. I shall examine the two interpretations in turn.

1. The Constitutive Interpretation

On the constitutive interpretation, one will have to explain *why* it is the case that choice under the unusual conditions modeled in the original position is constitutive of justice. That is, the constitutive view prompts the question, What is distinctive about the original position such that any principle chosen there will *ipso facto* be just?

Traditional contract theorists had an easy answer to this question. On traditional versions of the contract theory, the state of nature models a conception of human nature.¹⁹ Persons in this state are “natural,” and motivated by the desire to exercise and preserve their natural freedom. Decisions and deliberations in the state of nature thus express the characteristic features of human nature. As political associations are artificial means to preserving as much natural freedom as is consistent with the security and protection for all, the political arrangements which would be chosen or consented to by humans in their most natural state are just. Traditional contractarianism thus defers to a theory of human nature to provide the essential connection between choice and justice in the state of nature.

This strategy is not immediately open to Rawls, who is wary of “controversial ethical elements” (Rawls 1999a, 12) and wants a theory which employs only “weak and widely held” (Rawls 1999a, 214) presumptions that are “natural and plausible” (Rawls 1999a, 16) because embedded within the “framework of an empirical theory” (Rawls 1999a, 226). However, he needs *some* account of the supposedly essential connection between choice and justice, and he apparently relies upon rational choice theory to establish this (Rawls 1999a, 14-15). But this appeal to rational choice theory does not answer the question, it merely delays it. *Why* is the framework of rational choice theory appropriate for a theory of justice? Unless one claims that rational choice theory

¹⁹ This is most clearly the case in Hobbes. See *Leviathan*, Chs. 13 and 14. This is evident in Locke as well; he says “To understand political power . . . we must consider what state all men are naturally in” (Locke 1689a, 218). See Fisk 1975 for an insightful discussion of Rawls and this aspect of contractarianism.

effectively captures something about human nature that is relevant to questions of justice. our initial question—viz., Why is choice in the original position *constitutive* of the justice of the principles chosen?—remains unmet.

One could, of course, argue on Kantian grounds that rational choice theory *does* capture something about human nature that is particularly relevant to justice. A Kantian may argue that humans are by nature *autonomous*, and that any political arrangement which can be shown to accord with the autonomous nature of humans is *ipso facto* just. Since the most basic exercise of individual autonomy is rational, uncoerced choice, and since justice simply is that which would be autonomously chosen, any principle chosen in the original position is necessarily just. Although this Kantian response does indeed explain the constitutive connection between rational choice and justice in the original position, it is clear that Rawls cannot employ this kind of argument if he is to avoid controversial premises, for it invokes an entire theory of human nature.

The relevant point is that the constitutive interpretation will *necessarily* involve some such theory, and will thus drive Rawls to articulate, or quietly endorse, the kind of controversial theory of human nature he wants to avoid. Taking the constitutive view of the original position will therefore frustrate the desire to remain within the confines of empirical theory. Rawls's interest in avoiding metaphysics will therefore draw him towards the evidential interpretation.

2. The Evidential Interpretation

On the evidential interpretation, the original position is a heuristic device

embodying our intuitive and considered sense of justice. On this view, justice as fairness is indeed a strictly empirical theory since questions of what liberals do in fact tend to think about justice are empirical questions. However, the evidential interpretation renders Rawls's theory of justice surprisingly incomplete.

On the evidential view, the position developed in *A Theory of Justice* is not strictly a "theory" of justice at all; it is rather, as Rawls says, "a theory of our moral sentiments as manifested by our considered judgements" (Rawls 1999a, 104). That is, Rawls does not provide a *demonstration* of the two principles, but simply proposes a model of moral reasoning which helps to clarify and organize the commonsense, intuitive sense of justice likely to be held by persons who favor liberalism. Accordingly, Rawls admits, "we want to define the original position so that we get the desired solution" (Rawls 1999a, 122).²⁰ The "desired solution" derives from the liberal conception of justice which the original position models. On the evidential interpretation, Rawls *presupposes* the validity of a liberal conception of justice. His argument consists not in demonstrating this conception, but in showing that it commits liberals to his two principles of distribution.

On the evidential interpretation, then, a positive case for liberalism is entirely absent from *A Theory of Justice*. But this leaves the liberal intuitions about justice unscrutinized and entirely unsupported. The evidential interpretation, therefore, frustrates Rawls's desire to provide a ground for liberalism firmer than that supplied by utilitarianism. His case for his principles of justice rests entirely upon the presumed

²⁰ R. M. Hare argues that this view commits Rawls to ethical subjectivism (Hare 1973, 82).

validity of the liberal intuitions from which he begins. Should it turn out that Rawls has misidentified or misrepresented the “intuitive sense” of justice shared by liberals, his theory will collapse. Furthermore, his theory of justice can engage only those who are already well-disposed to liberalism; his theory is unable to convert antiliberals to liberalism.

To review: *A Theory of Justice* invites two incompatible interpretations of the connections between choice and justice in the original position. I named these the *constitutive* and the *evidential* interpretations. I then argued that neither interpretation satisfies Rawls’s desire both to avoid metaphysics and to produce a stronger case for liberalism than utilitarianism offers. The constitutive interpretation forces Rawls to adopt and employ the kind of metaphysical and ethical presumptions he wishes to avoid. The evidential interpretation is problematic because it leaves Rawls without any firm ground for his liberalism and therefore constitutes no real advantage over a utilitarian theory: whereas the utilitarian derives the liberal principles from considerations concerning existing social conditions and utility distributions, Rawls rests his case for liberalism entirely upon a precarious appeal to a nebulous set of “intuitions.” Therefore, neither interpretation is satisfactory from the point of view of Rawls’s desiderata.

Additionally, we note that both interpretations involve question-begging. On the constitutive view, justice as fairness presumes an entire theory of human nature and therefore begs the question against alternative theories. On the evidential view, justice as fairness presupposes a liberal conception of justice, and hence begs the question against antiliberalism. On both interpretations, Rawls’s theory is in need of further support.

Excavating Rawls's "Deep Theory"

The ambiguity in Rawls's argument has understandably generated controversy.²¹ Troubled by the prospect that the pioneering work of political philosophy in the twentieth century could be a grand *petitio principii*, sympathetic and critical commentators have endeavored to uncover the "hidden assumptions" (Dworkin 1973, 26) underlying Rawls's view and to unlock the "secret of the original position" (Sandel 1982, 132).

Typically, those sympathetic to liberalism have argued that the evidential interpretation of the original position is correct, and consequently that Rawls's view presupposes rather than proves the validity of liberalism and its characteristic moral claims. On this, Thomas Nagel is clear:

The egalitarian liberalism which [Rawls] develops and the conception of the good on which it depends are extremely persuasive, but the original position serves to model rather than to justify them I believe that Rawls' conclusions can be more persuasively defended by direct moral arguments for liberty and equality (Nagel 1973, 15)

Ronald Dworkin argues similarly:

The two principles comprise a theory of justice that is built up from the hypothesis of a contract. But the contract cannot sensibly be taken as the fundamental premise or postulate of that theory It must be seen as a kind of halfway point in a larger argument, as itself the product of a deeper political theory We must therefore try to identify the features of a deeper theory that would recommend the device of a contract as the engine of justice (Dworkin 1973, 37)

These commentators have faced an obvious difficulty. If it is true that Rawls's "conclusions can be more persuasively defended by direct moral arguments" and that we

²¹ See, for example, Dworkin 1973; Nagel 1973; Lyons 1975; R. P. Wolff 1977, Ch. XVI; Sandel 1982, Ch. 3; and Kukathas and Pettit 1990, Ch 2.

must search for the “deeper theory” his presentation presupposes, then why should Rawls have elected to adopt a contractarian strategy in the first place? Why did he bother with the idea of the original position at all? This kind of defense of Rawls renders the construct of the original position, the element which seemed to lie at the heart of Rawls’s argument, a curious and superfluous adjunct to justice as fairness.

Many of Rawls’s critics have adopted the constitutive interpretation. They have argued that Rawls’s view presupposes an entire metaphysics of the self, which, once uncovered, is vulnerable to decisive objections. The strongest articulation of this kind of critique is found in the work of Michael Sandel.²² In *Liberalism and the Limits of Justice*, Sandel argues that Rawls’s depiction of the parties in the original position commits him to a roughly Kantian theory of the self. On this view, the self is a detached “subject of possession” (Sandel 1982, 59) for which no commitment or obligation arising from a social relation could constitute identity. According to Sandel, since Rawls maintains that “the self is prior to the ends which are affirmed by it” (Rawls 1999a, 491), he must also assert that,

No commitment could grip me so deeply that I could not understand myself without it. No transformation of life purposes and plans could be so unsettling as to disrupt the contours of my identity. No project could be so essential that turning away from it would call into question the person I am. (Sandel 1982, 62)

That is, Sandel argues that Rawls is committed to a theory according to which the self is essentially “unencumbered” by social relations, given “prior to and independent of its purposes and ends unbound by prior moral ties, capable of choosing [its] ends for

²² See also Bell 1993; Barber 1984, Ch. 4; and Taylor 1990.

[itself]" (Sandel 1996, 12).

On Sandel's view, then, Rawls has failed to articulate a theory confined to an empirical framework. Moreover, Sandel argues that the metaphysical picture of the self presupposed by Rawls is demonstrably false. According to Sandel, the image of the unencumbered self "fails to capture those loyalties and responsibilities whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are" (Sandel 1996, 14; cf. 1982, 179). Certain obligations, Sandel contends, are such that they cannot be properly understood as the product of the choice of an unencumbered self. The force of religious, familial, and patriotic duties and loyalties lies precisely in the fact that these are given and not chosen. The theory of the unencumbered self cannot account for these most important and "indispensable aspects of our moral and political experience" (Sandel 1996, 14).

Finally, Sandel argues that Rawls must tacitly reject the theory of the unencumbered self if his second principle of justice is to make sense. Recall that the second of Rawls's principles stipulates that economic goods are to be redistributed so that inequalities are to the advantage of the least well-off. According to Rawls, this scheme of distribution "represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset" (Rawls 1999a, 87). Sandel argues that there is no basis for regarding the natural distribution of individual talents a "common asset" unless we "presuppose some prior moral tie" among the individuals whose talents would be enlisted in a "communal endeavor" (Sandel 1984b, 22) of the sort envisioned by the theory of the self which Rawls rejects. Sandel concludes that Rawls's theory is

“parasitic” on a theory of the encumbered self and the corresponding constitutive theory of community it “officially rejects” (Sandel 1984b, 24; cf. 1982, 80). In short, Sandel argues that Rawls presupposes a theory of the self which is not only false, but insufficient for his own liberal purposes.

Rawls's Metaphilosophical Response: Political Liberalism

These early commentators share a common presumption, namely, that justice as fairness is to be understood as a comprehensive theory of liberalism. That is, they have read *A Theory of Justice* as an attempt to *establish* or *demonstrate* the justice of his two principles from some set of philosophical premises. Finding this demonstration incomplete, they have sought to fill in the gaps in Rawls's presentation, and defend or critique the resulting argument accordingly.

In his later work, Rawls also admits to there being serious problems with the view presented in *A Theory of Justice*: however, whereas Nagel, Dworkin, Sandel, and others have taken the problem to be that *A Theory of Justice* is lacking the necessary philosophical groundwork, Rawls now contends that *A Theory of Justice* was overly philosophical, that it relied too heavily upon philosophical premises, and that justice as fairness as presented there is “unrealistic” and hence must be “recast” (Rawls 1993, xvii), “reformulated” (Rawls 1996, xlili) and corrected (Rawls 1989a, 490). To explain: Rawls maintains that *A Theory of Justice* attempted to provide a comprehensive liberal theory which rivals utilitarianism (Rawls 1993, xvi); however, he now contends that the project

of comprehensive liberalism is misguided, that liberalism requires no deep philosophical foundations, and that no consistent comprehensive theory of liberalism is possible. In light of this, he now maintains that justice as fairness is to be understood as what he calls a “political” rather than comprehensive liberal theory. These are startling claims, and unpacking them will take some care.

In a pivotal 1985 article, “Justice as Fairness: Political not Metaphysical” and the subsequent writings which are compiled in his 1993 book, *Political Liberalism*, Rawls has abandoned the project of providing a comprehensive philosophy of liberalism. Rawls has proposed a liberal theory which “deliberately stays on the surface, philosophically speaking” (Rawls 1985, 395). Whereas previous theorists endeavored to ground liberalism upon more basic philosophical premises about human nature or morality, Rawls insists that, “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” (Rawls 1985, 390). That is, Rawls sees the traditional project of liberal political philosophy as fundamentally misguided.

The main failing of the traditional aspiration is that no comprehensive theory of liberalism can acknowledge what Rawls calls the “fact of reasonable pluralism” (Rawls 1993, 4). Rawls explains,

A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens. (Rawls 1993, xvi)

Rawls is convinced that the full and free exercise of human reason will not converge upon a single comprehensive philosophical or religious doctrine; reasonable persons will hold different and incompatible comprehensive views. Consequently, Rawls contends that pluralism is not "a mere historical condition" (Rawls 1993, 36) which shall pass; rather it is the "long-run outcome of the work of human reason under enduring free institutions" (Rawls 1993, 129) and therefore "a permanent feature" of a democratic society (Rawls 1993, 36). Further still, "a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power" (Rawls 1993, 37). That is, unity at the level of comprehensive doctrines can be won *only* by oppression: "free institutions themselves lead to pluralism" (Rawls 1989a, 491).

Given his belief that reasonable pluralism is a permanent condition, it is easy to see why Rawls should want to abandon the traditional aspirations of liberal philosophy.

The fact of reasonable pluralism entails that,

The question the dominant tradition has tried to answer has no answer: no comprehensive doctrine is appropriate as a political conception for a constitutional regime. (Rawls 1993, 135)

That is, any comprehensive theory of liberalism will employ the kinds of philosophical claim about which free rational persons are bound to disagree. A society which bases its liberal politics upon a particular comprehensive doctrine will therefore be unstable: How shall it deal with those persons who reasonably reject the comprehensive doctrine upon which it rests its political principles? As we saw in the previous chapter, this kind of difficulty compelled Locke, who grounded his liberalism in a theological doctrine, to

maintain that religious belief was *necessary* for stability. Recall that on Locke's view, "The taking away of God, though but even in thought, dissolves all": he therefore argued that "those are not at all to be tolerated who deny the being of God." (Locke 1689b, 313). However, if pluralism is the inevitable outcome of human rationality operating under free institutions, the unity which a comprehensive liberalism requires cannot be achieved except by illiberal means. Hence a liberal society which depends upon a comprehensive doctrine will not remain liberal for long.

Rawls thus proposes what he calls a "political" liberalism; he endeavors to develop a liberal theory which will "leave aside philosophical controversies whenever possible, and look for ways to avoid philosophy's longstanding problems" (Rawls 1985, 395). Such a liberal theory will neither draw upon nor require support from any underlying and deep philosophical theory, empirical or otherwise. A political liberalism rather is independent and "freestanding" (Rawls 1993, 10). Rawls explains further.

Briefly, the idea is that in a constitutional democracy the public conception of justice should be, as far as possible, independent of controversial philosophical and religious doctrines. (Rawls 1985, 388)

Political liberalism does not look for philosophical foundations, but simply draws from "the basic intuitive ideas found in the public culture of a constitutional democracy," these ideas "are likely to be affirmed by each of the opposing comprehensive moral doctrines" affirmed by citizens (Rawls 1985, 410).

On Rawls's view, then, political philosophy is not concerned with the foundationalist project of grounding liberalism in comprehensive theories of morality and human nature; the Rawlsian political philosopher instead begins with the political *status*

quo, the ideas, traditions, and institutions of liberal democracy. Using these “settled convictions” as a “shared fund of implicitly recognized basic ideas and principles” (Rawls 1993, 8), the Rawlsian philosopher attempts to construct a systematic conception of justice. This conception aims not simply at an acceptable compromise, what Rawls calls a *modus vivendi*, among persons divided by their incompatible comprehensive doctrines, but rather tries to win an “overlapping consensus” (Rawls 1993, 147). That is, the political philosopher attempts to articulate a conception of justice which can win the citizens’ support because each sees the proposed conception as one which can be endorsed from within his own comprehensive doctrine (Rawls 1993, 134).

A political theory of liberalism therefore does not provide the groundwork for the liberal principles, but serves as a “module” which “fits into and can be supported by various reasonable comprehensive doctrines” (Rawls 1993, 12). A political theory of liberalism which “offers no specific metaphysical or epistemological doctrine” (Rawls 1993, 10) and hence can win an overlapping consensus in a society marked by reasonable pluralism is “the most we can expect” from political philosophy; “nor do we need more” than this (Rawls 1985, 410).

Justice as Fairness as a Political Conception

Having articulated this metaphilosophical position, Rawls attempts to formulate justice as fairness as a strictly political conception of justice (Rawls 1993, 9). Rawls tells us that a political theory of justice must satisfy three conditions. First, a political theory

of justice must apply solely to the basic structure of society. Second, it must be formulated in terms that are independent of any comprehensive doctrine. Third, it must be founded upon the fundamental ideas implicit in the public culture of a modern democracy (Rawls 1993, 223). To elaborate: (1) A political conception of justice does not attempt to define justice as such and with regard to all spheres of life, but is restricted to the basic economic, social, and political institutions of society. (2) A political conception of justice does not rely upon, require, or tacitly assume any comprehensive moral, theological, or philosophical doctrine. (3) A political conception of justice is a systematic articulation and extension of the intuitive ideas presumed by and implicitly shared in a modern constitutional liberal democracy.

Accordingly, any aspect of justice as fairness which seemed in *A Theory of Justice* to invoke a comprehensive philosophical doctrine needs to be recast in strictly political terms. This process of reformulation involves no substantive departure from justice as fairness (Rawls 1993, xvi), but rather a series of clarifications with regard to the raw materials from which the theory is constructed. That is, the essentials of the earlier formulation of justice as fairness—the two principles, the original position, et al.—are preserved; only the character of the justification of the theory changes.

