THE CATHOLIC UNIVERSITY OF AMERICA

John Rawls, Political Justice, and the Problem of Universality and Particularity

A DISSERTATION

Submitted to the Faculty of the
Department of Politics
School of Arts and Sciences
Of The Catholic University of America
In Partial Fulfillment of the Requirements
For the Degree
Doctor of Philosophy

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By
Brett Larson
Washington, D.C.

2015
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Brett Larson, Ph.D.

Director: Claes G. Ryn, Ph.D.

Abstract

John Rawls is widely regarded by both critics and defenders as the most important political philosopher of the latter half of the twentieth century. Philosophers since at least the time of Plato and Aristotle have wrestled with the problem of the relationship between the universal and the particular. Astonishingly, no scholar has seriously investigated either Rawls’s understanding of the relationship between universality and particularity or how his view of this connection affects his justification for liberal democracy. This dissertation fills this glaring void. It attempts to answer two primary research questions. The first concerns what Rawls’s political philosophy implies about the relationship between universality and particularity, and the second pertains to how this implicit view influences his defense of liberal democracy. This dissertation applies a traditional hermeneutical method of textual analysis to all of the writings of Rawls that are relevant to answering these two questions.
Throughout his voluminous works, Rawls attempts to insulate his conception of justice from the influence of historical circumstances. Rawls admits that the three fundamental ideas of justice as fairness—the conception of the person, the idea of a well-ordered society, and the idea of society as a fair system of cooperation—are ideals that do not exist in historical political orders. Additionally, Rawls derives the two principles of justice as fairness from the hypothetical and non-historical original position. Further, Rawls claims that his work describes political institutions that can arise only under highly idealized conditions and that these institutions should serve as the standard for measuring the validity of actual political orders. Rawls’s attempt to construct a conception of justice on the basis of ahistorical ideals and devices suggests that he thinks that political right is a standard that exists outside of historical societies. The acceptance of a dichotomy between justice and tradition indicates that Rawls thinks that universality is separate from particularity. Despite the revisions that he made to justice as fairness after his so-called political turn, Rawls was unable to resolve this problem.

Rawls’s assumption that universality and particularity are antithetical weakens his defense of democracy. Since Rawls argues that justice is a standard that is divorced from concrete circumstances, it is unclear how the former is relevant to the latter. By separating right and history, Rawls grants legitimacy to the practice of undermining actual political orders in the name of abstract ideals. Also, Rawls’s rigid distinction between the ideal conception of justice and the conditions of actual political orders may cause citizens to become disillusioned with their institutions and to think that genuine justice is impossible. Additionally, Rawls’s appeal to an ahistorical standard of right does not provide a solid evidentiary basis for adjudicating between
conflicting abstract views of justice. Finally, Rawls’s claim that liberal democracy is the only just political system may facilitate perpetual hostility between liberal and non-liberal states.
This dissertation by Brett Larson fulfills the dissertation requirement for the doctoral degree in politics approved by Claes G. Ryn, Ph.D., as Director, and by David Walsh, Ph.D., and Dennis Coyle, Ph.D. as Readers.

Claes G. Ryn, Ph.D., Director

David Walsh, Ph.D., Reader

Dennis Coyle, Ph.D., Reader
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CHAPTER ONE

The Importance of Rawls

John Rawls is often lauded by both defenders and critics as the most significant political philosopher of the second half of the twentieth century. Throughout his sophisticated and technical writings, Rawls adroitly weaves together ideas drawn from a broad range of fields including politics, philosophy, ethics, sociology, economics, and law into an impressive and elaborate account of political and social justice. Rawls’s theory, justice as fairness, makes important contributions to numerous subjects including political philosophy, moral theory, liberal democracy, human nature, distributive justice, human rights, liberty, equality, and international relations. Robert Nozick writes that “A Theory of Justice is a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the wrings of John Stuart Mill,” and consequently, “political philosophers now must either work within Rawls’ theory or explain why not.”¹ Some have claimed that Rawls played a crucial role in the revival of political theory that took place during the late 1960s and early 1970s. Catherine Audard contends that “single-handedly, Rawls reclaimed the field of political philosophy and social justice after decades of neglect,” and Jurgen Habermas states that “Rawls’s A Theory of Justice marks a pivotal turning point in the most recent history of practical philosophy, for he restored long-suppressed moral questions to the status of serious objects of philosophical investigation.”² Others have credited Rawls with both undermining the dominance

of the utilitarian justification for liberal democracy and reformulating the discredited social contract doctrine into a formidable alternative. Jon Mandle writes that “with the publication of A Theory of Justice, utilitarianism…could no longer be taken for granted,” and Samuel Freeman argues that the resurrection of social contract theory is “one of the major philosophical accomplishments of Rawls’s work.” According to Freeman, A Theory of Justice has been translated into over thirty languages. Scholars around the globe have written hundreds of monographs and thousands of articles addressing the various aspects of Rawls’s philosophy. Whether or not one finds Rawls’s arguments and conclusions persuasive, the extensive attention lavished on his work by scholars in fields including politics, philosophy, ethics, and law is a testament to its pervasive influence among contemporary academics representing a wide range of disciplines.

**The Significance of Universality and Particularity**

Throughout the history of western thought, philosophers have wrestled with the perplexing question of how the universal relates to the particular, and many have arrived at the conclusion that there exists a fundamental separation between the two. Plato’s philosophy illustrates this type of thinking. One way that Plato expresses this separation is through the contrast between the “visible” realm and the “intelligible” sphere. The former contains both images of physical objects and the physical things themselves, while the latter encompasses the forms of physical entities. The most real substances are the forms found in the intelligible world, and the least authentic entities are the physical objects that exist in the visible realm. Since Plato locates

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4 Freeman, Rawls, x.
5 Plato Republic 509d.
perfect justice or the form of the just in the sphere of intelligence, genuine political right cannot exist in any historical political order. The best that historical societies can achieve is an inadequate and dim reflection or approximation of the idea of the just city. Augustine is another philosopher who thinks that there is a disjunction between universality and particularity. Augustine articulates this dichotomy through the sharp contrast between the nearly unmitigated evils of the temporal realm and the unsurpassed blessedness of the eternal sphere. According to Augustine, heavenly life “is most blessed,” and in comparison, earthly existence “is most wretched.” Augustine insists that true happiness, justice, virtue, and society are realized only in the eternal realm, and that all temporal manifestations of happiness, justice, virtue, and society are fundamentally vitiated and distorted. At its best, life on earth is an interlude of trials that must be patiently endured by God’s elect until they are liberated from it by death. Leo Strauss is an example of a twentieth century theorist who forcefully defends a rigid antithesis between universality and particularity. According to Strauss, “nature” or true justice is fundamentally separate from and often opposed to “convention” or history. Strauss thinks that the dichotomy between nature and convention is necessary for preserving the existence of an objective universal standard of right. In order for a measure of justice to be authoritative, it must be detached from the entity that it is evaluating. For Strauss, the denial of the disjunction between justice and history “is identical with nihilism.”

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6 Augustine City of God 19.20.
7 Ibid., 19.4-19.8.
8 Ibid., 19.10-19.11.
9 Leo Strauss, Natural Right and History (Chicago: University of Chicago Press, 1965), 11.
10 Ibid., 5.
Despite the predominance of the view that universality and particularity are distinct, a
number of political theorists have attempted to show that it is possible to reconcile them.
Although Edmund Burke does not explicitly state that he is attempting to produce a synthesis
between universality and particularity, his political theory provides important insights into how
this unification may be achieved. According to Burke, the attempt to detach political morality
from historically evolved tradition may undermine the relevance of the former to the latter. As a
result, Burke maintains that genuine justice is found by carefully considering the concrete
“circumstances” of political societies, rather than by appealing to “metaphysical
abstraction[s].”\textsuperscript{11} However, Burke does not think that connecting right and tradition necessarily
leads to cultural relativism or ethical nihilism. Instead, Burke insists that by consulting the best
of the collective experience of political societies or the “bank and capital of nations,” it is
possible to uncover moral universality.\textsuperscript{12} History is an indispensable, although imperfect, guide
for human beings. Benedetto Croce is another political philosopher who tries to unify
universality and particularity. Croce approaches this challenge by attempting to undermine the
distinction between historical and philosophical knowledge. According to Croce, all knowledge
is the desire to understand the world in which human beings live and act. Since human life and
action take place in the realm of history, all human knowledge is “historical.”\textsuperscript{13} Croce reasons
that since all human knowledge is historical, the antinomies of “philosophy” and “history” and of
“metaphysics” and “physics” are difficult to maintain.\textsuperscript{14} Universality does not exist in some

\textsuperscript{11} Edmund Burke, \textit{Reflections on the Revolution in France}, ed. L. G. Mitchell (Oxford: Oxford University Press,
1993), 7-8.
\textsuperscript{12} Ibid., 87.
\textsuperscript{14} Ibid., 25-26.
transcendent sphere detached from history, but rather is present in the historical world. Claes Ryn is another political theorist who questions the antithesis between universality and particularity. Ryn argues that the notion that justice and tradition must be separate rests on a dubious practice of dividing “living wholes of experience” into discrete “pieces.” According to Ryn, the idea that it is possible to distinguish fully between what is universal and what is particular is predicated upon attributing “omniscience” to human beings. Since human understanding is limited, Ryn does not think that individuals are able to make a clean division between right and tradition. Ryn contends that the only way that human beings are able to discover universality is by looking to “concrete particulars.” For Ryn, the universal and the particular are mutually dependent and can be brought together. Other notable thinkers who have attempted to demonstrate the possibility of a synthesis between universality and particularity include G. W. F. Hegel and Irving Babbitt.

The answer to the question of how the universal is related to the particular has numerous important implications for the field of political philosophy. Given the limited scope of this dissertation, which is to examine Rawls’s understanding of this issue, only two will be mentioned. The first concerns how philosophers should view history, and the second pertains to how they should understand diversity. If Plato, Augustine, and Strauss are correct, it seems that political theorists should not seek justice in history, but rather in some transcendent sphere. According to these thinkers, the primary reason for why philosophers should attend to concrete

16 Ibid., 65.
17 Ibid., 78.
circumstances is to determine the most efficacious way of aligning deficient political orders with the pre-existing universal standard of right. Despite very important differences between their respective views, Plato, Augustine, and Strauss all suggest that differences between traditions, cultures, religions, and societies can be impediments to universality. If justice is a standard that is detached from history and can be understood in the abstract, and if all peoples honor it, there should be a strong inclination toward uniformity. The existence of diversity implies that there is deviation from universality. However, if Burke, Croce, and Ryn are right, it appears that the best way for philosophers to discover a standard of justice is to look at how political right is adapted to and manifested in concrete traditions and societies. Circumstances are important not only for identifying the best means for actualizing justice, but also for determining what is the most appropriate measure of political right for a specific situation. The approaches of Burke, Croce, and Ryn imply that political, social, cultural, religious, and ethical diversity can be assets to universality. If political justice is not a standard that exists a priori, and if no single group of people has complete knowledge of this measure, then theorists should be open to the possibility that different societies may manifest justice in diverse ways. The cumulative expressions of justice of all political orders may provide a more complete articulation of universality than any one of them on its own.

**Research Questions and Thesis**

Given the immense influence that Rawls’s political philosophy has exerted on contemporary academic disciplines including politics, philosophy, and law, and given the tremendous significance of the problem of the relationship between universality and particularity, it is surprising that no study has scrupulously and rigorously investigated Rawls’s understanding of
the connection between right and history. This dissertation fills that glaring void. It thoroughly and systematically investigates two primary questions. The first concerns what Rawls’s political philosophy implies about the relationship between the universal and the particular, and the second concerns how the suggested connection between universality and particularity affects the overall success of his attempt to provide a defense of liberal democratic society. In order to answer these questions, this dissertation considers all of Rawls’s writings that are relevant to both the issue of the relationship between universality and particularity and the issue of how that connection influences the success of his overall project. The criterion for determining which ideas of Rawls should be discussed and the amount of space that should be devoted to each of them is their relevance to answering the main questions. Since the goal of this dissertation is not to provide a comprehensive account of how all of Rawls’s ideas fit together, it does not discuss notions of his that are not directly relevant to its central purpose. The dissertation focuses primarily on A Theory of Justice, Justice as Fairness: A Restatement, Political Liberalism, and The Law of Peoples, because these works provide the most extensive and systematic articulations of Rawls’s relevant concepts. However, it considers other writings of his that contain pertinent notions. The dissertation also employs secondary literature, such as monographs and journal articles, for the twin purposes of assisting with the interpretation of primary documents and illustrating the main philosophical questions. The dissertation applies a traditional hermeneutical method of textual analysis to both primary and secondary documents.

The main thesis that this dissertation advances is that Rawls’s political philosophy, as a whole, implies a dichotomy between universality and particularity and that this assumption, whether deliberately or unconsciously held, weakens his apology for liberal democracy. The
main argument of this dissertation proceeds as follows. Many of Rawls’s main ideas including the conception of the person, the idea of society as a system of cooperation, the idea of a well-ordered society, the original position, the two principles of justice, and the ideal of public reason are unnecessarily detached from concrete historical evidence. Rawls’s apparent need to separate the normative elements of his theory from the actual world suggests that he accepts a dichotomy between universality and particularity. By accepting this disjunction, Rawls unintentionally raises doubts about whether his view of political justice is relevant to real social orders. It should be noted that since the ideas of thinkers evolve over time, and since most political theories have elements that point in somewhat different directions, it should not come as a surprise that there are some aspects of Rawls’s philosophy that can be construed to indicate that it may be possible to reconcile universality and particularity. This dissertation identifies these ideas and attempts to indicate how they could have been developed to allow synthesis between the universal and the particular.

This dissertation attempts to apply an already existing philosophical framework of analysis to a new subject. The main idea of this existing approach is that the universal and the particular are potentially complementary and codependent. This theoretical approach has been developed by previously mentioned thinkers such as Burke, Croce, Ryn, Hegel, and Babbitt. What is novel about this dissertation is the application of this perspective to the political theory of Rawls. This dissertation focuses on what Rawls’s philosophy suggests about the relationship between universality and particularity and how the implied connection influences the success of his defense of democracy. Although the idea that it is possible to reconcile universality and particularity needs to be explained and defended to some degree, it is beyond the scope of this
dissertation to provide a detailed articulation and justification of it. Readers who desire a more extensive discussion of the claim that it is possible to synthesize universality and particularity are encouraged to consult the cited works of the aforementioned authors.

The findings of this dissertation may have important implications for the present state of both democratic political theory and political theory in general. The fact that Rawls’s theory is widely thought to provide the best defense of liberal democracy suggests that many of today’s leading scholars sympathize with his approach. If this dissertation’s argument is correct and Rawls’s apology for democracy is diminished by an excess of abstraction, it is likely that the theories of many contemporary thinkers suffer from a similar deficiency. Rawls’s approach may be but one prominent instance of a pervasive problem. Should this be the case, supporters of liberal democracy may need to look for alternative defenses of popular government.

Is another Dissertation on Rawls Justified?

The overwhelming amount of secondary literature on Rawls’s political philosophy raises the questions of whether the topic of Rawls’s political philosophy has been exhausted and whether it is possible to offer any original contributions to it. There are two preliminary responses to these questions. The first is that the claim that a subject is exhausted seems to presuppose that there are ascertainable boundaries to a particular topic and that these limits can be known comprehensively. In other words, the assertion that advancement within an area of study is impossible assumes the possession of exhaustive knowledge of that realm of research. The assumption that fields of inquiry have fixed, definite upper limits seems to underestimate the complexity of philosophical issues and the potential for intellectual creativity. The answer to the question of whether a study is able to advance knowledge and understanding of a subject must be
determined by the content of the study itself rather than a priori. The second response is that no previous study has considered adequately either the issue of what Rawls’s philosophy suggests about the link between universality and particularity or the matter of how his understanding of this issue influences his overall project. That a particular question or issue has not been raised in relation to a specific thinker is not sufficient by itself to prove that it is worth pursuing. The question, the author, or both may lack relevance for the field of political philosophy. It is not difficult to imagine projects that are original, yet unlikely to advance understanding substantially. This dissertation escapes these difficulties for two reasons. The first is that the problem of the relationship between universality and particularity is one of the issues that political philosophers have wrestled with since at least the time of Plato and Aristotle. This question is central to the history of western political theory, and is thus intrinsically deserving of attention. The second is that Rawls is arguably the most influential moral and political theorist of the latter part of the twentieth century. As a result, it seems appropriate, if not imperative, to consider how Rawls deals with an issue that is central to western political thought.

**Departures from Previous Approaches**

The closest that previous scholarship has come to addressing the questions of what Rawls thinks about the connection between universality and particularity and how his answer affects his apology for democracy is the debate over whether Rawls’s political philosophy is excessively abstract and universalistic. In order to understand this debate, it is necessary to provide a brief outline of the main themes of Rawls’s project.

It is probably best to understand Rawls’s work as having three primary aims. The first and broadest goal is the discovery of an objective, rational system for adjudicating moral and
political disputes. In one of his earliest published articles, which is a summary of the main ideas of his dissertation, Rawls tries to formulate a “reasonable method” for determining the validity of both competing moral principles and the actions that are based on them.\(^{19}\) In his subsequent works such as *A Theory of Justice*, *Justice as Fairness*, and *Political Liberalism*, Rawls pursues a similar goal, but confines it to a much narrower subject matter. Instead of attempting to resolve disputes that emerge within the broad field of ethics, Rawls limits his work to adjudicating political disagreements that arise between citizens of liberal democracies. As Rawls explains, one of the fundamental purposes of political philosophy is to discover a “shared basis” for determining which institutions are the most appropriate for liberal democratic societies.\(^{20}\)

The second and narrower aim is to solve the Hobbesian prisoners’ dilemma or the assurance problem without the use of a Hobbesian sovereign. In other words, Rawls wants to show how freedom is compatible with order, or how liberal democratic society can be “stable.”\(^{21}\) According to Rawls, political systems are stable “if the departures from their preferred equilibrium positions caused by normal disturbances elicit forces sufficiently strong to restore these equilibria.”\(^{22}\) Rawls identifies two main sources of stability. The first is the use of coercive power or “sanctions” to create incentives for individuals to accept a social order, and the second is the appeal to “reason” to persuade persons to adopt a conception of justice.\(^{23}\)

Approximately one-third of *A Theory of Justice* is devoted to demonstrating how justice as fairness produces stability in the second way, and the central purpose of *Political Liberalism* is to


\(^{22}\) Ibid.

\(^{23}\) Rawls, *Political Liberalism*, 143.
explain how it is possible for a liberal democracy to be “stable” on the basis of reason rather than force.\textsuperscript{24}

The third and narrowest end is the creation of a non-utilitarian justification for liberal democratic political society. Rawls argues that throughout much of the modern era, utilitarianism has been the “predominant” systematic theory of ethics.\textsuperscript{25} According to Rawls, utilitarianism defines a just or properly arranged society as one where the “institutions maximize the net balance of satisfaction.”\textsuperscript{26} Since the distribution of satisfaction among persons is irrelevant to determining the justice of a political system, a social order where the “the greater gains of some…compensate for the lesser losses of others” is completely consistent with the principle of utility.\textsuperscript{27} Consequently, utilitarianism can justify sacrificing the rights and liberties of individuals for the purpose of maximizing aggregate satisfaction. Rawls contends that the primary deficiency of utilitarianism is the failure to “take seriously the distinction between persons.”\textsuperscript{28} Due to his dissatisfaction with utilitarianism, Rawls undertakes the ambitious project of constructing a systematic and rigorous “theory of justice” that provides absolute protection for individual rights and serves as a “viable alternative” to utilitarianism.\textsuperscript{29}

In order to fulfill the three aforementioned goals, Rawls proposes to construct a conception of justice that he calls “justice as fairness.”\textsuperscript{30} Rawls insists that the main ideas of justice as fairness are derived from the notions and principles that are implicit in the “public

\textsuperscript{25} Rawls, \textit{A Theory of Justice}, xvii.
\textsuperscript{26} Ibid., 21.
\textsuperscript{27} Ibid., 23.
\textsuperscript{28} Ibid., 24.
\textsuperscript{29} Ibid., 3.
\textsuperscript{30} Rawls, \textit{Political Liberalism}, 5.
culture” of liberal democracies. Rawls attempts to formulate these ideas into a coherent and sophisticated view of right. The three fundamental concepts of justice as fairness are the idea of society as a “fair system of cooperation,” the conception of persons as “free and equal,” and the conception of a “well-ordered society.” In order to discover the principles of justice that are appropriate for regulating a fair system of cooperation between free and equal persons, Rawls introduces the device of the “original position.” Once the axioms of right have been created in the original position, Rawls checks to see if they are consistent with the “considered convictions” of persons in liberal democracies. If there is congruence, the principles of justice are validated or justified.

There are several scholarly debates between the critics and defenders of Rawls that point in the direction of, but do not address adequately the issue of the relationship between universality and particularity. One is the controversy over whether Rawls’s political philosophy is excessively abstract. Critics tend to fixate on Rawls’s use of the original position to construct the main principles of justice as fairness. For example, Michael Walzer argues that since the parties deliberating behind the veil of ignorance are denied knowledge of the particular conditions of their society, they are unable to construct a view of right that considers adequately the circumstances of their social order. Defenders normally try to show that Rawls’s philosophy takes place within the historical context of liberal democracy and that his ideas are drawn from the public cultures of these societies. For instance, Audard argues that since Rawls

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31 Ibid., 8.
32 Ibid., 35.
33 Ibid., 22.
34 Ibid., 8.
attempts to formulate the “considered convictions” of individuals in liberal democracies into a coherent conception of justice that they can accept on due reflection, it is misleading to suggest that his philosophy attempts to impose an “abstract” view of right upon society.\footnote{Audard, John Rawls, 60, 59.}

This dissertation is different from the work of critics such as Walzer and supporters such as Audard, since it seeks to answer another question. Walzer and Audard attempt to address, in addition to other issues, the problem of whether the political philosophy of Rawls is unnecessarily ahistorical. In contrast, this dissertation attempts to investigate the issue of what Rawls’s philosophy implies about the relationship between universality and particularity. Although these two questions are related, they are not identical. The first focuses on the narrow issue of Rawls’s approach to politics, while the second extends to the broad question of his understanding of what orders the higher pursuits of human life. The universal includes political justice, but the latter does not exhaust the former. Answering the former question does not necessarily provide an answer to the latter. As this dissertation shows in subsequent chapters, it is entirely possible for political theorists to give different responses to the first, but identical answers to the second. Although it seems that most thinkers who rely on abstractions tend to affirm a separation between universality and particularity, many authors who decry ahistorical thinking may also assume a disjunction between the two. In order to determine Rawls’s view of the relationship between universality and particularity, it is necessary to consider whether his approach to politics is abstract. However, this dissertation intends to move beyond that question to the question of what Rawls thinks about universality and particularity. In other words, it starts where Walzer and Audard stopped.
A key difference between this dissertation and the work of Walzer concerns the definition of abstraction. Walzer seems to think that a conception of justice is abstract to the degree that it fails to be sensitive to the prevailing social norms and values of a particular community. Walzer argues that since Rawls’s view of justice does not adequately take into consideration the values of existing societies, it is abstract. In contrast to Walzer, this dissertation defines abstraction as the tendency to insulate a view of right from concrete historical evidence. According to this understanding, the failure of a conception of justice to conform to the prevailing ideas of a community does not necessarily mean that it is ahistorical. Further, it is at least conceivable that certain social norms may be abstract.

Another academic dispute that is related to the question of the connection between universality and particularity is what Rawls’s political philosophy implies about the nature of justice. Critics and defenders generally fall into one of two camps. Some argue that Rawls either denies or ignores moral universality, and others claim that he affirms an ethical absolute. Michael Sandel is an example of a scholar who thinks that Rawls rejects the existence of moral universality. According to Sandel, Rawls’s claim that the right is prior to the good implies that the “self” is prior to its ends. The priority of the self necessitates a world where there is no “objective moral order.” Sandel argues that in such a universe, morality is relative to human will. Freeman is an example of an interpreter who understands Rawls to be defending a transcultural standard of justice. For Freeman, Rawls consistently maintains that justice as fairness is

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38 Ibid., 175.
a “universal ideal” that all political orders are obligated to observe.\footnote{Freeman, \textit{Rawls}, 425.} If any social system deviates from the requirements of justice as fairness, it is “unjust” to the degree that it departs from Rawls’s axioms of right.\footnote{Ibid., 426.}

This dissertation differs from the works of Sandel and Freeman in that it addresses Rawls’s view of the link between universality and particularity, while Sandel and Freeman are concerned with whether Rawls is a moral universalist or relativist. This dissertation, Sandel, and Freeman attempt to solve different, although related, problems. Ethics is a part, but not the whole of universality. There is not always a clear connection between one’s view of the nature of ethics and one’s understanding of the relationship between universality and particularity. Philosophers who deny moral universality and ones who affirm it may hold similar understandings of the relationship between the universal and the particular. Thus, determining Rawls’s view of the nature of morality does not necessarily uncover his understanding of the relationship between universality and particularity. Consequently, this dissertation attempts to move beyond the debate over whether Rawls is a moral universalist to the issue of how he understands universality and particularity.

A third debate that is related to the problem of the link between universality and particularity concerns whether Rawls’s view of justice assumes a controversial metaphysical claim about human nature. Sandel argues that Rawls’s assertion that the right is prior to the good is predicated on regarding the self as prior to its ends. According to Sandel, the problem with Rawls’s position is that it creates a radically “disembodied subject” that is ultimately
Sandel concludes that Rawls’s deficient conception of the person casts doubt on the validity of his theory of justice. In writings subsequent to *A Theory of Justice* such as *Political Liberalism*, Rawls argues that his theory is not founded on a “metaphysical doctrine” of the person. Rawls explains that the account of the person provided by justice as fairness is confined to the political sphere and does not extend to broader moral or epistemological issues. As a result, Rawls thinks that Sandel’s criticism is based on a misunderstanding of justice as fairness.

There are several important differences between the main argument of this dissertation and Sandel’s thesis about the Rawlsian subject. First, these two critiques have different aims. Sandel’s analysis focuses on what Rawls’s theory implies about the nature of the person, and it concludes that Rawls’s philosophy is predicated on an excessively detached view of the subject. Sandel does not attempt to address the question of what Rawls’s use of abstractions suggests about how he understands the link between universality and particularity. In contrast, this dissertation attempts to explain what Rawls’s philosophy implies about the relationship between the universal and the particular, and it tries to show that Rawls’s proclivity toward abstraction is founded on the view that universality and particularity are distinct. Second, Sandel’s work and this dissertation have different scopes. Sandel’s work is limited to exposing one abstract element of Rawls’s theory, while this dissertation attempts to unveil a propensity toward ahistoricism that pervades all of Rawls’s philosophy, even after his so-called political turn.

The debate over whether Rawls should have adopted a universal standard of justice reveals another way in which this dissertation diverges from previous approaches to Rawls’s

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philosophy. It is important to observe that this debate is different from the one over whether Rawls endorses a global standard of political right. Walzer thinks that Rawls’s attempt to construct a “universally applicable” conception of justice is problematic, since global measures of right are unable to respect properly the ineradicable diversity and complexity of different political orders. According to Walzer, Rawls could have avoided this error by adopting a conception of justice that is local rather than global. In contrast, Robert Taylor defends the universalistic elements of Rawls’s political philosophy and argues that insofar as Rawls departed from them, he weakened his argument for justice as fairness. Taylor thinks that Rawls should have grounded his view of the person in a “detranscendentalized” version of Kant’s justification for human freedom, since this would have allowed him to reformulate his theory into a “universalistic Kantian liberalism.” By taking this approach, Rawls could have avoided falling into the morass of cultural relativism.

Despite important differences in their respective interpretations of Rawls’s project, and despite offering opposite solutions to perceived problems that they identify in it, both Walzer and Taylor appear to accept a similar premise about the relationship between universality and particularity. Walzer insists that in order to discover a standard of justice, philosophers can appeal to either an “objective and universal standpoint” or the norms of a specific political society. The former perspective understands justice as uniform across temporal and geographical boundaries, and the latter regards justice as varying from one culture to another. Taylor argues that moral theorists must choose between approaches that conceive of ethical

43 Walzer, Spheres of Justice, 79.
45 Walzer, Spheres of Justice, xiv.
principles as “objective” and those that view them as “subjective.”⁴⁶ The former method claims that morality transcends place and time, while the latter states that justice is a product of specific cultures and traditions. Although Walzer sides with particularism and Taylor embraces universalism, both seem to accept uncritically the notion that universality and particularity are inherently distinct. They take it for granted that Rawls adopts a similar view, and thus they argue that he must choose between abstract globalism and historical relativism. This dissertation departs from Walzer and Taylor in that it considers a third option, which is apparently far from their accustomed philosophical inclinations. This neglected alternative claims that it is possible for universality and particularity to be united, though only selectively and in limited ways. If correct, this possibility would make it unnecessary for Rawls to choose between the two unsatisfactory alternatives and would allow him to affirm a form of universality that is also concrete.

One more point of contrast between this dissertation and Rawls’s critics deserves mention. Outside of Sandel, none of the so-called communitarian detractors of Rawls, with whose arguments this dissertation might have the most in common, has attempted to demonstrate systematically and meticulously that Rawls’s political philosophy is actually vulnerable to the various communitarian critiques. Scholars such as Walzer, Alasdair MacIntyre, and Charles Taylor, who are normally described as communitarians, offer only truncated discussions of Rawls’s philosophy.⁴⁷ They are thus vulnerable to the charge that they misunderstand the nature of Rawls’s theory. In contrast, this dissertation provides a great deal of textual evidence to

⁴⁶ Taylor, Reconstructing Rawls, 6.
substantiate its interpretation of Rawls. If there is some superficial overlap between the conclusions of communitarians such as Walzer and those offered by this dissertation, the latter are based on a much firmer foundation. Of course, a number of scholars who do not belong to the communitarian school of thought have provided well-supported interpretations of Rawls. There is, however, relatively little continuity between their arguments and the ones found in this dissertation.