We may claim that Rawls's later work avoids having to answer the constitutive / evidential ambiguity posed earlier. Rather than affirm one or the other of these options, Rawls proposes a metaphilosophical claim, namely, that liberalism does not require foundations. So, wherever he seems to make use of the kind of deep philosophical claims suggestive of the constitutive view, Rawls will claim that the underlying conception of

human nature is simply a liberal intuition and is not a philosophical theory. If it is claimed that the evidential strategy of drawing only upon liberal intuitions is question-begging, Rawls will insist that, since he is not attempting to construct a comprehensive theory of liberalism, there are no questions to beg.

The general strategy of political liberalism can be easily summarized; we therefore shall not rehearse the whole of Rawls's translation of justice as fairness from a comprehensive to a political theory. Rawls's strategy is this: Wherever it seems that he must give some philosophical support for any element of justice as fairness, Rawls turns not to metaphysics or ethics proper, but to the metaphysical and ethical ideas implicit within the political culture of a democratic society. Accordingly, Rawls begins from the presumption that society is not a fixed hierarchy of rulers and subordinates but a fair system of cooperation among citizens who are free and equal participants under a common political conception of justice (Rawls 1993, 14f.). Although this fundamental presumption invokes a determinate and distinctive set of comprehensive metaphysical and moral ideas, Rawls leaves to the side the project of assessing their philosophical merit; to such issues political liberalism "does not speak" (Rawls 1993, 127).

The Fundamental Tension, Again

Rawls believes that the "shared fund" of political intuitions is adequately fecund to generate the conceptions of the self and society required for a complete liberal conception of justice. Political liberalism thus can be seen as a novel response to

liberalism's fundamental tension. Whereas previous theorists, including the Rawls of *A Theory of Justice*, sought to strike an appropriate theoretical balance between robust foundations and deep pluralism, between philosophy and toleration, the political liberal denies altogether the need for philosophical foundations. By claiming that "in a constitutional democracy, the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines," the political liberal applies "the principle of toleration to philosophy itself" (Rawls 1985, 388),²³ and hence places the liberal commitment to toleration so far above the desire for deep philosophical foundations that the latter is no longer felt. In the words of Richard Rorty, who is sympathetic to Rawls's current view, political liberalism insists that liberalism does not need "philosophical backup" (Rorty 1988, 178) and can "get along without philosophical presuppositions" (Rorty 1988, 179). The political liberal "put[s] politics first and tailor[s] a philosophy to suit" (Rorty 1988, 178); in this way "Rawls puts democratic politics first, and philosophy second" (Rorty 1988, 191).

In assessing political liberalism, there are two kinds of questions to be raised. On the one hand, we must ask whether political liberalism is *possible*. Can liberalism really "get along without philosophical presuppositions"? Does Rawls avoid employing controversial philosophical premises in his exposition of political liberalism? Is there sufficient order within the tradition of democratic theory to generate any consistent set of intuitions about justice? On the other hand, we must ask whether political liberalism is *desirable*. How is a politically liberal society to deal with those persons or groups who

²³ Cf. Rawls 1993, 9-10.

cannot join the overlapping consensus of liberal justice? What can Rawls's political liberalism say to those holding comprehensive doctrines which are decidedly illiberal? Perhaps more importantly, what can Rawls's theory say to liberal democrats about illiberal antidemocrats? More generally, how does Rawls's view deal with political conflict, both within a liberal society and between liberal and illiberal societies?

Investigation of questions such as these shall be the objective of the following two chapters. In the next chapter, I address the questions regarding the *possibility* of political liberalism. I shall argue that Rawls exposition of political liberalism does not entirely avoid philosophy but indeed employs a series of controversial philosophical premises. I then propose a reformulation of Rawls's view which does in fact "stay on the surface" of philosophy. I then argue, in the subsequent chapter, that a truly political liberalism is undesirable insofar as it cannot help us address, much less ameliorate, the kinds of social political challenges which confront contemporary democracy.

CHAPTER FOUR THE REFUTATION OF POLITICAL LIBERALISM

In this chapter I shall subject political liberalism to what I contend is decisive criticism. It is important to note at the outset the form that this critique will take. As was argued in the preceding chapter, Rawls's move to a political liberalism is to be understood primarily as a metaphilosophical shift. What is at issue in political liberalism is the *justification* of the liberal principles, or, more correctly, whether liberalism *requires* any philosophical justification at all. Rawls's claim is that there can be no comprehensive theory of liberalism that is consistent with liberalism itself. According to Rawls, the fact of reasonable pluralism disallows this. Since one of the fundamental commitments of a liberal society is the Principle of Neutrality and a corresponding commitment to the toleration of different comprehensive doctrines, a liberal theory which draws upon a comprehensive doctrine for its justification fails to be impartial in the required sense. Rawls insists that the failure of the philosophical aspiration to a comprehensive theory of liberalism is no cause for lament. At the core of political liberalism is the confidence that liberal theory and liberal democratic society can do without philosophy.

Rawls has moved to metaphilosophical ground. One therefore cannot expect to accomplish much with criticisms that presuppose the metaphilosophical conceptions he rejects. To complain that Rawls's political liberalism fails to provide sufficient theoretical justification or philosophical support for the liberal principles is to miss the

point.¹ The critic of political liberalism must not beg the metaphilosophical question against Rawls; the critic must begin with Rawls's metaphilosophy. Rawls insists that the liberal theorist must stay "on the surface" of philosophy. But is it *possible* to do so? That is, is it possible to formulate a recognizably liberal political theory without employing philosophical premises? In the present chapter, I shall launch what may be called an "internal" critique of Rawls.² I shall argue that Rawls has not followed his own metaphilosophical prescription, that his political liberalism in fact does not avoid contestable philosophical premises, but presupposes and employs a series of concepts and distinctions which require philosophical justification. I shall then argue that if Rawls is to meet this objection, if he truly is to stay on the surface, he must endorse a view which would be, by his own admission, "political in the wrong way" (Rawls 1993, 142) and insufficiently liberal.

The Theory of Reasonable Pluralism

Rawls claims that "it is the fact of reasonable pluralism that leads . . . to the idea of a political conception of justice and so to the idea of political liberalism" (Rawls 1996,

¹ Heidi Hurd and Jean Hampton both make this mistake. Hurd asks, "Can one meaningfully take Rawls to be justifying liberalism when he has explicitly excluded everyone who is not a liberal from the congregation to which he is preaching?" (Hurd 1995, 822); Hampton argues that the move to a political liberalism "undermine[s] the effectiveness of [Rawls's] defense of his theory of justice" (Hampton 1993, 300). The mistake lies in taking Rawls to be *justifying* or *defending* liberalism rather than simply *articulating* it. The political liberal has abandoned the project of trying to justify liberalism: the fact of reasonable pluralism precludes philosophical justification.

² I borrow this characterization from Leif Wenar; see Wenar 1995.

xlvii). Elsewhere, he refers to the fact of reasonable pluralism as being among the “general facts of political sociology and human psychology” which a political theory must acknowledge (Rawls 1989a, 474). Such remarks suggest that the fact of reasonable pluralism constitutes the fulcrum of political liberalism; we begin with this alleged fact.

Rawls’s term “the fact of reasonable pluralism” is misleading. Although Rawls refers to reasonable pluralism as a *fact*, it is clear that he is proposing what is more properly called a *theory* regarding disagreement at the level of comprehensive views and the political implications of such disagreement. More specifically, Rawls begins with two obvious facts: (1) there is philosophical, moral, and religious disagreement among sincere and cooperative persons, and (2) this disagreement is relevant to politics. He then proposes a *theory* according to which this disagreement is *permanent* and *reasonable* (in the senses to be explicated below) under conditions of freedom. Certainly, whereas it is obvious that there is disagreement over comprehensive views and that this disagreement is relevant to politics, nothing is immediately clear regarding the nature of such disagreement. That disagreement at the level of comprehensive views is both *reasonable* and *permanent* in a free society is an extrapolation by Rawls and, as such, not some theory-neutral datum of which political philosophy must take account. That disagreement is reasonable and permanent is the *claim* of Rawls’s theory.

In an especially fecund passage, Rawls explains reasonable pluralism:

[T]he diversity of comprehensive religious, philosophical, and moral doctrines found in modern democratic societies is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy. Under the political and social conditions that the basic rights and liberties of free institutions secure, a diversity of conflicting and irreconcilable comprehensive doctrines will emerge, if such diversity does not already exist. Moreover, it will

persist and may increase. The fact about free institutions is the fact of pluralism. (Rawls 1989a, 474)

There are at least two related, though distinct, epistemological claims woven together here which must be disentangled. The first of these I call the Non-convergence Thesis:

The Non-convergence Thesis

The full and free exercise of each person's reason will not result in the general convergence of all persons upon one particular comprehensive doctrine.

Although Rawls accepts the principle, often associated with Charles Peirce, that inquiry in the natural sciences will lead to convergence upon a single conception "at least in the long run" (Rawls 1993, 55),³ he explicitly denies the possibility of such convergence on questions of philosophical, religious, and moral essentials. Consequently, he denies that rational and free citizens will eventually come to agree upon a single comprehensive doctrine, even in the long run. Although disagreement with regard to scientific theories may be temporary, disagreement with regard to comprehensive views can be overcome only by oppression (Rawls 1993, 37); disagreement is therefore a "permanent" feature of a free society.

The Non-convergence Thesis entails a second thesis, which we shall call the Equal Reasonableness Thesis:

The Equal Reasonableness Thesis

There are several distinct comprehensive doctrines which, though incompatible with each other, are each equally consistent with the full exercise of human reason.

Whereas the Non-convergence Thesis asserts that disagreement regarding comprehensive

³ Peirce writes of scientific investigators, "They may at first obtain different results, but as each perfects his method and his processes, the results are found to move steadily together toward a destined center" (Peirce 1878, 38). Cf. Rawls 1989a, 475.

views is permanent, the Equal Reasonableness Thesis affirms the possibility of *reasonable* disagreement over comprehensive views. Since the full exercise of free human reason will not converge upon a single comprehensive doctrine, it is not the case that all disagreements concerning philosophical, moral, and religious essentials involve irrationality, unreasonableness, or lack of integrity on the part of one or all of the parties to the disagreement.⁴ There is a plurality of fully reasonable comprehensive doctrines, and doctrines which are logically incompatible may be each fully reasonable. In this sense, there is not simply widespread and permanent *disagreement*, but *pluralism* with regard to philosophical, moral, and religious essentials. Of course, the Equal Reasonableness Thesis does not entail the view that *all* comprehensive views are equally reasonable: Rawls maintains that certain comprehensive views are decidedly *unreasonable*. Rawls's ideas concerning unreasonable comprehensive views will be taken up later. Here we note the force of the qualifier "reasonable" in Rawls's concept of the "fact of reasonable pluralism": free institutions do not only generate a plurality of comprehensive views, but a plurality of irreconcilable comprehensive doctrines which are each fully supported by human reason (Rawls 1993, 36).⁵

⁴ Rawls claims that whereas this kind of account of disagreement "explain[s] much," it is "too easy and not the kind we want" (Rawls 1993, 55).

⁵ Rawls does not add the qualifier until the book *Political Liberalism*; accordingly, Rawls 1989a discusses the "fact of pluralism." The addition of the qualifier does not mark a revision of the view, but rather a clarification; see Rawls 1993, 36 n. 37 and Cohen 1993, 281ff.

Staying on the Surface

As the theory of reasonable pluralism is comprised of two epistemological theses, the entire enterprise of political liberalism, as Rawls has articulated it, rests upon an epistemological doctrine. Why should we accept Rawls's pluralistic theory of moral epistemology? Why should we believe that disagreement over philosophical, moral, and religious essentials is permanent and, at least in some cases, reasonable?

Rawls proposes what has come to be known as the "burdens of judgment" argument in support of his theory of reasonable pluralism.⁶ The burdens of judgment are offered as an explanation of why "our conscientious attempt to reason with one another" does not result in "reasonable agreement" on a single comprehensive view (Rawls 1993, 55). Rawls offers an account of the "many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life" (Rawls 1993, 56). Paraphrasing a long and cumbersome passage in Rawls, Mulhall and Swift explain the burdens of judgment as follows:⁷

They include such factors as the following: the evidence bearing on the case is complex and conflicting; the weight to be attached to any given piece of evidence is contestable; our concepts are vague and subject to hard cases; and our judgements are imponderably but decisively and differently influenced by the whole course of our individual moral experience. (Mulhall and Swift 1996, 177)

These "hazards" or "burdens" of judgment certainly account for the existence of *disagreement* at fundamental levels, but are they sufficient to establish the Non-

⁶ In an earlier paper, they are called the "burdens of reason" (Rawls 1989a, 475f.).

⁷ See Rawls 1993, 56-57 for the passage of which the following is a paraphrase. Cf. Rawls 1989a, 476-477.

convergence and Equal Reasonableness Theses? That is, do the burdens of judgment commit us to the view that continued and cooperative reason among persons will *never* converge upon a single comprehensive view, and thus that there are many such views equally consistent with full reason although inconsistent with each other?

Acknowledgment of the burdens of judgment is fully consistent with the denial of the Non-convergence Thesis. The burdens of judgment argument establishes only that there is a plausible explanation for the fact that conscientious, cooperative, and well-intentioned persons fundamentally disagree. The explanation it gives is simply that human judgment is fallible. But certainly one can agree that humans are fallible and nevertheless maintain that should reasoned discourse and cooperative inquiry persist, persons initially holding different and irreconcilable comprehensive views will in the long run converge upon a single view.³ Therefore, if Rawls is to establish that reasonable pluralism is indeed a fact, he needs an additional argument. Specifically, he needs an argument showing not only that there is a plausible explanation of the fact that persons disagree, but that this disagreement is permanent, and that disagreement is at least in certain cases reasonable.

Drawing upon recent and familiar metaethical positions, one could pose an argument according to which disagreement concerning philosophical, moral, and religious essentials is interminable even when fully rational because philosophical, moral,

³ In fact, this is precisely the view of Charles Peirce. See especially Peirce 1877, 18-19; and Peirce 1878, 38. One could of course argue that Peirce's view, which mixes fallibilism with a convergentist view of truth under conditions of continuing inquiry, is false or otherwise problematic, but surely it is not self-contradictory. Hence, Rawls's burdens of judgment argument does not strictly entail Non-convergence.

and religious propositions are subjective, strictly prescriptive, or meaningless. Hence, whereas convergence may be possible in scientific inquiry, where claims can be tested against the brute facts in nature and gradually corrected, there is nothing upon which long-run philosophical, theological, or moral inquiry can converge. Therefore, one might continue, the burdens of judgment are decisive—philosophical, moral, and religious disagreement is permanent and in some cases fully reasonable.

Although it may help to explain why Rawls does not assert a fact of reasonable pluralism with regard to scientific disputes, the above argument is not open to someone who wants, as Rawls does, to “leave aside philosophical controversies” (Rawls 1985, 395). Philosophical disputes concerning the nature of moral and religious language are as old as Plato’s *Euthyphro*, and a political theory which is premised upon a particular conception of the meaning of the language in which we articulate our respective comprehensive doctrines fails to stay on the surface of philosophy.

Rawls may elect to respond that I have misconstrued the character of his appeal to the fact of reasonable pluralism. The claim that persons will always disagree on fundamental matters is not in need of philosophical demonstration and is not the product of a philosophical theory, but rather is among the “basic intuitive ideas” (Rawls 1985, 390) found in the “public culture” (Rawls 1993, 8) of liberal democracies. Consequently, the burdens of judgment do not provide an *argument* for reasonable pluralism, but an intuitive *explanation* of disagreement which liberal democrats are likely to endorse. In this way, the fact of reasonable pluralism is *itself* a postulate of political liberalism, not, as I have supposed, the product of some background theory of moral epistemology and

evaluative language.

This response renders Rawls's account circular. Rawls often writes as if the fact of reasonable pluralism provides the *motivation* for rejecting comprehensive liberal theories and developing a political liberalism.⁹ But clearly, the fact of reasonable pluralism cannot be both a postulate of political liberalism *and* that which drives one to adopt political liberalism. Either reasonable pluralism is a "fact" that is external to political liberalism, or it is not. My argument has shown that if it is external, then Rawls must provide some philosophical explanation of *why* there is reasonable pluralism. If, alternatively, reasonable pluralism is internal to political liberalism, if it is just another claim to which political liberalism is committed, then Rawls has not made a case for his view.

I suspect that Rawls is likely to endorse the second option; he will accept that reasonable pluralism is itself a postulate of his view, and that he therefore has not made a case for political liberalism. However, that he has not made a case for political liberalism will not occasion dismay; Rawls can claim that the idea that one must make a case for one's liberal theory presumes the kind of metaphilosophical conceptions he has rejected. A political liberal foregoes any attempt to "prove" his view; he rather endeavors to *articulate* and *organize* the intuitions of liberal democrats. In this way, my charge of circularity is apparently defanged. Rawls, after all, is not attempting to argue for liberalism; he instead is trying to develop a theory which accurately models and fully

⁹ E.g., "Thus, a main aim of [*Political Liberalism*] is to show that the idea of a well-ordered society in [*A Theory of Justice*] may be reformulated so as to take account of the fact of reasonable pluralism" (Rawls 1996, xlili).

captures the considered judgments of liberals. Political liberalism derives its justification, then, not from how well it corresponds to the facts about politics and morality, but rather from how well it comports with the liberals' intuitive sense of justice. Consequently, Rawls begins with the fact of reasonable pluralism not because it is *true* that disagreement at the level of comprehensive doctrines is permanent and sometimes reasonable, but rather because liberals *believe* that it is. To questions regarding the truth of philosophical conceptions, political liberalism "does not speak" (Rawls 1993, 128); to insist that it must is to beg the metaphilosophical question against Rawls.

Whereas this kind of reply might seem to succeed, it actually only delays the difficulty. Consider that, with this latest response, Rawls has committed himself to the claim that among the "basic intuitive ideas" embedded within the minds of liberals is the idea that reasonable pluralism is a fact. However, it is not immediately clear that this is so. Rawls must therefore *establish* this, he must *show* that liberals in fact generally think that disagreement over comprehensive views is permanent and sometimes reasonable. The required demonstration will certainly require some appeal to findings in the social-sciences. However, as with any collection of scientific data, the relevant social-scientific data require interpretation. Questions of the interpretation of social-scientific data are notoriously thorny, and every interpretation presumes some hermeneutic scheme and presumes some philosophical claims. Thus, if Rawls were to attempt to produce the needed demonstration, he would, again, find that philosophical commitment and controversy is inescapable.

Should Rawls insist that the "basic intuitive ideas" to which he is appealing are

not necessarily the ideas popular among today's liberal democratic citizens, but those principles which are "embedded" in the "political institutions" and "public traditions" of liberal democracy (Rawls 1985, 390), he will have certainly escaped the need to invoke recent findings of social scientists and political pollsters. However, it is unclear that there is a single and consistent set of principles which can be extracted from the historical tradition of modern democracy. It is odd that Rawls should on the one hand recognize the "absolute depth" (Rawls 1993, xxvi) of disagreements over comprehensive doctrines yet nevertheless maintain that the tradition of modern democracy features a "shared fund of implicitly recognized basic ideas and principles" (Rawls 1993, 8) which can serve as the basis for a political conception of justice.¹⁰ Why should there be a stable and unified "shared fund" of "public traditions" in a society which is deeply divided at the most basic levels?¹¹ If disagreement does have "absolute depth," any attempt to extract some shared "basic ideas and principles" from the history of the democratic tradition will involve some selection and interpretation. Consequently, Rawls will have to provide a philosophical argument to show that his conception of these implicit principles is not arbitrary.

Yet even if we suppose that there is a unified shared public tradition which can be extracted from our history, it is not clear that this tradition is liberal. Antiliberal theorists such as Michael Sandel have argued that a rival intellectual tradition—namely, civic

¹⁰ Cf. Rawls 1989a, 475; and 1993, 38, n. 41.

¹¹ Sandel wonders why Rawls does not recognize a "fact of reasonable pluralism" with regard to questions of justice. See Sandel 1998a, 203f.

republicanism—dominates the political history of the United States, and that “the version of liberalism that informs our present debates is a recent arrival, a development of the last forty or fifty years” (Sandel 1996, 5).¹² The accuracy of Sandel’s reading of our political history is not at issue; the point is that there are competing and conflicting interpretations of the “political culture” and “public traditions” of modern democracy. Therefore Rawls must provide some argument in support of his particular interpretation of those traditions; that is, he must propose some account according to which the *proper* understanding of the political tradition of modern democracy sanctions his own variety of liberalism. That is to say, Rawls must give some philosophical account of our shared political tradition.

The argument thus far has demonstrated that Rawls is not able to completely abstain from philosophy; at some point, he must draw upon some philosophical ideas, commit to some philosophical conceptions, and enter into the arena of philosophical debate. Accordingly, political liberalism cannot entirely stay on the surface of philosophy. But perhaps this is not so devastating a conclusion after all. Rawls may opt to respond that the point of political liberalism is not to completely eschew philosophical claims, but rather to avoid philosophical *controversy*. The political liberal tries to get along with as little philosophy as possible, he tries to commit to as few philosophical premises as he can. That political liberalism employs and draws upon philosophical ideas is obvious; every coherent political theory will inevitably invoke philosophical conceptions at some level. The aim of political liberalism is to keep one’s philosophical

¹² Cf. Sandel 1998c, 318f.; see also Pettit 1997, Ch. 1; and Pettit 1998, 41ff. Cass Sunstein makes an argument similar to Sandel’s with regard to interpretations of the First Amendment; see Sunstein 1993.

claims as shallow as possible; that is, to stay on the philosophical *surface*, to avoid *deep* philosophical commitments. Avoiding deep philosophical commitment presumably means avoiding especially *contentious* philosophical ideas; the political liberal may thus employ the kinds of philosophical claim about which there is not wide disagreement.

Let us thus permit Rawls to help himself to whatever philosophical claims are necessary for the articulation of his view. Can Rawls formulate political liberalism in a way which is both identifiably liberal and free from the kind of deep philosophical controversy he believes a liberal theory must avoid? To see that he cannot, we shall have to explore the conception of political legitimacy which Rawls derives from the fact of reasonable pluralism.

Reasonable Pluralism, Reasonable Persons, and Legitimacy

According to Rawls, political power is “always coercive power” (Rawls 1993, 216). The task of a liberal theory is to delineate the conditions under which political power is justly exercised, to render the chains of society legitimate, to evoke Rousseau’s famous remark (Rousseau 1761, 420). In *Political Liberalism*, Rawls articulates a standard liberal view of legitimacy:

[O]ur exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. (Rawls 1993, 217; cf. 1993, 136)

Thus coercion is justified and legitimate when it is exercised in accordance with the basic

political principles which can win the consent of “reasonable and rational” persons. The terms “reasonable” and “rational” are here being used in a technical sense which must be explained. A person is *rational*, on Rawls’s view, in the degree to which he is able to coordinate means and ends; more specifically, the rational agent is one who is able to employ his powers of judgment and deliberation in ways which help him to reach his ends and satisfy his interests (Rawls 1993, 50). By contrast, a person is *reasonable* insofar as he (1) “is willing to propose and honor fair terms of cooperation” and (2) is willing “to accept the burdens of judgment and accept their consequences” (Rawls 1993, 49 n.1). A person is *unreasonable*, then, insofar as he (1) does not seek fair terms of social cooperation and (2) does not accept the burdens of judgment and their consequences.

As we have seen, Rawls thinks that the burdens of judgment establish the Non-convergence and Equal Reasonableness Theses. Therefore, among the consequences of the burdens of judgment is the recognition that one’s own comprehensive doctrine is not the only view which is consistent with the full exercise of the human intellect. It is therefore *unreasonable* to insist that terms of social cooperation conform to one’s own comprehensive doctrine. Likewise it is unreasonable to demand that state power be used to enforce the principles of one’s own comprehensive view (Rawls 1993, 61). Rawls writes,

Where there is a plurality of reasonable doctrines, it is unreasonable or worse to want to use the sanctions of state power to correct, or to punish, those who disagree with us. (Rawls 1993, 138)

The reasonable person hence acknowledges that at least some of those persons

holding comprehensive views that are incompatible with his own have reasons for believing as they do which are as good as his own reasons for holding his view, and he seeks to establish and maintain fair terms of social cooperation with them. Insofar as these other persons are themselves reasonable, they too accept reasonable pluralism and seek fair terms of political association. They all recognize that to accomplish this, one must not propose terms of political association which are couched in his own comprehensive doctrine; one should instead attempt to cast all proposals for political arrangement in a vocabulary that is neutral and mutually agreeable to all. As they are divided on philosophical, moral, and religious essentials, only those political principles and arrangements which do not presuppose or draw upon any particular philosophical, moral, or religious conceptions will be mutually agreeable. They thus devise and accept a collection of arrangements and principles which do not draw upon any particular comprehensive view. But all of this is to say that reasonable persons are necessarily political liberals.¹³ Stronger still, it is to say that *only* political liberals are reasonable persons, and that the consent of political liberals alone is sufficient for political legitimacy.

Rawls will here object. He will claim that the comprehensive doctrines associated with, for example, Kant and Mill have “their proper place in the background culture” and can play a “supporting role” in a regime of political liberalism (Rawls 1993, 211 n.42): he will thus deny that according to political liberalism the Millian and the Kantian are unreasonable. Consequently, he will also deny that political liberalism excludes Kantians

¹³ Chantal Mouffe argues similarly. see Mouffe 1996, 248-253.

and Millians from the “legitimation pool,” the “pool of persons whose endorsement would confirm the legitimacy of Rawls’s political liberalism” (Friedman 2000, 16).

Yet it is unclear that Rawls can maintain this with consistency. Consider the case of the utilitarian. According to him, state action and political policy is *just* only insofar as it maximizes general happiness; conversely, the utilitarian holds that state action and policy are *unjust* when they do not maximize general happiness. Like all liberals, the utilitarian furthermore believes that a state is legitimate only if it abides by the dictates of justice.¹⁴ Therefore, insofar as the utilitarian believes that the state must be legitimate, he believes that state must endeavor to maximize general happiness. Should the state decide policy on grounds other than the general happiness, it will be, according to the utilitarian, unjust and therefore illegitimate. Put another way, the utilitarian believes that the state *ought* to legislate according to the Greatest Happiness Principle, for this is precisely what justice, and hence legitimacy, requires. Yet according to political liberalism, it is unreasonable to expect the state to endorse one’s own comprehensive view. Therefore, because he expects state action and policy to satisfy the Greatest Happiness Principle, the utilitarian is unreasonable according to the political liberal.

Rawls will respond that whereas in a liberal society citizens are free to endorse and follow any reasonable comprehensive view in their private lives, they are unreasonable if they expect state policy to always reflect their own doctrine. This means that whereas the utilitarian is fully reasonable in his belief that right actions are those

¹⁴ Cf. Rawls: “Justice is the first virtue of institutions, as truth is of a system of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust” (Rawls 1971, 3).

which maximize the general good, he is unreasonable if he believes that his conception should be adopted in the political realm. That is, in order to be reasonable, one must recognize the political as a “special domain” (Rawls 1989a, 482) separate from non-political realms and having its own distinct values which “normally will have sufficient weight to override all other values that may come into conflict with them” (Rawls 1989a, 483).

So whereas the utilitarian may believe that persons should seek to maximize general happiness, he must not insist that the state adopt this view. Moreover, whereas the utilitarian may believe that his conceptions of morality and political justice are *true*, he must not insist that they be given any institutional and political force. Is this possible?

Rawls writes,

It is vital to the idea of political liberalism that we may with perfect consistency hold that it would be unreasonable to use political power to enforce our own comprehensive view, which we must, of course, affirm as either reasonable or true. (Rawls 1993, 138; cf. 1989a, 484)

On Rawls’s view, then, to qualify as a reasonable person, the utilitarian must accept the proposed distinction between the political and non-political domains and must additionally subordinate the specific values associated with utilitarianism to the “political” values associated with the political domain. So whereas the utilitarian maintains that,

(1) Actions and policies are just only if they maximize general happiness,

he is reasonable *if and only if* he also accepts that,

(2) It is not the case that in deciding action and policy, the state must try to maximize the general happiness.

Thus, on Rawls's view, the reasonable utilitarian believes that.

- (3) A state may be legitimate even though it does not always strive to do what is just.

This seems incoherent.¹⁵ Part of what makes utilitarianism a *comprehensive* philosophical view is that it proposes *its own* conception of political justice and *its own* distinction between the political and the non-political. So whereas it is possible for one to believe both (1) and (2), it is not possible for a *utilitarian* to do so. If he accepts (2) he ceases to be a utilitarian. As Rawls maintains that rejecting (2) would render the utilitarian unreasonable, it follows that, according to Rawls, utilitarians are unreasonable.

Rawls is demanding that the utilitarian revise his position in light of the fact of reasonable pluralism. To be sure, such revision will not require great deviation from the classical utilitarian view; the revision amounts to tempering the proposed scope of the Greatest Happiness Principle so that it applies only to non-political domains. We might even imagine a "reformed utilitarian" agreeing with Rawls and making the necessary adjustments. But a reformed utilitarian is a *compromised* utilitarian, and it is unclear why any utilitarian *ought* to reform his view to accommodate Rawls. More importantly, it is not clear that Rawls can give any non-question-begging reason why utilitarians should become reformed utilitarians. Unless he is to defend reasonable pluralism as an independent thesis, and thereby plunge into the depths of philosophical controversy, Rawls can offer no principled incentive to the utilitarian to become a reformed utilitarian.

Of course, one reason why utilitarians might agree to reform their view to

¹⁵ Samuel Scheffler argues that political liberalism is incoherent on slightly different grounds: see Scheffler 1994, 9.

accommodate the fact of reasonable pluralism is that, on Rawls's view, not doing so will exclude them from the legitimation pool. Recall that according to Rawls, legitimacy is generated by the consent of rational and reasonable persons; the consent of irrational and unreasonable persons is not required for legitimacy. This is to say that the consent of an unreformed utilitarian is not necessary for political legitimacy, and thus that, on Rawls's view, the coercive power of the state may be employed against unreformed utilitarians on the grounds that their comprehensive doctrine is unreasonable.¹⁶ Where a philosophical argument is lacking or otherwise to be avoided, Rawls can offer a "political" argument for reforming allegedly unreasonable doctrines.

Thus it is not the case that those holding unreasonable comprehensive views will merely be excluded from the pool of those whose consent is constitutive of legitimacy. As if this kind of exclusion were not enough, Rawls also claims that the politically liberal state may take positive steps to curb the influence of unreasonable comprehensive views.

Rawls writes,

[A] given society may also contain unreasonable, irrational, and even mad, comprehensive doctrines. In their case the problem is to contain them so that they do not undermine the unity and justice of society. (Rawls 1993, xvi-xvii)

Marilyn Friedman asks, "How does one 'contain' a doctrine?":

Doing so requires regulating and controlling the media in which it is expressed and promulgated—books, magazines, cyberspace, and so on. More significantly, it requires suppressing those who hold the doctrine, in particular, suppressing their expression and/or their enactment of it.¹⁷ (Friedman 2000, 22-23)

¹⁶ Rawls writes, "It is unreasonable for us to use political power, should we possess it, or share it with others, to repress comprehensive doctrines that are not unreasonable" (Rawls 1993, 61). Hence it may be fully reasonable in some cases to use political power to repress *unreasonable* comprehensive doctrines.

¹⁷ Note Rawls's discussions of the "political virtues" which a liberal regime must "strengthen" (Rawls 1993, 195) through education (Rawls 1993, 199).

Wanting to avoid the consequences of unreasonableness, the utilitarian may elect to become a reformed utilitarian as a matter of political prudence. We may therefore speak of the “reluctantly reformed utilitarian” as one who tempers his utilitarianism according to the demands of political liberalism not because he sees that there is a fact of reasonable pluralism, but simply as a necessary political compromise.

The argument has shown that political liberalism requires utilitarians to “reform” their view to accommodate the fact of reasonable pluralism and the corresponding political/non-political distinction endorsed by Rawls. Of course, the political liberal cannot offer the utilitarian any philosophical arguments to support the proposed revision of utilitarianism; doing so would induce the kind of philosophical controversy the political liberal wishes to avoid. We have seen, however, that political liberalism *does* offer the utilitarian an incentive for reforming his view—the political liberal may employ the state’s coercive power to quell unreasonable comprehensive doctrines. As a matter of prudence, then, the utilitarian might accept the compromises imposed upon his view by political liberalism—he may become what I have called a reluctantly reformed utilitarian.

Now, this complicated argument clearly can be generalized to show that, according to Rawls, anyone holding a comprehensive doctrine which specifies a particular conception of political justice and which contains a view regarding how the political should be distinguished from the non-political is unreasonable.¹⁸ To avoid the

¹⁸ Heidi Hurd notes, “In Rawls’s sense, many of my best friends are unreasonable” (Hurd 1995, 821).

measures designed to “contain” their allegedly unreasonable doctrines, those holding such comprehensive views will “reform” their respective views to accommodate the fact of reasonable pluralism and the other elements of political liberalism; in so doing, however, they will in part abandon their doctrines. In many cases, then, this reform will be reluctant; that is, persons will accept the required revision of their view as a matter of political compromise.

A Mere Modus Vivendi

We may draw this internal critique to a close by arguing that the aforementioned implications of Rawls’s conceptions of political legitimacy and individual reasonableness make political liberalism “political in the wrong way” (Rawls 1993, 142). To begin, Rawls is rightly concerned with what he calls “the question of stability” (Rawls 1993, 140). It is commonly thought that in order for a society to exist securely over time, citizens must share some common beliefs, commitments, and ideals.¹⁹ However, no theorist who recognizes the fact of reasonable pluralism can accept this account of stability. According to political liberalism, a society based upon a shared moral, religious, or philosophical vision is *prima facie* oppressive.²⁰ Rawls hence insists, “A

¹⁹ See, for example, Aristotle: “For it is a peculiarity of humans... to have perception of good and bad, just and unjust, and the like; and community in these things makes a household and a *polis*” (*P* 1253a15). The Greek *koinonia*, which Simpson renders “community” connotes a state in which something is consciously shared or held in common.

²⁰ “A continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power” (Rawls 1993, 37).

constitutional regime does not require an agreement on a comprehensive doctrine: the basis of its social unity lies elsewhere” (Rawls 1993, 63). The political liberal therefore must give an account of the social unity required for political stability which does not involve a violation of the fact of reasonable pluralism. Rawls frames the question of stability thus:

[H]ow is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines? (Rawls 1993, 4)

One response to the question of stability is to suppose that the liberal principles may be adopted by citizens as a matter of what Rawls calls a *modus vivendi* (Rawls 1993, 145). That is, we imagine that persons holding diverse and incompatible comprehensive doctrines agree to a liberal politics as a matter of concession: such persons would endorse a liberal state as a second-best, less-than-ideal arrangement. Like Glaucon in Plato’s *Republic*, who articulates the view that the life of justice is “intermediate between the best and the worst” (Plato 1992, 359a), the *modus vivendi* liberal holds that liberalism is a passable compromise between the best political arrangement (i.e., a politics based solely upon his own comprehensive doctrine) and the worst (i.e., a politics based solely upon a comprehensive doctrine which is incompatible with his own).²¹ In this way, we imagine a liberal society whose stability is not based upon agreement upon a comprehensive view.