**Outline of the Dissertation**

The remainder of the dissertation is structured as follows. Chapters two, three, four, and five offer a systematic examination of all of Rawls’s ideas that are relevant to answering the two central questions of this dissertation. Ideas that are discussed include Rawls’s criticisms of rational intuitionism, ideal and non-ideal theory, the conception of the person, the idea of society as a system of cooperation, the idea of a well-ordered society, the original position, the two principles of justice as fairness, reflective equilibrium, Rawls’s political turn, reasonable pluralism, the overlapping consensus, and the idea of public reason. Special attention is given to the argument that the revisions that Rawls made in *Political Liberalism* insulate him from the charge that his political theory is unnecessarily abstract.48 The time and space devoted to each concept is proportional to its significance for the central purpose of the dissertation. These four chapters thus attempt neither to provide a comprehensive articulation of Rawls’s philosophy as a whole nor to sort out the merits of the numerous different interpretations of his theory. Although these chapters are organized topically rather than chronologically, they try to be sensitive to how

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Rawls’s main ideas evolved over time. Chapter six undertakes an examination of the secondary literature on Rawls that is relevant to the two main questions posed by the dissertation. This discussion of previous scholarship on Rawls sharpens and defines the philosophical issue of the connection between universality and particularity and demonstrates that previous scholars have not considered what Rawls’s philosophy implies about this problem. This chapter considers the most prominent representatives of the different approaches to Rawls’s thought whose work is related to the problem of universality and particularity. Keeping in mind the purpose of this dissertation, this chapter neither provides a comprehensive review of the numerous scholarly responses to Rawls’s philosophy nor offers a thorough reconstruction of all the main arguments advanced by these thinkers. The major authors that are mentioned include Sandel, Walzer, Nozick, G. A. Cohen, Richard Rorty, Habermas, Allan Bloom, and David Lewis Schaefer. The seventh chapter identifies some of the problems that arise from Rawls’s acceptance of an antithesis between universality and particularity and explains how these difficulties dilute the force of his argument for liberal democracy. It also mentions several elements of Rawls’s philosophy that, if they would have been developed more thoroughly, could have led him to conclude that it is possible to synthesize universality and particularity. Chapter eight shows how it may be possible to reconcile the universal and the particular, and thereby to mitigate some of the challenges of disconnecting the two. A brief concluding chapter offers a summary of the main arguments of the dissertation, comments on the merits of Rawls’s attempt to justify liberal democracy, and explains what implications the findings of this dissertation may have for contemporary democratic theory.
CHAPTER TWO

Introduction

The purpose of chapters two, three, four, and five is to explain thoroughly and systematically all of the ideas of Rawls that are relevant to answering the question of what his political philosophy as a whole implies about the relationship between the universal and the particular. Chapter two discusses Rawls’s objections to rational intuitionism, ideal and non-ideal theory, the idea of society as a system of cooperation, the conception of the person, and the idea of the well-ordered society. The third chapter considers the idea of the original position, the two principles of justice, the four-stage sequence, ideas of the good in justice as fairness, the priority of right, and moral justification. Chapter four examines Rawls’s political turn, the problem of stability, political versus comprehensive conceptions of justice, the idea of the overlapping consensus, and reasonableness versus truth. The fifth chapter reviews the idea of public reason and the law of peoples. As a whole, these four chapters attempt to demonstrate that Rawls’s penchant for abstract ideals and conceptions implies that he accepts a dichotomy between universality and particularity. Of course, this is not to suggest that all of the elements of Rawls’s philosophy point in the same direction, since it is surely possible to find aspects of his work that are more historically sensitive. Rather, it is to show that the dominant strain of Rawls’s thought insinuates that there is a separation between universality and particularity.

Before proceeding, it is necessary to offer to readers a note of caution about what lies ahead. The discussion of Rawls’s political philosophy that follows is technically demanding. There are several reasons for this. One is to avoid the objection that this study fails to consider
in sufficient detail all of Rawls’s relevant ideas. Many prior interpreters of Rawls have labored to show that his ideas are neither abstract nor detached, and thus there is a substantial amount of scholarly evidence that supports a more historical evaluation of Rawls’s philosophy.¹ Since this study presents an interpretation of Rawls that challenges this daunting scholarly consensus, it is necessary to provide a large amount of evidence to convince skeptical readers. Another reason is to lay the groundwork for subsequent arguments and conclusions. The complicated and technically exacting nature of Rawls’s political theory often requires precise and laborious explication of prior concepts in order to arrive at antecedent observations. Readers who neither demand to see an extensive amount of evidence to be persuaded of the main point of this dissertation nor are especially intrigued by the minute details of Rawls’s philosophy may find the following exposition excessively lengthy and meticulous. Such individuals may benefit from skimming or skipping over altogether some of the more technical segments of the next four chapters. Readers can easily navigate these chapters by observing the titles of the various sections.

**Rawls’s Rejection of Rational Intuitionism**

The broadest goal of Rawls’s political philosophy is to construct a rational procedure for adjudicating ethical disputes and for justifying moral beliefs. Prior to describing Rawls’s theory, it may be helpful to consider his primary competitor, which is a philosophical position that he

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calls “rational intuitionism.” Rawls thinks that philosophers including Plato, Aristotle, Aquinas, Henry Sidgwick, Samuel Clarke, and Gottfried Wilhelm von Leibniz have advanced variants of this view. Although Rawls identifies a number of characteristics of rational intuitionism, only two are relevant to this discussion. The first is that the truth or justification of fundamental moral principles and axioms depends on their conformity to a fixed moral order that is prior to and independent of human beings and society, and the second is that the primary function of human beings in ethics is limited to discerning and applying this moral order through intuition. Ethical norms are independent and prior in the sense that their existence, content, and applicability are not dependent upon human action or knowledge. As a result, human beings are merely receptacles of this external moral order. Although Rawls does not use this terminology, it is probably accurate to say that rational intuitionism claims that the universal and the particular are dichotomous.

Rawls finds rational intuitionism defective for several reasons. The first is its failure to provide an adequate account for how the independent moral order is relevant to the needs and aims of individual persons, how the ethical order provides a sufficient basis of motivation for human action, and how the moral order relates to the purposes and problems of political society. Rawls argues that neither the fact that the principles of right have been established by God or nature nor the fact that they are comprehensible to human beings explains why they should be obeyed by individuals. For Rawls, rational intuitionism’s view of universality or justice is

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excessively removed from the realm of human life. According to Rawls, genuine political right must take into consideration the facts of political society. Rawls’s second objection to rational intuitionism is that he thinks it is a form of “heteronomy.”\(^5\) According to Rawls, autonomy is when human beings act according to principles of ethics and justice that are constructed by the exercise of their practical reason, and heteronomy is when individuals conform to rules of right that are known by the use of their theoretical reason. Since the content of the moral order of rational intuitionism is determined by a source external to persons, human actions that comply with its dictates are heteronomous. Since Rawls views political right or universality as a product of human creativity and reason, he thinks that rational intuitionism erroneously renders the former independent of the latter.

Rawls’s rejection of rational intuitionism’s claim that ethics is completely separate from history does not lead him to reject altogether the idea that universality and particularity are dichotomous. Rational intuitionism is not the only school of thought that attempts to insulate justice from tradition. Social contract theorists such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau separate justice and society by searching for political right in hypothetical constructs such as the state of nature and the social contract.\(^6\) Immanuel Kant affirms a similar dichotomy when he insists that the principles of duty and right must be completely independent of experience.\(^7\) Certainly, Rawls could have followed in the footsteps of philosophers such as G.

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W. F. Hegel, who attempted to develop a synthesis between justice and history. However, as the remainder of this chapter demonstrates, Rawls seems to have much more in common with the social contract theorists and Kant, on the one hand, than with Hegel, on the other.

**Ideal and Non-Ideal Theory**

Rawls’s distinction between “ideal” and “nonideal” theory provides important insights into his approach to political ethics. Ideal or “strict compliance” theory attempts to discover the principles of justice that are appropriate for regulating the background structure of a completely just or well-ordered society, while nonideal or “partial compliance” theory attempts to uncover the axioms and policies necessary for governing the basic institutions of an unjust or poorly ordered society. Ideal theory assumes the existence of “favorable conditions” such as the cultural, social, educational, economic, and institutional standards necessary for just society and that all members of society perfectly comply with the conception of justice. Rawls divides nonideal theory into two parts. The first deals with situations where unfavorable “natural” and “historical” conditions inhibit the implementation of just institutions, and the second addresses circumstances where there are deviations from just or nearly just institutions. The former describes the appropriate measures for establishing just institutions, and the latter provides the measures necessary for restoring justice such as punishment, war, civil disobedience,

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8 See Hegel, *Phenomenology of Spirit*.
11 Ibid., 216.
conscientious refusal, militant resistance, revolution, compensatory justice, and the standards for comparing different forms of injustice against one another.

There is an important relationship between ideal and nonideal theory. Rawls contends that his primary purpose in constructing justice as fairness is to elaborate an ideal theory of political right and not to provide an explanation for correcting the evils of unjust political orders. In *A Theory of Justice*, Rawls writes that his “main concern” is with ideal theory and that the two principles of justice as fairness “belong” to ideal theory, and in *Justice As Fairness*, he reiterates that he is “concerned for the most part” with establishing a conception of justice for regulating a well-ordered society.\(^\text{13}\) Rawls’s insistence that contemporary American democracy “is not well-ordered,” and his statement that “the problems of partial compliance theory are the pressing and urgent matters…that we are faced with in everyday life” raise the question of the relevance of ideal conceptions of justice to historical political societies.\(^\text{14}\) In other words, what does the ideal theory have to do with the nonideal world? The answer is that the former serves as a standard for measuring and correcting the latter. According to Rawls, ideal theory “presents a conception of a just society that we are to achieve if we can,” and “existing institutions are to be judged in the light of this conception and held to be unjust to the extent that they depart from it without sufficient reason.”\(^\text{15}\) Rawls seems to think that a complete conception of justice must be known in advance to achieve the twin purposes of providing “a systematic grasp” or “a deeper understanding” of injustice and for providing “a rational basis” or blueprint for political and


social reform.  Once the ideal view of right is discovered, and once the discrepancies between the ideal and the real are identified, the main problem is the application of the perfect standard to imperfect society. For Rawls, the goal is to inject as much of the content of justice as fairness into deviant social orders as “circumstances permit.” Aside from a discussion of the justification of civil disobedience and conscientious refusal, Rawls offers relatively little concrete guidance for social and political reform. Rawls is content to leave the task of figuring out how to align less than well-ordered political societies with his ideal conception of right to others.

The Three Fundamental Ideas of Justice as Fairness

The structural edifice of justice as fairness is predicated upon three fundamental ideas or assumptions. The first, and most fundamental, is that liberal democratic political society is “a fair system of social cooperation over time, from one generation to the next.” Rawls argues that there are three aspects or elements of social cooperation. The first is the important distinction between “social cooperation” and “socially coordinated activity.” Social coordination is achieved when a power or authority that is independent from the participants in a society issues directives or dictates that govern their behavior, while social cooperation exists when the persons who are engaging in a political enterprise create, accept, and follow a system of regulations and procedures that direct their interactions with each other. Rawls argues that members of a liberal democracy do not regard or “view” their society as a “fixed natural order”

17 Rawls, A Theory of Justice, 216.
18 See Ibid., 319-341.
19 Rawls, Justice as Fairness, 5; Rawls, Political Liberalism, 15; see also, Rawls, A Theory of Justice, 4.
20 Rawls, Justice as Fairness, 6; Rawls, Political Liberalism, 16.
or an “institutional hierarchy” predicated upon “religious or aristocratic values.” In other words, democracy is a political system where the laws are created by the voluntary consent of citizens rather than by an outer or external source such as nature, tradition, divine will, or an unaccountable ruling elite. The second is that the “fair terms of cooperation” or the principles of political justice are ones that all individuals can accept or acknowledge if everyone else does the same. The fair terms of cooperation are characterized by the concept of “reciprocity,” or the notion that all individuals who conform to the rules and procedures of the conception of justice should benefit in ways specified by that system of political right. The third is that there is a “good” or “rational advantage” that each participant is attempting to achieve through social cooperation. By following the rules of the political order, all members have the opportunity to advance their interests.

The second basic idea is that of the person. Rawls argues that human beings are “moral persons.” There are two primary features or characteristics of moral personality. The first is the capacity for a “conception of the good,” and the second is the capacity for a “sense of justice.” The former is the ability to possess, develop, revise, and pursue an ordered system of goals or ends that are in one’s own interest or benefit, and the latter is the desire or inclination to act from the principles of justice that regulate political society. The sense of justice is manifested in two ways. The first is acceptance of and support for the just or right institutions that exist in the society in which one resides, and the second is “willingness” to labor for and not

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21 Rawls, Political Liberalism, 15; see also Rawls, Justice as Fairness, 6.
22 Rawls, Justice as Fairness, 6; Rawls, Political Liberalism, 16.
23 Rawls, Justice as Fairness, 6; Rawls, Political Liberalism, 16.
24 Rawls, Justice as Fairness, 6; Rawls, Political Liberalism, 16.
26 Rawls, Justice as Fairness, 18-19; Rawls, Political Liberalism, 19; see also Rawls, A Theory of Justice, 442.
to oppose both the establishment of just or right institutions and the reform of current institutions when it is required by the principles of right.²⁷

Rawls also views persons as “free and equal.”²⁸ There are three ways or respects in which persons are free. The first is that individuals possess the ability to choose, revise, and reject a conception of the good. Since persons are “independent” from any particular conception of the good, their political rights, liberties, and privileges are not predicated upon the conception of the good they choose to affirm.²⁹ The second is that individuals are “self-authenticating sources of valid claims” or possess the right to make demands on political society for the purpose of advancing their conception of the good so long as it does not conflict with the principles of justice that regulate political society.³⁰ These claims are self-authenticating since their validity is derivative from within themselves rather than from duties or obligations established by the rules of society. The third is that persons possess the ability to be responsible for the goals or aims that they choose to pursue.³¹ This means that individuals are able to adjust or refine their goals and desires to be consistent with the requirements of the principles of justice and to be appropriate to the material and social goods that they can reasonably expect to acquire. The primary way that persons are equal is that they possess the “capacity for moral personality” to a “certain minimum degree.”³² It is important to observe that the requisite minimum is the “capacity” for rather than the “realization” of moral personality.³³

²⁷ Rawls, A Theory of Justice, 415; Rawls, Political Liberalism, 19.
²⁸ Rawls, A Theory of Justice, 475; Rawls, Collected Papers, 255, 309; Rawls, Justice as Fairness, 18; Rawls, Political Liberalism, 19.
²⁹ Rawls, Political Liberalism, 30.
³⁰ Ibid., 32.
³¹ Ibid., 33.
³² Rawls, A Theory of Justice, 442; see also, Rawls, Justice as Fairness, 20; Rawls, Political Liberalism, 19.
Rawls also thinks that human beings are “reasonable” and “rational.” Reasonableness is the willingness to consider seriously the interests of other persons and to attempt to find a course of action that is acceptable to all involved. Reasonable actors are willing to offer “terms of cooperation” that are acceptable to other persons and to honor these conditions, even at the expense of their own interests, as long as everyone else is willing to do the same. In contrast, rationality is the pursuit of “ends or interests,” either one’s own or another’s, without regard for those of other individuals. Actors that are rational but not reasonable are unwilling both to propose standards of cooperation that sincerely recognize the interests of others and to honor terms of association if it does not advance their interests.

Finally, Rawls characterizes human beings as “autonomous.” Autonomy is acting from principles of right or justice that are given to oneself under conditions that best express the nature of human beings as free and equal, while heteronomy is obeying rules that are either derived from an external authority such as nature, history, or divinity, or chosen under the influence of historical circumstances such social or economic position. Citizens in a well-ordered society realize autonomy when they “act from” principles of justice that they would select for themselves in the original position. It is important to note that in A Theory of Justice, Rawls implies that autonomy is an “ethical value,” while in Political Liberalism, he insists that it is only

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34 Rawls, Collected Papers, 316; Rawls, Justice as Fairness, 6; Rawls, Political Liberalism, 48.
35 Rawls, Political Liberalism, 50.
36 Ibid.
37 Rawls, Collected Papers, 315; Rawls, Political Liberalism, 77; see also Rawls, A Theory of Justice, 452.
38 Rawls, A Theory of Justice, 222.
39 Rawls, Political Liberalism, 77; see also Rawls, Collected Papers, 315.
a “political” one.\textsuperscript{40} By an ethical value, Rawls means one that applies to the “whole of life,” while by a political value, Rawls means one that is limited to “political life.”\textsuperscript{41}

The third fundamental idea of justice as fairness is the “well-ordered society.”\textsuperscript{42} There are three essential features of a well-ordered society. The first is that all members accept, and know that all other members accept, identical principles of right. The second is that all members either know or have good reason to think that the organization of the primary institutions of society conforms to the axioms of justice. The third is that members of the social order possess “a normally effective sense of justice,” and that they regularly adhere to the just institutions of society.\textsuperscript{43} In a well-ordered society, the unanimously accepted conception of justice serves as a common perspective or “shared point of view” to adjudicate disputes between members.\textsuperscript{44}

Rawls repeatedly insists that his idea of society as a fair system of cooperation, his conception of the person, and his notion of a well-ordered society are “implicit in” or derived from the “public political culture” of liberal democratic society.\textsuperscript{45} According to Rawls, justice as fairness attempts to “formulate” the main ideas and principles implicit in the public culture of liberal democracy into a viable political conception of justice.\textsuperscript{46} Rawls defines the public political culture as the “political institutions” of a constitutional democracy such as the various branches of government, the “public traditions of their interpretation” provided by statesmen, political parties, courts, writings on law, government, and philosophy, and the “historic texts and documents” such as constitutions and declarations of rights that are commonly known and

\begin{thebibliography}{99}
\item Rawls, \textit{Political Liberalism}, 77.
\item Ibid., 78, 77.
\item Rawls, \textit{Collected Papers}, 322; Rawls, \textit{Justice as Fairness}, 8; Rawls, \textit{Political Liberalism}, 35.
\item Rawls, \textit{Political Liberalism}, 35.
\item Ibid., 35.
\item Rawls, \textit{Political Liberalism}, 43. See also Rawls, \textit{Justice as Fairness}, 5-6.
\item Rawls, \textit{Political Liberalism} 8; see also John Rawls, \textit{Collected Papers}, 306, 393; Rawls, \textit{Justice as Fairness}, 5.
\end{thebibliography}
recognized by members.⁴⁷ These conceptions and axioms found in the public culture are often conflicting and contradictory. As Rawls puts it, “the public political culture may be of two minds at a very deep level.”⁴⁸ Consequently, Rawls is not claiming that the notions and ideals that he derives from the public culture enjoy unanimous support, but rather that they are held by at least some members of liberal democratic society.

The idea of society as a fair system of social cooperation between free and equal persons seems to be an ideal that Rawls hopes liberal democracies can approximate rather than a description of real liberal societies. It is difficult to imagine any actual social order—either liberal or non-liberal—where the fundamental axioms of justice are determined solely by the voluntary consent of its participants. Even in the most democratic political systems, the rules and laws that govern society are influenced, at least to some degree, by central authorities such as legislators, presidents, and judges, and by traditions, customs, and precedents. In addition, Rawls does not make any effort to show that historical democracies have ever achieved the ideal of a fair system of cooperation. Precisely why Rawls declines to demonstrate that liberal democracies can achieve this ideal is a question that he does not address.

Rawls insists that his view of the person is a “moral conception.”⁴⁹ A moral conception is an idea whose content is determined by “ideals, principles, and standards” that articulate values.⁵⁰ Rawls explicitly states that the idea of persons as free and equal is not intended to be an accurate description of actual individuals in historical societies. Rawls repeatedly describes

⁴⁷ Rawls, Political Liberalism, 13-14; see also Rawls, Justice as Fairness, 5-6, 19-20.
⁴⁸ Rawls, Political Liberalism, 9.
⁴⁹ Ibid., 397, 423
⁵⁰ Ibid., 423.
his view of the individual as an “idealized” or “abstract” notion.\(^{51}\) Rawls admits that real persons often fail to embody the attributes of this ideal. For example, Rawls recognizes that as a result of birth, accident, or illness, some persons may not possess, to the requisite minimum degree, the capacity for moral personality.\(^{52}\) Rawls also admits that since individuals display “special psychologies” such as envy, spite, or the will to dominate others, they routinely fail to embody the ideal of reasonable actors.\(^{53}\) Additionally, since many of the rules and laws of actual democratic societies fail to conform to the standard of justice derived from the original position, it seems that actual individuals are unable to realize the ideal of autonomy. Instead, Rawls views the conception of the person as a first principle or assumption of justice as fairness. The goal is to construct a form of political order that allows individuals to realize freedom, equality, reasonableness, and rationality.

Rawls denies that the idea of a well-ordered society is intended to be a depiction of any existing political order. Rawls frequently characterizes the idea of a well-ordered society as an “idealized” or “abstract” notion.\(^{54}\) Also, Rawls insists that existing political systems are rarely, if ever, well-ordered since citizens normally disagree with each other on fundamental ideas of justice.\(^{55}\) Further, and perhaps most revealing, Rawls never attempts to provide an historical example of a society that conforms to or approximates his notion of a well-ordered. As a result, the ideal of a well-ordered society is probably best understood as a basic assumption or useful

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fiction in justice as fairness. Rawls thinks that the ideal of a well-ordered society is the type of social organization that best accommodates his view of the person.

Rawls’s claim that his ideas of the well-ordered society and the person are intended to be idealizations or abstractions and his failure to demonstrate that the idea of society as a fair system of cooperation is anything other than an ideal raises the important question of the purpose of abstract notions in his political philosophy. According to Rawls, “abstract conceptions” help persons to achieve “a clear and uncluttered view” of an issue or question, because they strip away extraneous information and emphasize the “elements” that are “most relevant” to resolving or answering it. Since the notion of society as a fair system of cooperation ignores the sway of central authorities and tradition over the basic principles of justice, it seems that Rawls thinks that this truth is inconsequential to deliberations about political right. Since the ideal of the person excludes features of actual human beings such as special psychologies and disabilities, it appears that Rawls believes that these realities are irrelevant to determining the content of justice. In addition, since the abstraction of a well-ordered society disregards the existence of dispute over the nature of justice, it seems that Rawls finds this factor peripheral to constructing a just political system.

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56 Rawls, Justice as Fairness, 8.
CHAPTER THREE

The Original Position

Since Rawls understands society as a fair system of cooperation between free and equal persons, and since he thinks that a well-ordered society is regulated by a conception of justice, the next question that he addresses concerns the content of the conception of justice. To answer this question, Rawls introduces the device of the “original position.”¹ The fundamental purpose of the original position is to determine the principles of justice that are most appropriate for a society that is understood as a fair system of cooperation between free and equal persons.² Stated differently, the original position connects the idea of the person with the idea of the well-ordered society.

Rawls describes the original position as “hypothetical” and “nonhistorical.”³ The initial situation is hypothetical since its fundamental purpose is to discover the content of the principles of justice that parties in a suitably specified situation could or would agree to, rather than to discover the conception of right that real persons have actually consented to under historical circumstances. The original position is nonhistorical since it is assumed that it has neither existed nor could exist and since the question of whether it has or could exist is entirely immaterial to its basic aim. There are two main reasons for why Rawls insists on the hypothetical and nonhistorical nature of the initial situation. The first is to immunize it from

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“objections” to older formulations of social contract theory.⁴ According to Rawls, there are two primary criticisms of social contract theory.⁵ The first is that since knowledge of the idea of the social contract is limited to a few countries and since people must be aware of the social contract in order for it to be the basis of political obligation, consent cannot possibly be the universal basis of social duty. The second is that since most governments are founded upon violence and force rather than upon an initial agreement or contract, the basis of most political authorities cannot be the consent of the ruled. Rawls argues that these criticisms are easily avoided by rendering the initial situation and social contract as hypothetical and nonhistorical. The second reason for why Rawls insists that the original position must be hypothetical and nonhistorical—and the one that is most important for this dissertation—is that he thinks that the content of the principles of justice must not be unduly influenced by the conditions of the social system that they are intended to evaluate. According to Rawls, the principles of justice regulate the “basic structure” of political society.⁶ The basic structure is the manner in which the primary social, political, and economic institutions cohere into a single system and the way that they distribute rights, privileges, duties, and goods to participants in society. The main institutions include the constitution, property, the economy, and the family. Rawls argues that since the axioms of right are intended to govern the basic structure, the content of the former should be independent from the circumstances of the latter. Consequently, Rawls contends that in order to reach a “fair

agreement,” it is necessary to discover a “point of view” that is “removed from and not distorted by” the basic institutions of society.\footnote{Rawls, \textit{A Theory of Justice}, 118; Rawls, \textit{Collected Papers}, 301; Rawls, \textit{Justice as Fairness}, 15; Rawls, \textit{Political Liberalism}, 23.}

The most prominent and important feature of the original position is the “veil of ignorance.”\footnote{Rawls, \textit{A Theory of Justice}, 118; Rawls, \textit{Collected Papers}, 310; Rawls, \textit{Justice as Fairness}, 15; Rawls, \textit{Political Liberalism}, 23.} The veil of ignorance ensures that the parties who select the principles of justice in the original position are unaware of historical “contingencies” such as social or economic class, natural talents or abilities, personal characteristics, psychological tendencies, and moral, philosophical, and religious beliefs.\footnote{Rawls, \textit{A Theory of Justice}, 118; Rawls, \textit{Justice as Fairness}, 16.} However, the representatives have access to any “general facts” such as the laws and principles of politics, economics, sociology, and psychology that are relevant for selecting appropriate principles of right.\footnote{Rawls, \textit{A Theory of Justice}, 119; Rawls, \textit{Justice as Fairness}, 87.} While Rawls maintains that the principles of justice should be independent of particular information, he does think that it is permissible for them to “depend” on general facts.\footnote{Rawls, \textit{Collected Papers}, 336.} Rawls advances three main justifications for the veil of ignorance. The first is that the principles of justice must be chosen impartially.\footnote{Rawls, \textit{Political Liberalism}, 23.} If the parties in the initial situation are aware of historical contingencies, they may be tempted to tailor the principles of right to benefit their own interests or the interests of the people that they represent. Also, since social conditions distribute influence and power unequally, knowledge of these conditions may permit some parties to use these disparities to craft the axioms of right to their advantage. The second is that the decisions of the parties must be autonomous.\footnote{Rawls, \textit{Collected Papers}, 351.} If the parties are aware of historical contingencies, then their deliberations and verdicts are constrained or
limited by historical accidents. In addition, since particular circumstances produce inequalities, such knowledge will undermine the symmetrical situation of the parties in the original position. The third, and most crucial, is that historical contingencies are “arbitrary from a moral point of view.” Rawls does not think that the content of ethical principles should be determined by social and political conditions that fall outside of the sphere of the general facts established by the social sciences. If the conception of justice adopted in the original position is to be moral rather than merely expedient or rational, it is necessary for the parties to construct and accept them on the basis of ethical considerations.

Rawls notes that construing the original position as hypothetical and nonhistorical raises the question of how the agreement reached in it by the parties is relevant to historical political societies. Since the agreement is hypothetical and since hypothetical agreements are not binding, it is not clear how this agreement is applicable to real persons and societies. Rawls argues that the solution to this problem is to understand the original position as a “device of representation” or a “thought-experiment” that employs fictional conditions for the purpose of modeling or representing certain “convictions” or beliefs of persons in political society. Rawls contends that the conditions of the original position represent the freedom, equality, rationality, and reasonableness of persons. The freedom or autonomy of individuals is represented by the fact that the parties in the initial situation are not bound or limited by “prior or antecedent principles of right or justice” specified by nature, God, or tradition. The parties are free to pursue the principles of justice that best advance the interests of the persons that they represent. The

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equality of individuals is modeled by the fact that all representatives in the original position are “symmetrically” situated relative to each other. All the parties have equal power, authority, and influence over the process of constructing axioms of right for governing political society. The rationality of persons is exemplified by the fact that the parties attempt to formulate principles of justice that best secure and advance the interests of the persons that they represent. The reasonableness of individuals is modeled by the restrictions that the veil of ignorance places on the deliberations of the representatives in the initial situation. Since the veil of ignorance prevents the parties from selecting principles of justice on the basis of factors such as social or economic position that cannot be reasonably accepted by all, it forces the parties to select rules of right on the basis of arguments and information that can be accepted by everyone. Rawls argues that the features of the original position model what real persons in actual societies “regard” as appropriate conditions under which the delegates of free and equal individuals select the principles of justice for regulating the basic structure and what they “regard” as defensible limitations on the reasons for proposing, accepting, and rejecting conceptions of justice.

Rawls argues that the original position is a device of “selection” rather than one of “deduction.” The best or most appropriate conception of right is not “deduced” from the conditions or premises of the original position, but instead is “selected” from a compilation of alternatives. Consequently, the parties inhabiting the initial situation are presented with a “short list of traditional conceptions of justice” and are required to select the most acceptable

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20 Ibid.
22 Rawls, *Justice as Fairness*, 82.
23 Ibid.
alternative. The competing views of right on the list are derived from the liberal democratic “tradition of political philosophy.” Rawls states that the catalogue presented to the representatives does not include all possible conceptions of justice. The parties proceed by comparing the alternatives two at a time until they arrive at the best one. The representatives decide in favor of one alternative over another on the basis of the “balance of reasons” since there are usually good reasons that favor and oppose all conceptions of justice. Rawls states that he wants the case or argument from the original position to be “strictly deductive” and to be “a kind of moral geometry.” For Rawls, the goal is to ensure that the conclusions that are derived from the original position follow from the conditions and premises of the initial situation. The descriptions of the parties should fully account for why they will select certain principles of justice over alternatives. However, Rawls acknowledges that the arguments presented will “fall far short” of the ideal.

In order to understand the original position, it is necessary to consider that nature of the parties that inhabit it. Rawls describes these actors as “artificial persons.” The criterion for determining which characteristics and features are most appropriate for the parties is their utility or expedience to the purpose of discovering a suitable conception of justice for a democratic society. As a result, the description of the representatives is not intended to be an accurate account of the deliberation, motives, or attributes of either real persons in historical societies or ideal citizens residing in well-ordered political systems. The first artificial attribute is “rational

24 Rawls, A Theory of Justice, 106.
25 Rawls, Justice as Fairness, 82.
26 Ibid., 95.
27 Rawls, A Theory of Justice, 104. 105; see also Rawls, Justice as Fairness, 82.
28 Rawls, A Theory of Justice, 105; see also Rawls, Justice as Fairness, 82.
29 Rawls, Justice as Fairness, 87; Rawls, Political Liberalism, 75.
30 Rawls, Justice as Fairness, 87; Rawls, Political Liberalism, 28.
autonomy.” Rawls mentions two ways in which the representatives are rationally autonomous. The first is that the parties are free to select or construct any principles of justice for regulating the basic structure of society solely on the basis of their own reason without regard for any prior or independent standard of right or justice. In other words, the deliberations of the parties determine the content of the principles of political morality. The second is that the parties attempt to select the principles of justice that are most likely to guarantee the existence of conditions that are conducive to the development of the moral powers of their constituents. The only motivation of the representatives in the initial situation is the advancement of the interests of citizens in political society. The attribute of rational autonomy is justified because the purpose of the parties is to select principles of justice rather than to act upon them. However, Rawls recognizes that rational autonomy is not an accurate description of the motives and actions of actual persons in real societies. The second artificial characteristic of the parties is that they are not motivated by “certain special pathologies” such as envy, spite, excessive aversion to risk and uncertainty, and the desire to dominate and rule over others. This characteristic is necessary since the content of the principles of right should not be influenced by undesirable traits. However, Rawls acknowledges that actual individuals inhabiting real political systems are moved by these undesirable characteristics.