Rawls insists, however, that a political conception of justice “must not be political

²¹ To illustrate how a liberal political arrangement may arise out of a *modus vivendi* agreement, Rawls employs the example of the conflicting views of Catholics and Protestants in the sixteenth century. Although “Both faiths held that it was the duty of the ruler to uphold the true religion and to repress the spread of heresy and false doctrine,” the conflicting parties agreed to a policy of religious toleration (Rawls 1993, 148). I suppose Rawls’s historiography can be challenged, but I shall not take this up here. Rawls provides a footnote citing supporting documents: Rawls 1993, 148, n. 14.

in the wrong way”; that is,

It must not be political in the sense of merely specifying a workable compromise between known and existing interests, nor political in looking to the particular comprehensive doctrines known to exist in society and in then being tailored to gain their allegiance. (Rawls 1989a, 491)²²

It is clear, then, that modus vivendi liberalism would be political in the wrong way; the “form and content” of such a liberalism would be contingent upon “the existing balance of political power” among the comprehensive doctrines operative within society (Rawls 1993, 142). Consequently, the stability of modus vivendi liberalism is “contingent on circumstances remaining such as not to upset the fortunate convergence of interests” (Rawls 1993, 147). That is, a citizen’s commitment to political liberalism will persist only for as long as his favored comprehensive doctrine is too weak to dominate the others. Should the balance of power be upset and his own view gain ascendancy, he would swiftly abandon political liberalism.

It may seem that a liberal society based upon a modus vivendi agreement is unacceptable simply because it is unlikely to be long-lasting. However, even if we were to postulate a society in which the relative power among competing comprehensive doctrines was fixed and distributed such that a liberal arrangement could be long-lasting, Rawls would still be unsatisfied. As Kukathas and Pettit explain,

The stability Rawls is looking for . . . is not the fleeting stability that comes with sound institutional design to moderate the contest for power among competing interests. Stability is a condition in which there is deep-seated agreement on fundamental questions about the basic structure of society. (Kukathas and Pettit 1990, 142).

²² Cf. Rawls 1995, 389; 1996, xlvii.

According to Rawls, stability requires that “people who grow up under just institutions (as the political conception defines them) acquire a normally sufficient sense of justice so that they generally comply with those institutions” (Rawls 1993, 141). Rawls thus insists that if a liberal society is to be stable, its political conception of justice must be endorsed not as a “mere modus vivendi” but by what he calls an “overlapping consensus” (Rawls 1993, 147).

Where a liberal political arrangement is the focus of an overlapping consensus, the liberal principles are adopted by citizens from within their respective comprehensive doctrines; that is, each citizen sees liberalism as an appropriate manifestation in the political realm of his own comprehensive view. Rawls explains,

An overlapping consensus, therefore, is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests. All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides. (Rawls 1993, 147)

A liberal society which is the focus of an overlapping consensus is stable not simply because it is likely to be long-lasting, but because it is endorsed by its citizens in a way which gives them reason to uphold its principles of justice regardless of the balance of power among their respective comprehensive doctrines. That is, where there is an overlapping consensus, citizens endorse liberalism “for its own sake” and “on its own merits” and not as a second-best compromise. Citizens “will not withdraw their support of it should the relative strength of their view in society increase and eventually become dominant ... the political conception will still be supported regardless of shifts in the distribution of political power” (Rawls 1993, 148).

Political liberalism therefore constitutes an attempt to articulate a liberal conception of justice which can be the focus of an overlapping consensus. If the argument from the previous section is correct, however, political liberalism cannot be the focus of an overlapping consensus, for it cannot win endorsement from *within* the comprehensive doctrines likely to flourish in a constitutional democratic state. Recall our discussion of the utilitarian. We discovered that a regime of political liberalism *demand*s that utilitarians reform their view to accommodate the fact of reasonable pluralism. Utilitarians who refuse to do this will be considered unreasonable and therefore justly subject to political efforts to “contain” their doctrine. By contrast, those utilitarians who *do* comply with the demands of political liberalism thereby *revise* utilitarianism. Now, it might be the case that a given utilitarian, call him Smith, for some reason comes to accept the fact of reasonable pluralism and consequently adopts the view that I earlier called “reformed” utilitarianism. Smith can clearly join an overlapping consensus focused upon a political conception of justice. We may imagine another utilitarian, Jones, who, understanding the consequences of insisting on political justice as he sees it, reluctantly comes to tame his utilitarianism in the way which political liberalism demands. Although he may have tempered his view in the required way, Jones clearly *cannot* join an overlapping consensus focused upon a political conception of justice, for he endorses the political conception as a matter of compromise.

We may likewise imagine reformed and reluctantly reformed versions of all comprehensive doctrines: Kantianism, Catholicism, Marxism, Anarchism, and others. Persons who have reformed their views will join the overlapping consensus, whereas

those who have reluctantly reformed their views can accept the political conception of justice only as a *modus vivendi*. Therefore, if Rawls is to avoid a society whose conception of justice is “political in the wrong way,” he must ensure that citizens reform their views non-reluctantly. Can he do so?

The way to encourage the necessary reform is to attempt to *demonstrate* the fact of reasonable pluralism. Should Rawls develop a sound philosophical argument supporting reasonable pluralism, he will be able to *convince* his interlocutors that the parts of their comprehensive doctrines which are inconsistent with reasonable pluralism *ought* to be abandoned, and that their views *ought* to be revised accordingly.²³ Persons so convinced would be able to join the overlapping consensus on a political conception of justice, and thus political liberalism would not be political in the wrong way. However, this route is not open to Rawls because it requires him to engage in philosophical debate. Clearly, to propose a demonstration of the fact of reasonable pluralism is to plunge in to the depths of philosophy. More importantly, this strategy is self-defeating: a political liberalism based upon a philosophical proof of reasonable pluralism is not a *political* liberalism at all, but rather a variety of *comprehensive* liberalism.

If Rawls cannot deploy a philosophical argument to convince persons to reform their comprehensive views in the required ways, his only recourse is to appeal to political force. Indeed, as we have seen, this is what Rawls endorses; persons must reform their views to accommodate reasonable pluralism as a condition of reasonableness. Those who

²³ It could of course be argued that the very idea of a sound demonstration of the fact of reasonable pluralism is incoherent.

refuse to reform their comprehensive views are *ipso facto* unreasonable, and thus may be justly subject to coercive measures designed to “contain” their views. Persons will thus either deal with the consequences of being thought unreasonable, or will accept the demanded reform. However, one who accepts the demanded reform for strictly prudential reasons will do so *reluctantly*. As I have argued above, one reluctantly holding a reformed version of his comprehensive doctrine cannot join an overlapping consensus, but will endorse the political conception of justice proposed by Rawls on a modus vivendi basis. Therefore, unless Rawls is to offer a philosophical justification of his view, and thereby abandon a strictly *political* liberalism, he must resign himself to a modus vivendi liberalism. But, by Rawls’s own admission, a modus vivendi liberalism is unstable and political in the wrong way. I would add the stronger claim that a liberal arrangement which is political in the wrong way is not liberal at all: for its stability lies in the fact that it has power sufficient to force compliance. Rawls thus has turned out to be a Thrasymachus in liberal garb.

Conclusion

The argument has shown that Rawls has again adopted desiderata which are not mutually satisfiable. Rawls wants a “freestanding” political liberalism which is not “political in the wrong way.” My argument has demonstrated that a liberalism which truly abstains from philosophical controversy must be a modus vivendi liberalism, and therefore political in the wrong way. To make the point in a slightly different way, the

argument has shown that Rawls must engage in philosophical argument and controversy if he is to propose a view which can be the focus of an overlapping consensus.

Specifically, Rawls must propose an *argument* for reasonable pluralism and for the corresponding political / non-political distinction if he is to avoid being political in the wrong way. However, were he to supply the requisite philosophical accounts, he thereby would have surrendered the project of *political* liberalism—justice as fairness would again be a comprehensive liberal theory. This is to say, political liberalism is incoherent.

CHAPTER FIVE LIBERALISM WITHOUT FOUNDATIONS

Liberalism and the End of Philosophy

It was argued in the previous chapter that Rawls has not followed his own metaphilosophical prescription: political liberalism, as Rawls has formulated it, requires some deep philosophical demonstration of the fact of reasonable pluralism and the corresponding distinction between the political and non-political realms if it is to avoid being “political in the wrong way.” The argument also has shown that if Rawls were to supply the requisite philosophical accounts, his liberal theory would cease to be a *political* liberalism, and would be a *comprehensive* liberalism. I thus concluded that the very idea of a political liberalism—a freestanding account of liberal justice which can be the focus of an overlapping consensus of persons holding reasonable but incompatible comprehensive doctrines—is incoherent. What is a liberal to do?

Someone sympathetic to Rawls’s general approach may accept the conclusion of the foregoing chapter. One who approves of Rawls’s metaphilosophical aspiration to “leave aside philosophical controversies” and to “avoid philosophy’s longstanding problems” (Rawls 1985, 395) could argue that in drawing the distinction between a *modus vivendi* and an overlapping consensus, Rawls made the mistake of indulging in philosophical theorizing. Instead of insisting that liberalism be the focus of an overlapping consensus, Rawls should have accepted fully the logical implications of his view: the “absolute depth” of the “irreconcilable latent conflict” (Rawls 1993, xxvi)

among persons renders everything but a *modus vivendi* liberalism illegitimate. Rather than worrying about liberal theory being “political in the wrong way,” Rawls should have recognized that a liberal theory which truly “stays on the surface” can aspire to nothing greater than endorsement on *modus vivendi* grounds. Rawls should have stuck to his metaphilosophical guns and enthusiastically embraced an anti-philosophical, *modus vivendi* liberalism.

This is precisely Richard Rorty’s strategy. Keeping with the general “end of philosophy” campaign launched in his *Philosophy and the Mirror of Nature*, Rorty draws upon Rawls’s later work and offers a “thoroughly historicist and antiuniversalist” liberal theory which “can get along without philosophical presuppositions” (Rorty 1988, 179-180). He insists that contemporary democracy is best served by a liberal theory which seeks no “philosophical backup” (Rorty 1988, 178; Rorty 1989, 44). Of course, it could be argued that, like Rawls, Rorty employs philosophical claims in articulating his liberalism. However, unlike Rawls, Rorty’s liberalism is couched within a more general anti-philosophical endeavor which he calls “pragmatism.”¹ Rorty thus wholeheartedly embraces the crudely pragmatic strategy of “putting politics first and tailoring a philosophy to suit” (Rorty 1988, 178); he sees philosophy as *subordinate* to liberal democracy (Rorty 1989, 196). That is, whereas Rorty is willing to employ the philosophical premises necessary for the articulation of a liberal theory, he does not supply any philosophical argumentation in their support; he denies that philosophical

¹ The relation of Rorty’s pragmatism to the philosophical movement in American philosophy associated with Charles Peirce, William James, and John Dewey is debatable. For an interesting collection of essays addressing this issue, see Saatkamp, ed. 1995; see also Festenstein 1997.

claims require philosophical backup.

This is the essence of what Rorty calls “liberal ironism.” The liberal ironist maintains the standard philosophical and moral commitments of liberalism—individual liberty, toleration, neutrality, etc.—while renouncing the idea that these commitments are in any sense more worthy, valid, or demonstrable than any other rival political principles (Rorty 1989, 46). Rorty insists we should resist the urge to engage in philosophical debate and should embrace ironism instead. The goal of the liberal ironist is not to develop a philosophical argument for liberalism, but rather to “see one’s language, one’s conscience, one’s morality, and one’s highest hopes as contingent products” (Rorty 1989, 61) and nevertheless to remain “unflinchingly” (Rorty 1989, 46) committed to them.

With this strategy, Rorty has fully removed liberal politics from the arena of philosophical dispute. He therefore has proposed a more consistent and thoroughgoing version of the kind of account of liberalism to which Rawls aspired. By unabashedly affirming the “priority of democracy to philosophy,” Rorty avoids the contradictions latent within Rawls’s presentation. Rorty does not begin with the supposed fact of reasonable pluralism, and does not think it is possible for liberalism to be “political in the wrong way.” Therefore, Rorty cannot be attacked on philosophical grounds. One must rather challenge Rorty’s claim that an anti-philosophical, ironist liberalism best serves the interests of democracy.

In the present chapter, then, I shall first expose the thoroughly anti-philosophical character of Rorty’s articulation of liberalism. It will be shown that whereas Rorty often writes as though he is *arguing* for his variety of liberalism, he is better understood to be

only *preaching* or *promoting* a self-styled vision of liberal politics; it is in this sense that I think it makes sense to think of Rorty as a liberal *politician* rather than a liberal *philosopher*.² With the character of Rorty's work so understood, I shall then argue that Rorty's liberalism does not in fact serve democracy. I shall argue that Rorty's liberal ironism lacks the resources to respond effectively to certain political realities which currently threaten democracy. This argument will in part set the stage for the argument of the subsequent chapter in which I propose what I call a post-liberal theory of democracy.

Foundationalism and Antifoundationalism

In a series of characteristically provocative articles and book chapters, Rorty has promoted what he calls, among other things, an "antifoundationalist" liberalism.³ Although Rorty's distinction between antifoundationalist liberalism and foundationalist liberalism bears considerable likeness to the distinction between comprehensive liberalism and political liberalism, Rorty's characterization is worth attending to.

Believing that "political institutions are no better than their philosophical foundations" (Rorty 1988, 178), the foundationalist seeks a philosophical *proof* of liberalism. The foundationalist wants an argument which establishes the justice and superiority of liberalism from self-evident or otherwise unavoidable premises. As these

² Raz wonders whether Rawls has in his later work become a "politician," viz., someone for whom "the only thing that counts is success in commanding general agreement" (Raz 1990, 66f.). In the sense I intend, a politician is one who proffers persuasive and inspiring images rather than rational arguments and theories. Rorty embraces this role; see Rorty 1998a, ch. 1.

³ See Rorty 1988; 1989; and 1996 for the main articulations of his view.

premises must be such as to win the assent of antiliberals,⁴ they must not beg the question in the liberal's favor and therefore must appeal to something beyond existing liberal practices. That is, the case for liberalism must begin from some fact or principle that is *external* to liberalism; foundationalists typically appeal to supposed facts about "human nature," "rationality," or "morality" for the needed premises (Rorty 1996, 333).

Foundationalists thus try to establish the justice of liberalism by "driving" opponents "against an argumentative wall" (Rorty 1989, 53) of unavoidable first principles. According to the foundationalist, liberal society is "enfeebled" unless it can be shown to be based upon a liberal theory which follows from such principles (Rorty 1996, 335). The job of the liberal foundationalist, therefore, is to *refute* antiliberals by showing that the proposition "liberal democracy is the best kind of society" (or some such proposition) follows from a set of principles that they implicitly accept.

But Rorty insists that the attempt thus to "ground" liberalism is futile:

. . . there is no way to beat totalitarians in argument by appealing to shared common premises, and no point in pretending that a common human nature makes the totalitarians unconsciously hold such premises. (Rorty 1987, 42)

Furthermore, Rorty charges that foundationalist "attempts to ground a practice on something outside the practice will always be more or less disingenuous" (Rorty 1996, 333). The lesson we must learn from the failure of the Enlightenment is that "human beings are historical all the way through" (Rorty 1988, 176), that there are no external facts about "morality," "rationality," or "human nature" which could provide the

⁴ Rorty identifies many of the usual suspects: Nietzsche, Loyola (Rorty 1988, 187), racists (Rorty 1996, 335), Nazis, totalitarians (Rorty 1987, 42), and Marxists (Rorty 1989, 53).

foundationalist with his premises. Accordingly, any proposed foundation for liberalism will inevitably be “just a hypostatization of certain selected components” of existing liberal practice (Rorty 1996, 333-334). Rorty writes:

To say that a certain course of conduct is more in accord with human nature or our moral sense, or more rational, than another is just a fancy way of commending one’s own sense of what is most worth preserving in our present practices, of commending our own utopian vision of our community. (Rorty 1996, 334)

According to Rorty, we must abandon the foundationalist aspiration of a philosophical proof of liberalism, and embrace the thoroughgoing contingency of our language, our selves, and our society (Rorty 1989); we must give up the idea that liberals can and need to refute antiliberals.⁵ On the antifoundationalist view, political philosophy is not the search for foundations, but simply a contest between different “idealizations” of existing social practices. An idealization of a social practice is a vision of “the utopian future of our community” which “suck[s] up and concentrate[s] intuitions about the importance of certain components of our practices” (Rorty 1996, 333). Hence, Rorty describes the difference between Rawls’s left-leaning welfare liberalism and Robert Nozick’s libertarianism as the “competition between the two men’s idealizations” of “present practices in the liberal democracies.” On Rorty’s reading, the dispute between Rawls and Nozick comes to nothing more profound than this: “Rawls’s principles remind us of what we do in our appellate courts, whereas Nozick’s remind us of what we do in our marketplaces.” The difference between the welfare state and the entitlement theory is

⁵ For Rorty, it is enough to say of critics of liberalism such as Nietzsche and Loyola that they are “mad,” “crazy” (Rorty 1988, 187); he advises liberals to simply “refuse to argue” with them (Rorty 1988, 190).

simply “a matter of playing certain of our practices against others” (Rorty 1996, 333).

Rejecting the idea that there is anything external to our existing practices against which they may be evaluated, the liberal antifoundationalist offers a “circular justification” for his idealization: he “makes one feature of our culture look good by citing still another.” and compares our culture with others “by reference to our own standards” (Rorty 1989, 57). By promoting a particular idealization of his community, the antifoundationalist does not provide a foundation (albeit a relativist one) for the practices he idealizes, he is not supplying “philosophical backup” for those aspects of his community that he most admires. Rather, he is “putting politics first and tailoring a philosophy to suit” (Rorty 1988, 178).

In this way, liberal democracy is prior to philosophy for the antifoundationalist. The antifoundationalist recognizes that a circular justification of an “idealization” of liberalism is “the only sort of justification we are going to get” (Rorty 1989, 57). Rorty does not lament this, however. He insists that the purposes of liberal democracy are *better served* by the antifoundationalist strategy: “The search for foundations of [liberal] democracy” is a “distraction from debates between competing idealizations of current practices” (Rorty 1996, 335).

The Liberal Philosopher and the Liberal Politician

Rorty’s critics have charged that his account is relativist, irrationalist, emotivist,

ethnocentric, self-defeating, and non-progressive.⁶ Although these charges are justified, Rorty is not bothered by them; he insists that such labels will offend only those who are still practicing the kind of philosophy he has abandoned. To the charge that his liberalism is irrationalist and emotivist, Rorty responds that only those who accept an archaic moral psychology—viz., one that “distinguishes between reason and the passions”—could make such a charge (Rorty 1996, 334). Similarly, to the suggestion that his account is ethnocentric, Rorty responds that it is because “the philosophical tradition has accustomed us to the idea that anybody who is willing to listen to reason—to hear out all arguments—can be brought around to the truth” that one worries about “ethnocentrism” in political philosophy (Rorty 1988, 188).

A survey of Rorty’s replies to his critics causes one to wonder whether it is *possible* to offer a criticism that Rorty will have to take seriously. One gets the sense that Rorty has established for himself an unassailable vantage point from which to offer his views, a tactical position from which any objection will be ruled out of order for being philosophical and therefore question-begging. Perhaps it is precisely this feature of Rorty’s view that is most objectionable. One could pose an argument like the following:

1. According to Rorty, philosophical objections to a view are not grounds for abandoning or revising the view, since the presuppositions which make them “philosophical” objections have to be abandoned.
2. According to Rorty, any objection to Rorty’s view is *ipso facto* philosophical.
3. Therefore, Rorty’s views fail the verifiability condition, and are vacuous.

⁶ See for example, Stout, 230; West 1985; West 1989, 206; Bernstein, 541; Teichman; and McCarthy.

Rorty's response to this obvious objection is easy to anticipate. Verifiability criteria go by the board once we accept Quine's holistic response to the second dogma of empiricism. Therefore, the above objection bites only if one persists in doing the kind of philosophy that Rorty thinks is no longer worth doing. The objection is thus defused and promptly disposed of.

A different kind of argumentative strategy is required. Perhaps we must first attempt to understand the *kind* of case Rorty is making, the *status* of his claims. The discussion has indicated that Rorty is committed to three central ideas:

- (I) One cannot achieve a proof of liberalism of the sort the foundationalist wants.
- (II) Once the foundationalist project is abandoned, all that is left for political philosophy is the antifoundationalist enterprise of offering "idealizations" of current practices.
- (III) Democracy is best served by antifoundationalism.

We begin by noting that it is unclear whether anyone today really thinks that a foundationalist proof of the kind Rorty describes is possible.⁷ Of course, Rorty will take this point to count as one more consideration that supports his picture of radical contingency. However, what Rorty has not explicitly shown is that the only alternative to the Enlightenment dream of a deductive political science is his brand of antifoundationalism. Why should we think that Rorty's distinction between "foundations" and "idealizations" forms an exclusive disjunction? That is, why should

⁷ Aristotle maintained that "precision cannot be expected in the treatment of all subjects alike. . . a well-schooled man is one who searches for that degree of precision in each kind of study which the nature of the subject at hand admits"; in dealing with politics, "we must be satisfied to indicate the truth with a rough and general sketch" (*NE* 1094b12-25).

we accept (II)?

Rorty's principle (II) is derived from the consideration that.

It is not clear how to argue for the claim that human beings ought to be liberals rather than fanatics without being driven back on a theory of human nature.⁸
(Rorty 1988, 190)

According to Rorty, every foundationalist argument will by definition require something like a theory of human nature for its "ground." Again, in order to serve the foundationalist's dialectical purposes, this theory must be external to and independent of any existing social practices; the "ground" must be ahistorical, non-contingent, and metaphysical.

The problem with being "driven back" upon a theory of human nature is that.

Humanity no more has a nature . . . independent of the accidents of history, than life has a nature independent of the accidents of biological evolution. (Rorty 1996, 334)

There is ultimately no "argumentative wall" upon which to rely for a proof of democracy. any proposed wall will turn out to be "a painted backdrop, one more work of man, one more bit of cultural stage-setting" (Rorty 1989, 53). Reconstructing a bit, Rorty's position seems to run as follows:

1. The attempt to get beyond idealizations to foundations will necessarily evoke some theory of human nature.
2. A theory of "human nature" as something distinct from existing social conditions is incoherent because there is no "human nature" in this external sense.

⁸ Rorty here elects to use "human nature" as an example of the kind of external fact to which a foundationalist is likely to appeal. As far as Rorty is concerned, one could replace "human nature" with "reason" or "morality" to the same effect. In the analysis that follows I shall keep to "human nature" for the sake of clarity.

3. As there is no point external to the contingencies of our society from which to launch a political philosophy, all political philosophy can be is the exercise of promoting various idealizations of current social practices.
4. Therefore there are only idealizations and no foundations.

The force of this line of reasoning derives entirely from premise 2. Why should one accept this premise? Once it is noted that Rorty's support for premise 2 is his reading of the philosophical implications of Darwin (Rorty 1996, 334), the argument collapses. Rorty's second premise rests upon a controversial theory about theories of human nature that is based upon a controversial reading of the philosophical implications of the theory of evolution. One might accuse Rorty of using his controversial reading of Darwin to provide the ground for his antifoundationalist political philosophy; that is, one might accuse Rorty of arguing:

1. Darwin has shown us that life does not have a nature independent of "the accidents of biological evolution."
2. "Human history is simply biological evolution continued by other means" (Rorty 1996, 334).
3. Therefore, there is no human nature apart from "the accidents of history": human nature is contingent.
4. Therefore, any argument which appeals to some non-contingent sense of "human nature" is incoherent.
5. By definition, all foundationalist arguments appeal to a non-contingent sense of "human nature."
6. Therefore, every foundationalist argument is incoherent and thus unacceptable.

Here, the crucial premise is the intermediary conclusion 3, which supposedly follows from premises 1 and 2. However, premise 2 involves a speculative, perhaps esoteric, extrapolation from Darwin. It seems that Rorty has therefore failed to "get along without philosophical presuppositions" (Rorty 1988, 179); his argument rests upon his own philosophical account of the metaphysical implications of the theory of evolution.

Rorty will undoubtedly resist this reconstruction of his position. He will deny that his antifoundationalist political philosophy rests upon a foundationalist argument from Darwinian biology. In anticipation of the kind of criticism I have raised, Rorty writes:

I am not . . . saying that the . . . account of language and the . . . account of conscience and selfhood which I have sketched provide “philosophical foundations of democracy.” For the notion of a “philosophical foundation” goes when the vocabulary of Enlightenment rationalism goes. (Rorty 1989, 44)

However, it is not enough for Rorty to simply *announce* that he has not employed a foundation. It is not enough for him to simply drop the *vocabulary* associated with foundationalism or “Enlightenment rationalism,” for the issue is not simply *terminological*. To deflect the charge that he has simply placed the Enlightenment wine in Postmodern Ironist bottles, Rorty rather must show that his reading of Darwin does not *function* as a foundational premise in his argument against foundationalist theories of liberalism. That is, he must show that there is a way to run his argument without the implication from premises 1 and 2 to premise 3. He does not do this.

Moreover, it will not do for Rorty to appeal to the language of the later Rawls, as he often does. Rorty cannot claim to be following Rawls’s program of drawing “solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime . . .” (Rawls 1985, 390).⁹ The claim that “Human history is simply biological evolution continued by other means” (Rorty 1996, 334) is, as far as I can tell, *not* a “basic intuitive idea” operative within our political culture.

I suspect Rorty will respond that he has not underhandedly inserted a

⁹ For Rorty’s gloss on this passage in Rawls, see Rorty 1988, 180.

philosophical foundation into his argument because he has not posed an “argument” at all; he may claim that the idea of an “argument” is yet another fabrication of the Enlightenment which must be jettisoned. Rorty may insist that he has not *argued* for any antifoundationalist conclusion, but rather has simply tried to *persuade* us that,

For purposes of social theory, we can put aside such topics as an ahistorical human nature, the nature of selfhood, the motive of moral behavior, and the meaning of human life. We treat these as irrelevant to politics as Jefferson thought questions about the Trinity and about transubstantiation. (Rorty 1988, 180)

That is, Rorty may respond to my argument by simply changing the subject (Rorty 1989, 44); he might shift from what seem to be philosophical arguments about the impossibility of escaping contingency to pragmatic talk about how he thinks we might improve politics. In this way, his antifoundationalism consists in nothing more than the attempt to “deflect attention from all questions other than ‘what sort of compromise might we be able to freely agree upon?’” (Rorty 1998b, 120). Rorty’s liberalism is thus not properly a liberal *theory* at all, but rather a plea for doing politics without engaging what Bruce Ackerman has called “Big Questions” (Ackerman, 361). Antifoundationalist liberalism is thus anti-philosophical liberalism; accordingly, Rorty is not proposing a liberal philosophy, but proffering liberal propaganda. To make the same point in a less rhetorical way, Rorty aims to *promote* and *inspire* liberalism among those already well-disposed to it rather than *defend* or *prove* it to antiliberals.

Democracy without Philosophy

Rorty insists that “democracies are now in a position to throw away some of the ladders used in their own construction” (Rorty 1989, 194). Among the ladders to be discarded is the idea that liberal democratic politics is “subject to the jurisdiction of a philosophical tribunal” (Rorty 1989, 196-197), that liberalism requires “philosophical backup” (Rorty 1988, 178). Is it true that democracy can “get along without philosophical presuppositions”? Is the attempt to develop and articulate philosophical arguments in favor of democracy merely a “distraction” (Rorty 1996, 335)?

As I have shown, a philosophical critique of Rorty’s antifoundationalism will be met by Rorty with a charge of question-begging: the very idea of a philosophical critique supposes that there is something outside of our own contingent vocabularies and practices against which we may evaluate those vocabularies and practices, and it is precisely this kind of supposition which Rorty is challenging. How, then, should one respond to Rorty? I believe the right strategy is to take up his claim that democracy is best served by a liberal antifoundationalist vocabulary and self-image. I want to suggest that this view is insufficient to deal with certain political realities which currently threaten contemporary democracy.

According to Rorty, to be an antifoundationalist is to understand philosophical debates about democracy as dialectical competitions between different “idealizations” of existing social practices. As was discussed earlier, Rorty thinks of the difference between Rawls and Nozick in these terms. One may agree with Rorty that the dispute between Rawls and Nozick really is just a dispute about how we should prioritize our existing

practices. We could, with Rorty, borrow a term from Daniel Dennett and say that Nozick and Rawls employ different “intuition pumps” (Rorty 1996, 333).

However, Rorty’s antifoundationalist picture of alternative “idealizations” makes sense *only if* we restrict our analyses to congenial disputes between professional academics such as Rawls and Nozick. The picture breaks down when we consider the more fundamental disputes which arise outside the academy. Consider, for example, Stalin’s claim that his brutal regime is democratic “in a higher sense.” Does it make sense to say that Stalinism is just another “idealization” of democracy? The obvious response, one that Rorty apparently would endorse (Rorty 1998a, 57-58), is that Stalinist “democracy” is not democracy at all. However, it is unclear how Rorty can make the distinction between “real” democracy and tyranny disguised as democracy while remaining faithful to his antifoundationalism.

Perhaps Rorty would like to treat Stalin as he would treat Nietzsche and Loyola. That is, perhaps he will avoid having to distinguish “real” democracy from tyranny by simply dismissing Stalin as “mad.” Of course, on Rorty’s view, to call Stalin “mad” is not to render a psychological diagnosis, but simply to say that “there is no way to see [him] as [a] fellow [citizen] of our constitutional democracy”: Rorty thinks Stalin is “crazy” because “the limits of sanity are set by what *we* can take seriously.” These limits are, of course, “determined by our upbringing, our historical situation” (Rorty 1988, 187-188).

While consistent with his antifoundationalism, this “ethnocentric” (Rorty 1988, 188) strategy founders once we consider cases of *fellow citizens* who promote

“idealizations” of our democracy which are similar to those proffered by Stalin, or Hitler, or any of Rorty’s other paradigmatic madmen. Members of white-supremacist or other racist organizations certainly promote a certain vision of the “utopian future of our community” (Rorty 1996, 333), a particular image of what is best in our culture. We cannot treat racists as “mad” *and* maintain that “the limits of sanity” are set by the contingencies of community, for, in this case, the “madmen” are *members* of my community; the KKK is as much a part of my liberal inheritance as the ACLU, the NAACP, and the AFL-CIO. Rorty must either introduce an *ad hoc* qualification to the terms “ethnocentrism,” “idealization,” and “social practice,” such that racists will necessarily not count as “one of us,” or he will have to concede that the modern democratic state is home to persons who promote views that differ substantially from his own.

To make this point in a more general way, Rorty must acknowledge that when he writes sentences like,

For purposes of social theory, we can put aside such topics as an ahistorical human nature, the nature of selfhood, the motive of moral behavior, and the meaning of human life. (Rorty 1988, 180)

the pronoun “we” actually refers to a very small sector of the democratic community. In fact, citizens of the United States very often think that Big Questions matter for politics, and many of our commitments and actions are determined by the answers we favor.

Given these political realities, we simply cannot afford to treat philosophical disputes about politics in the way that Rorty recommends: there is much more at stake in some disputes than “idealizations.” We must face the fact that, in the interests of

allowing the kind of open discussion which is requisite to self-government, a democratic regime allows an extremely wide variety of political organizations to operate. Some of these agencies aim to use democracy to undermine democracy. That is, some use the openness of democracy to propagate their own answers to Big Questions which are not only false, but inimical to democracy. On Rorty's view we would have to treat these as alternative "intuition pumps" and hope for the best. Meanwhile, as Seyla Benhabib notes, there is evidence which suggests that in the United States neofascist organizations are emerging "on a scale unprecedented since the end of World War II" (Benhabib, 3).¹⁰

Rorty surely is aware of these threats. However, his antifoundationalism leaves his political theory impotent to respond; he suggests that, when dealing with opponents of liberal democracy, we "ask [them] to *privatize* their projects" (Rorty 1989, 197). Of course, Rorty acknowledges that he can offer "nothing to back up such a request" (Rorty 1989, 197). And what shall we do when they refuse? What reason shall we give when they ask us why they should treat their favored answer to some Big Question as a "private" matter? Certainly, antiliberals will see Rorty's distinction between "public" and "private" projects to be but one more aspect of the political system they reject.

Since Rorty has surrendered the assumption that "anybody who is willing to listen to reason—to hear out all arguments—can be brought around to the truth" (Rorty 1988, 188), he insists that "there is no way to beat [e.g.] totalitarians in argument" (Rorty 1987, 42). The only recourse of the antifoundationalist liberal democrat is force. Once again,

¹⁰ Benhabib cites Umberto Eco, "Eternal Fascism" (*New York Review of Books* 42, no. 11 (June 22, 1995): 12-16).

the liberal who wants to “stay on the surface” of philosophy has turned out to be a polite Thrasymachus.

Perhaps it will be objected here that Rorty is correct: there really is no way to beat totalitarians in argument because a consistent totalitarian will simply *refuse* to take argument seriously.¹¹ However, Rorty is not merely acknowledging the obvious point that at some point reasoned discussion fails and we must fight tyrants, but rather he is suggesting that we entirely give up the project of giving *reasons* or *arguments* why democracy is better than tyranny. Whereas it may seem clear that arguing with a totalitarian is a waste of time, it is not immediately clear that *all* attempts to develop a philosophical account of democracy are a “distraction” (Rorty 1996, 335).

The need for a philosophical account of democracy is especially clear when we turn attention away from the aspiring tyrant and toward our fellow citizens. Lamentations over the marked decline in recent decades in political participation, political competence, and general forms of civic activity are by now almost banal.¹² It seems that theorists across the political spectrum are agreed that democracy in the United States is faltering. As they are well-known, I will not here rehearse the social-scientific data regarding shrinking voter turnout, voter competence, civility, and trust of government. Instead, we

¹¹ In the *Republic*, Thrasymachus is *not* a consistent totalitarian since he opts to take seriously Socrates’s distinction between a ruler believing that policy *x* is to his advantage and its really being so (339a-d). The consistent totalitarian in the *Republic* is Cleitophon who advises Thrasymachus to not allow Socrates’s distinction (340b), and then remains silent for the remainder of the *Republic*.

¹² Much of the current literature stems from Robert Putnam’s “Bowling Alone” article (Putnam 1995) and related work on the concept of “social capital” (e.g., Putnam 1993). See also Putnam 2000, Elshstain 1995a, Page 1996, Barber 1998a, Barber 1998b, Iyengar 1991, Walzer 1999, Dionne 1991, Beem 1999, and the essays collected in Elkin and Soltan, eds. 1999.

must ask whether Rorty's antifoundationalist liberalism provides sufficient resources for dealing with these disturbing trends.

Maintaining that "the idea that liberal societies are bound together by philosophical beliefs" is "ludicrous" (Rorty 1989, 86), Rorty thinks that preaching the gospel of "social hope" which he associates with, among others, Walt Whitman and John Dewey will inspire the attitudes, the "national pride," necessary for citizenship (Rorty 1998a, ch. 1). However, if it is ludicrous to suppose philosophical arguments can revitalize democracy, I see no reason to suppose that it is not equally ludicrous that a society should find a common source of democratic inspiration in the writings of Whitman and Dewey.

Rorty's suggestion will seem even more unsatisfying when it is acknowledged that antidemocrats *do* propose philosophical arguments in favor of their views, and, for better or worse, ours is a culture that is still attached to the idea that arguments matter. Similarly, citizens who are politically disengaged are not simply "uninspired," but often believe that they have *good reason* to ignore politics. One could therefore turn Rorty's own vocabulary against him by pointing out that one of the things "we" liberal democrats tend to think is that philosophical arguments matter for politics. Since the proponents of antidemocratic ideas and attitudes employ arguments in support of their views, democrats must attempt to respond in kind. I suspect if we follow Rorty's advice to simply "refuse to argue" with opponents of democracy (Rorty 1988, 190), we shall encourage and strengthen the antidemocratic tendencies in roughly the way Mill describes in *On Liberty*. Echoing Mill, Robert Dahl raises a similar concern:

[L]et us imagine a country with democratic political institutions in which intellectual elites are in the main convinced that democracy *cannot* be justified on reasonable and plausible grounds. The prevailing view among them, let us suppose, is that no intellectually respectable reasons exist for believing that a democratic system is better than a nondemocratic alternative. As long as the political, social, and economic institutions of the country are performing adequately from the perspective of the general population, perhaps most people will simply ignore the querulous dissent of their intellectuals; and political leaders and influential opinion makers may in the main go along with the generally favorable popular view. But in times of serious crisis—and all countries go through times of serious crisis—those who try to defend democracy will find the going much harder, while those who promote nondemocratic alternatives will find it that much easier. (Dahl 1996, 338)

I share Dahl's worry that Rorty's strategy of simply dismissing or bullying democracy's enemies and challengers rather than attempting to engage them in a more or less philosophical way will weaken democracy in times of crisis. I add to this the further suspicion that an antifoundationalist approach to democracy may actually help to precipitate such crisis.