The fact that the parties in the original position lack knowledge of the conceptions of the good that are held by their constituents raises the question of how the former can select principles of justice that will advance the interests of the latter. If the parties do not know what

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their constituents want, on what basis will the former choose principles that are in the best interests of the latter? Rawls’s solution to this problem is the idea of “primary goods.” Rawls’s definition of primary goods evolves throughout his works. In *A Theory of Justice*, Rawls defines primary goods as “things which it is supposed a rational man wants whatever else he wants.” Primary goods are things that will assist individuals in pursuing their rational plans of life, regardless of what those plans are. In other words, they are universal, all-purpose means for advancing conceptions of the good. Rawls thinks that it can be assumed that all persons “prefer more rather than less” of the primary goods. There are three main categories of primary goods. The first includes “rights, liberties, and opportunities,” the second contains “income and wealth,” and the third is self-respect or a “sense of one’s own worth.” In *Justice as Fairness* and *Political Liberalism*, Rawls revises both the definition and the categories of primary goods. According to the new definition, primary goods are the “social conditions” and “all-purpose means” that permit free and equal citizens “to pursue their determinate conceptions of the good” and “to develop and exercise their two moral powers.” The revised definition limits primary goods to the things required by persons as citizens and excludes goods that may be required by persons as non-citizens. The fundamental idea is that primary goods are all the things that allow free and equal citizens to be fully functioning members of a liberal democratic society over the course of a complete life. Rawls also expands the number of categories of primary goods to five. The first includes the “basic rights and liberties” such as “freedom of

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37 Ibid.
38 Ibid.
39 Ibid.
thought” and “liberty of conscience,” the second contains “freedom of movement and free choice of occupation against a background of diverse opportunities,” the third consists of “powers and prerogatives of offices and positions of responsibility,” the fourth includes “income and wealth,” and the fifth is “the social bases of self-respect.” Rawls insists that the determination of what counts as a primary good is based on the “conception of the person as free and equal” and on “various general facts” that are necessary for deducing what free and equal citizens need. The process of selecting primary goods starts with a conception of the person and then uses general information to figure out what persons conceived in this way would want. Rawls emphatically denies that the criteria for determining the primary goods depends on “historical or social facts” derived from “a comprehensive empirical or historical survey” of what real people normally need to achieve the ends or goals that they usually select. In essence, Rawls starts with a conception of the person rather than with the historically observed facts about human beings. He wants to adjust the historical facts to a pre-existing conception of the person rather than to align the conception of the person with the concrete evidence. It is important to observe that Rawls freely acknowledges that the account of the primary goods is predicated upon the questionable assumption that all persons desire more rather than less of the primary goods. Rawls writes that “of course, it may turn out, once the veil of ignorance is removed, that some of them for religious or other reasons may not, in fact, want more of these goods.” Rawls argues that the parties in the original position select principles of justice that maximize the share of primary goods.

40 Rawls, Political Liberalism, 308; see also Rawls, Justice as Fairness, 58-59.
41 Rawls, Justice as Fairness, 58.
42 Rawls, Political Liberalism, 308.
43 Rawls, A Theory of Justice, 123.
distributed to their constituents. Consequently, the primary goods serve as a standard or measure for evaluating the merits of the competing conceptions of justice.

In addition to the restriction of the veil of ignorance, the deliberations of the parties in the original position are subjected to five additional “formal conditions.” Rawls refers to these restrictions as “the constraints of the concept of right,” since they are applicable not only to principles of political justice but also to axioms of moral and ethical conduct. In order to receive consideration by the representatives in the initial situation, a conception of justice must conform to these five principles. Rawls argues that the appropriateness or “propriety” of the five formal constraints is derived from the purpose of a view of justice, which is to arbitrate the demands made by individuals upon each other and upon their institutions. Since the five constraints are fairly weak, Rawls contends that most traditional conceptions of justice such as utilitarianism and Kantianism satisfy these requirements and thus are candidates for consideration in the original position. However, Rawls notes that these requirements exclude “various forms of egoism” from consideration by the parties. The first constraint is that “principles must be general.” The generality condition means that rules or axioms must be constructed without reference to specific persons, classes, and entities and without definitions that favor one party or entity over another. The basic idea is that the first principles of political justice should be impartial. The second constraint is that “principles are to be universal in

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44 Ibid., 112; see also Rawls, *Justice as Fairness*, 85.
46 Ibid., 113.
47 Ibid.
48 Ibid.; see also Rawls, *Justice as Fairness*, 86.
application.” The universality requirement means that axioms must apply to all individuals because they are “moral persons.” The third restraint is that the principles of right are publically known. The “publicity” condition means that all or most persons in a political society must know that the principles of right are generally followed by all other members of political society. The fourth limitation is that “a conception of right must impose an ordering on conflicting claims.” The ordering condition means that the rules of justice must determine which competing demands have priority over others. The fifth constraint is that the principles of justice must be the final arbiters of disputes in political society. The “finality” condition means that the conception of justice is the highest standard of right in political society and that there is no appeal beyond it to some other measure of justice.

The Two Principles of Justice as Fairness

Having described the conditions of the original position, this dissertation will now explain the two principles of justice as fairness. In his later writings, Rawls revised and reformulated the two fundamental axioms of justice. Since these revisions are not particularly relevant to determining Rawls’s view of the relationship between justice and history, this dissertation will not chronicle the different formulations of the two principles and will consider only Rawls’s latest articulation. The first principle of justice states, “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

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49 Rawls, A Theory of Justice, 114; see also Rawls, Justice as Fairness, 86.
50 Rawls, A Theory of Justice, 114.
51 Ibid., 115; see also, Rawls, Justice as Fairness, 86.
52 Rawls, A Theory of Justice, 115.
53 Ibid., 116.
guaranteed their fair value.”

The second principle states, “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; and second, they are to be to the greatest benefit of the least advantaged members of society.”

The fully adequate scheme of equal basic liberties includes freedom of thought, freedom of conscience, the right to vote, the right to hold office, liberty of association, the liberty of the person to be free from physical and psychological harm, the right to possess personal property, and the rights and liberties covered by the rule of law. These fundamental liberties are derived from the conception of the person. According to Rawls, basic freedoms are the ones that are necessary for securing the social conditions that are necessary for the “adequate development” and the “full and informed exercise” of the two moral powers of the person in the “two fundamental cases.” The first fundamental case is the ability of individuals to determine whether the basic structure and social policies of a political order satisfy the requirements of the principles of justice, and the second fundamental case is the ability of persons to use the “principles of deliberative reason” to form and guide their conduct or action throughout the course of their lives. The first fundamental case involves the exercise of the first moral power, which is the capacity for a sense of justice, and the second fundamental case involves the exercise of the second moral power, which is the capacity for a conception of the good. Rawls argues that the equal political liberties such as the right to vote, the right to hold office, and

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54 Rawls, Political Liberalism, 5; see also Rawls, Justice as Fairness, 42.
55 Rawls, Political Liberalism, 6; see also Rawls, Justice as Fairness, 42-43.
56 Rawls, A Theory of Justice, 53; Rawls, Justice as Fairness, 44; Rawls, Political Liberalism, 291, 335.
57 Rawls, Political Liberalism, 332; see also Rawls, Justice as Fairness, 45, 112.
58 Rawls, Political Liberalism, 332; see also Rawls, Justice as Fairness, 45.
freedom of thought permit citizens to apply the principles of justice to the basic structure of society, and freedom of conscience and association allow citizens to develop, amend, and pursue a conception of the good. Additional basic liberties such as the liberty of the person and the rights and liberties secured by the rule of law are “connected” to the two fundamental cases, since they are necessary for the security of the aforementioned basic liberties.\footnote{Rawls, \textit{Political Liberalism}, 335; see also Rawls, \textit{Justice as Fairness}, 113} Rawls states that the significance of any given liberty is determined by how important it is to “the full and informed and effective exercise of the moral powers in one (or both) of the two fundamental cases.”\footnote{Rawls, \textit{Political Liberalism}, 335; see also Rawls, \textit{Justice as Fairness}, 113.}

The idea of the “fair value” of the equal basic political liberties is an important feature of Rawls’s view of freedom.\footnote{Rawls, \textit{Political Liberalism}, 335; see also Rawls, \textit{Justice as Fairness}, 113.} Rawls notes that many “radical democrats” and “socialists” have argued that the equality of rights and liberties in liberal democratic society is “merely formal,” since vast economic and social inequalities allow some to have substantially more influence in the political sphere than others.\footnote{Rawls, \textit{Justice as Fairness}, 149; Rawls, \textit{Political Liberalism}, 327.} Although all citizens in a liberal democracy have the equal rights to vote and to hold office, disparities in wealth and position allow privileged individuals to control the political system for their advantage. Rawls distinguishes between “basic liberties” and the “worth” or value of these freedoms.\footnote{Rawls, \textit{Justice as Fairness}, 148; Rawls, \textit{Political Liberalism}, 325.} The former are a class of legally protected rights and privileges that permit or entitle individuals to act in certain ways without interference from other persons, and the latter is the ability of persons to utilize or exercise these rights and privileges. Rawls argues that individuals possessing superior wealth, education, or social status
have the ability to make better use of their basic liberties than persons possessing inferior wealth, education, and social status. Rawls contends that the value or usefulness of liberties is specified or evaluated by the “primary goods” rather than by overall levels of wellbeing or utility. Rawls argues that the solution to the problem of the unequal worth of liberty is to guarantee that all freedoms have fair value. The fair value of liberty means that all citizens, regardless of historical contingencies such as social or economic status, have a “fair opportunity” to obtain positions of political authority and to influence political policies. Rawls states that “it is beyond the scope of a philosophical doctrine to consider in any detail” the practical policies necessary for implementing the principle of the fair value of the basic political liberties. Rawls acknowledges that current policy makers may lack “the requisite historical experience and theoretical understanding” to successfully implement policies that ensure the fair value of liberty. Despite this lack of knowledge, Rawls writes, “I simply assume” that there are feasible political arrangements for achieving this goal.

The idea of the “priority of liberty” is another key aspect of Rawls’s conception of freedom. The priority of liberty means that the equal fundamental liberties such as freedom of thought and conscience possess “a special status” or “absolute weight” in comparison with all other competing considerations such as maximizing public utility, promoting human excellence and good civilization, and increasing economic productivity and well-being. The equal basic freedoms cannot be limited or restricted for the purpose of maximizing some other value or

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64 Rawls, *Political Liberalism*, 326; *Justice as Fairness*, 149.
67 Ibid., 328.
68 Rawls, *Justice as Fairness*, 149.
70 Rawls, *Political Liberalism*, 294
good. As a result, the first principle is lexically or serially “prior” to the second since the requirements of the former must be satisfied before those of the latter. The fundamental liberties “constitute a family” or group, and this collection as a whole rather than any single liberty on its own enjoys absolute priority. The only permissible reason for restricting or compromising the fundamental liberties is to preserve or protect the basic freedoms. Rawls explains that since the fundamental liberties often “conflict,” it may be necessary to curtail some freedoms in order to organize them into one “coherent scheme.” Although the basic liberties are absolute in comparison with non-freedom values, they are relative in comparison with each other. The “criterion” or standard for determining the validity of restrictions on the basic liberties is whether or not these limitations produce a coherent scheme of fundamental liberties that is “fully adequate” for the evolution and employment of the two moral powers. Regulations that produce such a scheme of freedoms are justified, while restrictions that do not produce such a scheme are invalid. For example, Rawls argues that it is permissible to impose content-neutral regulations on the time, place, and manner of speech, since these limitations are necessary for ensuring that freedom of speech fulfills its “purpose” of advancing the two moral powers of the person. However, it is not permissible to impose content-based limitations on speech, since these restrictions inhibit the purpose of freedom of speech, which is the advancement of the two moral powers of the individual.

71 Rawls, A Theory of Justice, 53; Rawls, Justice as Fairness, 43.
72 Rawls, Political Liberalism, 357.
73 Rawls, Political Liberalism, 295; Rawls, Justice as Fairness, 104.
74 Rawls, Political Liberalism, 332.333
75 Ibid., 296.
The major exception to the priority of liberty is when political society fails to meet certain minimum economic and social standards necessary for the development and exercise of the two moral powers of citizens. Rawls explains that the prerequisite for the first principle of justice is that the “basic needs” of citizens are met to the degree necessary for persons “to understand and to be able fruitfully to exercise those rights and liberties.”\(^76\) If the necessary preconditions are absent, it is permissible to restrict or deny basic liberties for the purpose of changing the “quality of civilization” so that society reaches a level where “everyone can enjoy” the fundamental liberties.\(^77\) Whether or not a civilization is capable of sustaining just institutions depends on its cultural, social, educational, economic, and institutional circumstances. Although he does not provide a definite requisite minimum level of economic well-being that a society must have prior to establishing democratic institutions, Rawls insists that the creation and operation of democratic structures does not “presuppose a high level of wealth and income.”\(^78\) As a result, Rawls argues that the main “barriers” or obstacles to the formation of a correct social structure are usually found in the “political culture,” current “interests,” and the lack of “political will” rather than in deficient economic means, educational standards, and democratic skills or abilities.\(^79\) Although Rawls thinks that “reasonably favorable conditions” for the creation of just institutions exist in the United States, he is less sanguine about whether the political will to implement them is present.\(^80\)

\(^{76}\) Rawls, *Political Liberalism*, 7
\(^{78}\) Rawls, *Justice as Fairness*, 47; see also Rawls, *Political Liberalism*, 297.
\(^{79}\) Rawls, *Justice as Fairness*, 47.
\(^{80}\) Rawls, *Political Liberalism*, 297; Rawls, *Justice as Fairness*, 101
The second principle of justice requires that all social and economic inequalities must be connected with offices and positions that are accessible under circumstances of fair equality of opportunity. Rawls notes that although a system of formal equality of opportunity affords all persons equal legal rights to pursue and obtain social and political positions of influence and power, it fails to mitigate the influences of social and economic status on the prospects of individuals acquiring influential offices. As a result, the distribution of positions and power in society is affected by “factors” that are “arbitrary from a moral point of view.”\textsuperscript{81} To rectify this problem, Rawls argues that offices and power should be allocated on the basis of fair equality of opportunity. Fair equality of opportunity means that individuals who possess identical levels of natural talent and ability, and who have identical levels of motivation to develop and exercise them, should have “the same prospects of success” regardless of their social or economic status.\textsuperscript{82} In essence, Rawls thinks that natural talents and abilities rather than birth and wealth should determine the opportunities of individuals in political society.

The second principle of justice also stipulates that all social and economic inequalities must be to the greatest benefit of the least advantaged members of society. Rawls defines “moral desert” as the outcome of intended and willed action.\textsuperscript{83} In order to morally deserve something, an individual must consciously and willingly perform an appropriate action. Rawls argues that since the “native endowments” or natural talents possessed by an individual are not products of his conscious and intentional action, they are not deserved or merited from a moral perspective.\textsuperscript{84} As a result, Rawls contends that “the natural distribution” of talents and abilities “is neither just

\textsuperscript{81} Rawls, \textit{A Theory of Justice}, 63.
\textsuperscript{82} Ibid.; Rawls, \textit{Justice as Fairness}, 44.
\textsuperscript{83} Rawls, \textit{Justice as Fairness}, 74.
\textsuperscript{84} Rawls, \textit{A Theory of Justice}, 89; Rawls, \textit{Justice as Fairness}, 75.
nor unjust,” but instead is simply a natural fact or historical contingency that is arbitrary from a moral point of view. Although natural capacities are not morally earned, individuals “own” and possess a “right” to their native assets that is protected by the liberty of the person. Consequently, Rawls denies that political society should adopt policies that attempt to “ignore” or “eliminate” natural distinctions and differences between members. Nevertheless, Rawls argues that since rights and liberties should be predicated upon a moral foundation, and since the distribution of natural endowments is morally arbitrary, it is unjust to base the allocation of political and social rights, liberties, and privileges on native talents and abilities. A social system arranged by the allocation of natural capacities “incorporates the arbitrariness found in nature.”

Rawls observes that there is a tension or conflict between the idea of persons as free and equal and the historical fact that individuals possess unequal natural talents and abilities. Rawls writes that if there were no way to reconcile this conflict, “the structure of social worlds and the general facts of nature would be to this extent hostile to the very idea of democratic equality.” The solution to the problem of finding a moral basis for distributive justice and to the apparent conflict between historical circumstances and the democratic ideal of the person is the difference principle. The difference principle requires that all inequalities must benefit the least advantaged members of society. This means that “the higher expectations” or the greater benefits of the more advantaged members of society are just or right only if they improve the “expectations” or

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88 Ibid., 88.
89 Rawls, *Justice as Fairness*, 76.
benefits of the “least advantaged” participants in society.\textsuperscript{90} The difference principle attempts to ensure that the basic structure is organized so that the unequal distribution of natural talents and abilities benefits all members of society. Rawls explains that the goal is “to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets…without giving or receiving compensating advantages in return.”\textsuperscript{91} The difference principle permits “the better endowed” to gain from their privileged position in the allocation of natural capacities on the condition that they do so in ways that benefit the “less endowed.”\textsuperscript{92}

**The Argument from the Original Position**

Rawls’s case for why justice as fairness is the best conception of political right for regulating democratic society is divided into two parts.\textsuperscript{93} The first concerns whether the two principles of justice will be selected over alternatives by the parties in the original position, and the second relates to whether a society organized on the basis of the two principles is sufficiently stable. Rawls proceeds by first constructing principles of right and second by evaluating whether they are feasible. Rawls hopes that he can demonstrate that justice as fairness meets both criteria.

Since the purpose of this discussion of Rawls’s argument from the original position is not to evaluate whether or not the parties in the initial situation would select justice as fairness, but instead is to uncover Rawls’s conception of ethics, it is unnecessary to provide a complete and detailed exposition of his reasoning. Only a brief summary will be provided that draws attention to key aspects of Rawls’s argument that are illustrative of his approach to political right. In *A Theory of Justice*, Rawls presents the case for justice as fairness in terms of a rational choice

\begin{thebibliography}{99}
\bibitem{91} Ibid., 87.
\bibitem{92} Rawls, *Justice as Fairness*, 76.
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problem. Since the parties in the original position conceive of themselves as free persons who possess the ability to amend and change their ultimate aims, and since they have a “fundamental interest” in preserving their freedom to revise and alter their final goals, they will select the conception of justice that is most conducive to securing this basic liberty.\footnote{Rawls, \textit{A Theory of Justice}, 131.} Since justice as fairness provides the best protection for the higher order interests of the parties, they select it over the alternatives. Rawls’s formal, systematic argument is as follows. According to Rawls, justice as fairness is the “maximin” solution to the problem of political right.\footnote{Ibid., 132.} The maximin principle states that when making choices under uncertainty, it is rational to select the alternative that has the best or least bad worst outcome.\footnote{Ibid., 133.} This principle is rational to follow in cases of uncertainty if three conditions are present. The first is that there is good reason to discount estimates of probability, the second is that what can be gained above a satisfactory minimum standard is of little value, and the third is that the alternatives have unacceptable worst outcomes. Rawls contends that the three conditions are present in the original position. The first condition is ensured by the veil of ignorance. Since the parties are completely unaware of the conditions of the society to which they belong, and since they are fully unaware of their place in the political system, they have no reliable basis for making useful “probability calculations.”\footnote{Ibid., 134.} Also, since the parties have to justify their choice of principles of justice to their constituents, they are unlikely to base their decisions on probability. The second condition is ensured by the nature of the parties and the content of the principles of justice as fairness. Since the highest interest of the participants is the security of the basic rights and liberties, and since they are unwilling to
“jeopardize” guaranteed freedoms for potential economic or social gains, their first choice will be the alternative that meets this satisfactory minimum.98 Further, since justice as fairness provides absolute security for basic rights and liberties, the parties have an option that achieves the minimum standard. The third condition is ensured by the content of the competing conceptions of justice. Since the alternative views of political right fail to provide absolute protection for the basic rights and liberties, they have possible outcomes that are “intolerable” to the parties.99 Since the three conditions are present, it is rational for the parties to employ the maximin principle, and since justice as fairness has the best worst outcome, it is rational for the parties to select it over alternatives.

In Political Liberalism, Rawls bases the argument made in the original position in favor of the principles of justice less on the principles of rational choice and more on the conception of the person. As a result, Rawls places less emphasis on the peculiar conditions of the original position and more importance on the two moral powers of the person. As a result, the idea of the person is more significant in the reasoning of the parties in Political Liberalism than in A Theory of Justice. In Political Liberalism, Rawls argues that the representatives in the original position select justice as fairness over alternatives because the former provides social conditions that are more conducive to the development and exercise of the two moral powers than the latter. Rawls makes three main arguments for why justice as fairness provides superior conditions for the formation and use of the capacity for a conception of the good. The first concerns the individual’s “determinate conception of the good.”100 Although the parties in the initial situation

98 Ibid., 135.
99 Ibid.
100 Rawls, Political Liberalism, 310.
know that their constituents have a conception of the good, they are unaware of both the content of these views and the prevalence of these conceptions in political society. Consequently, in order to protect the conception of the good held by each of their constituents, the representatives must select a view of justice that “guarantees equal liberty of conscience” for all members of society.\textsuperscript{101} The second concerns the capacity for a conception of the good as a “means” to a person’s view of the good.\textsuperscript{102} Since the power of the individual to amend or change his final goals is an important instrument for improving his plan of life, and since freedom of thought, conscience, and association are necessary for the exercise of this power, the parties are bound to choose a conception of right that protects these basic liberties. The third concerns the capacity for a conception of the good as a way of “affirming” or choosing a plan of life.\textsuperscript{103} In order to understand on the basis of reason and evidence rather than on the basis of outside authority why beliefs or opinions are worth adhering to, an individual needs the freedom of conscience to examine the merits of different conceptions of the good. Consequently, the representatives must agree on principles of justice that protect the liberty of conscience.

Rawls advances three reasons for why justice as fairness is more likely than competing conceptions of right to produce social conditions that are conducive to the development of a sense of justice in citizens. The first concerns the issue of stability.\textsuperscript{104} Rawls argues that a political society that is stable because all members willingly accept and follow the basic principles of justice is more conducive to the advancement of the good of citizens than a society that is stable as a result of extensive and powerful coercive sanctions. As a result, the parties in

\textsuperscript{101} Ibid., 311.  
\textsuperscript{102} Ibid., 312.  
\textsuperscript{103} Ibid., 313.  
\textsuperscript{104} Ibid., 316.
the original position will prefer a conception of justice that produces stability in the former manner over one that produces it in the latter way. Rawls contends that a stable conception of justice meets three criteria. The first is that it is “clear and perspicuous to our reason,” the second is that it is “congruent with and unconditionally concerned with our good,” and the third is that it is grounded on an “affirmation of our person.”105 According to Rawls, justice as fairness meets these criteria better than competing conceptions because it secures the equal basic liberties, ensures the fair value of these freedoms, and ensures that inequalities benefit all members of society. Since justice as fairness most effectively produces stability that is conductive to the advancement of the goods of citizens, the parties in the initial situation select it over competitors. The second is rooted in the primary good of “self-respect.”106 Rawls argues that self-respect is predicated upon individuals believing that their plans of life are worth pursuing and upon the development of the two moral powers. If persons lack self-respect, they may lack the will to pursue their conception of the good. Rawls contends that justice as fairness promotes the development of the two moral powers by securing the basic liberties necessary for their exercise, and that it promotes the sense of self-worth by encouraging citizens to interact on the basis of “respect” and “mutuality” by securing the fair value of liberty and requiring inequalities to benefit all.107 Since justice as fairness promotes self-respect, the parties in the initial situation will select it. The third is related to the idea of society as “‘a social union of social unions.’”108 Rawls understands a social union as a group of persons who each develop one different yet complimentary skill or talent and whose diverse abilities are harmonized so that

105 Ibid., 317.
106 Ibid., 318.
107 Ibid., 319.
108 Ibid., 320.
the collective both actualizes a wider range of human talents and permits a fuller development of each ability than any one member could accomplish alone. Political society is a social union of social unions because it harmonizes and coordinates the various social unions that exist within it. Thus, the good of the individual is advanced by the harmonization of different social unions. Rawls argues that in order for a conception of justice to combine the various social unions into one social union, it must contain a conception of persons as free and equal and it must include an idea of reciprocity between free and equal persons. Rawls contends that justice as fairness encourages the attitudes of cooperation and reciprocity since it publically grants justice to free and equal citizens on the basis of mutual respect. Consequently, the parties in the original position will prefer justice as fairness over alternatives.

**The Four Stage Sequence**

Once the principles of justice have been determined by the deliberations of the parties in the original position, Rawls develops the idea of the “four stage sequence,” which offers an account of how the conception of justice may be applied to political society. Rawls argues that the four stage sequence is intended to be a set of different “points of view” that individuals can adopt rather than a factual description of historical political procedures. The various perspectives specify the principles and information that are appropriate for making political and social decisions. As a result, the decisions reached by the parties in each of the stages serve as the standards or measures for the correctness of conceptions of justice, constitutions, laws, and judicial decisions. The first stage is the “original position.”

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parties are situated behind the full veil of ignorance, and they select principles of justice for regulating the basic structure of political society. As the basic features of the original position have already been described in previous sections of this chapter, it is unnecessary to explain them here. The second stage is the “constitutional convention.” In the constitutional convention, the participants are viewed as “delegates” and are placed behind a less restrictive veil of ignorance. The parties are deprived of knowledge concerning particular persons such as social or economic position, natural talents and abilities, and moral or religious views, but they possess information concerning the general axioms of social theory and the general facts of the society that they inhabit such as natural resources, level of economic development, and political culture. The representatives also know the principles of justice selected in the original position. On the basis of this information, the representatives are supposed to construct or select a “constitution” that is consistent with the previously accepted conception of justice and that specifies the basic powers of government and the rights of citizens. In the constitutional stage, the delegates apply the principles of justice to the constitution. The third stage is the “legislative.” In the legislative stage, the participants are viewed as “legislators,” and are placed behind an even less restrictive veil of ignorance. The representatives are denied knowledge concerning themselves such as social and economic status, native capacities, and ideas of the good, but they are aware of all other information. The participants are also aware of the previously selected principles of justice and the constitution. Given this information, the

112 Rawls, A Theory of Justice, 172; Rawls, Justice as Fairness, 48; Rawls, Political Liberalism, 397.
113 Rawls, A Theory of Justice, 172; Rawls, Political Liberalism, 397.
114 Rawls, A Theory of Justice, 172; Rawls, Justice as Fairness, 48; Rawls, Political Liberalism, 397.
115 Rawls, A Theory of Justice, 174; Rawls, Justice as Fairness, 48.
116 Rawls, Political Liberalism, 397; see also Rawls, A Theory of Justice, 174.
parties are supposed to create legislation to govern political society that is consistent with the proceedings of the previous stages. In the legislative stage, the lawmakers apply the principles of the constitution to the laws and regulations of political society. The fourth stage is the judicial. In the judicial stage, the parties are viewed as “judges” or “administrators” who interpret and apply the constitution and the laws to specific cases. In this stage, the veil of ignorance is completely removed and the judges or administrators have full knowledge of all the facts and evidence. The fundamental aim of the judges is to apply the principles adopted in previous stages to the particular cases.

It is important to observe the precise reasons behind the progressive lifting of the veil of ignorance. Rawls states that the amount of information afforded to the parties at each stage is determined by “what is required in order to apply these principles intelligently to the kind of question of justice at hand” without producing “bias,” “distortion,” or irreconcilable discord. According to Rawls, the primary function of knowledge of historical conditions is to allow the parties to implement the principles of justice rather than to determine the content of the axioms of right. Rawls seems to view comprehension of particulars as a threat to the impartiality and purity of the conception of justice. Consequently, Rawls wants to exclude as much circumstantial knowledge as possible from the deliberations of the parties in each stage of the sequence.

117 Rawls, A Theory of Justice, 175; see also Rawls, Justice as Fairness, 48; Rawls, Political Liberalism, 397-398.
118 Rawls, A Theory of Justice, 175-176; see also Rawls, Political Liberalism, 398.
Ideas of the Good in Justice as Fairness

To counter the objection that the priority of right suggests that justice as fairness lacks any substantial conception of the good, Rawls identifies five major notions of goodness in his theory of right. The first is what he calls “goodness as rationality.” Rawls provides a subjective or individualistic account of the human good. Rawls defines the good for an individual as the “satisfaction of rational desire.” According to Rawls, each individual constructs a “plan of life” that specifies methods of fulfilling wants. A plan of life is rational if it is consistent with the “principles of rational choice” and if it would be selected by the individual with “full deliberative rationality.” In other words, a rational plan of life is the best way of obtaining the wants of the individual. Rawls argues that the human activity of satisfying desires through rational means is a general good. Of course, Rawls admits that the idea of goodness as rationality is “purely formal,” and that by itself, it is unable to specify the types of ends or goals that individuals will choose. He argues that in order to determine what ends people will seek, it is necessary to be aware of essential human “needs,” “capacities,” and the basic “facts” of social life.

To provide an account of the basic needs of members of liberal democracies, Rawls introduces the second notion of the good in justice as fairness, which is “primary goods.”

Since Rawls’s idea of primary goods has already been explained earlier in this chapter, it is

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119 Rawls, A Theory of Justice, 347; Rawls, Collected Papers, 449; Rawls, Justice as Fairness, 140; Rawls, Political Liberalism, 176.
120 Rawls, A Theory of Justice, 80.
121 Ibid., 358.
122 Ibid., 358-359.
123 Ibid., 372-373.
124 Rawls, A Theory of Justice, 79; Rawls, Collected Papers, 313-314; Rawls, Justice as Fairness, 58; Rawls, Political Liberalism, 181.
unnecessary to provide a detailed discussion of it here. For Rawls, primary goods are the things that are needed or required by free and equal persons who are engaged in social cooperation in a well-ordered society. According to Rawls, the primary goods are deduced from the conception of the person, the idea of society as a system of cooperation, the idea of a well-ordered society, goodness as rationality, and the facts of social life.\textsuperscript{125} Since Rawls admits that his concepts of the person, society as a system of cooperation, and the well-ordered society are ideals and since he admits that the notion of goodness as rationality is formalistic, it seems that the primary goods may also be highly idealized and formal.

Rawls’s third idea of the good is what he labels “permissible” conceptions of the good.\textsuperscript{126} Permissible conceptions of the good are ones that are compatible with the two principles of justice as fairness. That is, the pursuit of these goods by members of political society does not violate the rights and liberties of other citizens that are secured by the fundamental rules of right.

The fourth notion of goodness in Rawls’s theory is the “political virtues”\textsuperscript{127} The political virtues include “civility,” “tolerance,” “reasonableness,” and “fairness.”\textsuperscript{128} Rawls thinks that these political virtues are characteristics or dispositions that are desirable for citizens residing in a well-ordered liberal democracy to possess. In order for society to be a fair system of cooperation, it is necessary for citizens to have the virtues that foster collaboration. Rawls’s understanding of the political virtues is closely linked to ideal theory. For Rawls, persons who live in well-ordered societies normally possess and exercise the political virtues. However, since Rawls acknowledges that both the idea of a well-ordered society and the ideal type of citizen

\textsuperscript{128} Rawls, \textit{Political liberalism}, 194; see also Rawls, \textit{Justice as Fairness}, 116-117.
who inhabits it do not exist in actual political systems, it is unclear how the good of the political virtues is relevant to historical societies.

Rawls contends that the “good of a well-ordered society” is the fifth and final concept of goodness in his theory of political justice. According to Rawls, citizens residing in a political system that conforms to the two principles of justice as fairness are able to develop their two moral powers and are treated justly. In addition, by cooperating with each other, members of a well-ordered society are able to achieve common ends and goals that they would not be able to obtain on their own. Rawls’s discussion of the good of a well-ordered society raises the question of whether this notion of goodness can ever be realized in concrete form. Since Rawls admits that the well-ordered society is an ideal that probably has never existed and since he provides little reason to expect that it could ever come into being, one wonders whether this good is anything more than an ideal.