There is a further and related difficulty. According to the antifoundationalist, liberalism has been given its best and final articulation. It is for this reason that there is no longer any need to engage in philosophical debate over political essentials: liberal society has already had "the last *conceptual* revolution it needs" (Rorty 1989, 64). Consequently, the only job left for the liberal political philosopher is to help inspire future generations; the *philosophical* work is complete. Insofar as it takes all the philosophical questions to have been adequately answered, Rorty's liberalism is non-progressive: it dismisses out of hand further philosophical attempts to deepen or improve upon our current understandings of basic political concepts such as democracy, liberty, equality, community, and freedom. In this way, the antifoundationalist liberal closes off any

further discussion of political philosophy. However, this strategy makes little sense in light of the aforementioned concerns with dwindling political and civic participation. Given the condition of our current political and social scene, it hardly seems the time to refuse to explore alternative possibilities.

Conclusion

Rorty has carried Rawls's metaphilosophical program of "staying on the surface" to its full conclusion. A noncomprehensive liberalism must be an antifoundationalist liberalism. In Rorty's work, the tension internal to liberal theory between philosophy and neutrality has been relieved by abandoning philosophy entirely. The antifoundationalist liberal cannot propose philosophical arguments in favor of liberal democracy, but can only attempt to inspire liberal democratic attitudes. In this sense, the antifoundationalist liberal abandons liberal philosophy and turns to liberal propaganda. But where philosophy is replaced with propaganda, democracy is endangered. The antifoundationalist liberal can offer to his fellow citizens no reason to participate in politics, and can give no reason *why* one should favor liberal democracy over its alternatives. As Dahl has noted, this feature of the antifoundationalist position is likely to help empower the agenda of those promoting various forms of antidemocracy.

In the last analysis, the tension endemic to liberalism between deep philosophical foundations and the aspiration to pluralism, diversity, neutrality, and tolerance remains unresolved. Liberals must choose between a comprehensive theory which implies or

favors some particular comprehensive doctrines and therefore compromises their commitment to tolerance and neutrality or a non-comprehensive theory which disposes of all pretensions to philosophy but thereby renders the liberal's own commitments contingent, accidental, and, ultimately, impotent. As modern democratic states become increasingly more diverse, comprehensive liberal theorists wanting to accommodate pluralism will find themselves driven in the direction of an antifoundationalist view. However, it seems that, as Michael Sandel has argued, an antifoundationalist liberalism "cannot sustain the kind of political community and civic engagement that liberty requires" (Sandel 1996, 24). As an antifoundationalist liberal cannot supply *reasons* why democratic self-government and participation is a good, his political view "soon generates its own disenchantment" (Sandel 1996, 24).

CONCLUSION

GROUNDWORK FOR A POST-LIBERAL THEORY OF DEMOCRACY

My objectives throughout this study thus far have been decidedly critical. Seeking to diagnose a problem facing contemporary democratic societies, I have found that liberalism, understood as the inertial frame of contemporary democratic politics, provides insufficient resources to sustain a healthy democracy under conditions of pluralism. If we continue to conduct our political thinking in liberal terms, we should expect continued and perhaps increasing nonparticipation, separateness, alienation, intolerance, and distrust among citizens. It has seemed to several recent theorists that these difficulties are best addressed by an antiliberal political theory. Such a theory would place the good prior to the right, it would emphasize the role of constitutive communal attachments and shared values for citizenship. As was suggested in the first chapter of the present study, although they accurately target the difficulties with liberalism, the antiliberal proposals face difficulties of their own. Specifically, antiliberal efforts to correct the problematic aspects of liberal theory often force the antiliberal theorist to endorse illiberal political policies. Liberals are right to worry that antiliberal theory invites an unacceptable politics. Addressing Sandel's call for a civic republican politics of "settled roots and established traditions," Amy Gutmann writes,

The common good of the Puritans of seventeenth-century Salem commanded them to hunt witches; the common good of the Moral Majority of the twentieth century commands them not to tolerate homosexuals. The enforcement of liberal rights, not the absence of settled community, stands between the Moral Majority and the contemporary equivalent of witch-hunting. (Gutmann 1985, 132-133)

The proposals currently on offer confront us with a choice between a comprehensive liberalism deeply rooted in philosophical foundations which cannot with consistency uphold the Principle of Neutrality, a variety of noncomprehensive liberalisms which can offer citizens no reason to prefer liberal democracy to tyranny, and several antiliberal proposals which cannot avoid majoritarianism and illiberality. None of these options is acceptable. Where, then, are we to go from here? An acceptable political theory must have resources sufficient to provide a plausible account of democratic citizenship which does not raise worries of majoritarianism and community tyranny, it must avoid both the hyper-individualism of liberal proposals and the moral communalism of the antiliberal alternatives; in short, a viable theory must articulate a view of citizenship which does not derive from or presume moral homogeneity among citizens.

In this final chapter, then, I aim to lay the foundations for what I call a "post-liberal" theory of democracy. I believe that this theory can meet the criteria identified above. Like liberalism and democratic antiliberalism, the view I shall develop is a "framework" of democratic politics, a way of understanding the philosophical ground of the familiar features and institutions of contemporary democracy such as free elections, representative bodies, a free press, and the like. The basic legitimacy of democracy is therefore presupposed rather than demonstrated. As this theory aims to be thoroughly deliberative, it cannot be developed fully by a single theorist, and perhaps it cannot be developed "fully" at all; its continuing development is the work of a deliberating democratic community. What follows is hence more of a proposal for further work than a complete democratic theory; there is without a doubt more work to be done.

Liberalism, Guardianship, and Democracy

As I seek to lay the groundwork for a post-liberal theory of democracy, I begin with a famous challenge to democracy. Early in Book VI of Plato's *Republic*, Socrates presents a powerful challenge to democracy in the form of an image of an imperiled ship (488a-489d).¹ The ship owner—here representative of the *demos*—is at once the most powerful force on board but also the most easily confused. Surrounded by sailors eager to gain control of the ship, the owner is constantly bombarded with suggestions, advice, and exhortations designed to persuade him to relinquish the helm. The owner is eventually stupefied and bewildered by these pleas and turns his rudder over to the sailors. As the sailors know nothing about navigation and seek only private advantage, each wants to take the ship in a different direction. The sailors therefore compete with each other for control; mayhem ensues, leaving the ship without a coherent plan. Meanwhile, the “true captain”—the analogue of the philosopher—who does not seek control of the ship, but wants only to understand “all that pertains to his craft” (488d) is derided, censured, and thought a “useless stargazer” (489c) by everyone on board. Surely, a ship directed by those who know nothing of navigation cannot hope to find its proper port.

The lesson of the story is that “The best among the philosophers are useless to the majority” (489b). Since a democratic city is one which is ruled by the many (557a),² the

¹ Parenthetical references to Stephanus pages will refer to the *Republic* (in Plato 1997) unless otherwise indicated. The image of a ship is also found in *Statesman* (302a) and the *Euthydemus* (291d). A similar argument is raised in the *Protagoras* (319b-320c).

² In Book VIII of the *Republic* (555b ff.), democracy arises out of a war between rich and poor in an oligarchy: when the poor (the many) win the war, democracy is instated.

philosophers, the true knowers who are few in number, have no place in a democracy. As the many are “hard of hearing,” “short-sighted,” and intellectually “deficient” (488b); they are hence easily swayed by the rhetoric of sophists and politicians who seek political power for private advantage and who know nothing about justice. The democratic city is destined to founder.³

Socrates is thus wary of democracy. A city which has no concern for knowledge and wisdom cannot be just and stable. Socrates accepts the premise that it is the purpose of a just city to promote the good life among persons. As the task of promoting the good life requires knowledge of what is good, political power in the just city should be distributed according to one’s knowledge about goodness. Since the knowledge which philosophy pursues is knowledge of what is good, political power properly belongs to the philosopher alone.⁴ In a just city, then, political power is invested entirely in a special class which Socrates calls the “guardians” (412c ff.). Consequently, democracy is among the worst forms of political association;⁵ as it invests power in the foolish many, it is unable to achieve the purpose of politics and is therefore unjust.

Borrowing a term from Robert Dahl, we may refer to Socrates’ challenge to democracy as the “Guardianship Argument.”⁶ Updating the vocabulary a bit, we can pose

³ In the *Republic*, the democratic man devolves into a tyrant and the democratic city generates tyranny (565d ff.; 571a ff.).

⁴ Hence Socrates’ plea for philosopher kings: “Until philosophers rule as kings or those now called kings and leading men genuinely and adequately philosophize. . . cities will have no rest from evils . . . nor, I think, will the human race” (473c-d).

⁵ In the *Republic*, democracy is superior only to the very worst constitution, namely, tyranny.

⁶ On “guardianship,” see Dahl 1989, chs. 4 and 5.

the argument as follows:

The Guardianship Argument

1. The just city promotes the good life among its citizens.
2. There is a special kind of knowledge, which we shall call "political knowledge," which gives its possessor the knowledge necessary to the effective promotion of the good life among citizens. A person who has this kind of knowledge possesses "political wisdom."
3. THEREFORE, political power ought to be distributed according to political wisdom.
4. Political wisdom is not equally distributed among persons; rather, some are politically wise and some are not.
5. THEREFORE, political power should not be equally distributed; those possessing political wisdom should wield the political power whereas those lacking political wisdom should have none.

That this line of reasoning constitutes an objection to democracy should be clear: insofar as it establishes that political power should not be distributed among citizens equally, but invested entirely in a class of "guardians," it recommends an antidemocratic political arrangement.⁷ Although the Guardianship Argument presumes many substantive philosophical principles, it is for our purposes especially important to focus on two key claims presumed by the argument.⁸ We may call the first the "Political Wisdom Principle." It has two parts:

⁷ There are variations of this argument which claim to be "democratic." Schumpeter and Lippmann have posed the "elitist" conception of democracy. On this view, "we define the democratic method as that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote" (Schumpeter 1950, 83). See also Lippmann 1922.

⁸ The following discussion draws from Estlund 1993.

Political Wisdom Principle. (1) Normative claims about politics are cognitive, and (2) knowledge of the truth values of normative political claims (i. e., political wisdom) is possible.

We shall refer to the first part of the Political Wisdom Principle as the “cognitivity claim,” and to the second part as the “knowability claim.” Additionally, the Guardianship Argument rests upon a second principle which we may call the “Epistocracy Principle”:⁹

Epistocracy Principle. Political wisdom entitles the politically wise person to a share of political power directly proportionate to his wisdom. Conversely, those lacking political wisdom should lack political power.

One can understand the tradition of liberal-democratic philosophy as a series of attempts to respond to the Guardianship Argument by rejecting at least one of the principles identified above. The varieties of comprehensive liberalism, with the exception of Mill’s theory, deny the Epistocracy Principle.¹⁰ The liberal idea of natural political rights, as employed by Locke, Kant, and the early Rawls, establishes that political participation is not contingent upon individual political wisdom. If it is true that each of us “possesses an inviolability . . . that even the welfare of society as a whole cannot override” (Rawls 1999a, 3), then political rights, the formal statements of individual inviolability, are what Ronald Dworkin famously has called “trump cards” (Dworkin 1978, 198). If each person has rights, and if these rights entitle persons to equal treatment and political participation, then the omniscience of Socrates’ ideal philosopher does not justify philosophical kingship.

⁹ I borrow the term “epistocracy” from Estlund. See Estlund 1997, 183.

¹⁰ Mill endorses the Epistocracy Principle in his *Representative Government* (Mill 1861b, 335-337).

To recall the results of the foregoing study, the force of this kind of response to the Guardianship Argument rests upon the strength of the philosophical theory of individual rights it presupposes. As we have seen, the project of grounding liberalism in a comprehensive philosophical theory is fraught with difficulty; any robust philosophical account of individual rights will presuppose, imply, or favor what Rawls has called in his later work a “comprehensive doctrine” about which well intentioned and sincere persons may reasonably disagree. However, one of the basic commitments of liberalism is that the state should be neutral and impartial with regard to deep philosophical theories concerning human nature and the good life. Therefore, it appears that the project of comprehensive liberalism, the project of providing a deep philosophical theory to ground a politics that attempts to eschew deep philosophical commitments, may be, as one critic has said, an “oxymoronic conundrum” (Barber 1998b, 3).

In response to the failure of the comprehensive project, non-comprehensive theories have targeted the Political Wisdom Principle. Specifically, the political liberal abstains from comment on the cognitivity claim (Rawls 1993, 128) and denies the knowability claim.¹¹ This denial is, after all, implied by the fact of reasonable pluralism. If it is not the case that all rational roads lead to a single and specific moral doctrine, then it is the case that nobody can *know* which among the rational moral doctrines are true. If nobody can *know* which (or if any) moral doctrines are true, then nobody is politically wise in the sense in which the Guardianship Argument requires. The political liberal

¹¹ On the idea of liberal “abstinence” from philosophical commitment, see also Larmore 1987, ch. 4; Dworkin 1988, 196ff.; Nagel 1987; Nagel 1991, ch. 14; Raz 1990; Hampton 1989; Hampton 1993; and Estlund 1998.

concludes that philosopher kings cannot exist because even a fully rational human cannot have the kind of knowledge Socrates envisions.

By contrast, the antifoundationalist liberal explicitly denies both parts of the Political Wisdom Principle. According to the antifoundationalist, political claims, like every other kind of claim, are not cognitive. As Rorty has put it, when “philosophy goes antifoundationalist . . . the question, ‘Is there any evidence for *p*?’ gets replaced by the question, ‘Is there any way of getting a consensus on what would count in favor of *p*?’” (Rorty 1997, 155). Since normative political claims have no truth value, there is no political knowledge, and therefore no political wisdom. Philosopher kings cannot exist because the kind of knowledge they are supposed to have does not exist.

According to a familiar historical narrative, liberalism was developed as a revolutionary response to arguments supporting the legitimacy of aristocratic and monarchic regimes (Dryzek 2000, 20); historically these antidemocratic arguments followed roughly the line of reasoning represented in the Guardianship Argument. Traditionally, it has been thought that unless at least one of these principles be denied, the Guardianship Argument will succeed and democracy will have to be abandoned.¹² Democratic politics hence was divorced from the epistemological and moral concerns presupposed by Socrates. However, on the view I wish to suggest, this sundering of democracy from epistemology and political wisdom makes sense only under the kinds of historical circumstances within which liberalism was first proposed but which no longer obtain. When entrenched social homogeneity could be presupposed, there was no need

¹² See Estlund’s exchange with David Copp; Estlund 1993 and Copp 1993.

for a political theory to articulate a conception of citizenship. Under current conditions of pluralism and disagreements at fundamental levels, however, a politics which ignores substantive questions of the sort which Socrates insisted upon pressing will, as Sandel has rightly argued “generate its own disenchantment” (Sandel 1996, 24) in the form of the dwindling participation, eroding civility, and dissolving trust which now prevail.

I therefore propose that we accept the Political Wisdom Principle and, in the qualified form to be identified below, the Epistocracy Principle. I begin with the Political Wisdom Principle. If one accepts this principle, does one thereby jeopardize one’s commitment to democracy? No. What renders the Political Wisdom Principle potentially dangerous for democracy is the epistemology and metaphysics in terms of which it was originally posed; one can accordingly accept that normative political claims are cognitive and knowable *and* reject the traditional accounts of cognitivity and knowledge. In the following section, I shall promote a reading of the Political Wisdom Principle which divorces it from its traditional epistemological and metaphysical underpinnings and thereby renders it consistent with democracy.

The Deliberative Nature of Political Wisdom

It is important to note that the Guardianship Argument, along with the Political Wisdom and Epistocracy principles, was originally framed within the context of an entire metaphysical / epistemological system which we shall call “Platonism.” Although few today explicitly accept Platonism as a viable philosophical position, many who attempt to

respond to the Guardianship Argument tacitly, or perhaps unwittingly, accept the epistemological notions characteristic of Platonism. In this way, democratic theorists have conceded a crucial element of Socrates' case against democracy. This is a mistake; I contend that the epistemological assumptions of Platonism must be rejected if a viable case for democracy is to be made.

Socrates understood the politically wise person, the philosopher king, to be one who has knowledge of The Good. On the basis of this knowledge, the politically wise person could design public policy to realize particular goods in the political realm (500c-e). Although the politically wise person approaches knowledge of The Good through dialectic (533b-d), it is actually attained in an act of *theoria*, and intellectual grasping or beholding akin to the way in which one becomes aware of the Sun.¹³ As the object of knowledge cannot change (477ff.), The Good is fixed and immutable, and once knowledge of it is attained, it is possessed in its entirety once and for all. Since few people are capable of grasping The Good, and since knowledge of The Good is necessary for legitimate political rule, few persons are fit for political rule. Consequently, the constitution which places political rule in the hands of the few who know The Good is the most just.

The feature of this view which is most relevant to our purposes is the idea that The Good is an independent entity, knowledge of which can be grasped in an individual act of apprehension and then applied to particular cases. Theorists of democracy have

¹³ For the analogy between grasping the Good and seeing the Sun, see 508b-c. *Theoria* is etymologically related to the idea of a spectator at a sporting event; a *theoros* is an "observer." It is the word from which "theater" and "theory" derive.

tacitly accepted this general epistemological picture even when they have sought to reject the Guardianship Argument. The democrat's typical response that an adult person is more likely, as a general rule, to "understand his or her personal interest better than another person" (Dahl 1989, 70) obstructs the Guardianship Argument, but leaves intact the Platonist epistemology of a Good—here reinterpreted as the satisfaction of "interests"—which can be discerned by an individual consciousness. Accordingly, this kind of democratic response is fragile; the principle that each person is the best judge of his own good (or his own interests) is not immediately plausible, and tends to degenerate into a vacuous platitude.

That these epistemological conceptions should persist in an age in which we have available an alternative model of knowledge is puzzling. What modern advances in the sciences suggest is that the enterprise of attaining knowledge is not an individual affair, but requires the presence of and participation in a socially organized body, what is generally referred to as the "scientific community." That is, the pursuit of knowledge in the sciences requires that results, ideas, theories, and proposals of individual inquirers be continually corroborated, verified, challenged, responded to, refined, and checked by members of a community committed to common methods of inquiry, a common view of experimentation, and common standards of evidence. Moreover, the scientific enterprise is aimed primarily at the resolution of specific problems and challenges within human experience; scientific theories and speculation arise out of the practical affair of confronting difficulties and trying to deal with them.

The conception of knowledge suggested by scientific practice differs greatly from

that offered by Platonism. On the scientific view, knowledge is a continuing enterprise of participation and cooperation among members of a community, not the immediate apprehension of the Truth by an individual mind. Moreover, since the Platonist view places theory prior to practice, it confronts the difficulty of explaining how knowledge of ideal objects can be applied to actual human problems.¹⁴ On the scientific view, by contrast, theories, speculations, predictions, and the like are *products* of practice; accordingly, scientific knowledge is not a matter of the detached contemplation of an other-worldly ideal, but is always rooted in the vicissitudes of human experiences and human problems. Further, whereas the Platonist view promotes the idea that knowledge is always knowledge of eternal and changeless entities, the scientific model construes knowledge as essentially connected to *experimentation*; hence knowledge is in the first instance the *ability* to predict, affect, direct, and control changing conditions. Lastly, the Platonist understands knowledge as the achieving of certainty; accordingly, once one has apprehended The Good, intellectual activity ceases and knowledge is once and for all attained. On the scientific view, however, knowledge is a continuing endeavor in which no result, claim, or theory is once and for all established; that is, scientific knowledge never rises above the status of hypothesis. In order to qualify as scientific, claims and theories must be subjected to continuing test and possible revision and correction against new experimental results. Science rejects certainty as a mark of knowledge and adopts fallibilism and experimentalism in its stead; the claim or theory most worthy of

¹⁴ Socrates concedes that knowledge of The Good is insufficient for just rule. The *kallipolis* dissolves because the philosopher kings err in applying their knowledge of The Good to specific political conditions (546a-e).

acceptance is the one which is best supported by the currently available evidence, the one which can command the assent of the community of inquirers.

Although the case is sometimes made that knowledge in all its forms is best understood in terms of the kind of cooperative, participatory, and continuing social undertaking which characterizes scientific inquiry. I need not here press the this more general epistemological agenda.¹⁵ Whatever one might want to say about knowledge in general, and the relation of scientific knowledge to knowledge of other sorts, the concept of knowledge with respect to *political* matters lends itself easily to the kind of anti-Platonist analysis I am promoting. Specifically, I want to argue that political wisdom is the product of democratic processes of continuing public deliberation.

Political wisdom is knowledge *of* political phenomena. The phenomena of politics are complex; they include individual and group interests, current distributions of social goods and resources, established institutions, power relations, laws, policies, economic arrangements, technological capabilities, cultural factors, social traditions, and the like. These complex phenomena are interrelated and dynamic, prone to fluctuation, disorder, and conflict. To fix terms, let us call an instance of disturbance among the various political phenomena a "problem." Accordingly, political problems need not always be "conflicts" between competing interests, although such conflicts do of course comprise one kind of problem. Political problems are instead multiform, and are not

¹⁵ This kind of epistemology is characteristic of classical American pragmatism, as found especially in the work of Charles Peirce and John Dewey. See Peirce 1868; Peirce 1877; Peirce 1878; Dewey 1939, ch. 6; Dewey 1938; Dewey 1929; and Dewey 1927, chs. 5 and 6. See also Quine 1968, and the literature concerning naturalized epistemology collected in Kornblith, ed. 1985. Hilary Putnam makes the connection between pragmatist epistemology and democracy in H. Putnam 1990.

always reducible to Hobbesian analyses.

When a problem arises, decisions must be made with regard to how it may be dealt with, responded to, and resolved; resources must be reallocated, new policies introduced, old institutions revised and corrected, legislation must be drafted, committees must be formed. In short, when a political problem arises, something must be *done* in response to it. Given the complexity and dynamic nature of political phenomena, it is rarely the case that one can *know* in advance of acting whether a particular course of action will be satisfactorily effective; proposals for dealing with political problems are thus *hypotheses* generated from political / social / economic conceptions which are themselves products of prior attempts to deal with political problems. Like hypotheses in scientific inquiry, proposals for dealing with political problems are to be tested in experience; they are to be brought to bear on the problem at hand and judged according to their results. Simplifying a bit, we can say that a proposed response to a political problem can either (1) fail to actually address the problem, leaving it as it was, or (2) address the problem, but exacerbate it, creating a further or worse problem which was otherwise avoidable, or (3) address the problem and resolve it, but generate a new problem elsewhere, or (4) address the problem and resolve it, restoring relative integration among the various political phenomena previously disordered. Responses of the last kind are preferable to the former three, and are the aim of political decision-making.

I trust these are noncontroversial, even mundane claims. The principal contention of a post-liberal theory of democracy is that processes of public deliberation, discussion, and debate, are generally the best available means for political decision. More

specifically, I want to suggest that if political decision is required when a political problem arises, and if political decision aims to derive a response to a particular problem which resolves the problem without generating additional or deeper problems, then the best way we have of making political decisions is ongoing open public deliberation. By “open public deliberation” I mean processes by which citizens share, compare, and contrast perspectives, information, and proposals; in deliberating, citizens engage one another in debate and participate in cooperative dialogue in such a way that individuals come to influence and be influenced by each other’s perspectives, reasons, and arguments. Through deliberation, citizens thus come to understand better the problem at hand, the merits of proposed solutions, and each other. The aim of these processes of collective reasoning is two-fold: in the first place, democratic deliberation aims to develop a resolution of the problem and reintegrate relative stability into the political order; in the second place, democratic deliberation aims to maintain and strengthen the process of deliberation itself so that cooperative, collective deliberation may continue in the future. Through the continuing process of cooperative reasoning with regard to common problems, citizens become better deliberators, and thus better able to arrive at wise political decisions.

In short, the deliberative view I am posing maintains that political wisdom arises from or emerges out of the process of public deliberation. In this way, one can accept the Political Wisdom Principle but remain committed to democracy. It is the case that normative claims about political policy are cognitive, and that we can come to know which policies are best; however, “knowledge” is here understood not on the Platonic

model of *theoria*, a grasping of an eternal Truth, but rather as an *ability* to direct political phenomena. The most reliable way of gaining such knowledge is the democratic process of public discussion and cooperative reasoning. Hence one may also accept the Epistocracy Principle insofar as it asserts that political power should be proportioned to political wisdom. However, as political wisdom cannot be properly said to belong to any particular individual, but only to a community engaged in public deliberation, the Epistocracy Principle actually supports democracy. Democracy, as it is here understood, is the one form of political arrangement which is designed to place the power of political decision in the hands of the body which can achieve political wisdom, namely, the community of public deliberation.

Democratic Deliberation and Scientific Inquiry

Despite some important differences which will be examined later, the analogy between the model of democratic deliberation and scientific inquiry should be clear. Just as scientific inquiry is directed primarily towards the resolution of problems occurring within experience, deliberative democratic citizens reason together with the objective of arriving at workable solutions to shared political problems. Just as the products of scientific inquiry never rise above the status of hypothesis and thus are subject to continual test and revision, the products of citizen deliberations are hypotheses to be tested and evaluated against the problems to which they are supposed to respond. As scientific inquiry is an ongoing endeavor of *verifying* and *confirming* scientific theories

and proposals, the deliberative process is likewise ongoing; as political principles and policies are understood to be hypotheses, they are never established as final and fixed: continued deliberation is necessary for purposes of confronting new problems, revising old conceptions when circumstances require, and correcting the products of prior deliberation. Lastly, scientific inquiry *accumulates* results in the form of theories and claims which although never “proven” are relatively well-confirmed and hence may be *presumed* in current inquiries; similarly, deliberating citizens confront problems armed with the results, conceptions, and principles which have emerged from previous deliberations. That is, present deliberations presume and employ what may be called a “background theory” of well-entrenched political principles. We may even think of the standard liberal rights—rights to freedom of expression, freedom of assembly, equal treatment under the law, etc.—as especially well-confirmed political hypotheses: they maintain the conditions under which deliberation functions best, and hence are means to the maintenance, realization, and further development of democracy.¹⁶

This last point of comparison occasions discussion of an important contrast between scientific inquiry and democratic deliberation. Proponents of the kind of view of science I am drawing from have often maintained that if individual scientific inquiries are to be understood teleologically, that is, as proposed solutions to experienced problems, then the scientific enterprise as a whole must be teleological also. In Peirce, this long-run teleology is expressed by the idea of a “predestinate,” final, or “ultimate” opinion

¹⁶ Cass Sunstein promotes a similar analysis of the First Amendment: “The First Amendment is the central constitutional reflection of the commitment to deliberative democracy.” (Sunstein 1993, 249).

towards which scientific inquiry necessarily progresses (Peirce 1878, 38).

This convergentist view of inquiry hardly seems analogous with deliberation about politics. In the case of scientific inquiry it is reasonable to suppose that,

There are Real things, whose characters are entirely independent of our opinions of them; those Reals affect our senses according to regular laws, and . . . by taking advantage of the laws of perception, we can ascertain by reasoning how things really and truly are; and any man, if he have sufficient experience and he reason enough about it, will be led to the one True conclusion.¹⁷ (Peirce 1877, 18)

However, the convergentist's realism and physicalism seem out of place in a theory of political deliberation. Are we to suppose that there are "solutions" to political problems ("political truths"?) which await discovery and guide public debate?

The breakdown of the analogy between scientific inquiry and democratic deliberation constitutes a significant problem for the deliberative theorist. Were one to press the analogy by answering the above question affirmatively, one would jeopardize the main contention of deliberative democracy, namely that processes of public deliberation are the best means to realizing political wisdom. If political wisdom is knowledge of some *object*, then it is unclear why one should need public discussion to discover it rather than, for example, the researches of a few well-trained scientists. Most deliberative theorists have instead denied that there are independently existing "solutions" which public deliberation discovers. They have attempted to "define political truth as the outcome of [the] deliberative process" (Sunstein 1993, 19). Benjamin Barber, for instance, has insisted that "Political truth is made in the context of history and experience," and that "there are no 'true' or 'false' answers, no correct or incorrect

¹⁷ See Haack 1998 for a similar view and for references to current literature.

positions” with regard to political problems, but only “alternative visions” competing for “communal acceptance” (Barber 1984, 169). However, Barber’s denial that deliberation tracks or is responsive to anything outside itself is tantamount to rejecting the cognitivity of normative political proposals, and therefore severs an essential connection between deliberative democracy and the Political Wisdom Principle; in calling for a deliberative politics which aims solely at “communal acceptance,” Barber invites the charge of majoritarianism and community tyranny leveled against antiliberalism.¹⁸

On the view being proposed, deliberation is an ongoing, cooperative activity by which citizens address and attempt to resolve political problems. As I suggested earlier, the aim of deliberation is not only the development of effective solutions to problems but also the avoidance of further problems. Given the complex and dynamic nature of political phenomena, what is required for generating wise solutions to political problems is a continual feedback mechanism by which citizens can respond to, react to, and work through a shared and complex political world; public deliberation is this feedback mechanism. Thus it is also an aim of democratic deliberation to maintain and nurture the conditions under which deliberation may flourish and expand.

One need not think of political truths as somehow “out there” like Peircean Reals; nor need one resort, with Barber, to defining political wisdom vacuously, viz., as whatever deliberation happens to generate. We might instead think of democratic

¹⁸ I would argue similarly that liberal accounts which make the point of deliberation the *legitimation* of political policies also sever the connection between deliberation and political wisdom, and hence suffer from a similar defect. Cohen and Rawls are committed to such a view; see Rawls 1993, Ch. vi; Rawls 1999b; Cohen 1989; and Cohen 1996.

deliberation in terms similar to Aristotle's conception of *phronesis*, practical wisdom, the ability to deliberate well about the human good within the context of particular situations.

According to Aristotle, *phronesis* is "neither a pure science nor an art" (*NE*, 1140b1); it is neither a process of *discovering* antecedently existing political truths nor of *producing* them. It is, rather, a matter of "seeing" what the best thing to do is under given circumstances (*NE*, 1140b10). But whereas Aristotle understands this "seeing" in terms of *theoria*,¹⁹ an individual act of cognition which apprehends truth, I suggest that the "seeing" required for political wisdom emerges out of properly conducted public deliberation.²⁰

To sum up: I have proposed a view according to which democratic deliberation is analogous to scientific inquiry in that it is a communal, participatory, perpetual, and experimental process of addressing present problems; the local aim of both is the resolution of a given problem and the avoidance of further problems. Democratic deliberation differs from scientific inquiry in that whereas the science presupposes, in addition to the short-run aim of problem resolution, a long-run *telos* in the form of an independent reality which is gradually disclosed in the course of continuing inquiry, deliberation has no ultimate aim beyond its own continuation. Because of the complex and dynamic nature of political phenomena, there is no *telos*, no Aristotelian final cause, of deliberation; rather, democratic deliberation is its own "end," not a *terminus*.

¹⁹ The Greek at *NE* 1140b10 for "seeing" is *theorein*.

²⁰ Aristotle himself gestures towards this kind of interpretation of *phronesis* in the *Politics* when he acknowledges that "... the many, each of whom is not a serious man, nevertheless could, when they have come together, be better than those few best—not, indeed, individually, but as a whole" (*P* 1281a42).

but a process, a *praxis*, which aims at its own continuation and perfection.

To illustrate this last point, consider the game of pocket billiards. The player is confronted with an ongoing, developing situation which sets for him at each turn the problem of sinking an appropriate ball. At any given turn, then, the player's immediate aim is to sink the appropriate ball. However, the player shoots not only for the sake of sinking the ball, but also with the aim of continuing to shoot. The able player is therefore not one who simply is a good shot, but one who can discern within current conditions on the table a series of possibilities for future shots on the basis of which he can decide and gauge his current shot. The wise pocket billiards player is the one able to coordinate current activities both with current conditions and with future possibilities. If his coordinating efforts are successful, he continues to shoot: as shooting continues, he becomes a better shooter. The shooting is thus directed towards its own continuation and perfection. In a similar way, public deliberation is a *praxis* which aims not only at solutions to current problems, but also at continuing and improving future deliberation.

Of course, the analogy between the *praxis* of democratic deliberation and the pocket billiards player breaks down once it is realized that the ultimate *telos* of the player is a completed and won game. It perhaps would be nice if the political realm were as simple as a round of pocket billiards. However, the sphere of politics is indeed far more complicated than that of any game, and the analogue of the finished billiards game is not available in politics. The political scene knows no lasting stasis; it is constantly moving, developing, transforming: changing conditions generate novel problems and new challenges, old solutions become impotent or inappropriate, new approaches must be

developed and tried. It is the aim of democratic deliberation, and the mark of the political wisdom which, when all goes well, is its product to coordinate and integrate the dynamic aspects of the political scene and to restore and maintain integration when problems emerge. One could hope for a state of affairs so complete and perfect that politics would be unnecessary; but like Aristotle's ideal of an apolitical life of contemplation, such a condition is beyond the possibilities of the human abode.²¹

An Account of Deliberation

I have proposed that we think of political wisdom as an ability to coordinate or manage the dynamic network of political phenomena. This ability emerges out of the processes of continuing public deliberation, processes by which citizens reason together, argue, debate, consider, bargain, and brainstorm for the purposes of developing solutions to shared political problems and constructing or maintaining the conditions under which deliberation can continue and improve in the future. Although the comparison with scientific inquiry has helped clarify what I mean by "deliberation," further specification is necessary. To this I now turn.

No one pretends that political wisdom can be achieved simply through conversation. Persons getting together and talking about politics will in itself accomplish

²¹ In the *Ethics*, Aristotle claims that the life of contemplation, *theoria*, is the truly best life (*NE* 1177a11), and the life of practicing moral virtue is best in a "secondary sense" (*NE* 1178a8); however, Aristotle also maintains that the life of *theoria* "would be more than human" (*NE* 1177b25). Note also that the very first city of the *Republic*, the city which requires no politics since every person works at only one task and otherwise minds his own business, is quickly dismissed as a city unsuitable for humans (372d).

nothing. In fact, if one turns to the current arenas of public discourse, such as talk radio, afternoon tabloid / confessional television, evening debate programs, and internet newsgroups and discussion lists, one is likely to be disappointed. In these fora, discussion most often secures only the reinforcement of prejudices, a heightened sense of polarity and of the intractability and pervasiveness of political conflict, and further confirmation that reason and fair-mindedness are no match for rhetorical prowess. Judging from these examples, open public discourse constructs a Babel rather than a politically wise self-governing community. One might hence conclude that the policy of granting greater political influence to public discussion will only strengthen the ability of sophists and demagogues to bewilder the public. Far from a remedy for democracy's discontent, political discourse actually obstructs self-government.²²

It is therefore insufficient simply to call for a more deliberative politics; one must provide an account of what deliberation is and what the ideal of democratic deliberation requires of citizens *qua* deliberators. To begin, it is interesting to note that theorists of deliberation are presently confronting an impasse which resembles a long-standing dilemma in moral and political theory. Attempts to formulate a substantive account of democratic deliberation tend to fall neatly into what might be called "proceduralist" and "consequentialist" categories. Proceduralist accounts attempt to identify an "ideal deliberation procedure" (Cohen 1989, 73), or an "ideal speech situation" which respects the "inescapable presuppositions" of discourse (Habermas 1990, 89); actual deliberations

²² On this kind of worry, see Barber 1998b, 149; Stokes 1998; Pzeworski 1998; and Shapiro 1999b.

which follow the correct procedure produce legitimate decisions. Consequentialist accounts specify ends or outcomes which deliberation is supposed to produce, such as shared moral understandings and a deepened sense of community and common purpose, and advocate a conception of deliberation which achieves these political aims.²³

The dilemma mirrors that between deontological and consequentialist moral theories, and is subject to the same problematics. To adopt the familiar Hegelian critique of Kantian formalism, one cannot derive by means of a transcendental deduction from a formal conception of an “ideal speech situation” a substantive theory of the processes of actual democratic deliberation; there are no “inescapable presuppositions” of discussion. political deliberation cannot be reduced to an algorithmic procedure. On the other hand, to raise a familiar objection to consequentialism, one cannot establish *a priori* a list of substantive goals or outcomes which deliberation is supposed to realize without thereby rendering one’s commitment to democratic deliberation, and hence to democracy itself, strictly instrumental and therefore tentative.²⁴

I contend that the proper response to this dilemma is to adopt a more Aristotelian conception of deliberation; that is, just as many moral theorists have recently returned to a virtue- or character-based ethics, we must develop a virtue-based account of democratic deliberation. We begin, then, neither with a transcendental deduction of “inescapable

²³ Of course, there are some who offer mixed conceptions of deliberation. Gutmann and Thompson, for example, specify procedural rules which deliberation must obey (reciprocity) and policy outcomes which must be preserved (liberty, fair opportunity, equal opportunity). See Gutmann and Thompson 1996, ch. 1.