The Priority of Right

Since Rawls’s ideas of justice and goodness have been discussed, it is now possible to consider how he thinks that they relate to each other. According to Rawls, the “right” and the “good” are two of the most important concepts in moral philosophy. In broadest terms, the former refers to moral principles or rules that establish the boundaries of appropriate human action, and the latter refers to the end or goal that human beings strive to accomplish through their deeds. Rawls thinks that moral and political theories can be classified according to how they conceptualize and relate the right and the good. “Teleological” theories start with a concept of what is good for

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129 Rawls, Collected Papers, 466; Rawls, Justice as Fairness, 142; Rawls, Political Liberalism, 202.
130 Rawls, A Theory of Justice, 21.
human beings, and then define the right as whatever “maximizes” the pre-existing conception of the good.\textsuperscript{131} Actions or institutions are considered to be right or just to the degree that they actualize what is good. Rawls thinks that the key thesis of teleological theories is that the good is independent of and prior to the right. The definition of the good varies from one teleological theory to another. Some teleological theorists such as Aristotle understand the good as human perfection, while others such as Jeremy Bentham view it as the satisfaction of rational desire. Rawls thinks that utilitarianism is one manifestation of the teleological approach to morality and justice. Utilitarianism defines the good as the “satisfaction of desire” and the right as the social and political arrangements that bring about the greatest total “sum of satisfaction” of participants in society.\textsuperscript{132} In contrast to teleological theories, “deontological” ones either do not define the good “independently” from the right or do not view the right as whatever “maximizes” the good.\textsuperscript{133} Deontological conceptions claim that the right places limitations on the way that individuals can pursue what they think is good. Rawls argues that his view of right, justice as fairness, is deontological in the sense that it does not view justice or right as that which brings about the greatest cumulative amount of good. Justice as fairness does not employ a “maximum” principle for determining political justice.\textsuperscript{134} Instead, justice as fairness starts with axioms of right that place limitations on how individuals can pursue ideas of the good. Rawls summarizes the deontological approach to ethics and institutions in the phrase “the concept of the right is prior to that of the good.”\textsuperscript{135}

\textsuperscript{131} Ibid., 22.
\textsuperscript{132} Ibid.
\textsuperscript{133} Ibid., 26.
\textsuperscript{134} Ibid., 27.
\textsuperscript{135} Ibid., 28; see also Rawls, Collected Papers, 449; Rawls, \textit{Justice as Fairness}, 140; \textit{Political Liberalism}, 173.
Rawls thinks that teleological are deficient for two main reasons. The first is that teleological doctrines fail to provide absolute security for the rights and liberties of all members of political society. As explained in chapter one, Rawls argues that the principle of utility, at least in theory, can be used to justify sacrificing the rights of some individuals for the purpose of increasing the aggregate satisfaction of all persons in a society. Rawls contends that “common sense convictions” hold that the rights and liberties of each individual member of society outweigh or override the wellbeing of society as a whole.\textsuperscript{136} As a result, rights and liberties cannot be infringed on for the purpose of increasing aggregate happiness. Since Rawls thinks that this belief is widely held in liberal societies, he does not feel inclined to defend it further. Rawls’s objection to the principle of utility can be applied easily to other teleological doctrines, which subordinate human freedom to the attainment of some conception of the good such as pleasure, happiness, or perfection. The second objection that Rawls raises against teleological theories is related to his understanding of the conditions of free political societies. In his later works, Rawls argues that it is highly unlikely, if not impossible, that all members of a liberal democracy can agree on the same conception of the human good. This is because when human beings are allowed to exercise their rational faculties without external coercion, they tend to arrive at different conclusions. The only way for all members of political society to arrive at the same conception of the good is through coercion. Since teleological theories claim that the good is prior to the right, and since they require agreement on the good, they demand a form of consensus that is not possible for free political orders.

\textsuperscript{136} Rawls, \textit{A Theory of Justice}, 25.
In order to avoid misunderstanding Rawls, it is necessary to provide a more detailed discussion of precisely what he means by the idea of the priority of right. Although Rawls maintains that the two principles of justice constrain the types of goods that citizens can pursue, he also insists that the right and the good are not completely separate from each other. Rawls argues that the right and the good are best understood as “complementary.”137 This means that justice as fairness draws on “political” ideas of the good.138 The interaction between the right and the good in justice as fairness occurs as follows: justice as fairness recognizes that the human activity of satisfying desires through rational plans of life is a good.139 In order to specify the needs of citizens in a well-ordered society, justice as fairness constructs an index of primary goods. The primary goods serve as the standard by which parties in the original position evaluate competing conceptions of justice. Once selected, the principles of justice determine both the conceptions of the good that members can pursue and the political virtues that are essential for citizens to possess. Finally, a political society that conforms to the principles of justice as fairness turns out to be a good in itself.

There is probably no necessary connection between whether a theory is classified as teleological or deontological, on the one hand, and whether it implies a separation between justice and history, on the other. It is not difficult to imagine a teleological theory that begins with an abstract conception of the good and then tries to derive a conception of the right from this ahistorical starting point. Conversely, it is at least conceivable that a deontological theory could try to base its understanding of justice on historical experience and evidence.

137 Rawls, Political Liberalism, 173.
138 Ibid., 176.
139 Rawls, Political Liberalism, 207.
Nevertheless, it seems that deontological theories may be especially susceptible to abstraction, since they attempt to restrict or eliminate altogether the influence of the good on principles of ethics and justice. By limiting or excluding considerations of human excellence and perfection from questions of morality and right, deontological views leave political theorists with a substantially smaller amount of historical experience to work with.

The more fundamental issue with deontological theories in general and justice as fairness in particular may be the attempt to separate the right and the good. It seems that the right and the good could work together in a dialectical process to provide better conceptions of political justice and human ends. By developing a better understanding of the right, one could arrive at a fuller comprehension of what is good, and greater knowledge of the good could lead to an advance in one’s conception of the right. By trying to settle the question of the right in advance, and only then allowing individuals to develop their conceptions of the good within the boundaries established by justice, Rawls may be artificially restricting evidence that could help to develop his understanding of the right. Rawls’s tendency to divide the different elements of human experience into discrete parts, which is manifested in his treatment of the relationship between the right and the good, may lead him to engage in unnecessary abstraction. Of course, Rawls may protest that his claim that the right and the good are complementary insulates him from this criticism. However, as has been explained earlier in this chapter, Rawls’s notions of goodness are highly formalistic and largely without substantial historical content. As a result, Rawls’s appeal to them does relatively little to anchor his conception of justice in historical reality.
Rawls’s Method of Justification

In contrast to rational intuitionism, Rawls argues that moral principles are justified if they meet two criteria. The first is that they are acceptable to appropriately specified parties acting under appropriate conditions, and the second is that they are acceptable to persons in political society. Since the first criterion has been discussed in detail in preceding sections, this section will focus on the second criterion. In order to understand Rawls’s approach and its implications for the relationship between justice and history, it is necessary to consider it in some detail. Rawls’s view of justification is probably best described as non-foundational and constructivist. It is non-foundational in the sense that neither the conditions of the original position nor the principles derived from it are either “necessary” or “self-evident” truths, or are deduced from such truths.\(^{140}\) Instead, the primary criterion for moral justification is coherence. A particular conception of political right is justified or validated when its principles or axioms are more consistent than alternatives with the considered judgments of individual members of society. As Rawls explains, “justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent scheme.”\(^{141}\) The procedure of validation attempts to prove or demonstrate that a conception of justice is logically derived or deduced from what the parties to the disagreement “hold in common.”\(^{142}\) The procedure is constructivist in the sense that the principles of justice are produced or constructed through the deliberations of suitably specified parties that take place under properly designed conditions.

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\(^{142}\) Ibid., 508.
Rawls initiates his procedure of justification by examining what he calls the “considered convictions” of individuals residing in liberal democratic society. Considered convictions are the judgments rendered by persons when “conditions are favorable to the exercise” of their two moral powers of “reason” and a “sense of justice.” Favorable conditions include ones where individuals are free from distorting influences and interests, and where they have the capacity, the opportunity, and the will to make a sound decision. Examples of considered judgments include the belief that “religious intolerance” and “racial discrimination” are unjust. Considered convictions vary in their “levels of generality.” The most particular are beliefs about specific individuals, actions, and circumstances, the intermediate are opinions concerning political institutions and policies, and the most general are views about principles and axioms of justice that regulate political order. Rawls notes that although considered judgments are given under advantageous circumstances, they are neither necessarily correct nor unchanging. For example, Rawls observes that “firmly held convictions” such as the beliefs that slavery and religious persecution are morally permissible have been rejected over the course of history. Also, Rawls points out that there is often inconsistency or conflict between both the different considered judgments held by a single individual and the considered convictions of different individuals. Rawls argues that the conflict between “‘the liberties of the moderns’” and “‘the

143 Rawls, Justice as Fairness, 29; Rawls, Political Liberalism, 8; see also, Rawls, A Theory of Justice, 42.
144 Rawls, Justice as Fairness, 29; see also Rawls, A Theory of Justice, 42.
145 Rawls, A Theory of Justice, 17; see also Rawls, Justice as Fairness, 29; Rawls, Political Liberalism, 8.
146 Rawls, Political Liberalism, 8; Rawls, Justice as Fairness, 30.
147 Rawls, Political Liberalism, 8.
liberties of the ancients” in the history of democratic thought is a prominent example of the latter.\textsuperscript{148}

Rawls thinks that one of the important steps in the procedure of moral justification is facilitating “reflective equilibrium.”\textsuperscript{149} Reflective equilibrium is intellectual consistency or the alignment or coherence of all considered convictions on all levels of generality. Rawls identifies three types of reflective equilibrium. The first is “narrow” equilibrium.\textsuperscript{150} Narrow equilibrium is reached when an individual adopts a conception of justice that requires the fewest revisions in his sincerest beliefs. In this case, the considered convictions of the person are entirely consistent. The second is “wide” equilibrium.\textsuperscript{151} Wide equilibrium is achieved when, after carefully reflecting upon alternative views of political right in his political tradition and the reasons supporting and opposing them, a person selects a conception of justice. In this situation, the settled judgments of the individual are completely aligned. The third is “general” equilibrium.\textsuperscript{152} General equilibrium occurs when all citizens have achieved wide equilibrium, and when they all affirm the same conception of justice. In this case, the considered convictions of all citizens concur. Rawls notes that this situation only occurs in a well-ordered society where all persons acknowledge the same view of political right. Rawls’s view of justification regards the considered judgments of individuals in society as “provisional fixed points” of reference.\textsuperscript{153} It proceeds by arranging and organizing the principles “implicit” in or underlying these beliefs into

\begin{itemize}
\item \textsuperscript{148} Rawls, \textit{Collected Papers}, 307; Rawls, \textit{Justice as Fairness}, 2; Rawls, \textit{Political Liberalism}, 4-5.
\item \textsuperscript{150} Rawls, \textit{Justice as Fairness}, 30.
\item \textsuperscript{151} Rawls, \textit{Justice as Fairness}, 31; Rawls, \textit{Political Liberalism}, 384.
\item \textsuperscript{152} Rawls, \textit{Justice as Fairness}, 31; Rawls, \textit{Political Liberalism}, 384.
\item \textsuperscript{153} Rawls, \textit{A Theory of Justice}, 18; Rawls, \textit{Political Liberalism}, 8; see also Rawls, \textit{Justice as Fairness}, 29;
\end{itemize}
a coherent conception of justice.\textsuperscript{154} Persons are presented with this view of right and are given the option of revising their considered judgments, the conception of justice, or both to produce intellectual unity. Rawls insists that in the process of producing congruence between considered judgments and the conception of justice, neither a particular type of conviction nor a specific category of generality necessarily has priority over the others. Instead, all forms of considered convictions may, upon careful examination, retain an “intrinsic reasonableness.”\textsuperscript{155} As a result, a highly general belief may override a very particular one and vice versa. The question of the assignment of relative weights to each conviction is answered by the “reflection” or thought of the individual.\textsuperscript{156}

There is an important connection between the device of the original position and the process of reflective equilibrium. The description of the original position is intended to represent or model “commonly shared presumptions” concerning the appropriate conditions for reaching agreements.\textsuperscript{157} Thus, the principles of justice selected by the parties in the initial situation are derived from conditions that real persons in actual political societies generally accept as reasonable. Once the view of right is derived from the original position, it is compared against the considered convictions of individuals in political society. Rawls hopes that there will be a “match” or congruence between the conception of justice and the most settled beliefs of citizens.\textsuperscript{158} If there is agreement, reflective equilibrium has been achieved, and the account of

\textsuperscript{154} Rawls, \textit{Political Liberalism}, 8
\textsuperscript{155} Rawls, \textit{Justice as Fairness}, 31; see also Rawls, \textit{Political Liberalism}, 8.
\textsuperscript{156} Rawls, \textit{A Theory of Justice}, 43; Rawls, \textit{Political Liberalism}, 8.
\textsuperscript{157} Rawls, \textit{A Theory of Justice}, 16.
\textsuperscript{158} Ibid., 17.
right is justified. If there is dissonance, the conditions of the original position, the considered convictions of members of society, or both may be revised to achieve harmony.

Rawls appears to regard the various types of reflective equilibrium as ideal states that human beings should strive for but cannot achieve fully. According to Rawls, general reflective equilibrium exists only in a “well-ordered society,” and since he admits that a well-ordered society is an ideal that has never existed, it seems that he views general reflective equilibrium as an unrealized ideal. Rawls thinks that the considered convictions held by each member of society often conflict with each other as well as with the judgments of other members of the political order. According to Rawls, individuals who believe that their considered judgments are completely harmonious are either “unreflective” or “dogmatic.” Since human beings cannot achieve absolute consistency in their beliefs, Rawls argues that the purpose of his political philosophy is to reduce rather than to eliminate completely intellectual inconsistency.

A number of Rawls’s defenders argue that his account of justification demonstrates the historical nature of his political philosophy. In particular, supporters argue that Rawls’s claim that a conception of justice is justified when members of society can accept it proves that his approach is sensitive to the values of real democratic societies. It is true that Rawls thinks that his conception of justice is responsive to the norms of democratic political orders. However, Rawls does not provide any specific criteria for evaluating whether the values of a society are defensible on the basis of historical experience. People within any particular political system may have convictions that range from abstract to concrete. In order for Rawls and his defenders

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160 Ibid., 30.
to demonstrate that justice as fairness is historical, it is not sufficient to show that it aligns with the firmly held beliefs of people in society. Instead, Rawls and his supporters must prove that justice as fairness is defensible on the basis of concrete evidence. Chapter seven provides a more substantial consideration of this issue.
CHAPTER FOUR

Rawls’s Political Turn

Rawls’s attempt in the 1980s and 1990s to transform justice as fairness from a partially comprehensive doctrine to a political conception is normally referred to as his political turn. There is substantial debate over the significance of the revisions that Rawls made to justice as fairness in his writings that appeared after *A Theory of Justice*. Some scholars such as Samuel Freeman interpret Rawls’s political turn as a pragmatic move designed to make his conception of justice more palatable to people in liberal democracies. Freeman argues that in *A Theory of Justice*, Rawls presents a philosophically “justifiable” or “true” account of political right, while in *Political Liberalism*, he offers a “publically” justifiable view of justice.\(^1\) Freeman insists that even after the publication of *Political Liberalism*, Rawls never recanted his claim that the philosophical positions espoused in *A Theory of Justice* were “correct.”\(^2\) As a result, *Political Liberalism* should not be understood as rejecting the main ideas of *A Theory of Justice*, but instead as recognizing that they may not be acceptable to all members of liberal democracies. Freeman argues that in order to remove obstacles that may prevent citizens of liberal democracies from accepting justice as fairness, Rawls attempts to detach it from all “controversial” philosophical notions.\(^3\) Other academics such as Richard Rorty argue that Rawls’s political turn demonstrates the historical rootedness of justice as fairness. Rorty contends that in writings subsequent to *A Theory of Justice*, Rawls explicitly detaches traditional

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\(^1\) Freeman, *Rawls*, 325.
\(^2\) Ibid.
\(^3\) Ibid.
“topics” of philosophical investigation such as human nature, the nature of moral motivation, and the meaning of life from questions of “public policy.” Instead of attempting to justify liberal democracy on the basis of detached, controversial philosophical conceptions of human nature, Rawls tries to show that democracy is consistent with the norms and values that are accepted by members of liberal communities. Rorty thinks that if *A Theory of Justice* is read in light of Rawls’s later works, it becomes evident that the seemingly abstract original position, presented in *A Theory of Justice*, is an attempt to discover a “middle ground” between a perspective that is beyond history and one that is subject to the momentary whims of popular opinion. According to Rorty, the intermediate position that Rawls seeks is the deeply held convictions of members of liberal democracies. Sebastiano Maffettone offers an explanation for Rawls’s political turn that falls between the ones given by Freeman and Rorty. According to Maffettone, Rawls intended the arguments of *Political Liberalism* to ameliorate the “lack of realism” of the ones found in *A Theory of Justice*. Maffettone explains that *A Theory of Justice* presents an “ideal” or perhaps “utopian” account of a well-ordered liberal democracy, while *Political Liberalism* offers a “non-ideal, more realistic” description of liberal order. Maffettone thinks that *A Theory of Justice* provides a more “philosophical” defense of justice as fairness, while *Political Liberalism* advances a more “historical” apology for Rawls’s conception of right. Unlike Freeman, Maffettone does not argue that Rawls’s changes in *Political Liberalism* are explained by pragmatic motives, and in contrast to Rorty, Maffettone does not claim that Rawls’s earlier

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5 Ibid., 266.
7 Ibid., 219.
8 Ibid.
writings were particularly historical. This debate is particularly relevant to the subject of this dissertation. If Freeman is correct that Rawls’s political turn was not a rejection of his earlier approach to political justice, it appears that the abstractness of *A Theory of Justice* may pervade his more recent works. However, if Rorty is correct that Rawls’s political turn shows that justice as fairness was never as detached as its detractors thought, it seems that not only his later works, but also his earliest ones may be immunized from the charge of excessive ahistoricism. If Maffettone is right, it appears that Rawls’s political turn corrected some of the excessive idealism of his earlier writings. The following sections will attempt to show which of these three interpretations of Rawls’s political turn is the most accurate.

The Problem of Stability in *A Theory of Justice*

Why did Rawls decide to make substantial revisions to the account of justice as fairness presented in *A Theory of Justice?* Much of the recent scholarship on this question shows that the main reason for why Rawls amended his conception of justice is that he became dissatisfied with the account of stability presented in *A Theory of Justice.* The issue of the nature of the alterations that Rawls made to his theory of right is more important to the central purpose of this dissertation than the rationale for why he made them. As a result, this dissertation will focus more on the former than the latter.

The problem of “stability” is a central issue in Rawls’s works from *A Theory of Justice* to *Political Liberalism.* In *A Theory of Justice,* Rawls argues that political systems are stable to

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the degree that “departures from their preferred equilibrium positions” that are induced by
“normal disturbances” evoke internal forces that are “sufficiently strong” to bring about the
restoration of the original balances or “equilibria.” 11 The stability of a social order is
proportionate to the “strength of internal forces” that reestablish order or equilibrium. 12 The
equilibrium of a political society is “the justice of the basic structure and the moral conduct of
individuals.” 13 Thus, the balance or equilibrium of a political system is proportionate to the
rightness of its fundamental political, social, and economic institutions, and the correctness of the
actions of its citizens.

Rawls identifies two primary problems that threaten the stability of political societies.
The first is the “isolation problem.” 14 The isolation problem occurs when the decisions of
individuals made in insolation from each other produce worse outcomes than the decisions that
these same individuals would have made if they were not isolated from each other. The second
is the “assurance problem.” 15 The assurance problem occurs when there is a lack of an effective
method of ensuring that individuals will fulfill their obligations or duties. Both of these
problems are illustrated by the “prisoners’ dilemma.” 16 In the prisoners’ dilemma, two prisoners
are interrogated separately. Both are aware of the following conditions. If neither confesses,
both will receive one year in prison. If one confesses and the other does not, the former will be
released and the latter will receive ten years in prison. If both confess, both will receive five
years in prison. Rawls notes that the best outcome for both parties is “unstable” since both

11 Ibid.
12 Ibid.
13 Ibid., 401.
14 Ibid., 238.
15 Ibid.
16 Ibid.; see also Rawls, Lectures on Political Philosophy, 76.
prisoners have the rational incentive to protect themselves from the worst outcome by confessing.\(^{17}\) This is because the prisoners act in isolation, and because they lack assurance that the other party will act in a way that produces the best mutual outcome. Rawls argues that Hobbes’ solution to the assurance problem is the creation of a “Sovereign” to “stabilize” the social system through the threat of “coercive sanction” which makes it “rational” for all persons to act in ways that are consistent with their “mutual advantage.”\(^{18}\) However, since Rawls thinks that the creation of a Hobbesian sovereign is inconsistent with liberal democracy, he wants to discover an alternative solution to the prisoners’ dilemma.

It should be noted that Rawls’s primary motivation for discussing the question of stability is to demonstrate that the principles of justice selected in the original position are consistent with the general facts about human nature and political society. Rawls states that “the crucial point” of his discussion of the moral development of human beings is to demonstrate that “the general facts of moral psychology affect the choice of principles in the original position.”\(^{19}\) Rawls’s case for justice as fairness rests on two distinct arguments. The first is the one presented in the original position, and the second is the one found in his discussion of human nature and stability. Rawls wants to show that justice as fairness is the best solution to the problem of choice in the original position and the problem of stability in political society. Since the former has already been discussed, this dissertation will now consider the latter.

Rawls argues that a well-ordered society regulated by the two principles of justice as fairness is stable for two reasons. The first is that it encourages individuals to develop a sense of


justice, and the second is that it produces congruence between the demands of justice and the interests of individuals. Rawls contends that there are three stages of the moral development of human beings that correspond to three psychological principles. The first stage is the “morality of authority.”\(^{20}\) The development of the sense of justice in children is a product of their relationships with their parents. When children feel loved and cared for by their parents, they normally reciprocate similar sentiments. When children love their parents, the former usually accept the moral principles and rules prescribed by the latter. The basis for the development of moral beliefs in children is affection for parents rather than reason or knowledge. The first psychological law is that children love their parents if their parents first love them. The second stage is the “morality of association.”\(^{21}\) The development of a sense of justice in persons is a result of their relationships with other members of associations to which they belong. Associations such as families, churches, and clubs have different positions for members, and each of these positions is associated with appropriate standards of conduct. Individuals accept the proper rules for each position on the basis of the approval or disapproval of other members of the association in which they participate. By taking part in associations, individuals discover that other persons have different perspectives, that they have different goals and ends, and that all persons must regulate their conduct so that it takes into consideration the perspectives and aims of others. The second psychological law is that when individuals honor their duties, this encourages other persons to trust them and to want to fulfill their obligations. The third stage is the “morality of principles.”\(^{22}\) As individuals participate in the different positions and offices of


\(^{21}\) Ibid., 409.

\(^{22}\) Ibid., 414.
a well-ordered political society, develop the bonds of friendship and trust with other participants, and recognize that the social order is beneficial to both themselves and those they care about, they acquire allegiance to the political system. The third psychological law is that when persons have developed relationships with others on the basis of the first two laws, their realization that the social order benefits both themselves and the persons they have affections for encourages the development of a sense of justice or the desire to act from the principles of justice and to maintain a just political order. Rawls observes that the three principles or rules of moral psychology express the basic idea of “reciprocity,” which is the “tendency to answer in kind.” 23 Rawls insists that reciprocity is “a deep psychological fact” of human nature, and that the lack of reciprocity would render human nature “very different” and social cooperation “fragile if not impossible.” 24

It is necessary to emphasize that Rawls states that the three-stage account of the acquisition of the sense of justice assumes the existence of the ideal of a “well-ordered society.” 25 It should be noted that Rawls views the concept of a well-ordered society as an ideal or abstraction that has probably never existed in the real world. Rawls is offering a hypothetical scenario of how idealized persons who reside within a well-ordered society might develop a sense of justice rather than attempting to describe the actual moral education of real persons who live in an existing society.

Rawls argues that the above account of the development of the sense of justice explains how the two primary sources of instability can be overcome in a well-ordered society regulated

23 Ibid., 433.
24 Ibid.
by justice as fairness. Since all members of society have an effective sense of justice that ensures that they wish to advance their conceptions of the good in ways that benefit everyone, they have no incentive to act in ways that are rational but lead to less than optimal outcomes. As a result, the isolation problem is remedied. Since all members of society recognize that everyone has an effective sense of justice that ensures that all participants will honor the principles of justice, they have no incentive to violate the rules of society for the purpose of advancing their own interests. Thus, the assurance problem is solved. Consequently, Rawls concludes that justice as fairness is “a reasonably stable moral conception.”

Rawls’s account of moral psychology allows him to advance two arguments for why justice as fairness is superior to rival conceptions of justice. The first is that it produces a “stronger” sense of justice than alternatives such as utilitarianism. Rawls argues that the two principles of justice provide greater assurance than the principle of utility that both the institutions and members of society seek to advance the good of all participants. Since the first principle of justice provides absolute and complete security for the equal rights and liberties of all members of the social system, it ensures that their good cannot be sacrificed for the purpose of social utility. Since the second principle of justice requires fair equality of opportunity and stipulates that all inequalities must benefit all members of society, it ensures that individuals interact on the basis of reciprocity. As a result, individuals are likely to support and affirm the principles of justice. In contrast, since the principle of utility permits the good of some members of society to be sacrificed for the purpose of maximizing aggregate satisfaction, it is likely to arouse feelings of suspicion and resentment between the better and worse off. Consequently, a

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26 Ibid., 436.
27 Ibid.
significant number of the members of society are likely to regard the rules of justice with indifference or hostility.

Assuming for the sake of argument that Rawls’s view of moral psychology is correct, it is not clear that Rawls has demonstrated that justice as fairness is compatible with the general facts. While Rawls’s discussion of moral development may show that persons in a well-ordered society regulated by justice as fairness can acquire a sense of justice, it does not show how persons living a society that is not well-ordered can develop an appropriate sense of justice. Rawls’s argument is predicated upon the prior existence of certain ideal conditions that he acknowledges do not hold for actual social orders. In order to show that justice as fairness is rooted in historical evidence, Rawls needs to bridge the divide between the ideal and the actual.

The second argument is that justice as fairness produces “congruence” between the good of the individual and the principles of right.\(^{28}\) The purpose of this argument is to show that justice as fairness is not only the most rational conception of justice from the perspective of the original position, but also that it is the most rational view of right from the standpoint of the individual residing in a well-ordered society who has no restrictions on information. Rawls provides four main reasons for why there is congruence between the right and the good. The first is that there is a “psychological cost” of engaging in “a systematic course of deception and hypocrisy.”\(^{29}\) According to Rawls, all members of a well-ordered society agree that the principles of justice as fairness are right or just and assume that all participants have a normally operative sense of justice. Rawls notes that it is possible to imagine an individual who agrees that the principles of justice are right but is willing to disregard the laws for personal gain while

\(^{28}\) Ibid., 496.
\(^{29}\) Ibid., 499.
pretending to uphold the prevailing moral view. Such as person, according to Rawls, will incur significant psychological burdens that arise from engaging in the actions that are necessary for deceiving the other persons in society, since he is fully aware that the basic institutions are just and he is not fulfilling his duty. The second is the “connection between acting justly and natural attitudes.”

Rawls argues that individuals in a well-ordered society have a strong desire to treat their friends and family members fairly. Rawls thinks that it is possible to conceive of individuals who wish to treat their close associates justly but want to take advantage of other members of society. According to Rawls, there are several obstacles to pursuing this course of action. One is that in a well-ordered society, close ties between members extend widely, and another is that there is no way to ensure that unjust action will not harm close friends and family. The third is the idea that participation in a well-ordered society is “a great good.”

Rawls argues that since no single person can actualize all the potentialities and inclinations of which human beings are capable, and since individuals enjoy the actualization of a wide diversity of human capabilities, political society, which permits the actualization of a wide range of human activity, is a good. However, in order to participate in this actualization of human ability, individuals must affirm the basic principles of justice underlying political society. The fourth is the “Kantian interpretation” of human nature. According to Rawls, human beings have “the desire to act justly” and “the desire to express” their “nature as free moral persons.”

Since the desire to act justly requires individuals to honor the two principles of justice as fairness, and since these two principles chosen in the original position are an expression of the free and equal nature of

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30 Ibid.
31 Ibid., 500.
32 Ibid., 501.
33 Ibid.
moral persons, the two desires direct individuals to act in identical ways from identical principles.

**The Problem of Stability in Political Liberalism**

In subsequent works such as *Justice as Fairness* and *Political Liberalism*, Rawls became dissatisfied with the account of stability presented in *A Theory of Justice*. In order to understand why Rawls thought that his earlier view of stability was deficient, it is necessary to consider two ideas that Rawls developed after the publication of *A Theory of Justice*. The first is the distinction between comprehensive doctrines and political conceptions of justice, and the second is the fact of reasonable pluralism. Rawls defines a “general” conception as one that “applies to a wide range of subjects,” and a “comprehensive” doctrine as one that contains non-political values and virtues. Rawls distinguishes between “fully” and “partially” comprehensive doctrines. A fully comprehensive view contains all nonpolitical “values and virtues in one rather precisely articulated system,” while a partially comprehensive system contains some but not all “nonpolitical values and virtues and is rather loosely articulated.” Rawls notes that many religious, philosophical, and moral conceptions are both general and comprehensive. Rawls identifies three features of a “political conception of justice.” The first is that it applies to the “basic structure” or the main political, economic, and social institutions of political society. The second is that it is “presented as a freestanding view.” This means that although the political conception of right can be affirmed by many comprehensive doctrines, it is neither

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34 Rawls, *Political Liberalism*, 13; see also Rawls, *Collected Papers*, 450, 480-481.
39 Ibid., 12.
dependent upon nor necessarily connected with any particular comprehensive conception. Also, it is not a compromise that finds a middle ground between conflicting comprehensive views. Rawls insists that the content of the political conception is “not affected in any way by the particular comprehensive doctrines that may exist in society.” The third is that its “content is expressed in terms of certain fundamental ideas” that are viewed as “implicit” in the public culture of a democratic society. The basic distinction between comprehensive and political conceptions of justice is that the former apply to a broader range of subjects and have more extensive content than the latter. Rawls also distinguishes between “reasonable” and “unreasonable comprehensive doctrines.” The former recognize that the burdens of judgment render complete and final agreement on all moral, religious, and philosophical issues impossible, and that it is not permissible to use the coercive power of the state to repress other reasonable comprehensive doctrines, while the latter endorse the use of political power for the purpose of compelling acceptance of beliefs and ideas. In practice, reasonable comprehensive doctrines endorse liberal democratic political society, while unreasonable comprehensive doctrines fail to do so. The former are able to support institutions that satisfy the “criterion of reciprocity,” while the latter cannot. Examples of reasonable comprehensive doctrines include the comprehensive liberal conceptions of “Kant” and “Mill” and religious doctrines that affirm “free faith” or toleration, and examples of unreasonable comprehensive doctrines include many “fundamentalist

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40 Ibid., 141; see also Rawls, Justice as Fairness, 188.
41 Rawls, Political Liberalism, 13.
43 Rawls, Justice as Fairness, 183, 191-192; Rawls, Political Liberalism, 61.
religious doctrines,” the “doctrine of the divine right of monarchs,” as well as “aristocracy,” “autocracy,” and “dictatorship.”

According to Rawls, liberal democracy is characterized by “the fact of reasonable pluralism.” Reasonable pluralism is the condition where citizens of a political society hold a diversity or plurality of reasonable yet competing and irreconcilable comprehensive moral, philosophical, and religious doctrines. Rawls notes that there is an important distinction between “the fact of pluralism as such” and “the fact of reasonable pluralism.” The former is when individuals in political society adopt a variety of comprehensive doctrines, while the latter is when persons adhere to a multiplicity of reasonable doctrines. Rawls insists that the fact of reasonable pluralism is a “permanent feature” of liberal democratic society. For Rawls, the free exercise of individual reason in free political society inevitably and inexorably leads to a diversity of moral, philosophical, and religious viewpoints. Rawls notes that there are a number of reasons for why liberty produces disagreement. One explanation is that the positions of individuals are determined by their interests, and since individuals have divergent interests, they adopt conflicting viewpoints. Another is that individuals’ lack of intelligence and propensity to commit logical errors produces disagreement. Although admitting that these reasons “explain much” about why real people disagree with each other, Rawls states that “they are too easy and not the kind we want.” The reason for why Rawls wants to dismiss these admittedly plausible explanations for disagreement is that he is operating “within ideal theory” rather than non-ideal

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theory. Since the goal of ideal theory is to discover the principles of justice that are appropriate for a perfectly just society rather than to consider the rules of right that are suitable for a less than just political order, it assumes that the persons who inhabit political society are reasonable. If citizens of liberal democracy are reasonable, their disagreements cannot be explained by narrow self-interest or fallacious reasoning. Rawls explains that the purpose of ideal theory is to demonstrate “how reasonable disagreement is possible” rather than to document why actual persons in real societies hold contrary opinions. Thus, Rawls’s account of reasonable disagreement is not intended to explain dissent in historical societies, but instead to provide an idealized account of disagreement in a completely just society inhabited by perfectly reasonable citizens.

Rawls thinks that disagreement between reasonable persons in a well-ordered society is explained by “the burdens of judgment.” The list of the burdens of judgment is a compilation of six factors or circumstances that can produce dissention among completely reasonable persons. The first is that the complexity and incongruence of the empirical and scientific evidence that is relevant to a particular situation can render it difficult to appraise and gauge. The second is that disagreement concerning the value or gravity of different pieces of evidence can produce divergent conclusions. The third is that since all ideas or concepts suffer from ambiguity or a lack of precise definition, individuals must make judgments and interpretations that may not be accepted by all reasonable persons. The fourth is that since personal experience influences how individuals evaluate and weigh evidence and values, and since the experiences of

individuals often diverge, reasonable individuals will likely treat evidence and values differently. The fifth is that since there are usually competing moral considerations of divergent weight on all sides of a debate, it is often challenging to arrive at a conclusion. The sixth is that since political society can accommodate only a limited number of values, and since individuals must select which values to realize in the social system, individuals are often faced with tough decisions that lack obvious answers. Consequently, reasonable persons can arrive at irreconcilable conclusions. Rawls states that although his discussion of the burdens of judgment should not be construed to “deny that prejudice and bias, self- and group interest, blindness and willfulness, play their all too familiar part in political life,” these causes of “unreasonable disagreement stand in marked contrast to those compatible with everyone’s being fully reasonable.” Rawls seems to be saying that the burdens of judgment are intended to explain the existence of disagreement between completely reasonable persons residing within a well-ordered society.

It is now possible to see why Rawls thought that his account of stability in *A Theory of Justice* was inadequate. According to Rawls, the changes to the original explanation of stability should be understood as “an attempt to resolve a serious problem internal to justice as fairness” rather than as a rejection of justice as fairness. For Rawls, the account of stability offered in part three of *A Theory of Justice* is inconsistent with the rest of the work. The inconsistency is between the description of the ideal of the well-ordered society and the essential conditions of a liberal democratic order. According to Rawls, *A Theory of Justice* assumes that all members of a well-ordered liberal democracy “endorse” the two principles of justice as fairness on the basis of

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the same comprehensive doctrine. As a result, the argument for stability in *A Theory of Justice* is predicated on all citizens embracing the same comprehensive view. Rawls contends that since different citizens in modern liberal democracies hold diverse reasonable yet incompatible comprehensive doctrines, the idea that all persons will agree on the same comprehensive doctrine and endorse justice as fairness on the basis of it is contrary to the historical conditions of democratic society. As a result, the description of the well-ordered society in *A Theory of Justice* is “unrealistic,” and its explanation for how liberal democracy can achieve stability is deficient.

In his writings that appear after *A Theory of Justice*, Rawls divides the issue of stability into two questions. The first concerns whether individuals who reside in well-ordered societies develop a “sufficient sense of justice” that leads them to comply with its institutions, and the second concerns whether, given the facts of democratic society, citizens can endorse justice as fairness. The answer to the first is provided by moral psychology, and the answer to the second is given by the idea of the “overlapping consensus.” According to Rawls, the description of the acquisition of the sense of justice presented in *A Theory of Justice* answers the first question. Consequently, Rawls’s goal in his later works is to answer the second question. Rawls identifies two ways that the second question can be answered. The first is to construct a conception of justice and then either to persuade other persons to accept it or to force them to “act in accordance” with it through coercive sanctions. The second is to discover a conception of justice that is “acceptable” to or can be endorsed by all members of a society regardless of their

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56 Ibid., xvi; see also Rawls, *Justice as Fairness*, 186.
58 Ibid., 141.
59 Ibid.
60 Ibid., 143; Rawls, *Justice as Fairness*, 184.
comprehensive doctrines. This approach does not attempt to convince other persons to adopt or act according to a particular comprehensive view. In *A Theory of Justice*, Rawls adopts the former method, while in subsequent works, Rawls pursues the latter approach.

Rawls contends that a well-ordered political society composed of individuals adhering to reasonable yet conflicting and irreconcilable comprehensive doctrines can be unified on the basis of an “overlapping consensus.” An overlapping consensus is the agreement of different reasonable yet competing comprehensive moral, religious, and philosophical doctrines on one free-standing political conception of justice. In essence, an overlapping consensus is where the different comprehensive views “intersect or converge.” Although the various comprehensive views all endorse the same political conception, they do so for divergent reasons. Rawls insists that the overlapping consensus is not a “modus vivendi” or a compromise between irreconcilable comprehensive views. In a modus vivendi or compromise, since all of the parties are unable to achieve their preferred options, they settle for an inferior choice. As a result, all of the parties are constantly attempting to change the terms of the agreement so that it more closely reflects their preferred options. The parties accept a pragmatic agreement on pragmatic grounds. In contrast, the object of the overlapping consensus is, according to Rawls, a “moral conception,” and it is accepted on “moral grounds.” Since the parties all endorse the principles of the political conception on the basis of their own moral, religious, or philosophical views, they are

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64 Rawls, *Collected Works*, 430.
willing to preserve the conditions of the agreement in perpetuity and are not constantly attempting to negotiate or impose new conditions.

Rawls insists that a political conception of justice “must be practicable” or “fall under the art of the possible,” while it is permissible for a non-political moral conception to be unrealizable in the sense that it describes “the world and human nature as too corrupt to be moved by its precepts and ideals.”\(^{67}\) Rawls argues that the idea of an overlapping consensus renders the ideal of a well-ordered society “more realistic” and less “utopian.”\(^{68}\) As a result, Rawls thinks that the goal of creating a society that is well-ordered on the basis of a political conception that is the locus of an overlapping consensus “seems not altogether impractical” and “is a reasonable guide” that “may be in good part realized.”\(^{69}\) To show that the formation of an overlapping consensus is not “utopian,” Rawls offers an “outline” of how it may develop.\(^{70}\) Nevertheless, it should be noted that Rawls admits that the issue of whether an overlapping consensus is possible in actual societies is “a speculative question” about which “one can reach an educated conjecture only by working it out and exhibiting the way it might be supported.”\(^{71}\) The outline specifies two stages. The first is the emergence of a “constitutional consensus,” and the second is the formation of an “overlapping consensus.”\(^{72}\) The former may develop when historical circumstances render a pragmatic agreement or modus vivendi on a constitutional arrangement securing basic rights and liberties such as voting, free speech, and free association the best way of mitigating conflict or strife between hostile parties. Although this arrangement is not the

\(^{67}\) Rawls, *Justice as Fairness*, 185.  
\(^{69}\) Ibid.  
\(^{70}\) Rawls, *Political Liberalism*, 158.  
\(^{71}\) Ibid., 14.  
\(^{72}\) Ibid., 158.
preferred solution of any of the parties, it is the best option that can obtain the endorsement of all groups. Since the comprehensive views held by the various parties may not be “fully comprehensive” or may contain “looseness,” it is possible that the participants may develop allegiance to the principles of the constitution as a result of the practical success of the compromise that is independent of their respective comprehensive doctrines.\(^7^3\) If the parties discover a conflict between the axioms of the constitution and their comprehensive positions, they may choose to amend the later to accommodate the former rather than to revise the former to fit with the latter. There are several “forces” that encourage the development of an overlapping consensus out of a constitutional consensus.\(^7^4\) The first is that when the different parties engage each other in the context of free political institutions, they will be required, in order to form a majority coalition, to “justify” their policy positions on the basis of reasons that other participants can accept.\(^7^5\) These attempts at justifying their beliefs may be developed into a political conception of justice that can be endorsed by all members. The second is that the constitutional consensus will be too “narrow” to resolve all the disputes about justice that will inevitably arise between the parties.\(^7^6\) Consequently, it is necessary to elaborate a political conception of justice that can serve as the focus of an overlapping consensus.

Despite insisting that the formation of an overlapping consensus is not unrealistic, Rawls expresses some skepticism about whether a single political conception of justice can serve as the basis of an overlapping agreement. In *Political Liberalism*, Rawls identifies two sources of doubt. The first is that although Rawls thinks that the conceptions of society and the person

\(^{73}\) Ibid., 159; see also Rawls, *Justice as Fairness*, 193.
\(^{74}\) Rawls, *Political Liberalism*, 164.
\(^{75}\) Ibid., 165.
\(^{76}\) Ibid., 166.
upon which justice as fairness is predicated are “central” to democracy, he admits that it is possible that there may be other “equally central” ideas that could produce liberal views of justice that are “markedly different” from justice as fairness. The second is that competing “social and economic interests” may encourage the formation and support of different liberal conceptions of right. As a result, the “focus” or object of the overlapping consensus may be a “range of liberal conceptions” rather than a single liberal view of right. Rawls speculates that the latitude of the group of liberal views is determined by the differences between the various conceptions and the interests that support them. In a situation where agreement on one political conception of right is not possible, Rawls hopes that justice as fairness can be the center or middle of the class of liberal views. For this to be true, two conditions must exist. The first is that justice as fairness is “correctly” founded on the most central basic ideas of liberal democracy, and the second is that it is “stable” on the basis of the interests that support it and that it fosters. Rawls observes that if the various liberal views “are supported by and encourage deeply conflicting political and economic interests,” and if there is not a form of constitutional regime that can mitigate this problem, “a full overlapping consensus cannot…be achieved.” In “The Idea of Public Reason Revisited,” Rawls seems to have abandoned the idea that one political conception of justice such as justice as fairness can serve as the sole object of an overlapping consensus. Rawls acknowledges that citizens in democratic political society accept “a family of reasonable political conceptions of justice,” and consequently, justice as fairness,

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77 Ibid., 167.
78 Ibid.
79 Ibid.
80 Ibid., 168.
81 Ibid.
despite its merits, is merely one member of this family. Rawls seems to think that his attempt in *Political Liberalism* to unify a political society around a single political conception of justice is unrealistic, much like his earlier attempt in *A Theory of Justice* to unify society around a single comprehensive conception of justice. Although Rawls never recants his claim that justice as fairness is the most reasonable political conception of justice, he recognizes that a substantial number of the members of actual liberal democratic societies do not share his view. Consequently, given the historical conditions that characterize modern liberal democracies, the greatest degree of unity possible among citizens is an overlapping consensus on a family of reasonable political conceptions of justice.

It should be noted that the idea of an overlapping consensus is predicated upon the existence of a deeper social and political unity. Rawls explains that the overlapping consensus “supposes agreement” among individuals in a well-ordered political society on the fundamental ideas of justice as fairness such as the notion of society as a fair system of cooperation and the conception of the person as free and equal. If this foundational consensus were absent, Rawls’s hope of achieving an overlapping agreement may not be feasible. If the existence of consensus on justice as fairness presupposes that persons already accept the basic ideas of his view of political right, is it possible that Rawls is assuming what he is attempting to prove? Despite the gravity of the existence of this fundamental concurrence to his argument, Rawls devotes very little of his voluminous writings to answering the question of whether it actually exists or how it might be brought about. Rawls seems to assume either that the necessary prerequisites are present or that, if they are not, they can easily emerge. As a result, it is possible that Rawls is

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83 Ibid., 149.
either giving insufficient attention to the cultural, moral, and philosophical origins of social unity or that he is expecting an unrealistic degree of intellectual and philosophical unity among members of political society.

Reasonable versus True

One of the most important aspects of Rawls’s political turn is his discussion of whether the freestanding political conception of justice or the family of views that serves as the focus of the overlapping consensus is true. Rawls develops an essential distinction between “reasonable” and “true.” There are two basic aspects of reasonableness. The first is the willingness to “propose” principles and rules for defining social order that take into consideration the interests of others and to “abide” by them as long as others are also willing to do so. The second is the willingness to “recognize” that the burdens of judgment render agreement on all moral, philosophical, and religious matters impossible and that it is illegitimate to use political power to compel others to accept any particular ideas or views. Persons, comprehensive doctrines, and political conceptions of justice that endorse these two attributes are reasonable, while ones that reject them are unreasonable. Rawls appears to associate the idea of truth with the correspondence theory, which claims that the truth or falseness of a claim is determined by the degree to which it corresponds to some idea or object. For example, a fact is true to the degree that it corresponds to or accurately represents some phenomenon. Rawls’s most complete exposition of his understanding of the nature of truth is set in the context of his discussion of rational intuitionism. According to Rawls, rational intuitionism asserts the existence of an

“independent” moral order and claims that the criterion for determining the “truth” of “moral judgments” is the degree to which they correspond or conform to this order.\(^8^7\) As a result, the truth of a conception of justice, regardless of whether it is comprehensive or political, is determined by how well it reflects the external standard of ethics. In “Kantian Constructivism in Moral Theory,” Rawls states that the standard of truth advanced by rational intuitionism is inappropriate for judging the merits of a conception of justice, since there is no prior and independent moral order.\(^8^8\) Consequently, the justification of a view of right does not depend on “its being true to an order antecedent to” human beings, but instead on whether it is the most “reasonable doctrine” for a political order.\(^8^9\) Rawls argues that describing conceptions of justice as reasonable or unreasonable rather than as true or false is not intended to convey an “alternative theory of truth,” but instead to “indicate” the differences between constructivism and rational intuitionism.\(^9^0\) However, Rawls notes that it is acceptable to label first principles of justice as “true” or false on the basis of whether they would be selected by the parties in the original position.\(^9^1\) In subsequent works such as “Justice as Fairness: Political not Metaphysical,” “The Idea of an Overlapping Consensus,” and Political Liberalism, Rawls changes his presentation of justice as fairness. Rawls writes that the purpose of justice as fairness as a political doctrine is “practical” rather than “metaphysical or epistemological.”\(^9^2\) In other words, justice as fairness is presented as a reasonable rather than true conception of morality. Rawls argues that the primary reason for this is not the denial of an independent moral

\(^{8^7}\) Rawls, Collected Works, 344; Rawls, Political Liberalism, 92; Rawls, Lectures on Moral Philosophy, 75.

\(^{8^8}\) Rawls, Collected Works, 354.

\(^{8^9}\) Ibid. 306, 307.

\(^{9^0}\) Ibid., 355.

\(^{9^1}\) Ibid.

\(^{9^2}\) Rawls, Collected Works, 394.
order but the impossibility of reconciling free institutions with agreement on the nature of truth. Since the fact of reasonable pluralism shows that citizens in a liberal democracy hold different comprehensive religious, moral, and philosophical views, and since these doctrines advance competing claims about the notion of truth, a conception of justice that advances contested positions concerning truth cannot serve as the focal point of an overlapping consensus. Thus, Rawls argues that justice as fairness pursues a “method of avoidance” in regards to controversial philosophical, metaphysical, and epistemological questions such as truth. Rawls insists that the denial that a view of justice that makes controversial claims about the existence of an independent or external moral can serve as the locus of an overlapping consensus does not imply “the controversial metaphysical claim that there is no such order.” Instead, it applies “the principle of toleration to philosophy” for the purpose of avoiding all controversies that are both unnecessary for and possibly impediments to discovering a common ground for resolving political disputes. Consequently, justice as fairness “does without the concept of truth.”

Although denying that justice as fairness claims to be a true or correct conception of political right, Rawls suggests that it can be regarded as such by certain comprehensive doctrines that form part of the overlapping consensus. Rawls observes that the fact that justice as fairness does not employ the criterion of truth does not mean that citizens cannot evaluate whether it is true. If the comprehensive doctrines held by the citizens who endorse justice as fairness contain a notion of truth, they can be used to evaluate the truth or correctness of the political conception of right. As a result, the “moral truth” of a conception of justice is assessed from the “point of

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93 Ibid., 395; see also Rawls, Collected Works, 434; Rawls, Political Liberalism, 150.
94 Rawls, Collected Works, 434.
95 Ibid., 435; Rawls, Collected Works, 395; Rawls, Political Liberalism, 10.
96 Rawls, Political Liberalism, 94.
view” of the various comprehensive doctrines to which members of society subscribe. Rawls argues that if all the “moral judgments” of any reasonable conception of justice held by members of political society are “true,” and if this reasonable comprehensive doctrine endorses justice as fairness, then justice as fairness “is correct” or true. Consequently, only one comprehensive doctrine in the overlapping consensus has to be true in order to guarantee that the political conception is also true. The implication of Rawls’s observation seems to be that justice as fairness is true or correct. However, Rawls stops short of this assertion. He asks whether it is possible to determine, on the basis of justice as fairness, whether any one comprehensive doctrine is true or right. The answer is that justice as fairness “does not speak to this question.” Instead, this question can only be answered by individuals or groups according to their individual comprehensive doctrines. As a result, it is impossible, on the basis of justice as fairness, to determine whether the criterion for assessing its own truth—the endorsement by a comprehensive doctrine that produces only correct judgments—is present. Thus, justice as fairness is unable to assess its own truth or correctness.

Although Rawls evades the issue of whether justice as fairness, reformulated into a political conception of justice, is true, he contends that it is a “moral” conception. According to Rawls, a conception of justice is properly denoted as moral if its “content is given by certain ideals, principles, and standards,” and if its content espouses “certain values.” Examples of moral ideals include the notion of society as a fair system of cooperation, the idea of a well-

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97 Ibid., 126.
98 Ibid., 128.
99 Ibid.
ordered society, and the conception of the person as free and equal. Rawls thinks that the content of moral ideals must be limited by general facts. According to Rawls, since it must be possible for individuals to “honor” an idea reasonably closely, ethical ideals are “limited” by “the general facts about human nature and society.” Thus, a conception of the person or of the social order must be reasonably compatible with certain general information.

Is Rawls’s Political Turn Historical?

Now that the key aspects of Rawls’s political turn have been discussed, it is possible to assess whether the revisions that Rawls made to justice as fairness in his later works such as Political Liberalism rectified the abstractness of A Theory of Justice. It is certainly true that Political Liberalism displays greater awareness of and sensitivity to the historical conditions of actual liberal democracies than A Theory of Justice. In Political Liberalism, Rawls recognizes that the existence of pluralism in liberal democracies renders unanimity on comprehensive doctrines highly unlikely. In response to this historical fact, Rawls reformulates justice as fairness into a political conception of justice that he hopes people holding different comprehensive doctrines can endorse, although for different reasons.

However, it is far from evident that these revisions overcome the ahistorical tendencies of Rawls’s approach. Rawls’s political turn did not significantly revise the three fundamental ideas of justice as fairness. The substance of both the idea of society as a fair system of cooperation and the idea of a well-ordered society is essentially the same before and after Rawls’s alterations to justice as fairness. Thus, Rawls’s political turn does nothing to mitigate the abstractness of these two concepts. Rawls did make an important amendment to the conception of the person as

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102 Rawls, Collected Works, 321.
free and equal in his later works. In *A Theory of Justice*, Rawls suggests that his conception of the person is intended to be a general claim about human nature, while in his later writings, Rawls insists that his idea of the person is intended to be a claim about citizens acting in the political sphere. In *Political Liberalism*, Rawls argues that for political purposes, citizens of liberal democracies view each other as free and equal. Whether all citizens endorse the much broader claim that the nature of the human being is free and equal is a question that Rawls deliberately dodges. However, Rawls’s assertion that his view of the person is intended to be a claim about citizens and not about human nature does not mitigate the fact that his conception of the individual is still highly abstract.

In his works that were published posthumously to *A Theory of Justice*, Rawls makes some important revisions to the original position. In *A Theory of Justice*, Rawls presents the original position as a device for resolving rational choice problems. Rawls specifies a list of conditions and argues that parties deliberating under these conditions would reach certain conclusions. In his later works, Rawls argues that the purpose of the original position is to connect a conception of the person with the conception of democratic society. The conditions of the original position are derived from the conception of the person. Another change concerns the argument from the original position. In *A Theory of Justice* and *Justice as Fairness*, Rawls devotes a significant amount of space to explaining why the parties in the original position select the two principles of justice as fairness over various formulations of the principle of utility. In contrast, Rawls’s discussions of the original position in *Political Liberalism* and “Kantian Constructivism in Moral Theory” do not address why the representatives choose justice as fairness over alternatives. Instead, his discussions in these works focus on the connection
between his conception of the person and the features of the original position. While these shifts in emphasis have important implications for his overall theory, they do not reduce the abstract nature of the original position.

After the publication of *A Theory of Justice*, Rawls made some stylistic changes to the two principles of justice as fairness to address some ambiguities and inconsistencies, but these revisions do not fundamentally alter their content. Also, Rawls did not substantially modify his method of arriving at these two axioms. Both before and after his political turn, Rawls maintains that the most reasonable way to discover the principles that are most appropriate for regulating the basic institutions of democratic society is to appeal to the device of the original position. In all of his works, the content of the principles of justice is carefully insulated from the influence of historical contingencies. Consequently, Rawls’s political turn does not render the substance of the two principles more sensitive to concrete circumstances.

It is not clear that the new ideas developed by Rawls during his political turn add much realism to the idealism of *A Theory of Justice*. Rawls does not provide any evidence to demonstrate that actual liberal democracies are characterized by reasonable pluralism rather than by simple pluralism, nor does he offer any reason to believe that liberal societies will develop something similar to reasonable pluralism in the future. As a result, it seems that the alleged fact of reasonable pluralism is not a description of real liberal democracies, but instead an ideal that Rawls hopes will come into being. The idea of an overlapping consensus also seems to be an ideal, since Rawls neither points to any historical societies where something similar to it has existed nor gives any solid evidence that demonstrates that it is likely to emerge. Both before
and after his political turn, justice as fairness makes copious use of ideals, and thus its connection to historical reality is questionable.
CHAPTER FIVE

The Idea of Public Reason

Another concept that helps to clarify Rawls’s understanding of the connection between history and justice is the “idea of public reason.” Rawls developed this concept later in his career. Rawls first presented this idea in the first edition of Political Liberalism, which was published in 1993, and he offered a revised version of it in an essay entitled “The Idea of Public Reason Revisited,” which was published in 1997. In the broadest terms, Rawls views public reason as the arguments and reasons that the citizens of a liberal democracy are permitted use to justify their actions and decisions concerning political issues. According to Rawls, public reason “specifies at the deepest level the basic moral and political values” that govern the relationship between a democratic government and its citizens and the relationship between the different members of a democracy. Rawls notes that the principles of the idea of public reason do not apply to all discussion of fundamental questions of justice but only to discourse on basic issues that occur in the “public political forum.” The public political forum includes the discourse of all elected officials such as judges, legislators, and executives, and the discourse of all candidates for political office and members of their staff. Rawls notes that the “ideal of public reason” is actualized when government officials and candidates justify their decisions, votes, and positions on the basis of the content of public reason. Citizens actualize the ideal of public reason when

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3 Ibid., 767.
4 Ibid., 768.
they ground their decisions to support or oppose both legislation and candidates on the basis of the material of public reason.

There are four features of liberal democratic political society that render an idea of public reason necessary. The first is that democratic society is entered only by birth and exited only through death, the second is that democratic society as a whole exercises coercive power over its members, the third is that democratic society is characterized by the fact of reasonable pluralism, which precludes the possibility of agreement on a single comprehensive moral, philosophical, or religious doctrine, and the fourth is the liberal idea of legitimacy, which requires coercive political power to be exercised on the basis of reasons that all members of society can accept. These four aspects raise the question of what “ideals and principles” should regulate the exercise of political power so that all individuals can justify their political decisions on a basis that is acceptable to all members of society. The appropriate rules and axioms for guiding the exercise of political power are specified by public reason. Rawls argues that the “content” of public reason is provided by a “family” of liberal political conceptions of justice. All liberal political conceptions of justice specify a “list of certain basic rights, liberties, and opportunities,” assign “special priority to those basic rights, liberties, and opportunities,” ensure that all citizens possess the “adequate all-purpose means” necessary for the effective exercise of their freedoms, and endorse the conception of the person as free and equal and the idea of society as a fair system of cooperation. Citizens participate in public reason when they justify their decisions concerning

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5 Ibid., 770.
6 Ibid., 773.
7 Ibid., 774.
fundamental political issues on the basis of the ideals, values, and principles specified by the family of liberal political conceptions.

There are several aspects of Rawls’s description of the idea of public reason that merit special consideration. First, Rawls states that the idea of public reason “belongs to a conception of a well ordered constitutional democratic society” and that his discussion of it is “concerned only with a well ordered constitutional democracy.”\(^8\) Since the idea of a well-ordered society is an ideal that has never been actualized, and since Rawls limits his discussion of the idea of public reason to well-ordered societies, it seems that the idea of public reason is derived from an ideal rather than from concrete experience. Although Rawls does not categorically state that the idea of public reason has never been achieved in any political society, he does not provide any examples of real societies that have actualized it in practice. Instead, Rawls lays out an ideal and insists that liberal democracies should, as much as possible, conform to it. Second, Rawls argues that the content or material of the idea of public reason is specified by liberal political conceptions of justice that approve the idea of the person and society and that citizens who participate in public reason are supposed to adopt these notions. Since Rawls freely admits that these conceptions are idealizations or useful fictions, the idea of public reason is predicated upon non-historical conceptions. When engaging in public reason, citizens are required to evaluate policies on the basis of whether they are suitable for idealized persons residing in an idealized society. As a result, the historicity of the idea of public reason may be suspect.

\(^8\) Ibid., 765, 771-772.
A final aspect of Rawls’s philosophy that sheds light on his understanding of the relationship between justice and history is his foreign policy recommendations for liberal societies. In *The Law of Peoples*, Rawls attempts to construct the “Law of Peoples,” which is a political conception of justice that governs the relations between countries. The content of this view of right is derived from a liberal conception of justice similar to, yet more general than, justice as fairness. All nations that comply with the dictates of the law of peoples are members of the “society of peoples.” Rawls also notes that *The Law of Peoples* lays out the principles that should regulate the “foreign policy” of liberal democracies. The *Law of Peoples* is divided into “ideal” and “nonideal” theory. Ideal theory has two parts. The first explains how liberal democratic societies can accept the law of peoples, and the second explains how non-liberal decent societies may conform to the law of peoples. Non-ideal theory also has two parts. The first explains how liberal and decent societies should deal with regimes that refuse to comply with the law of peoples, and the second explains how liberal and decent societies should treat regimes that are impeded from compliance by unfavorable historical, cultural, social, and economic conditions.

Rawls makes an important distinction between “peoples” and “states.” One significant difference between them is that peoples are both “reasonable” and “rational,” while states are

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10 Ibid.
11 Ibid., 10.
12 Ibid., 4.
13 Ibid., 27.
merely “rational.”\textsuperscript{14} This means that peoples interact on the basis of reciprocity or pursue their own interests in a way that takes into consideration the interests of other peoples. In contrast, states tend to pursue their own interests without regard for the interests of other countries. Another key difference is that peoples lack the “powers of sovereignty” such as the unlimited right to use war to advance their interests and the right to deal with individuals residing within their borders without interference from outside actors, while states possess and exercise these rights.\textsuperscript{15} Peoples recognize that their powers to wage war and to use force against individuals under their jurisdiction are limited by the law of peoples, while states do not.

The first part of ideal theory concerns the principles that govern the conduct of liberal democracies. There are three features of “liberal peoples.”\textsuperscript{16} The first is a “reasonably just” constitutional democratic government that is effectively controlled by and serves the fundamental interests of its citizens.\textsuperscript{17} Liberal democracies unite the “values of liberty and equality” through three principles.\textsuperscript{18} The first two principles define the basic rights, freedoms, and opportunities of citizens, and assign to these liberties priority. The third principle secures to all citizens the necessary means for effectively exercising these rights and freedoms, conforms to the principle of reciprocity, and prevents the development of excessive inequalities. The second feature of liberal peoples is that the citizens are unified by “‘common sympathies,’” which may arise from factors including a shared language, history, culture, and political principles, and the third feature is a “moral nature,” which means that their actions are governed by both

\begin{itemize}
  \item \textsuperscript{14} Ibid., 28.
  \item \textsuperscript{15} Ibid., 25.
  \item \textsuperscript{16} Ibid., 4, 63.
  \item \textsuperscript{17} Ibid., 23.
  \item \textsuperscript{18} Ibid., 49.
\end{itemize}
reasonableness and rationality.\textsuperscript{19} Also, due to reasonable pluralism, the citizens of a liberal society are not united in affirming a single comprehensive doctrine.\textsuperscript{20} Liberal democracies are categorized as “well-ordered peoples.”\textsuperscript{21} Rawls unequivocally contends that “liberal constitutional democracy is…superior to other forms of society.”\textsuperscript{22} Consequently, he insists that the foreign policy of liberal democracies should be designed to encourage non-liberal and non-democratic countries to adopt liberal democratic institutions. Since the best methods for promoting the development of democratic structures are determined by the conditions of the society in question, liberal democracies will treat different types of states divergently.