²⁴ Once again, worries over the kind of proposal Mill offers in *Considerations on Representative Government* that “those who work with their heads” should be given “two or more votes” (Mill 1861b, 336) is lurking behind this objection.

presuppositions” of discourse nor with a substantive political program to be achieved through deliberative processes; rather, we turn to examples of excellence in deliberation and attempt to extract from these the general characteristics of proper deliberation. Of course, this process is itself experimental and fallible; as Aristotle reminds us, “Problems of what is noble and just, which politics examines, present so much variety and irregularity that . . . we must be satisfied with a rough and general sketch” (*NE* 1094b15-20).

We may follow Aristotle in saying that deliberation is excellent when it realizes the aims of deliberation. Recall from our previous discussions that deliberation aims at the resolution of political problems in ways which avoid further problems and which maintain and expand the conditions under which deliberation may continue. Turning again to the ideal of a scientific community for a model, we identify dispositions and attitudes which constitute what may be thought of as “deliberative virtues.” When deliberators embody these virtues, their deliberations are more likely to generate politically wise results. The following list is of course not exhaustive, but preliminary: likewise, the brief descriptions following each virtue are intended to be suggestive rather than definitional.

The Virtues of Deliberation: A Preliminary List

1. *Fair-mindedness*. When a problem arises, various kinds of considerations must be taken into account: empirical and social-scientific evidence must be considered as well as the preferences, interests, ideals, and commitments of the persons affected by the problem. Fair-mindedness is the quality by which deliberators are able to manage these diverse factors; it is marked by an ability to follow evidence and weigh various factors and a willingness to base decisions upon such considerations. Accordingly, the

fair-minded deliberator enters into the deliberative process with the recognition that his own favored ideas and conceptions might, upon discursive examination, turn out to be faulty or parochial and in need of revision or even abandonment. The fair-minded citizen is in this sense willing to change his mind about even very important matters.

2. *Experimentalism*. The complexity of political problems is such that it is often impossible to know exactly how a proposed solution will operate once instituted. Sometimes, even well-conducted deliberation will generate solutions which will fail in practice. Even when a proposed solution to a problem is successful there will be unintended consequences, unforeseen outcomes which constitute new problems. The attitude of experimentalism is that of understanding political proposals as *hypotheses* to be tried and evaluated in terms of their effects. The experimental attitude is also marked by a willingness to seriously consider and possibly try novel or unorthodox proposals.
3. *Measured skepticism*. Political problems are often extremely complex, especially in our world of rapidly developing technology. There is accordingly an understandable and familiar, but nonetheless dangerous, tendency to oversimplify political questions into polarized categories: "pro" and "con"; "left" and "right"; "conservative" and "liberal"; etc. Such polarizations are obstructions to deliberation, what Peirce would have called "blocks to inquiry" (Peirce 1899, 54), as they aid in the constriction of straw-men and hence block mutual understanding. Excellent deliberators thus embody a virtue I call, somewhat clumsily to be sure, "measured skepticism": they are suspicious of polarizations and fixed ideological categories as well as of easy and obvious solutions to political problems.
4. *Cooperative persistence*. Self-government through proper collective deliberation is difficult. In addition to the above virtues, democratic deliberation requires of citizens the ability to continue working cooperatively on a problem despite set backs, complexity, failures, and adversity; I call this ability "cooperative persistence." The cooperatively persistent deliberator understands that however divided he and his fellow citizens otherwise may be, they nonetheless are joined in the common and continuing undertaking of self-government. He accordingly strives to be charitable in his interpretations of viewpoints which oppose his own; he tries to place himself in the position of others to better understand their concerns; he seeks not only to refute or disprove opposing views, but to rationally persuade others and, when persuasion fails, strike a reasonable compromise.

When citizens embody these abilities and dispositions, collective deliberation is best able to achieve the aims of deliberation, and hence to realize political wisdom. Of course, virtuous deliberation does not guarantee that mistakes will never be made. It is important to note, however, that *no* process of political decision—democratic or not—will be infallible. The principal strength of the deliberative account I am suggesting is that it is able to incorporate the fact of human fallibility into democratic politics. Insofar as it treats political proposals as hypotheses and requires *continuing* deliberation, deliberative democracy is self-correcting.

Deliberative Democracy as a Social Ideal

Some will want at this point to object that the account of virtuous deliberation I have just sketched places unreasonable demands on the general populace of democratic society. My image of a cooperating, rational public resolving problems through processes of collective and participatory deliberation is, some will say, unrealistic. The problems of contemporary nation-states are intricate and complex; citizens in contemporary democracies lack sufficient competence and civility to engage in proper democratic deliberation.

The objection is well taken. However, it is not decisive. One may begin to meet the objection by realizing that, like Aristotelian virtue, deliberative excellence can emerge and develop only within the context of a certain kind of social arrangement. The virtues of democratic deliberation cannot simply be presupposed; they must be developed and

supported by social institutions. Accordingly, deliberative democracy must be understood not primarily as a kind of *state* or a collection of institutional arrangements and procedures, but rather as a kind of *community*, or, to employ a slogan made famous by John Dewey, “a way of life.”²⁵ More specifically, a democratic community aims at something beyond fair procedures and the protection of individual rights: as important as these aims may be, it must also promote a way of life by which citizens may develop the deliberative virtues.

If citizens are to develop the abilities and dispositions requisite for excellent deliberation, there must be ample opportunity for them to deliberate. Towards this end, the democratic community seeks to continually democratize itself by expanding the influence of methods and principles of the democratic way of life into all modes of social association. In an especially clear and often quoted passage, Dewey articulates this component of democracy:

The idea of democracy is a wider and fuller idea than can be exemplified by the state even at its best. To be realized it must affect all modes of human association, the family, the school, industry, religion. And even as far as political arrangements are concerned, governmental institutions are but a mechanism for securing to an idea channels of effective operation. (Dewey 1927, 325)

Although the precise nature of the “idea of democracy” is not always clear in Dewey’s own writings, we here may fill in the details by saying that the “wider and fuller” idea of democracy towards which Dewey is gesturing is that of a community in which all modes of social association are governed by processes of participatory and shared deliberation. Within such associations, members actively participate in, and hence are jointly

²⁵ See Dewey 1916, 93; Dewey 1939, 155; Hook 1938; and Stuhr 1993.

responsible for, *directing* the activities and structure of the association; through this continuing activity, common interests and mutual understandings emerge, and individual deliberative abilities develop.

Understood in this way, a deliberative conception of democracy offers a comprehensive social ideal rather than simply a decision procedure. It is primarily the ideal of a social life which is democratic *all the way down*—from the level of national politics to that of local political organizations and social groups and even to personal associations. The ideal of democracy as a way of life is that of a political world constituted by human associations which are anti-dogmatic, non-hierarchical, and experimental in which individuals realize their deliberative abilities through participation in the processes of collective self-government.

We return at last to the objection under consideration according to which the ideal of deliberative democracy is unrealistic and too demanding. The degree to which citizens are not able to reason together about even the most local shared concerns is the degree to which democracy is failing. Widespread public ignorance, apathy, incivility, and nonparticipation at the level of national politics are indications of the lack of the opportunity for deliberation at lower levels of social association. Indeed, the current social scene offers little opportunity for cooperative participation in the processes by which group activity is directed. Our primary arenas of social association—business offices, educational institutions, local social organizations—have adopted top-down, authoritarian strategies; as Dewey predicted in 1930, our society has become more “corporate” than cooperative (Dewey 1930, 58ff.), and individuals are rarely called upon

to participate in the processes by which the associations to which they belong are directed.²⁶ Likewise, organs of political information and discourse promote a conception of politics focused almost exclusively upon horse race contests for public office and power, opinion polls, scandal, and exposé (Anderson 1998).²⁷ According to the image portrayed in the mass media, we are a collection of yea-sayers and nay-sayers, “liberals” and “conservatives,” “pros” and “cons,” not a community of discussants, interlocutors, and partners in a joint social undertaking.

Under conditions such as these, the prospects for a more deliberative democracy seem bleak indeed. However, those committed to democracy will respond to these obstructions and challenges with increased efforts to democratize society. The deliberative view I have been sketching gives some guidance on this score. I here offer two relatively modest suggestions.

Firstly, we may agree with Dewey and his followers that democratic citizenship is a principal aim of the public educational system. If the view developed here is correct, competence in the standard subject areas (“the three R’s”), and command of basic civic and historical facts are not enough for citizenship; democratic education must seek also to cultivate deliberative virtues by focusing upon the *methods* by which facts are checked, ideas are criticized, and knowledge is attained.²⁸ Sidney Hook has articulated this

²⁶ Hence Sandel claims the “fear that, individually and collectively, we are losing control of the forces that govern our lives” is one of the two “concerns that lie at the heart of democracy’s discontent” (Sandel 1996, 3).

²⁷ See also Page 1996; Somin 1998; Iyengar 1991; Sunstein 1993, Ch. 3; and Elkin and Soltan, eds. 1999.

²⁸ Cf. Gutmann 1987, xii-xiv.

aspiration well:

[We] must not only teach the facts, but how to test them, how to relate them to problems, and how they bear upon relevant alternatives. [We] must also stir imagination and sensibility in envisaging the effects of proposed modes of conduct on the human situation. In other words, [we] must develop the habits of intelligent choice and decision in personal and social affairs, in the relation of person to person and persons to groups. (Hook 1973, 291)

This principle lies behind recent proposals to introduce a “critical thinking” component into the general curriculum, and many of the recent textbooks in informal logic reflect a concern for the social implications of improper thinking.²⁹

Secondly, academics should reclaim the role of public intellectual; they ought to attempt to rebuild the lines of communication that once existed between the University and the society at large. They should seek to address broader audiences on topics of wider concern through more accessible channels. Moreover, they ought to relinquish the current role of sound-byte experts delivering pronouncements and speculations on technical matters. Academics are of course not the intellectual vanguards of free society, but they may serve as exemplars of reasoned debate and cooperative, critical discussion. They may help generate democratic community by adopting roles such as essayist, discussant, and columnist.

Of course, these suggestions are offered as examples of the *kind* of preliminary steps that can be taken towards the realization of a deliberative democracy. Further, more sweeping reforms are perhaps needed in areas such as economics, media, and business. However, these more drastic changes cannot be undertaken until the fundamental

²⁹ See Govier 1996; Kahane and Cavender 1997; Schick and Vaughn 1995; and Shermer 1997.

elements of the democratic way of life are secured, for the precise nature of the more drastic reforms must be determined through public processes of democratic deliberation.

Post-liberal Deliberativism and Liberalism

I have proposed a post-liberal deliberative theory of democracy according to which political wisdom belongs to a community in which citizens embodying the requisite virtues collectively deliberate in response to shared problems. It remains to show how my post-liberal deliberativism compares to the liberalism it is intended to replace.

Liberals will object to my view on the grounds that I have not sufficiently provided for individual protection from the will of the (deliberative) majority.³⁰ My earlier claim that certain principles and policies—such as the liberal basic rights—are so well established that they may be presumed for purposes of current deliberation in the way that a scientist may presume the truth of general physical laws when conducting his experiments will seem flimsy to the liberal. On my account, basic rights to, for example, freedom of expression and assembly are treated as especially useful instruments for maintaining the conditions under which proper deliberation can ensue and continue. As such, they are tentative and in principle revisable; should some extreme political circumstances arise, my view might recommend suspension of some basic liberal right.

³⁰ Gutmann and Thompson raise a similar objection against the views of Habermas and Benhabib: see Gutmann and Thompson 1996, 17-18. See Benhabib 1996b, 77-79 for an attempt to show how deliberative democracy can recognize basic rights.

The inability of my view to countenance individual rights in the robust liberal sense will be reason enough for the liberal to reject my deliberativism.

However, should liberals insist on an absolutist theory of individual rights, we must remind them that, if the main argument of this study is correct, liberalism cannot generate a coherent and robust theory of individual rights without jeopardizing its commitment to the Principle of Neutrality. The liberal thus cannot have his cake and eat it, too; he must either try to get by with a thin, “political, not metaphysical” account of rights, or surrender his claim to official neutrality. Moreover, we should also impress upon the liberal the fact that we already do accept considerable constraints on basic rights such as freedom of expression. For example, we do not grant constitutional protection to threats, fighting words, bribe offers, and certain kinds of obscenity. That is, the liberal idea of an absolute right is a myth. The question a post-liberal view prompts is. On what grounds shall we decide how to interpret and constrain, e.g., the right to freedom of expression? In providing its answer, a post-liberal deliberativism agrees with Cass Sunstein who argues that,

The American constitutional system is emphatically not designed solely to protect private interests and private rights Instead, a large point of the system is to ensure discussion and debate among people who are genuinely different in the perspectives and position, in the interest of creating a process through which reflection will encourage the emergence of general truths. (Sunstein 1993, 241)

Basic rights will have to be given a non-absolutist reading on any view; a post-liberal deliberativism argues that basic rights should be understood as well-established means to the realization of a properly deliberative democratic community. As individual citizens are the primary agents of deliberation, the deliberative view I am proposing offers them

sufficient protection in spite of liberal worries to the contrary.

Thus I believe that the post-liberal deliberativist can offer a plausible response to a fundamental liberal objection: A post-liberal deliberative democracy can extend to individuals the necessary protection from majorities. Recall that one of the difficulties facing liberalism is that of reconciling its emphasis on individual autonomy with a conception of democratic participation and citizenship. A mainstay of the antiliberal critique of liberalism is that liberal individualism can be secured only at the expense of community and the sense of a shared public good which seem requisite for democratic self-government. Antiberals hence promote a politics based upon a social concept of the self, a self which is essentially tied to the community to which it belongs. Liberals charge that the antiberals' communal political vision of tradition, encumberedness, and shared values is inherently majoritarian, conformist, and oppressive.

I maintain that a post-liberal deliberativism can steer a middle path between the liberal hyper-individualism which makes community impossible and the antiberall communitarianism which makes community oppressive: the post-liberal view hence can generate a plausible conception of democratic citizenship. The post-liberal view does this by emphasizing that citizens are neither encumbered selves helplessly ensconced within fixed historical or moral traditions and communities nor atomic and autonomous agents of *ex nihilo* self-creation; we rather are, for better or worse, sharers in a common social-political world and the joint inheritors of political institutions, historical traditions, ideas, principles, conflicts, and problems. This social-political world is dynamic and fluctuating, it *requires* that we respond to it—indeed, indifference, nonparticipation, and

self-absorption are responses. The post-liberal view contends with the antiliberals that democratic self-government requires a sense of community and shared purpose among citizens; it accordingly rejects the liberal aspiration to a neutral politics and accepts the antiliberal claim that the state must play a “formative” role in the lives of citizens. Yet the post-liberal view also affirms, with the liberals, the need for individual protections against majority tyranny and oppression.

The post-liberal insists that one can have it both ways: one can endorse a formative state *and* resist majoritarianism. To do this, one denies that the kind of community requisite to self-government must be a community of shared *moral* commitment. In contrast with the antiliberals, I contend that the state’s formative role is that of developing in citizens the *intellectual* habits necessary to proper deliberation rather than that of imposing a common moral vision. According to the post-liberal deliberativist, democratic community is realized by citizens who, no matter how divided they may be at the level of philosophical, moral, and theological essentials, are nevertheless committed to a common method of addressing the political problems which they jointly confront.

In this way, the democratic state’s formative role is *epistemological*, and not directly moral. Through public education and other public institutions, the democratic state must endeavor to develop in citizens the capacities and dispositions characteristic of excellent deliberation. As proper deliberation generally requires that individuals, the primary agents of deliberation, be protected in various ways, the post-liberal endorses a roughly liberal set of basic rights: deliberators must be free to express themselves, they

must be free to assemble in public and address their fellow citizens, they must be able to access information and news provided by a free press, etc. Unlike the liberals, who are unable to give a consistent account of *why* they are committed to these basic principles, the post-liberal deliberativist grounds basic rights in the processes of democratic deliberation: individual rights are *instruments* to political wisdom, not endowments or possessions granted from unknown sources. Firmly grounded in the *praxis* of democratic deliberation, individual protections are rendered more secure and less susceptible to misinterpretation than in the liberal view.

The post-liberal envisions a deliberative democratic public which, despite deep disagreements among individual citizens, is perpetually engaged in the joint project of self-government at all levels of social association. That we are the joint inheritors of a common political world cannot be denied; neither can it be doubted that our current practices and attitudes shape our political future. This is a future which will also be shared. What remains to be seen is whether it will be shared in the way in which passengers on a foundering ship share a common destiny, or in the way that participants in a common undertaking share the rewards and responsibilities of the cooperative processes by which their individual activities are directed and coordinated.

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