Rawls constructs the principles of the law of peoples in an international or “second original position.”\textsuperscript{23} The transnational initial situation has several features. First, it models the fair conditions under which representatives of liberal democracies determine the principles of interaction. Second, since the members of the society of peoples are regarded as free and equal, their representatives are symmetrically or equally situated in the original position. Third, the parties are regarded as rational actors motivated by securing the fundamental interests of the society to which they belong. These interests include maintaining their independence, culture, security, territory, and self-respect, and the well-being of their citizens. Fourth, the parties are placed behind the veil of ignorance. As a result, they are unaware of the characteristics of the state in which they reside such as territory, population, natural resources, military strength, or economic development. Rawls argues that the representatives in the second original position

\textsuperscript{19} Ibid., 23.  
\textsuperscript{20} Ibid., 34, 40.  
\textsuperscript{21} Ibid., 4, 63.  
\textsuperscript{22} Ibid., 62.  
\textsuperscript{23} Ibid., 32.
concur on eight principles. The first is that “peoples are free and independent, and their freedom and independence are to be respected by other peoples;” the second is that “peoples are to observe treaties and undertakings;” the third is that “peoples are equal and are parties to the agreements that bind them;” the fourth is that “peoples are to observe a duty of non-intervention;” the fifth is that “peoples have the right of self-defense but no right to instigate war for reasons other than self-defense;” the sixth is that “peoples are to honor human rights;” the seventh is that “peoples are to observe certain specified restrictions in the conduct of war;” and the eighth is that “peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.” Rawls argues that the list of principles is derived from the “history and usages of international law and practice.” Unlike the domestic initial situation where the parties select from a list of alternative conceptions of justice, the representatives in the second original position are presented with the above catalogue of principles. Since these axioms are acceptable to all participants, they are ratified without any consideration of alternatives. All peoples that accept and adhere to the eight principles that comprise the law of people are members in good standing of the society of people. Rawls argues that the society of peoples is “stable for the right reasons,” since the participants’ support is not contingent on the prevailing distribution of power but instead is based on “allegiance to the law of peoples itself.”

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24 Ibid., 37.
25 Ibid., 41.
26 Ibid., 45.
Rawls argues that the members of the society of peoples accept the idea of “public reason.”27 Since the different peoples have divergent institutions, languages, religions, cultures, and histories, they need a mutually acceptable basis for adjudicating political disputes. This common ground or public reason is specified by the principles of the law of peoples. The “ideal of public reason” is actualized when government officials and candidates for public office both adhere to and justify their actions on the basis of the law of peoples.28

After specifying the content of the law of peoples, Rawls turns to the second part of ideal theory. Rawls wants to demonstrate that the consensus on the law of peoples is not “limited only to liberal peoples.”29 Thus, Rawls creates the category of “decent peoples.”30 Decent peoples have an “associationist” form of social order, which means that persons are understood as members of groups, and that these groups rather than individuals are represented in the government.31 There are two main features of decent peoples. The first is non-aggression and the recognition that legitimate aims must be pursued through peaceful means. The second is divided into three parts. The first is the recognition of “human rights” including life, liberty of conscience, freedom from slavery, personal property, and formal equality; the second is the imposition of “moral duties and responsibilities” on members of society as responsible agents; and the third is that government officials sincerely and reasonably believe that the laws that they create are “guided by a common good conception of justice” that regulates society.32 A common good conception of justice means that the common goals or aims that a society seeks to achieve

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27 Ibid., 55.
28 Ibid., 56.
29 Ibid., 68.
30 Ibid., 63.
31 Ibid., 64.
32 Ibid., 65, 66.
must not be “maximized” as ends in themselves, but instead must be pursued within the bounds of legal and structural restrictions. Similar to liberal societies, decent societies are classified as “well-ordered peoples.”

Rawls emphatically denies that decent peoples are “as reasonable and just” as liberal democratic societies, since the former fail to conform to the standards of the latter. Nevertheless, Rawls contends that liberal democracies should “tolerate” decent peoples. Toleration is not only refraining from imposing political, economic, and diplomatic sanctions, but also recognizing decent peoples as equal members in good standing of the society of peoples who have certain rights and obligations. There are two primary reasons for toleration. The first is that representatives of decent peoples situated in the original position would “adopt” the same law of peoples as representatives of liberal democracies. Since the foreign policies of both liberal and decent peoples are governed by the same rules of conduct, the former should tolerate the latter. The second is that since toleration facilitates sentiments of “self-respect” in decent peoples while sanctions produce feelings of “resentment and bitterness,” the former is a better strategy than the latter for encouraging decent peoples to make liberal reforms.

Two aspects of Rawls’s discussion of decent peoples are especially relevant to uncovering his understanding of the connection between justice and history. The first is that instead of deriving a definition of decent peoples from historically existing societies, Rawls simply announces the two aforementioned criteria that a society must meet in order to qualify as

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33 Ibid., 71.
34 Ibid., 4, 63.
35 Ibid., 83.
36 Ibid., 59.
37 Ibid., 69.
38 Ibid., 61, 62.
decent. The second is that after formulating the definition of decency, Rawls does not provide any concrete examples of an actual decent society from among the nearly two hundred countries that currently exist around the globe. Instead, Rawls describes an “imaginary,” “idealized,” and “hypothetical” decent people, which he calls “Kazanistan.” The goal of this sketch is to “suggest” that a decent society is “viable” or possible given certain conditions. Rawls writes that “even though it is only imagined, I do not think it is unreasonable that a society like Kazanistan might exist.” According to Rawls, “the Law of Peoples does not presuppose the existence of actual decent historical peoples any more than it presupposes the existence of actual reasonably just constitutional democratic peoples,” and “if we set the standards very high, neither exists.” In the case of liberal democracies, “some are closer than others” to approximating the ideal standard, and in the case of decent peoples, it is “even less clear” which ones come the closest. Rawls seems to think that the standard of decency is prior to historical society and that it should serve as an ideal for peoples to emulate.

After considering ideal theory, Rawls turns to the problems of non-ideal theory. Rawls identifies three types of “not well-ordered” peoples. The first is “outlaw states,” the second is “societies burdened by unfavorable conditions,” and the third is “benevolent absolutisms.” Outlaw states are societies that “refuse to comply with a reasonable Law of Peoples.” Rawls mentions the use of force to advance interests and the violation of basic human rights as the two

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39 Ibid., 64, 75.  
40 Ibid., 75.  
41 Ibid., 78.  
42 Ibid., 75.  
43 Ibid.  
44 Ibid., 4, 63.  
45 Ibid., 63.  
46 Ibid., 90.
most common ways that outlaw states fail to comply with the law of peoples. Burdened societies are peoples that are unable to comply with the law of peoples because they lack the resources that enable them to do so such as political and cultural traditions, material and technological goods, human capital, and information. Burdened societies are not normally aggressive or expansionistic. Benevolent absolutisms are societies that “honor human rights” but fail to grant their members the rights and liberties that allow them to have a “meaningful role in political decisions.” Also, benevolent absolutisms are “non-aggressive” and pursue their interests through peaceful means.

The first part of non-ideal theory concerns the relations between well-ordered societies and outlaw states. Rawls argues that the ultimate goal of liberal and decent societies is “to bring all societies eventually to honor the Law of Peoples and to become full members in good standing of the society of well-ordered peoples.” There are several means to this end. Both liberal and decent societies have a “right to war” that can be used for preserving the integrity of their institutions against military attacks initiated by outlaw states. In addition, liberal and decent societies may exert “pressure” on outlaw states by establishing institutions and organizations that expose their unjust practices, by withholding economic and other forms of assistance, and by denying admittance into cooperative institutions, agreements, and practices. Further, liberal and decent peoples may use military force to intervene in the internal affairs of

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47 Ibid.
48 Ibid., 106.
49 Ibid., 63.
50 Ibid., 92.
51 Ibid., 93.
52 Ibid., 91.
53 Ibid., 93.
outlaw states in cases where there are “egregious” violations of human rights and where sanctions have been ineffective in alleviating these abuses.\(^{54}\)

The second part of non-ideal theory concerns the interactions between well-ordered peoples and burdened societies. As in their dealings with outlaw states, Rawls argues that the final aim of well-ordered peoples is “to bring burdened societies…into the Society of well-ordered Peoples.”\(^{55}\) Rawls argues that well-ordered societies pursue this goal by fulfilling their “duty of assistance” to burdened societies.\(^{56}\) The duty of assistance obligates liberal and decent peoples to aid burdened societies until the latter become “well-ordered.”\(^{57}\) Rawls argues that the primary factors that determine whether just institutions can be established in a particular country include political culture, moral, philosophical, and religious traditions, population policies, and the characteristics of the citizenry such as their political virtues, industriousness, probity, and innovativeness. Economic factors such as overall levels of wealth and availability of natural resources are usually of secondary importance. As a result, Rawls thinks that the best way to assist a burdened society is to encourage it to reform its “political and social culture.”\(^{58}\) However, Rawls does not specify the precise details for how this goal can be achieved.

Although Rawls does not provide much discussion of the relationship between well-ordered societies and benevolent absolutisms, several policy prescriptions can be inferred from his discussion of other societies. Since benevolent absolutisms are not well-ordered societies, and since the goal of liberal and decent peoples is to encourage all societies to become well-

\(^{54}\) Ibid., 94.
\(^{55}\) Ibid., 106; see also 81.
\(^{56}\) Ibid.
\(^{57}\) Ibid., 111.
\(^{58}\) Ibid., 108.
ordered, well-ordered societies should encourage benevolent absolutisms to reform their institutions. However, since benevolent absolutisms do not violate human rights, and since they are not aggressive, it is not permissible for well-ordered societies to use military intervention to reform benevolent absolutisms. Since Rawls places benevolent absolutisms in a different category than burdened societies, it seems that their failure to have just institutions is not a result of unfavorable conditions, and thus well-ordered societies do not have a duty to assist them. Nevertheless, it seems that it would be permissible for well-ordered societies to use aid and perhaps nonviolent sanctions to encourage benevolent absolutisms to reform their deficient institutions.

The proliferation of liberal democratic institutions around the globe is, according to Rawls, the best chance of obtaining universal peace and harmony between peoples. Rawls argues that the more closely actual democracies approximate the “ideal” of a liberal conception of justice, the less likely they are to engage in war with either each other or with non-liberal and non-democratic states. The two main reasons for why just liberal democracies use military force are “legitimate self-defense” or defense of allies against aggressive and expansionist outlaw states and legitimate “intervention” to protect human rights. Thus, if outlaw states ceased to exist, wars between peoples would cease to occur.

**Conclusion**

Chapters two, three, four, and five have attempted to discuss all of the ideas of Rawls that are relevant to answering the question of what his political philosophy suggests about the

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59 Ibid., 54; see also 49.
60 Ibid., 49; see also 54.
relationship between universality and particularity. The findings of these chapters can be summarized as follows. Rawls decisively rejects the attempt of rational intuitionism to divorce justice and history. According to Rawls, the claim of rational intuitionism that morality is an independent and unchanging standard determined by an outside source such as God, nature, or reason is flawed, since it renders ethics too detached from political society and since it fails to recognize that human creativity is an important aspect of morality. Rawls attempts to replace the independent ethical order of rational intuitionism with a conception of right that is both sensitive to the general facts established by the social sciences and influenced by human will. Although this is a promising start, Rawls is ultimately unable to deliver a historically rooted view of right. Both before and after his political turn, Rawls relies heavily on abstract ideals such as the idea of society as a fair system of cooperation, the idea of a well-ordered society, and the conception of the person. Even the allegedly historical concepts that he developed later in his career such as the fact of reasonable pluralism, the overlapping consensus, and the idea of public reason turn out to be examples of ahistorical thinking. Throughout all his major works, Rawls maintains that genuine political morality is discovered by appealing to the detached, ahistorical original position. Further, Rawls seems to think that justice is a pre-determined, fixed standard that existing political societies must approximate or conform to as much as possible. Rawls’s claim that his conception of justice is derived from the ideas that are implicit in the public culture of liberal democracies seems to do relatively little to counter the more obviously abstract elements of his political philosophy. This is because Rawls does not raise the question of whether these underlying ideas are defensible on the basis of concrete evidence. Additionally, Rawls seems to oscillate between cultural relativism and detached universality. On the one hand, Rawls tries to
disentangle his conception of justice from the controversial epistemological question of whether it is true or correct, while on the other, he insists that political institutions that conform to either the dictates of justice as fairness or a similar liberal view of right should be adopted by all peoples regardless of place and time. All of these aspects of Rawls’s philosophy indicate that he thinks that political justice is independent of concrete circumstances. Rawls’s acceptance of the specific premise that justice and history are separate implies that he adopts the more general assumption that the universal and the particular are disconnected.
CHAPTER SIX

Introduction

The purpose of this chapter is to explain and consider the secondary literature on John Rawls that helps to illustrate the problem of the connection between universality and particularity. There are two reasons for reviewing secondary sources. The first is to provide a clearer and more precise statement of the main philosophical issue that this dissertation addresses, and the second is to demonstrate that this question has not been adequately considered by previous scholars. This chapter attempts to discuss the most prominent and celebrated critics and defenders of Rawls, provided that their work is relevant to the topic. Also, this chapter tries to incorporate scholars whose work is representative of both the major approaches to Rawls and the most significant philosophical schools. However, this chapter is neither intended to provide an exhaustive survey of the numerous responses to Rawls’s ideas nor to offer a complete articulation of the criticisms presented by the authors that are discussed. Instead, it focuses narrowly on arguments that relate to Rawls’s understanding of the link between justice and history. Also, this chapter does not attempt to provide an extensive evaluation of the accuracy of these criticisms. This chapter discusses the works of so-called communitarians such as Michael Walzer and Michael Sandel, libertarians including Robert Nozick, Marxists represented by G. A. Cohen, pragmatists such as Richard Rorty, critical theorists including Jurgen Habermas, and Straussians represented by Allan Bloom and David Lewis Schaefer.
Walzer’s Criticism of Rawls

Probably the most serious and well-known criticism of Rawls’s ideas is offered by a group of scholars that are often called communitarians. The major theme that unites the diverse ideas and arguments of members of this group is that Rawls’s defense of liberal society fails to adequately account for the debt that political justice owes to the norms and values of communities.

Walzer’s political philosophy exemplifies this approach.

In *Spheres of Justice*, Walzer attempts to formulate a historically rooted alternative to Rawls’s conception of right. Walzer identifies a tendency among political philosophers to escape the “world of appearances” and to look for an “underlying unity.” As a result, most intellectuals have argued that there is a single just or legitimate method of distributing goods that must be applied to all political societies. Walzer thinks that Rawls’s principle of distributive justice is an example of this proclivity. In contrast to the dominant approach to distributive justice exemplified by Rawls, Walzer adopts a “radically particularist” conception of political ethics. Walzer argues that since political right is both created by and anterior to rather than independent of and prior to political society, “justice is relative to social meanings.” An equitable society is one where its “substantive life” or institutional arrangement is consistent with the “shared understandings” of its members on the values of social goods. Consequently, Walzer proceeds to discover distributive justice by examining and interpreting the “world of

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1 Walzer, *Spheres of Justice*, 4.
2 Ibid., 5, 79.
3 Ibid., xiv.
4 Ibid., 312.
5 Ibid., 313.
meanings” accepted by persons in a specific political community.\textsuperscript{6} Since political right depends on shared social values, Walzer denies that a conception of justice derived from a particular political order is necessarily universal or suitable for “all social worlds.”\textsuperscript{7} Also, Walzer insists that his theory of distributive justice has “no way of saying” whether the conception of right that governs one political order is superior to that of another.\textsuperscript{8} Although acknowledging that it is possible that certain principles or values may be “reiterated” in many or even all political societies, Walzer declares this issue to be an “empirical matter” that cannot be solved by philosophy, and thus he declines to pursue it.\textsuperscript{9}

Walzer’s main thesis is that the principles of distributive justice are “pluralistic.”\textsuperscript{10} This means that different social goods that inhabit different spheres of political society must be distributed on the basis of different axioms. Walzer summarizes his theory of goods in six propositions.\textsuperscript{11} The first is that distributive justice governs only social goods, the meaning or value of which is a creation of political society. The second is that the characteristics of members of society are shaped by the conception, creation, possession, and use of social goods. The third is that there is no single primary good or set of basic goods that is conceived of in the same way in all societies. The fourth is that the socially constructed meaning of goods regulates their distribution. The fifth is that since the definitions of social goods change over time, the justice of their distribution also varies. The sixth is that when the meanings of goods are discrete, they should be distributed autonomously or on the basis of different principles.

\textsuperscript{6} Ibid., xiv.
\textsuperscript{7} Ibid.
\textsuperscript{8} Ibid., 312.
\textsuperscript{9} Ibid.
\textsuperscript{10} Ibid., 6.
\textsuperscript{11} Ibid., 7-10.
A crucial distinction in Walzer’s theory is between “dominance” and “monopoly.” The former is when a social good can be used to control or gain other social goods, and the latter is when one individual or group possesses exclusive power over a particular social good. Walzer argues that all social goods have their own appropriate “spheres of operation,” and that there are legitimate and illegitimate conversions between social goods that are derived from their “social meaning.” Walzer distinguishes between “simple” and “complex equality.” The former challenges monopoly, but not dominance, by providing a roughly equal distribution of the dominant good, while the second challenges dominance, but not monopoly, by limiting conversions between goods. Walzer argues that his theory is a form of the latter, since it stipulates that no social good should be “generally convertible” into other social goods. For example, economic power such as the possession of great wealth should not translate into political power such as the ability to influence elected officials or to gain office. Walzer thinks that economic power constitutes a distinct sphere from political power, and that the one should not be converted into the other. According to Walzer, the ability to translate one social good into another when there is an absence of an “intrinsic” connection between the two is “tyranny.”

The above description of Walzer’s theory provides the background for understanding his criticisms of Rawls. Walzer objects to Rawls’s attempt to derive principles of justice from the original position not because it attempts to ensure impartiality, but because it is excessively detached from real circumstances. Rawls’s attempt to render the “particularism of interest”

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12 Ibid., 10-11.
13 Ibid., 19.
14 Ibid., 13, 17.
15 Ibid., 17.
16 Ibid., 19.
inadmissible to questions of justice has the unacceptable consequence of isolating political right from the “particularism of history, culture, and membership.”

For Walzer, the divergence between the decisions of individuals in the original position and persons in concrete societies is primarily a product of the lack of knowledge of their circumstances and only secondarily a result of impartiality. While Walzer thinks that individuals in actual political systems can overcome bias, he does not think that the parties in the original position can construct an adequate conception of justice without knowledge of historical details. Since an account of distributive justice depends on the conditions of political society, it cannot be derived from the deliberations of detached individuals.

Walzer also finds Rawls’s attempt to restrict monopoly rather than dominance problematic. According to Walzer, the purpose of Rawls’s difference principle is to reduce the ability of “talented” individuals to monopolize wealth. The potential weakness of this approach is that since state power is required to limit monopolies, the power of government will become the new dominant social good, and individuals will attempt to “monopolize” it for the purpose of achieving dominance. As a result, Rawls’s difference principle substitutes one dominant social good for another without providing any effective means of limiting dominance itself.

Although providing a cogent statement of the philosophical problem of the relationship between right and tradition, Walzer is unable to resolve the antithesis. Walzer accurately identifies a strain of Rawls’s thought that tends toward excessive universalization and

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17 Ibid., 5.
18 Ibid., 15.
19 Ibid.
abstraction, but it is not clear that he adequately guards against the opposite extreme. Since Walzer thinks that a view of right must be rooted in the shared understandings of persons in society, and since he thinks that these understandings may differ from one community to another, it is not obvious how he can avoid admitting that justice is parochial. If justice lacks universality, it is difficult to envision how disagreements between different political orders can be adjudicated without resorting to either force or isolation. Walzer ultimately leaves the reader with a choice between the two unsatisfying alternatives of detached universalism and relativistic particularism. Despite this difficulty, Walzer does not explain why justice and history must be mutually exclusive. Walzer’s criticism of Rawls reveals the necessity of resolving this disjunction.

**Sandel’s Criticism of Rawls**

Sandel’s treatment of Rawls is often considered to be part of the broader communitarian critique of Rawls’s political philosophy. However, Sandel has expressed reservations concerning this assessment. Sandel professes to agree with communitarians such as Walzer agree that a conception of right cannot be “independent” of a conception of good.\(^{20}\) However, Sandel points out that there are two ways to understand the relationship between the right and the good. The first states that principles of right are derivative from the beliefs or values of persons in a political community, while the second claims that axioms of justice are derived from human goods. According to former, equity depends on “tradition” or “community,” while according to the latter, it is determined by a “teleological” or “perfectionist” view of human excellence.\(^{21}\)

\(^{20}\) Sandel, *Liberalism and the Limits of Justice*, x.

\(^{21}\) Ibid., xi.
Sandel contends that communitarians such as Walzer adopt the former, but that he adheres to the latter. For Sandel, the approach adopted by Walzer and other communitarians is “insufficient” because by conflating “justice” with “convention,” it deprives the former of its “critical character.”^{22}

In *Liberalism and the Limits of Justice*, Sandel offers a philosophical critique of “deontological liberalism.”^{23} Sandel argues that the main thesis of deontological liberalism is that since political society is composed of a plurality of persons who hold diverse interests and views of the human good, it is best governed by principles of justice that are not predicated upon any conception of the good. The rules of society are validated because they conform to an idea of right that is prior to and independent of the good, and not because they maximize a notion of human excellence. According to Sandel, the priority of the right can be understood in either a “moral” or “foundational sense.”^{24} The former claims that justice is the highest virtue, and that its demands outweigh those of other interests, while the latter asserts that the principles of right are derived from a source that is independent of any notion of good. For Sandel, a “full deontological view,” such as the one offered by Kant, accepts both of these claims.^{25} The independent basis of the right is found in the idea of a subject that is completely free and autonomous from empirical or historical contingencies. Consequently, full deontology necessitates the existence of a subject that is “prior to and independent of its ends.”^{26} Sandel identifies two variants of the independent self. The first is Kant’s “transcendental” or

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^{22} Ibid.
^{23} Ibid., 1.
^{24} Ibid., 3
^{25} Ibid., 2.
^{26} Ibid., 7.
“noumenal” subject, and the second is Rawls’s empirical subject.\textsuperscript{27} According to Sandel, Rawls attempts to rescue Kant’s deontology from the criticism that it is too abstract by replacing the transcendental self with a more empirically rooted subject. Sandel’s main thesis is that Rawls’s defense of the priority of justice is problematic because it is predicated upon a conception of the person that is untenable.\textsuperscript{28}

Sandel advances several arguments for why Rawls’s view of the individual is impoverished. The first is that an adequate defense of Rawls’s difference principle “must presuppose” a view of the person that deontology rejects.\textsuperscript{29} According to Sandel, Rawls argues that since human beings do not perform any action to earn their natural endowments, the distribution of these assets is “arbitrary” from a moral point of view.\textsuperscript{30} However, since Rawls denies that it is possible or desirable to eradicate the inequalities arising from the unequal distribution of talents, he attempts to arrange society so that the lesser endowed “share” in the benefits enjoyed by the better endowed.\textsuperscript{31} Hence, Rawls arrives at the difference principle which stipulates that all social and economic inequalities must “benefit” the least advantaged members of political society.\textsuperscript{32} The difference principle effectively regards the allotment of natural endowments as a “common asset.”\textsuperscript{33} Sandel notes that viewing natural attributes as a common asset is open to the objection that it contradicts deontological liberalism’s ideas of the “inviolability” and individuality of the person.\textsuperscript{34} To undermine this challenge, Rawls argues that

\begin{thebibliography}{99}
\item \textsuperscript{27} Ibid., 13.
\item \textsuperscript{28} Ibid., 14, 65.
\item \textsuperscript{29} Ibid., 66.
\item \textsuperscript{30} Ibid., 68.
\item \textsuperscript{31} Ibid., 70.
\item \textsuperscript{32} Ibid.
\item \textsuperscript{33} Ibid.
\item \textsuperscript{34} Ibid., 78.
\end{thebibliography}
there is a distinction between the “self” and its natural “endowments.” As a result, abilities rather than individuals are understood as commonly possessed. Sandel notes that the distinction between the self and its attributes produces a “radically disembodied” subject that is similar to the Kantian “transcendental” self that Rawls wants to avoid. The only way out of this conundrum is, according to Sandel, for Rawls to replace the deontological view of the person with an “intersubjective” one. Since the latter permits the possibility of understanding the self as including more than one empirically distinct person, it is possible to argue that viewing natural endowments as a common asset does not necessarily use one person as a means for satisfying the needs of another.

Sandel’s second argument is that Rawls’s notion of common assets assumes a view of community that his theory “fails” to provide. According to Sandel, the claim that individuals do not morally deserve their natural endowments does not automatically lead to the conclusion that the community as a whole has a claim on them. Thus, Rawls needs to offer an account of society that justifies the common ownership of assets. Sandel contends that Rawls offers two conceptions of community. The first is “instrumental” and the second is “sentimental.” The former is where purely self-interested agents who lack common goals form associations. In this case, cooperation is a means to the end of satisfying personal desires. The latter is where individuals who have shared aims and who are capable of seeking the good of others create associations. In this situation, the purpose of cooperation is not only to satisfy individual

\[\text{Ibid.}\]
\[\text{Ibid., 79.}\]
\[\text{Ibid.}\]
\[\text{Ibid., 135.}\]
\[\text{Ibid., 149.}\]
interests but also to promote emotional ties between members. Sandel argues that since both accounts of community assume that persons are defined and “individuated” prior to entering society, neither explains why the political order has a greater claim on natural abilities than its members. As a result, Rawls is forced to choose between the undesirable options of allowing society to use individuals as a means or accepting an excessively abstract conception of the self. Sandel contends that Rawls’s only way out of this dichotomy is to accept a “strong” or “constitutive” understanding of community, which holds that the “identity” of the person is defined and shaped by political society.

Sandel’s third line of argumentation is directed against Rawls’s defense of the priority of right presented in *Political Liberalism*. Sandel acknowledges that since *Political Liberalism* detaches the argument for the priority of right from the “Kantian conception of the person,” it evades disputes over the nature of the subject. However, Sandel thinks that the arguments in *Political Liberalism* are liable to three objections, two of which are relevant to the topic of this dissertation. The first is that Rawls’s claim that public policy questions should be settled on the basis of “political values” rather than on the basis of “comprehensive” doctrines is problematic. According to Sandel, Rawls thinks that a political conception of justice is the only basis for adjudicating political disputes that can be accepted by all citizens. To ensure that it is satisfactory to all persons, a political view must refrain from evaluating the truth of comprehensive doctrines. However, Sandel thinks that the controversies over “abortion” and

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40 Ibid.
41 Ibid., 150.
42 Ibid., 195.
43 Ibid., 196.
“slavery” illustrate the limitations of this approach.\textsuperscript{44} In the case of the former, the debate turns on the question of whether abortion is morally evil. Most arguments against abortion are based on “religious” or “moral” doctrines. In order to determine whether it is justifiable to “bracket” these views, it is necessary to consider whether they are “true.”\textsuperscript{45} Similarly, in the case of the latter, the issue depended on whether slavery was immoral. In the 1830s and 1840s, most arguments against the morality of slavery invoked “religious” doctrines.\textsuperscript{46} As in the previous case, the rationality of disallowing them depended on their accuracy.

Sandel’s second argument is that the fact of reasonable pluralism is “not sufficient” to prove the priority of the right.\textsuperscript{47} According to Sandel, Rawls argues that since individuals in liberal democracies cannot concur on a conception of the good, it is necessary to organize political society on the basis of a conception of right. Sandel observes that the “assumption” behind this approach is that conditions that produce disagreement over morality and religion do not produce disputes over justice.\textsuperscript{48} However, Sandel argues that this conjecture is invalidated by the existence of numerous “disagreements” over the nature of justice in liberal democracies.\textsuperscript{49} If rational discourse is capable of producing agreement on justice, then it is also capable of producing consensus on morality and religion. Consequently, the “fact of disagreement” does not mean that governmental policy must be “neutral” with respect to moral, religious, or philosophical issues.\textsuperscript{50}

\textsuperscript{44} Ibid., 197.
\textsuperscript{45} Ibid., 197-198.
\textsuperscript{46} Ibid., 201.
\textsuperscript{47} Ibid., 203.
\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid., 204.
\textsuperscript{50} Ibid., 210.
Similar to Walzer, Sandel correctly identifies the question of the connection between right and tradition, but is unable to give a satisfactory answer. Sandel’s criticisms of Rawls’s conceptions of the person and community uncover an unjustifiably abstract strain in the arguments of the latter. However, it is not clear that Sandel is able to provide a suitable alternative. Sandel claims to favor a “teleological” approach that grounds political right on human goods. Unlike communitarianism, teleology does not identify justice with tradition. In contrast to liberal deontology, which views political right as a human “construction,” teleology understands justice as given by an “objective moral order.” The potential difficulty with the view that morality is independent from both tradition and human will is that ethics easily becomes too distant. The question of why the opposition between abstract objectivity and concrete relativism is necessary in the first place is left unexamined by Sandel. In the end, Sandel uncritically accepts the same antithesis as Walzer, although he chooses a different alternative.

Sandel’s discussions of the intersubjective view of the person and of the constitutive understanding of community suggest a method of bridging the divide between justice and tradition. Sandel seems to think that it is at least defensible to question both the idea that human beings are wholly distinct from one another, and the notion that individuals are rigidly defined and individuated prior to living in communities. If it is plausible that agents are not entirely discrete entities, and if it is plausible that their identities depend on community, why is it not plausible to question whether standards of evaluation must be wholly distinct from and unaffected by the objects that they evaluation? In other words, it seems possible to argue that

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51 Ibid., xi.
52 Ibid., 175.
political justice does not need to be detached in order to achieve either universality or authority. However, Sandel does not pursue this issue.

**Nozick’s Criticism of Rawls**

Nozick’s work provides a forceful and engaging articulation of the libertarian response to Rawls’s political philosophy. In *Anarchy, State, and Utopia*, Nozick offers both a rival to and a criticism of Rawls’s account of justice. According to Nozick, the most “fundamental question” that must be addressed by political philosophers is whether the state should exist.\(^{53}\) To answer this question, Nozick uses the idea of the “state-of-nature” or an “anarchic situation.”\(^{54}\) The primary purpose of the initial condition is to provide an explanation of how the state can be morally justified rather than to offer a description of how historical states come into being. As a result, the questions of whether the state of nature actually existed and whether its conditions are factually accurate are irrelevant to Nozick’s purposes.\(^{55}\) Nozick provides a description of the natural state that is “sufficiently similar” to the one offered by John Locke.\(^{56}\) In the initial state, all persons are free to act in any way that does not violate the law of nature, which forbids causing harm to other individuals or their property. Some individuals inevitably refuse to conform to the natural law, and the aggrieved parties have the right to defend themselves from and to inflict punishment upon the aggressors. Private enforcement of rights leads to inconveniences such as inability to sufficiently protect one’s rights against a more powerful party, disproportionate punishment for wrongs, unending feuds between parties, and lack of assurance that all individuals will abide by the same rules. To mitigate these problems, groups of

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54 Ibid.
55 Ibid., 7, 9.
56 Ibid., 9.
individuals may form “mutual-protection associations.”57 Such associations may offer services including impartial judges to adjudicate disputes between members, and police to protect rights from offenders. Nozick argues that although multiple protection agencies may emerge in one geographical area, they will quickly dwindle to a single “dominant” entity, since either the strongest will defeat competitors or two equals will agree to occupy different areas to avoid costly conflicts.58

Nozick contends that the dominant private protection association constitutes an “ultraminimal” state. The fundamental attribute of a state is the possession of a monopoly on determining “who may use force when.”59 The state is the ultimate arbiter of what constitutes a legitimate use of coercive power within its geographical boarders, and it has the ability to punish unapproved uses of force. Nozick distinguishes between the “minimal” and “ultraminimal” state.60 The former provides protective services to all persons within its borders, while the latter limits these services to individuals who pay for them. According to Nozick, the ultraminimal state is ethically justifiable in the following way. In the state of nature, all individuals have the “right” to access information concerning whether a “procedure of justice” that is applicable to them is “reliable and fair.”61 Individuals also have the right to “resist” the application of a system that they deem to be unreliable or unfair, or that they lack sufficient information about to determine its merits.62 If individuals with sufficient information determine that a procedure is dependable and equitable, they must submit to it, but if they think that a process is not

57 Ibid., 12.
58 Ibid., 15.
59 Ibid., 23.
60 Ibid., 26.
61 Ibid., 102.
62 Ibid.
trustworthy and just, they possess the right to oppose it. Persons also possess the right in the natural state to empower the protective association to which they belong to “exercise” their rights of resisting the enforcement of any procedure that has not been demonstrated to be reliable and fair. Consequently, the dominant protection agency in an area will protect its members from being subjected to undependable and unequitable procedures. Since the dominant association is merely exercising the right of its members to resist untrustworthy procedures, it is not a “de jure” monopoly or minimal state. However, since it is the only entity within a region that possesses enough power to enforce prohibitions on unapproved procedures, it is a “de facto” monopoly or an ultraminimal state.

Nozick argues that a morally legitimate minimal state emerges from the ultraminimal state. If the ultraminimal state “deems” that the procedures employed by non-members to enforce their rights are unfair or unreliable, it will prevent non-members from using these procedures against its clients. Since this prohibition severely restricts the ability of non-members to secure their rights against members, it significantly “disadvantages” the former. The “principle of compensation” stipulates that individuals who are disadvantaged by a prohibition on actions that could, but often do not, cause harm to others must be compensated for disadvantages arising from the prohibition, and thus the clients of the protective association must give reparation to non-clients. The least expensive means of compensation is providing protective services to non-members to cover interactions with clients. The total amount of the

63 Ibid.
64 Ibid., 109.
65 Ibid.
66 Ibid., 110.
67 Ibid.
68 Ibid.
compensation is the costs incurred by the parties as a result of the prohibition minus the costs that they would have incurred without the restriction. Thus, the ultraminimal state may be morally obligated to provide some individuals with services for less than the normal price. Once an ultraminimal state extends services to non-clients residing in its territory, it protects the rights of all persons, and is transformed into a minimal state.

Nozick argues that the minimal state is the “most extensive” one that can be justified on moral grounds since a more extensive one violates the rights of individuals.\(^6^9\) According to Nozick, “entitlement theory” offers the only account of “distributive justice” or “justice in holdings” that is compatible with the principles of the minimal state.\(^7^0\) Under this theory, there are two ways that persons can be “entitled” to or justly possess holdings.\(^7^1\) The first is by acquiring a holding in a manner that conforms to the “principle of justice in acquisition,” and the second is by acquiring a holding in a manner that conforms to the “principle of justice in transfer.”\(^7^2\) Consequently, the correct principle of distributive justice states that “a distribution is just” provided that “everyone is entitled to the holdings they possess under” it.\(^7^3\)

Nozick distinguishes between “historical” and “end-state” principles of distributive justice.\(^7^4\) The former claim that the justice of a distribution of holdings is determined by the historical events that brought it about, while the latter claim that the correctness of an allocation depends on whether it conforms to some prior principle of distribution. According to Nozick, Rawls’s difference principle, which holds that inequalities in distribution are just only if they

\(^6^9\) Ibid., 149.  
\(^7^0\) Ibid., 149, 150.  
\(^7^1\) Ibid., 151.  
\(^7^2\) Ibid.  
\(^7^3\) Ibid.  
\(^7^4\) Ibid., 155.
maximize the situation of the least advantaged, is an example of an end-state principle. Nozick argues that since voluntary exchanges between persons tend to produce distributions that are inconsistent with those prescribed by end-state principles, they cannot be “continuously realized” in political society without constant state intervention with the lives of individuals.\footnote{Ibid., 163.} The “redistributive” practices required by end-state principles violate the rights of individuals, and thus are outside of the scope of morally justified state actions.\footnote{Ibid., 168.}

Nozick thinks that Rawls’s description of the initial situation where the principles of justice are selected is unnecessary abstract. The ahistorical conditions of the original position are designed to ensure that the parties will select end-state rather than historical principles of distributive justice. According to Nozick, Rawls describes the parties in the original position as “rational” and “mutually disinterested” entities who are behind a veil of ignorance which deprives them of knowledge of their particular features such as location in society, social or economic status, and natural endowments.\footnote{Ibid., 189.} Since the representatives do not know their respective contributions to the aggregate social product, they have no grounds for determining individual entitlements and evaluating historical principles, and thus they are inclined to agree to an end-state principle of “equal distribution.”\footnote{Ibid., 198.} However, if the agents know that distributing social goods equally will result in everyone being worse off, they will be inclined to accept an end-state principle of “unequal distribution” provided that it raises the prospects of the worst off.\footnote{Ibid., 198.} Nozick argues that in any “actual situation,” the realizations that unequal contributions are
responsible for a larger social product and that those who are able to contribute more will do so only if they receive incentives lead to the adoption of an historical principle of distribution that specifies that persons are entitled to unequal shares.\textsuperscript{80} Thus, Nozick questions whether Rawls’s initial situation is the “appropriate model” for contemplating distributive justice.\textsuperscript{81}

On the surface, Nozick’s criticism of Rawls may not appear to be particularly relevant to the issue of the relationship between universality and particularity, but a deeper examination suggests otherwise. Nozick’s argument that Rawls’s description of the original position artificially prejudices the parties against historical principles of justice has its merits, but is it not possible to raise a similar objection against Nozick’s construction of the non-state situation? Could it not be argued that Nozick’s initial situation is designed to justify the minimal state and historical principles of distributive justice? Since both Rawls and Nozick use hypothetical initial situations in the validation of their conceptions of justice, it is not clear how the conflicting descriptions of the natural states can be satisfactory adjudicated without an appeal to historical evidence. However, once concrete proof is admitted as the final arbiter, the rationale for appealing to a pre-societal condition appears to be weakened. More crucial to this project, Nozick’s use of an unreal state of nature suggests that he implicitly and uncritically accepts the premise that justice depends on something beyond history. If so, it seems that Nozick is unable to reconcile the dichotomy between right and custom that has beleaguered many of the most erudite criticisms of Rawls.

\textsuperscript{80} Ibid.
\textsuperscript{81} Ibid.
Cohen’s Criticism of Rawls

In *Rescuing Justice and Equality*, Cohen provides a Marxist criticism of Rawls that penetrates to the central problem of this project. Cohen professes to accept the Platonic view that the form of justice or justice as such is not found by looking to historical facts, but instead by looking beyond them to independent principles.\(^8^2\) According to Cohen, there is an important distinction between “facts” and “normative principles.”\(^8^3\) The former are statements or “general directives” that specify what actions agents should or should not perform, and the latter either are, or correspond to, any truth other than a normative principle.\(^8^4\) Cohen also differentiates between “fact-sensitive” and “fact-insensitive” principles.\(^8^5\) The former are principles that either reflect or respond to facts such as the nature of human beings or society, while the latter are principles that are independent of, or not grounded in, facts. To say that a principle is fact sensitive means that at least part of the reason or ground for affirming it is constituted by facts, and to say that a principle is fact insensitive means that the reason or ground for accepting it is not determined by facts. Cohen creates an additional distinction between “fundamental normative principles” and “principles of regulation.”\(^8^6\) The former are fact insensitive principles that are not derived from other moral principles, and the latter are fact sensitive principles that are deduced from more basic principles. Fundamental principles are neither created by human beings nor specify how persons should act, while principles of regulation are formulated by human beings for the purpose of regulating conduct. Cohen’s main “thesis” is that principles can be fact sensitive only

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\(^8^3\) Ibid., 229.  
\(^8^4\) Ibid.  
\(^8^5\) Ibid., 231, 232.  
\(^8^6\) Ibid., 276.
because they are grounded in principles that are not fact sensitive, or at least are not sensitive to the same facts.\textsuperscript{87} In other words, the prerequisite for reflecting a fact is reflecting a principle that does not reflect that same fact. Cohen thinks that the most basic or “ultimate” principles that ground anterior ones are fact insensitive.\textsuperscript{88}

Cohen’s thesis rests on three premises. The first is that whenever some fact supports a principle, there exists an explanation for why the former provides a ground for the latter.\textsuperscript{89} This premise assumes as self-evident the general assertion that there is always an explanation for why a particular ground is such. The second is that the reason for why a fact supports a principle is provided by a more basic principle.\textsuperscript{90} Although the prior principle is not sensitive to the same fact as the subsequent principle, it may be sensitive to another fact. Cohen’s argument for the second premise is that there are no satisfying explanations for the relationship between a fact and a principle that do not presupposed prior principles. The third is that the process of identifying antecedent principles that explain relationships between facts and posterior principles will ultimately lead to the discovery of a principle or a set of principles that is insensitive to all facts.\textsuperscript{91} This premise does not imply that first principles cannot be justified, but rather that they cannot be “justified by facts.”\textsuperscript{92} Cohen defends the third premise on the grounds that the sequence cannot continue infinitely because human resources and knowledge are limited. Cohen concludes that if the three premises are correct, then all fact sensitive principles are eventually grounded on fact insensitive principles.

\textsuperscript{87} Ibid., 232  
\textsuperscript{88} Ibid., 236.  
\textsuperscript{89} Ibid.  
\textsuperscript{90} Ibid.  
\textsuperscript{91} Ibid., 237.  
\textsuperscript{92} Ibid., 238.
According to Cohen, since fundamental or ultimate normative principles are fact insensitive, their content cannot be affected by the capacities or abilities of human beings. Cohen argues that the commonly accepted thesis that obligation implies ability is “misused” when it is employed to demonstrate that feasibility influences the substance of first principles. The rejection of a principle that specifies that one should perform a particular action because the action is impossible is predicated upon the prior principle that one should perform an action if it is possible. If this principle is an ought statement, it violates the dictum that ought claims imply can claims because it fails to provide the latter. If the principle is not an ought statement, it contradicts the dictum that normative judgments are ought claims since it is an ultimate normative principle that is not an ought claim. Cohen contends that all statements of fundamental justice are formulated as conditionals: if it is possible to perform A, one is obligated to perform A. Since facts influence whether it is possible to perform A, they affect whether one is obligated to perform A, but not the content of A. Consequently, infeasibility may be a good reason for declining to accept a principle of regulation, but it is not an adequate rationale for defining the content of fundamental ethical principles. Cohen acknowledges that it “follows” from his position that “justice is an unachievable (although a nevertheless governing) ideal.”

Cohen thinks that Rawls’s constructivist approach fundamentally misunderstands the nature of justice. According to Cohen, Rawls’s original position is intended to be a “procedure” that specifies the appropriate conditions under which fundamental principles of justice are to be

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93 Ibid., 251.
94 Ibid., 252.
95 Ibid., 253.
96 Ibid., 254.
selected.\textsuperscript{97} The axioms derived from it are intended to regulate the actions of individuals in political society. The basis for deciding between competing conceptions of right is a body of relevant general facts about subjects including human nature and society.\textsuperscript{98} Cohen argues that Rawls’s method is flawed because it “mistakes” regulative or “applied” principles for “fundamental” ones.\textsuperscript{99} Since fundamental principles are fact insensitive, and since they are not directives for action, the original position does not produce ultimate principles, but rather rules of regulation. The device of the original position is unable to elucidate the prior principles that explain the relationship between the two principles of justice selected by the parties and the facts upon which they are chosen. Rawls’s confusion of fundamental and regulative principles leads him to make the two erroneous claims that justice as such is dependent upon facts and that its first principles are nothing more than directives for action.

Cohen offers both a clear discussion of the issue of the link between ethics and society, and an argument for why the two are separate. However, it is not evident that he is able to overcome the difficulties of maintaining this antithesis. Although providing a sophisticated argument for why Rawls’s approach misunderstands the nature of justice, it is not clear that Cohen is immune from the same charge. Cohen’s thesis that the first principles of justice are completely insulated from historical facts leads to the conclusion that there is a rigid and impregnable separation between universality and particularity. Cohen’s admission that his theory renders justice an impossible ideal raises the question of its practical value. If justice is too far removed from the actual circumstances confronting individuals, how can it serve as an

\textsuperscript{97} Ibid., 283.
\textsuperscript{98} Ibid., 284.
\textsuperscript{99} Ibid., 282.
adequate guide for human action? The expansive void between the sublime dictates of justice and the conditions of existing societies may encourage individuals to engage in violent revolution to implement the ideal, to become disillusioned with the dilapidated state of affairs and to withdraw from politics, or to abandon justice and base decisions on expediency or pragmatic concerns. Unfortunately, Cohen’s argument is light on solutions to these pressing problems.

**Rorty’s Defense of Rawls**

Rorty offers both an interpretation and a defense of Rawls that is particularly pertinent to the subject of this dissertation. According to Rorty, there are two views of the relationship between “justification” and “truth.”¹⁰⁰ The first is the enlightenment conception, which claims that the two are identical, and the second is the historicist understanding, which severs the connection between the two. The former is predicated upon the claim that there is a relationship between the “ahistorical” nature of the person and “moral truth” that is revealed through the free exchange of ideas, while the latter is predicated upon the denial of an ahistorical human nature that possesses the ability to discover universal right.¹⁰¹ Rorty argues that the enlightenment view has been largely discredited by contemporary intellectuals, and that the result is a polarization of “liberal social theory” into two camps.¹⁰² The “absolutist” view attempts to defend unconditional, universal human rights and moral truth without a theory of human nature, and the “pragmatist” view jettisons the idea of universal truth, and attempts to ground rights on the “consensus” of a

¹⁰¹ Ibid.
¹⁰² Ibid.
particular community or tradition. According to Rorty, Ronald Dworkin is an example of the former, and Rawls is an example of the latter.

Rorty contends that Rawls’s political theory offers a non-philosophical justification for liberal democracy. According to Rorty, Rawls argues that the lack of agreement on moral, philosophical, and religious issues means that comprehensive moral doctrines cannot serve as the foundation for public conceptions of justice in contemporary liberal democracies. As a result, it is necessary to “bracket” or set aside many traditional subjects of philosophy such as the nature of the person, the nature of the self, the basis of moral motivation, and the significance of human existence when contemplating or discussing social or political policy. The truth about these philosophical questions is simply “irrelevant” to democratic politics. Rorty contends that since Rawls thinks that the alternative to an appeal to philosophy is an appeal to the considered convictions of persons in democratic society, Rawls attempts to formulate these beliefs into a systematic and coherent conception of political right. As a result, the ultimate rationalization of a view of justice is whether it is acceptable to citizens through the process of “reflective equilibrium.” Rorty concludes that Rawls’s attempt to justify liberal democracy on the basis of the values of the community rather than on philosophical truths is “thoroughly historicist and antiuniversalist.”

Rorty observes that Rawls’s historicist approach produces a potentially unbridgeable divide between proponents and critics of democracy. According to Rorty, Nietzsche and Loyola

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103 Ibid., 258-259.
104 Ibid. 261.
105 Ibid., 262.
106 Ibid., 264.
107 Ibid., 262.
oppose liberal democracy because they think it tends to produce a deficient “kind of person.”

In order to answer these arguments on their own terms, it is necessary to formulate and defend a conception of the person. Rorty notes that Rawls declines to enter into a philosophical discussion about human nature, and instead dismisses Nietzsche and Loyola as “‘mad’” because their radically undemocratic conception of reality precludes them from ever being willing and sincere members of liberal democratic society. Given the foreign nature of their ideas, it is impossible for citizens of democracies to take Nietzsche and Loyola seriously. Rorty notes that this approach may appear to be “shockingly ethnocentric” to those who accept the enlightenment notion that there is truth that can be ascertained through free discussion by a faculty that is universally present in human beings. However, Rorty thinks that Rawls is justified in refusing to respond to the challenges raised by Nietzsche and Loyola. According to Rorty, “accommodation” and “tolerance” require individuals neither to adopt the “vocabulary” of nor to seriously discuss every “topic” advanced by interlocutors. Since variegated historical circumstances preclude the possibility of the existence of universally applicable moral vocabularies and principles, some terms and questions may cease to be relevant under certain conditions. Rorty contends that since the validity of liberal democratic institutions should be judged by the “moral intuitions” of the society in which they exist rather than by the type of persons they foster, Rawls is under no obligation to accept the terms of debate offered by Nietzsche and Loyola. Although acknowledging that accommodation and tolerance suggest

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108 Ibid., 268.
109 Ibid., 266.
110 Ibid., 267.
111 Ibid., 268.
112 Ibid., 269.
that participants in the debate concerning the merits of liberal democracy should seek “common ground,” Rorty concludes that the numerous failures of past attempts lead to the conclusion that no such agreement is possible.\textsuperscript{113}

Rorty’s pessimism concerning the prospects of finding common ground between representatives of different cultures and traditions is predicated upon his conception of the person. According to Rorty, human beings are “centerless networks of beliefs and desires” whose “vocabularies and opinions” are largely, if not completely, products of historical and cultural influences.\textsuperscript{114} Further, Rorty appears to think that individuals are free to create a “model” of the person that is tailored to complement their politics, religion, or understanding of the meaning of life.\textsuperscript{115} As a result, there may be insufficient “overlap” between persons living in different traditions to render consensus or even beneficial discourse possible.\textsuperscript{116}

Rorty provides a candid discussion of the problem of the connection between justice and culture, but seems to resign himself to the conclusion that there is no adequate solution. For Rorty, the two options are abstract universalism and relativistic particularism. Rorty argues that the former is problematic because it tends to foster interminable debates between dogmatic ideologies that lead to social discord, and that the latter is troubling because it tends to undermine the possibility of finding common ground between competing cultures. Given Rorty’s dissatisfaction with the alternatives, it is surprising that he does not visit the issue of whether the dichotomy is justified in the first place. As a result, Rorty joins the list of previously

\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.; see also, 270.
\textsuperscript{115} Ibid., 271.
\textsuperscript{116} Ibid., 269.
discussed interpreters of Rawls who uncritically embrace the antithesis between justice and history.

**Habermas’s Criticism of Rawls**

Habermas offers an inside or friendly criticism of Rawls’s attempt to defend liberal democracy. Habermas’s reservations fall into three main categories. The first concerns the concept of the original position, the second pertains to the distinction between reasonableness and truth, and the third is about the relationship between substantive rights and the democratic procedure. Since the first two are more pertinent to the subject of this dissertation than the third, only they will be considered.

Habermas contends that the excessively abstract description of the original position leads to undesirable consequences. More specifically, Habermas is not convinced that Rawls’s rational choice situation is able to provide an adequate moral perspective for selecting principles of justice. To illustrate his point, Habermas identifies three problems with the construction of the original position. The first is that the parties in the initial situation are unable to understand the “highest-order interests” of their clients. According to Habermas, Rawls describes citizens of liberal democracies as possessing the attributes of rationality and reasonableness, but he construes the representatives in the original position as having only the former. However, Rawls requires the parties to comprehend and take into account the reasonableness of their constituents. For example, the representatives must realize that their clients respect others not only because of self-interest but also because of just principles, possess obligations such as loyalty, and desire to have institutions and policies justified by public reason. Habermas argues that if Rawls endows

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117 Habermas, “Reconciliation Through the Use of Public Reason,” 112.
the parties with the characteristics of “moral persons,” he may threaten the distinction between the rational choice of the parties and the objective constraints of the initial situation that are essential for justifying its use in the first place.\footnote{Ibid., 113.}

The second difficulty is that the conditions of the original position tend to erode the important distinction between “rights” and “primary goods.”\footnote{Ibid., 112.} According to Habermas, since Rawls describes the inhabitants of the original position as mutually disinterested rational decision-makers, they can understand “normative issues” only in terms of “goods.”\footnote{Ibid., 114.} As a result, the parties must view individual rights and liberties as one “category” of primary goods that is desired by citizens.\footnote{Ibid.} Consequently, the foundation of rights is their contribution to human goods rather than their expression of individual autonomy. Since this view of rights is teleological rather than deontological, it is inconsistent with Rawls’s project. To solve this problem, Rawls stipulates that the basic liberties protected by the first principle of justice are prior to the distribution of goods governed by the second principle, and that the basic liberties must be guaranteed fair value.\footnote{Ibid., 115.} Habermas notes that while the introduction of the priority and fair value of the basic liberties restores the “deontological distinction between rights and goods,” it is inconsistent with Rawls’s original claim that rights are a subcategory of goods.\footnote{Ibid., 116.}

The third challenge is that the veil of ignorance does not adequately secure the “impartiality of judgment” that Rawls desires.\footnote{Ibid., 112.} Habermas argues that “social and ideological pluralism” precludes the possibility of assuming that all individuals possess a “universally”
correct understanding of reality that renders the interests of different persons congruent.\textsuperscript{125} According to Habermas, Rawls attempts to impose a “common perspective” on all the participants in the original position through the device of the veil of ignorance.\textsuperscript{126} The veil of ignorance must meet two demanding conditions. First, it must eliminate all particular interests that threaten impartiality, and second, it must not exclude any information that is relevant to the formation of the principles of justice. Habermas thinks that the latter stipulation is difficult to fulfill. As the four stage sequence unfolds and the veil of ignorance is progressively lifted, the parties gain access to a growing body of information. To prevent “discrepancies” from arising between the principles of justice selected behind the veil of ignorance and the newly available information, the theoretician who constructs the veil of ignorance must not only be aware of all the currently available information that is relevant to the selection of principles, but must also anticipate future advances in knowledge that may become germane.\textsuperscript{127}

According to Habermas, “discourse ethics” provides a more promising method of discovering a universal moral perspective than the original position.\textsuperscript{128} Habermas explains that discourse ethics uses a “process of ‘ideal role taking’” where free and equal participants in an “inclusive and noncoercive rational discourse” are required to adopt the point of view of all parties.\textsuperscript{129} The result of combining all the individual outlooks is a universal “we-perspective”
that can serve as an appropriate point of view for evaluating the validity of controversial norms or principles that are intended to regulate the conduct of members of society.\footnote{130}

Habermas’s second main criticism is that Rawls mistakenly sacrifices the truth of his theory for the purpose of ensuring its “neutrality.”\footnote{131} According to Habermas, Rawls attempts to validate justice as fairness in “‘two stages.’”\footnote{132} The first determines whether the two principles of justice are acceptable to persons in a well-ordered society, and the second tests whether they are acceptable to persons in a society characterized by reasonable pluralism. In order to increase the probability that justice as fairness will succeed in the second stage, Rawls attempts to tailor it to be “neutral” between competing “worldviews.”\footnote{133} One way that Rawls pursues this goal is by describing his theory as reasonable rather than true, and thereby effectively evades the controversial “epistemic” issue of truth.\footnote{134} Habermas thinks that Rawls’s tactic to secure acceptability renders the epistemological status of justice as fairness unclear. According to Habermas, Rawls must either accept a “functionalist interpretation” of his theory or claim that it is true.\footnote{135} Since Rawls denies that justice as fairness is a “modus vivendi,” he effectively rejects the former, but since he wants to avoid epistemological disputes, he recoils from the latter.\footnote{136} Thus, Habermas concludes that Rawls undermines the “normative binding force” of his theory.\footnote{137}
As in the case of Nozick, Habermas’s criticisms of Rawls’s philosophy may not appear to have a strong connection to the issue of the relationship between right and society. However, a closer examination may make the link more evident. Habermas correctly discerns several of the undesirable consequences that follow from the abstract conditions of the original position. However, if Rawls’s approach is too abstract, Habermas’s may be faulted for being excessively idealistic and unrealistic. The ideal speech situation seems to take for granted that conflicts between different persons in the public sphere are primarily caused by the failure to adopt a universal perspective. However, Habermas does not seem to give adequate attention to the possibility that the cause of some or even many political disagreements is found on the level of the will rather than knowledge. It may be that some or many people are not willing to consider the perspective of others or, even if they are, they may remain opposed to changing their interests or desires. As a result, Habermas’s solution appears to be to substitute one abstract procedure for another. If Habermas thinks that political right is discovered through an idealistic procedure, does this not imply that he accepts an antithesis between ethics and history?

While Habermas accurately points out that Rawls’s attempt to evade epistemological questions is problematic, he does not give adequate consideration to the possibility that one reason for why Rawls wants to detach his theory from philosophical controversies is his view of the relationship between truth and history. Perhaps Rawls’s pessimism concerning the prospects of reaching substantial consensus on philosophical questions can be, at least in part, explained by his tendency to view ethics as detached from immediate experience. Since philosophical, axiological, and religious disputes cannot be resolved on the basis of concrete evidence, they are unlikely to lead to anything more than a perpetual stand-off between opposing positions. If this
is the case, the best that political philosophers can hope for is to bracket these debates and focus on pragmatic policy questions.

**Bloom’s and Schaefer’s Criticisms of Rawls**

Rawls’s political philosophy has received strong and persistent criticism from Straussian authors such as Bloom and Schaefer. Bloom finds Rawls’s defense of liberal democracy too parochial and historicist. According to Bloom, although Rawls professes to present a philosophical defense of liberal democratic ideas, he confines his project to addressing problems and issues that arise in countries that and among thinkers who already embrace liberal democratic ideas, and does not make any serious attempt to consider the arguments raised by critics of democracy such as Karl Marx and Friedrich Nietzsche. Since Rawls simply “takes it for granted” that the opponents of liberal democratic society are “wrong,” he does not provide any justification for why liberal democracy is superior to other forms of political order such as socialism or dictatorship. As a result, Bloom notes that it is ambiguous as to whether Rawls’s philosophy is intended to be a “permanent statement about the nature of political things” or only a “collection of opinions” that are appealing to a particular society and historical period. In other words, Rawls does not offer a trans-historical foundation for liberal democracy.

Bloom is also critical of Rawls’s view of political philosophy. According to Bloom, Rawls starts with the “moral sense” of individuals in democracies, elaborates it into a coherent set of “principles,” and then determines whether there is congruence between the two.

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139 Ibid.
140 Ibid.
141 Ibid., 649.
flaw in this method is the failure to clarify whether the moral sense expresses objective truth or subjective preference. For example, Rawls assumes that persons residing in democratic societies accept egalitarian ideas and reject aristocratic notions. However, Rawls does not adequately explain whether the acceptance of the former and the rejection of the latter are predicated on truth about human beings or on what people “happen to like today.” The best that can be said for Rawls’s procedure is that it helps to promote intellectual consistency and political consensus. Bloom argues that in contrast to Rawls’s approach, genuine political philosophy, exemplified by classical thinkers such as Socrates, starts with “opinions,” subjects them to a rigorous process of “examination” which reveals their inadequacy, and finally directs individuals toward “knowledge” of reality. By affirming important distinctions between “opinion and knowledge,” “reality and appearance,” and nature and convention, authentic philosophy is able to provide a measure for weighing the merits of competing views of justice and political organization.

Schaefer finds many elements of Rawls’s political philosophy unnecessarily abstract and formalistic. One instance is the idea of the “original position.” According to Schaefer, the purpose of the original position is to impose “reasonable” conditions on the deliberations of parties that ensure that the principles agreed to are “morally acceptable.” Schaefer argues that Rawls’s attempt to derive principles of right under “simplified, highly abstract” conditions objectionable since deliberations concerning justice require full knowledge of the “particulars of

142 Ibid.
143 Ibid.
144 Ibid.
146 Ibid.
human existence.” Also, Schaefer thinks that since all “general knowledge” is derived from the “study of particulars,” it is doubtful that individuals can consistently observe the demands of the veil of ignorance. A second example is Rawls’s approach to the “meaning of liberty.” Schaefer argues that Rawls offers a formal rather than “substantive” account of the equal basic freedoms protected by the first principle of justice. Rawls thinks that most conflicts between fundamental liberties can be avoided through definitions, and rare conflicts can be resolved by “modifying” freedoms so that losses in one are balanced by gains in another. Schaefer maintains that since there is significant disagreement concerning the “value of different liberties,” political philosophy must provide substantive accounts. Also, since freedoms are not “homogeneous, commensurable, and quantifiable,” conflicts cannot be resolved adequately by balancing liberties against each other. A third case is the “four stage sequence.” Schaefer denies that there is a substantial relationship between the sequence and the creation of real conceptions of justice, constitutions, laws, and judicial decisions because the former artificially separates “justice” from “effectiveness.” According to Schaefer, deliberations about the axioms of justice and the process of creating a constitution have reciprocal influences, and the same is true of the other parts of the sequence. A fourth instance is the notion of “goodness as rationality.” Schaefer explains that Rawls thinks that the good for a person is

147 Ibid., 54.
148 Ibid., 61.
149 Ibid., 86.
150 Ibid.
151 Ibid., 87.
152 Ibid.
153 Ibid.
154 Ibid., 83
155 Ibid., 84.
156 Ibid., 164.
determined by a “‘rational plan’” of life. A rational life plan is selected on the basis of the “‘principles of rational choice,’” full knowledge of the relevant information, and careful deliberation. For Schaefer, Rawls’s account is “remote” from actual experience since individuals rarely choose and plan their lives in the “calculating” manner described by Rawls. More importantly, Schaefer argues that since Rawls does not offer any substantive criteria for helping individuals to decide between competing ends or preferences, the only purpose of rationality is to discover the most effective means for achieving one’s desires. As a result, Rawls views rationality as “purely instrumental.”

Although Bloom and Schaefer do not address the philosophical problem of the link between justice and society as directly as some of the previously discussed interpreters of Rawls, it is implicit in their analysis. And similar to these aforementioned scholars, Bloom and Schaefer do not offer a compelling solution. Bloom correctly observes that the parochialism of Rawls’s philosophy is unlikely to overcome the impasse between the partisans and antagonists of liberal democracy. However, it is not evident that Bloom’s argument from nature will have greater success. An appeal to a trans-cultural standard such as nature does not automatically resolve conflict between alternative traditions since representatives of different societies may disagree on either the content of nature or whether nature is the right standard. Consequently, an appeal to an ahistorical measure may change only the terms of the debate without affecting its substance. Also, if justice is based on a standard that is divorced from tradition, it has the tendency to become irrelevant to concrete circumstances. Schaefer’s identification of abstraction in Rawls’s

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157 Ibid.
158 Ibid.
159 Ibid., 165.
160 Ibid., 166.
philosophy arrives at the problem from a slightly different perspective. While Schaefer is right that some of Rawls’s concepts are unnecessarily detached, it is far from obvious that Schaefer’s appeal to nature is immune from this deficiency. If natural right exists outside of history, how is there a meaningful connection between the two? Interestingly, neither Bloom nor Schaefer appears to be interested in providing a justification for the antithesis between detached universality and relativistic particularity. As a result, the Straussian critique of Rawls does not appear to be any more successful than the other approaches mentioned in this chapter in transcending this unsatisfactory dichotomy.

**Conclusion**

Through a survey of some of the scholarly literature that is representative of the more prominent approaches to Rawls’s philosophy, this chapter has attempted to accomplish to goals. The first is to clarify and focus the philosophical issue of the relationship between universality and particularity, and the second is to demonstrate that previous considerations of Rawls have not adequately addressed the primary philosophical question. The scholars who directly confront the problem of justice and history expressly claim that the two are separate or even opposed, while those who do not forthrightly address it tend to implicitly assume the existence of a dichotomy. Regardless of which of these two options they follow, both critics and defenders of Rawls tend to view his philosophy through the lens of this dichotomy. As a result, they argue that his philosophy must be subject to the perils of either abstract universalism or relativistic historicism, and they make their assessment of his philosophy depend, in part, on whether he adopts the alternative that they favor. The question of whether Rawls could or should have attempted to unite justice and history remains unexamined.
CHAPTER SEVEN

Introduction

Chapters two, three, four, and five provided a detailed discussion of Rawls’s ideas that are relevant to determining his understanding of the relationship between universality and particularity, and they found that Rawls appears to think that the two are by definition separate. The current chapter has two goals. The first is to discuss further some of the problems that arise from John Rawls’s implicit acceptance of the notion that the universal is divorced from the particular, and to explain how these difficulties leave something to be desired in his defense of liberal democracy. The second aim is to explore some of the aspects of Rawls’s philosophy that point in the direction of the possibility of a synthesis, but were never pursued far enough to arrive at this solution. These elements may suggest that while Rawls was dimly aware of the possibility of unification, he never gave it serious consideration.

Problems Caused by Divorcing University and Particularity

Throughout his writings, Rawls usually works within ideal rather than non-ideal theory. Also, ideals such as the person and society, and abstract devices such as the original position are crucial to justice as fairness. Rawls’s heavy reliance upon detached ideals and speculative ideal theory may render his conception of justice liable to the same objections that he directed against the intuitionist view of right. If the independent moral order of intuitionism is defective because it is only tenuously connected to human beings and political society, how does justice as fairness perform any better? If Rawls’s view of right is based on ideals that he admits do not exist except in theory, how is justice as fairness relevant to any real political societies? What if the
institutions and practices prescribed by justice as fairness are not compatible with the historical circumstances of a particular people or society? Rawls seems to think that it is necessary to try to inject as much as possible of the ideal order into the institutions of noncompliant political systems. But, if an inappropriate model is imposed upon a people, could this not lead to less than desirable consequences? For example, in 2003, the United States attempted to replace Saddam Hussein’s military dictatorship in Iraq with something akin to liberal democracy. After more than a decade, Iraq has yet to develop stable and peaceful liberal democracy. This historical example suggests that the prerequisites for liberal democracy are not sufficiently present in Iraq and that establishing the formal institutions of democracy is not enough to bring about genuine democracy. This example is not intended to suggest that Rawls would have endorsed American intervention in Iraq. Given his political views, Rawls would probably have disapproved of this decision. The point is to draw attention to the fact that liberal democracy may not be the best form of political order for all peoples at all times. If this is the case, then Rawls’s attempt to construct a conception of government and society from ideals that are carefully insulated from historical circumstances may prove to be a dubious guide for practical political action. There may be a gap between the demands of ideal theory and the requirements of historical conditions.

Did Rawls ever respond to this criticism? Is it possible to defend Rawls from this challenge? The closest that Rawls comes to responding to this possible problem is in Political Liberalism where he offers a justification of his use of “abstract conceptions.”\(^1\) Rawls argues that it is necessary to turn to political philosophy when profound conflicts between different

\(^1\) Rawls, Political Liberalism, 44.
values arise in political society. To resolve these clashes, political philosophy employs abstractions such as the original position or ideals such as the person or society. The purpose of these abstractions and ideals is to clarify and systematize the ideas that members of society already accept. For example, Rawls thinks that citizens of liberal democracies either already accept or can easily be persuaded to accept his ideals of the person and society and the conditions of the original position. Rawls hopes that this process of clarification will either reveal a deeper consensus that is currently obscured or create a new one. Thus, Rawls argues that he does not use “abstraction for abstraction’s sake,” but rather for the purpose of resolving real disputes in actual societies.²

Some of Rawls’s defenders take a similar approach. They insist that Rawls’s abstract language and terminology disguise a much more concrete understanding of political justice. For example, Catherine Audard argues that Rawls’s concept of a well-ordered society where justice is the pre-eminent virtue is a “universal ideal” that is firmly rooted in a “specific case” or in the “historical fact” that liberal democracies have flourished for approximately two hundred years.³ According to Audard, Rawls thinks that the view of right that defines a well-ordered society must be “public” or accepted by persons who reside in a political system.⁴ As a result, justice as fairness is not an a priori conception that is forced upon political society, but rather one that evolves from within it. Further, Audard argues that one of the purposes of Rawls’s political philosophy is to form and shape the “public culture” of actual liberal democracies. It does this by “clarifying considered convictions,” and formulating them into a “single overall conception”

² Ibid., 46.
³ Audard, John Rawls, 59.
⁴ Ibid.
of political right.\textsuperscript{5} As a result, Audard thinks that Rawls recognizes that conceptions of justice derive their “meaning” from “specific contexts where theorizing is allowed and necessary.”\textsuperscript{6} These considerations lead Audard to conclude that Rawls’s political philosophy is far more “context-dependent and historical” than many interpreters recognize.\textsuperscript{7}

Richard Rorty offers a similar argument. According to Rorty, Rawls demonstrates how it is possible to defend liberal democracy without appealing to “philosophical presuppositions.”\textsuperscript{8} Rorty explains that Rawls intentionally eschews the practice of deriving a conception of justice from philosophical and metaphysical ideas of the person or society and instead proceeds by formulating the “‘considered convictions’” of persons in liberal democracies into a “coherent” view of political right that can serve as the standard for evaluating the institutions of society.\textsuperscript{9} Rorty seems to view philosophy as the quest for an abstract, detached “‘moral order,’” and he appears to think that studying the beliefs of persons in political societies is a search for a concrete, situated ethical system.\textsuperscript{10} Consequently, Rorty argues that Rawls’s political philosophy is “thoroughly historicist and anti-universalist.”\textsuperscript{11}

Both Rawls’s own defense and those offered by Audard and Rorty appear to be predicated upon attaching fairly loose and relaxed definitions to terms such as historical and concrete. The fact that Rawls is attempting to explain and defend a form of political organization that actually exists in history does not necessarily lead to the conclusion that his ideas and methods are historical. It is possible for a political philosopher to provide arguments

\textsuperscript{5} Ibid., 60.
\textsuperscript{6} Ibid.
\textsuperscript{7} Ibid., 58.
\textsuperscript{8} Rorty, \textit{Objectivity, Relativism, and Truth}, 261.
\textsuperscript{9} Ibid., 262.
\textsuperscript{10} Ibid.
\textsuperscript{11} Ibid.
in favor of a historical social system that range from radically detached to strongly situated. In order to determine how concrete a particular apology is, it is necessary to consider not only the object but also the means of defense.

Rawls insists that justice as fairness should be understood as a “realistic utopia.”

Political philosophy is “realistically utopian” when it extends the boundaries of what is normally thought to be possible in political society. Rawls denies that the “actual” circumscribes the limits of the “possible,” since human beings have the ability to alter their environment and institutions. According to Rawls, justice as fairness fits the model of a realistic utopia, since it specifies a just political order that is possible to achieve under favorable circumstances. When considered in the abstract, Rawls’s idea of a realistic utopia may seem harmless, or perhaps even laudable. Who would object to the idea that creative human action may lead to developments unimagined by past generations? However, the difficulties arise when one considers the details of Rawls’s theory. As elaborated in chapter two, most of Rawls’s writings focus on ideal theory. The principles of justice as fairness are predicated on ideals of the person and society, and derived from abstract devices such as the original position. Rawls’s explanation for how citizens of a liberal democracy might agree to make their institutions conform to the requirements of justice as fairness is highly idealized. The idealistic nature of Rawls’s political philosophy raises doubts about whether it is accurate to describe his utopia as realistic. While Rawls is correct to point out that the current conditions of political society do not exhaustively determine the limits of future ones, it does not follow that every ideal is possible. It is incumbent upon Rawls to

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13 Ibid.
14 Ibid., 12.
demonstrate that his best social order is feasible, and it is far from evident that he successfully meets this challenge. Of course, it exceeds the purpose of this dissertation to determine whether Rawls’s society could ever be implemented under any imaginable circumstances. Rather, the point of this observation is to draw attention to the idealistic nature of Rawls’s approach to justice.

Rawls, Audard, and Rorty might respond that the idealism of justice as fairness is tempered by the fact that its main concepts are derived from the public culture of real liberal democracies. More specifically, since Rawls’s ideas are a more systematic formulation of the considered convictions held by real persons who reside in actual societies, they are linked to a particular context. Neither Audard nor Rorty provide much evidence to support Rawls’s claim that there is a close connection between considered convictions and justice as fairness. Interestingly, Rawls himself does not offer much support for this assertion. Although it is difficult to know for sure, Rawls seems to think that this claim is fairly self-evident, and thus does not require much discussion. However, it should be observed that there is no necessary connection between the beliefs that slavery and religious persecution are unjust, on the one hand, and Rawls’s conception of justice, on the other, since there are alternative philosophical views that provide foundations for these positions. For example, many Christians argue that slavery and religious persecution are unjust, because they violate the dignity of human beings that comes from their bearing the divine image, and many libertarians reject slavery and religious persecution, because they are inconsistent with individual liberty. Christians and libertarians who object to slavery and religious persecution may also object to justice as fairness. Also, many of the ideas of Rawls have received sustained criticism from academics representing both
the left and the right. For instance, Marxists such as Cohen argue that the difference principle unjustly validates inequalities, and libertarians such as Nozick argue that the difference principle incorrectly justifies excessive governmental intervention in the lives of citizens. If these critics even remotely represent the beliefs of actual persons residing in liberal states, this casts doubt on Rawls’s claim that there is a substantial relationship between his view of justice and the popular ideas that he is attempting to justify. This discussion is not intended to resolve this issue, but rather to indicate that Rawls’s, Audard’s and Rorty’s argument that justice as fairness is historical rests on an unsupported assertion. If Rawls’s ideas are as concrete as he and his apologists contend, it should be easy to provide evidence for the alleged connection between them and considered convictions. That all three decline to meet this challenge may indicate that the link is tenuous, and that the reason for its delicacy is that Rawls’s ideas are not as historical as they are portrayed to be.

Even if Rawls, Audard, and Rorty are correct in claiming that there is a clear and definite connection between the ideals of justice as fairness and the beliefs of persons in real social systems, this may not be sufficient to establish that Rawls’s ideas are concrete. In order to demonstrate sufficiently that the main concepts of justice as fairness are historically rooted, Rawls, Audard, and Rorty must show that the criterion for evaluating the historical nature of an idea is whether it is held by real persons in actual political systems. In this case, terms such as historical and contextual are defined as believed by real individuals in actual societies. However, Rawls, Audard, and Rorty do not really provide much evidence or argumentation for why these terms should be understood in this way. Additionally, the potential difficulty with constructing these terms so broadly and expansively is that they begin to lose meaning. To illustrate this
point, it may be helpful to consider an example from the history of political philosophy. In *Leviathan*, Hobbes argues that the most basic or fundamental motivation in human beings is fear of the greatest evil, which is violent “death.”¹⁵ According to the above definition of historical, this idea meets all the criteria, since Hobbes was a real person who lived in England during the sixteenth and seventeenth centuries, and since he—and possibly others—presumably believed this notion. It is almost unnecessary to observe that the claim that the most basic human motivation is avoidance of violent death is contradicted by human behavior. For example, there are numerous historical instances of individuals sacrificing their lives for moral, religious, and political causes. This is not to argue that fear of violent death never explains any human action, but rather to point out that it cannot account for all human behavior. Since Hobbes’ claim is contradicted by historical evidence, it can be labeled as abstract and reductionistic. Consequently, it does not appear that it is very meaningful to denote an idea as historical if it meets the low threshold of being seriously entertained by persons in political society. In order to make a persuasive case that the key ideas of justice as fairness are historical in the more profound sense of the term, it is necessary for Rawls, Audard, and Rorty to provide concrete evidence that proves that there is a significant connection between its concepts, on the one hand, and actual human beings and society, on the other.

Rorty’s argument that Rawls’s philosophy is historicist rests on the notion that philosophy is abstract and that the study of the opinions of persons in society is concrete. However, Rorty’s statement of the antithesis may be inadequate on two different levels or planes. One way to illustrate this deficiency is to consider two sets of distinctions made by Croce. The

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first is between “philology” and “historiography.”

Croce argues that philology is the collection of facts or data such as the names of persons and the dates of events, and documents such as memoirs, chronicles, and annals, while historiography or history interprets, explains, and renders judgments about the facts and materials of philology. For Croce, philology does not produce direct knowledge, but instead provides the materials that are the “practical preparation” for genuine understanding. History, as Croce understands it, not only produces knowledge, but is the sum total of human understanding. Stated differently, history is not a “variety” or category of knowledge, but rather “knowledge itself.”

The second distinction is between “traditional” philosophy and “History-Philosophy.” According to Croce, the former postulates a fundamental dichotomy between the historical realm and the transcendent realm, while the second accepts a union between philosophy and history. Traditional philosophy claims that there are higher realities or universals that are independent of the lesser realities of the mundane world, while historical philosophy insists that the “universal” and the “individual” are closely connected.

If Croce is correct, the real distinction is not between ahistorical philosophy and concrete opinion, but rather between philosophy and beliefs that are historical, on the one hand, and philosophy and opinions that are abstract, on the other. As indicated above, the concreteness or abstractness of the ideas held by persons in political society depends on the degree to which they can be justified on the basis of historical evidence. The same scale can be applied to philosophical concepts. The more that they can be validated on the basis of concrete experience,

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16 Croce, *History as the Story of Liberty*, 141.
17 Ibid., 142.
18 Ibid., 23.
19 Ibid., 26.
20 Ibid.
the more they can be said to be historical. When Rorty uses the term philosophy, he has in mind something similar to what Croce calls traditional philosophy, which is a type of theorizing that insists on a dichotomy between the immanent and transcendent worlds. If Rorty’s definition of philosophy is enlarged by incorporating Croce’s distinction between the two forms, and if Rorty is required to distinguish between popular beliefs that are concrete and ones that are abstract, then Rorty’s claim that justice as fairness is predicated upon considered convictions instead of philosophy does not necessarily establish that Rawls’s theory is historical. In order to arrive at this conclusion, Rorty must show that the considered convictions upon which Rawls’s philosophy is based are defensible on the basis of historical experience. However, Rorty does not make any serious attempt to do so.

History suggests that idealistic conceptions of justice that create substantial dichotomies between the ideal and the actual can produce undesirable outcomes. At the one extreme is Platonic withdrawal from the world, and at the other is Marxist revolutionary transformation of society. In the *Republic*, Plato offers an idealistic conception of a just society that is intended to serve as the model for all actual political orders.21 This social system is ruled by a group of just individuals or philosopher-kings. Plato argues that since real politics in actual societies is dirty and potentially corrupting, morally upright individuals cannot enter the political sphere. As a result, it appears that the only persons who are both qualified to rule and possess the ability to institute the ideal social order are by definition excluded from politics. Thus, a just society is an impossible ideal. One possible outcome of Platonic idealism is cynical disillusionment and withdrawal from political affairs. This is hardly an acceptable conclusion for defenders of

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21 See Plato *Republic*. 
democracy such as Rawls. If his ideal description of democracy is any indication, Rawls’s goal is to encourage citizens to participate in government rather than to convince them that politics is hopelessly unredeemable. Karl Marx’s revolutionary philosophy stands in sharp contrast to Plato’s passivism. Throughout his various works, Marx paints a very dark picture of modern industrialized societies that contrast sharply with his ideal vision of a classless society where individuals achieve genuine freedom. Some of Marx’s self-proclaimed followers attempted to use violent political revolution to actualize something akin to Marx’s utopia. The consequence was not the creation of a classless society, but instead the creation of great social and political upheaval. This outcome is even less acceptable for a proponent of popular government and individual liberty. Wars and revolutions not only concentrate power in the hands of a few individuals, but also threaten personal freedoms. Although Rawls thinks that it is possible to justify civil disobedience, he does not endorse anything approaching the violent overthrow of the institutions of political society. Of course, these two alternatives certainly do not encompass all of the possible responses to idealistic views of right. Probably a more common outcome is one in which individuals strive to implement an ideal that they know that they can never fully achieve. As a result of the ineradicable gap between the ideal and the real, individuals may fall into a state of perpetual disappointment with their social and political institutions. As Rawls was neither a passive observer nor a revolutionary, his idealistic philosophy is probably most likely to produce an outcome similar to this. If this assessment is accurate, one may wonder what value such an ideal has, and why it should serve as the standard of justice. Is it not possible to find a standard of right that provides direction for reform that is not doomed to futility?

Rawls argues that one of the purposes of political philosophy is “reconciliation.” By demonstrating that political institutions are “rational” and that there are good reasons for accepting them, political philosophy can reconcile individuals to their social order. Rawls seems to think that his political philosophy may fulfill this goal by showing members of liberal democracies that their social systems are justifiable. However, it is not evident that Rawls’s political philosophy accomplishes this task. As explained in chapter two, almost all of Rawls’s work is devoted to demonstrating that the ideal is rational, and very little of it says anything about how the real either is or could become rational. Rawls constructs an ideal conception of justice that serves as the measure of the validity of existing political societies, and he candidly admits that contemporary liberal democracies fail to conform to his preferred conception of right. The contrast between the ideal description and the actual state of liberal democracies seems to draw attention not so much to the rationality of the real as to its failure to conform to the rational ideal. As a result, Rawls’s philosophy may be more likely to encourage dissatisfaction with rather than acceptance of historical political orders.

According to Rawls, one of the purposes of his political philosophy is to offer a method of adjudicating moral and political disputes that arise in liberal democracies. To do this, Rawls constructs two principles of justice that serve as the highest authority in political society. These principles are based on ahistorical ideas of the person and society and abstract devices such as the original position. Rawls’s approach takes for granted that deep down there is some underlying consensus or unity in liberal democracies. Either members already accept or can easily be persuaded to accept the ahistorical ideals of the person and society and the detached

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24 Ibid.
conditions of the original position. Once consensus is produced on these ideals and devices, individuals will be able to accept justice as fairness. However, what happens if this assumed consensus is a myth? What if citizens of liberal democracies accept conflicting ahistorical ideals and devices, and consequently, favor competing views of justice? For example, citizens in liberal democracies may find Robert Nozick’s abstract descriptions of both human beings and the conditions of the state of nature more appealing than Rawls’s. As a result, they may find the view of right offered by Nozick more persuasive than the one defended by Rawls. This conflict between irreconcilable, detached conceptions of right raises a potential difficulty with ahistorical standards. If political justice is determined by looking to abstractions, what happens when they conflict? How can these inconsistencies be adjudicated? What is the evidentiary standard for measuring the validity of ahistorical ideals? If historical evidence is disqualified, then the alternative is an appeal to more fundamental abstractions. However, this approach does not guarantee resolution, since there may be disagreement over which abstraction is the appropriate authority or over the appropriate content of the more basic abstraction. In effect, appealing to more fundamental abstractions may succeed only in shifting the conflict to another level without settling it.

Rawls seems to believe that liberal democracy is the universally best form of political society. As a result, he thinks that all peoples should strive to create liberal democratic institutions. For Rawls, the global validity of liberal democracy implies universal, institutional uniformity. Rawls appears to think that the universal, insofar as it is known by human beings, is exhausted by liberal democracy. It may be claiming too much to say that Rawls agrees with Francis Fukuyama that liberal democracy is the “end of history,” since there are important
differences between their respective political theories.  However, it is interesting to note that both Rawls and Fukuyama endorse the Kantian thesis that the world-wide spread of liberal democracy is the best chance of producing perpetual peace between nations.

Rawls’s view that all societies should become liberal democracies creates the possibility of perpetual hostility between liberal and non-liberal states. The reasons for this are not difficult to see. At best, liberal democracies view non-liberal states as having questionable legitimacy, and at worst, the former view the latter as threats to both the rights of their members and international peace. It is important to note that Rawls is extremely hesitant to endorse the use of military force to transform unenlightened societies into liberal democracies. Rawls argues that forceful intervention is permissible only in extreme cases. Nevertheless, this non-violent conflict may serve as an impediment to the possibility of mutually beneficial transactions between different cultures and traditions. If political justice is a standard that is known in advance, and if this measure dictates that liberal democracies are the only just political systems, what do liberal societies have to gain by interacting with other social orders? The benefits flow in a single direction. In essence, liberal democracies are simply waiting for less enlightened societies to undergo a process of enlightenment.

The nature of Rawls’s arguments for the superiority of liberal democracy may render him vulnerable to the charge of provincialism. It may be thought that provincialism and universalism are mutually exclusive, but this is not always true. Rawls starts from the ideas that are implicit in the public culture of liberal democracies, formulates them into a coherent conception of justice, and then insists that all social institutions around the world that fail to conform to it are suspect.

In effect, Rawls is arguing that a particular form of political and social order that works well in some countries should be adopted by all nations. However, he does not base this claim on careful study of the conditions and circumstances of political orders around the globe, but instead founds it on the limited experience of a few countries. The problem is not that Rawls attempts to make trans-cultural claims about justice, but rather that he does so on such parochial evidence. Rawls appears to take it for granted that the beliefs and practices that are currently dominant in a few liberal democracies have more weight in determining the nature of justice than those that exist in other political orders. Why the experiences of liberal states should override those of non-liberal countries is a question that Rawls does not really address.

**Rawls’s Truncated Reconciliation of Universality and Particularity**

A large portion of this dissertation has focused on demonstrating that, on the whole, Rawls’s philosophy points toward a separation between universality and particularity, and that the acceptance of this dichotomy diminishes the power of his defense of liberal democracy. However, there are some elements of Rawls’s work that indicate that it might be possible to reconcile right and history. Unfortunately, Rawls never pursued them to their logical conclusion. It is now time to discuss briefly several of these ideas, and to show how Rawls could have arrived at the conclusion that there is no necessary antithesis between the universal and the particular.

Rawls’s rejection of the intuitionist account of ethics and right suggests that justice and history are compatible. As discussed in chapter two, Rawls thinks that the central claim of intuitionism is that morality is contained in an order that is prior to and independent of both human beings and political society. One reason for why Rawls rejects this view is that it renders
morality excessively detached from the actual conditions faced by human beings. Rawls seems to be suggesting that morality needs to be sensitive to historical circumstances. Unfortunately, Rawls replaced the independent moral order of rational intuitionism with ahistorical concepts such as the person, society, the original position, and public reason, and concluded that they were sufficiently historical because persons in democratic societies either did or could be persuaded to accept them. However, Rawls’s appeal to abstractions is not entirely consistent with his criticism of intuitionism. If the independent moral order of intuitionism is excessively detached, it seems that the same objection could be raised against Rawls’s ideals. To avoid this difficulty, Rawls could have questioned the premise of intuitionism that an authoritative standard of justice must have distance from the subject that it is judging. By rejecting this assumption, Rawls could have arrived at the idea that right might be both historical and authoritative. Regrettably, Rawls seems to accept the same premise as intuitionism, and thus he looks for an alternative moral order that is detached from actual societies.

The process of justification developed by Rawls is another part of his philosophy that hints at the possibility of reconciling justice and history. As chapter two explains in detail, Rawls argues that a conception of right can be justified through a dialectical process that reconciles considered convictions with general principles. Rawls’s idea of justification is encumbered by a number of abstractions. For example, the principles of justice that Rawls wants to reconcile with the considered convictions of individuals are based on ahistorical ideals of the person and society, and are deduced from the original position. Also, justification is closely connected to the ideal of a society where all members have achieved complete intellectual consistency, and where they all accept the same conception of justice. But, if Rawls’s view of
justification is detached from these abstract ideals, it seems to be an affirmation of the dialectical nature of human thought. At its best, human reflection is in the process of struggling to express universality in more complete, although never final, ways. Since justice is not known in a final and exhaustive sense, it cannot be completely separated from history. By pursuing this line of reasoning, Rawls could have arrived at the conclusion that universality and particularity are mutually dependent. As a result, he could have recognized that it is not necessary to base political right on ideals that are insulated from concrete particulars.

Another aspect of Rawls’s philosophy that could lead to the idea of a potential unity of right and history is his appeal to the public culture of liberal democracies. As elaborated in chapter two, Rawls claims that his project develops the main ideas in the public culture of democracies into a coherent and systematic conception of justice that can be accepted by all members of society. Part of the problem with this approach is that it does not make any serious attempt at evaluating the quality of the ideas in the public culture. Some of these notions may be much more defensible than others. However, this approach does suggest that the content of a standard of justice can and should be informed by the circumstances of political society. If Rawls would have replaced the rather narrow and historically constricted perspective of the prevailing opinions of members of liberal democracies with the much broader idea of the whole of human experience throughout the ages, and if the substance of his conception of right would have been drawn from the latter rather than the former, he could have arrived at the possibility of reconciliation of universality and particularity. However, lacking this frame of mind, Rawls was disinclined to pursue this path.
A further aspect of Rawls’s political theory that faintly hints in the direction of a synthesis of universality and particularity has to do with the relationship between the principles of right selected in the original position and the general facts supplied by the sciences. Rawls argues that the parties in the original position must be completely ignorant of particular facts that may lead to bias. However, the representatives are permitted to know the general facts supplied by sciences such as economics, psychology, sociology, and politics. Rawls argues that since the choice of principles is somewhat dependent upon the content of these general facts, a change in these facts may produce a change in the principles of justice selected in the original position. This line of reasoning suggests that the human understanding of political right is in a state of incompleteness. If justice depends on concrete evidence, and if the evidence may change over time, then political right can also evolve. Consequently, political justice is not a final and complete standard that can be known in advance. Regrettably, Rawls did not pursue this line of argument beyond a broad hint, and much of his description of the role of a conception of justice in a well-ordered society suggests that it is a more or less final standard. For Rawls, the first principles of justice are not in question in a well-ordered society. However, the recognition that justice is a work in progress could have been developed into the acknowledgement that it is not possible to completely separate right from tradition.

A final aspect of Rawls’s philosophy that could be developed into an affirmation of the compatibility of right and history is the attempted transformation of justice as fairness into a political conception of justice. As mentioned in chapter two, Rawls became convinced in his later writings that it was impossible for any free political society to be united around one comprehensive doctrine. Also, Rawls came to the conclusion that his earlier works presented
justice as fairness as a comprehensive doctrine. While Rawls was surely right to conclude that all members of society cannot be assumed to accept the same comprehensive doctrine, his attempt to unify liberal society around a political conception seems to be predicated upon an analogous error. If individuals cannot reach unanimity on questions concerning the good, why would they be expected to reach unanimity on questions of justice? However, Rawls could have taken his theory in a different direction. He could have recognized that the inability of free persons to agree on a single comprehensive account of morality suggests that ethics does not provide a standard that is known in advance, but rather one that is continually in the process of development. As free human beings strive to reform their political society, their understanding of justice can also improve. Consequently, looking to ahistorical ideals and devices to determine the content of political right may be detrimental to pursuing political right. However, even after reformulating justice as fairness into a political conception, Rawls did not abandon his penchant for ahistorical reasoning but continued to maintain that it is necessary to have a final standard of right for measuring the justice of the institutions of political society. It appears that he was unable to overcome his assumption that there is a separation or antithesis between history and right.

The fact that Rawls’s political philosophy contains ideas that could have been developed in a manner that suggests that history can in a special sense provide its own standard of justice raises the question of whether Rawls was aware of the possibility of a union between universality and particularity. Since this idea has been explored in detail by many modern philosophers, and since Rawls’s work focused almost exclusively on modern thinkers, it would be surprising if Rawls did not encounter it. However, since Rawls does not really address this issue directly in
any of his scholarly writings, it is difficult to know for sure. The closest that Rawls comes to addressing this problem is in the section of Lectures on the History of Moral Philosophy that considers the political philosophy of Hegel.

According to Rawls, Hegel understands philosophy as a form of “reconciliation.” According to Rawls, Hegel understands philosophy as a form of “reconciliation.”26 The primary purpose of political philosophy is to show individuals that the social world in which they reside is “rational.”27 On Rawls’s interpretation, Hegel thinks that something like the modern liberal state is the form of political and social order that best allows individuals to actualize their freedom, which is the basis of their dignity. Consequently, the modern state is a rational political order. By demonstrating the rationality of the state, political philosophy reconciles persons to their social world. The process of reconciliation has important implications for the actuality of the modern state. Rawls argues that Hegel does not think that a political order achieves complete reality until its members are aware that it is rational. Spirit receives full actualization through human “self-consciousness.”28 Thus, when political philosophy helps individuals to understand the rationality of their state, it brings the state fully into existence. Another way of expressing this idea is to say that reconciliation makes the universal concrete. Although Rawls does not use this terminology, his description of Hegel’s view of political philosophy comes very close to the same notion.

According to Rawls, Hegel thinks that political philosophy should look to the “real” world rather than to some “ideal” realm for a standard of justice.29 Individuals should derive their sense of right and wrong from the customs and traditions of the society to which they

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26 Rawls, Lectures on Moral Philosophy, 331.
27 Ibid., 332.
28 Ibid.
29 Ibid., 334.
belong. If individuals look to an idealized realm, they may find their social world inadequate, and this may become an impediment to reconciliation. Rawls notes that it is important to avoid “misinterpretations” of Hegel.\footnote{Ibid., 348.} Although Rawls thinks that Hegel is defending the rationality of the modern state, Rawls does not think that Hegel is claiming that all aspects of it are completely rational or good. According to Rawls, since Hegel is fully aware of the great evils that exist in civil societies, a rational social world is not a “perfect” one.\footnote{Ibid., 335.} Rawls’s acknowledgement that Hegel looks for a standard of right in existing political society comes very close to the idea that the universal may be found in the particular. According to Rawls’s account, Hegel seems to be rejecting the idea that justice must be completely separate from political society in order to serve as the standard for judging the latter. Political right is simultaneously dependent on and independent from civil society.

Rawls interprets Hegel as saying that the actions of human beings which achieve great advancements in social life bring about the “realization” of spirit.\footnote{Ibid., 369.} According to Rawls, Hegel thinks that human beings become aware of the progress of spirit through art, religion, philosophy, and science, and spirit achieves “self-awareness” as individuals engage in these aspects of higher culture.\footnote{Ibid., 370} Spirit receives its most complete “realization” through the “collective self-awareness” of humanity in art, religion, philosophy, and science.\footnote{Ibid.} Rawls’s description of Hegel’s view of the role of human action in bringing about the development of spirit in history is very close to the idea that the universal is actualized in the particular through
creative human action. Rawls appears to recognize that Hegel thinks that the universal can be concrete. Consequently, it is reasonable to think that although many of his ideas suggest a separation between universality and particularity, Rawls was aware that serious philosophical attempts at uniting the two had been made.
CHAPTER EIGHT

A Mystery

Chapters two, three, four, and five explained why Rawls’s political philosophy suggests a dichotomy between universality and particularity, and chapter six showed that many of the prominent critics of Rawls accept a similar distinction or antithesis. Both Rawls and his critics believe that it is necessary to choose between the unsatisfactory alternatives of abstract universalism and historical relativism. Chapter seven discussed further some of the difficulties of viewing justice and history as separate. While this discussion was limited to describing how these problems arise directly from Rawls’s philosophy, it would not be difficult to show how similar difficulties emerge from the ideas of many of his critics. Given the serious problems that result from separating universality and particularity, it is a mystery as to why neither Rawls nor his interpreters seem to have seriously considered the possibility of some form of synthesis between right and tradition. The fact that the idea of a unity has been developed by previous political philosophers including Edmund Burke, G. W. F. Hegel, Benedetto Croce, Irving Babbitt, and Claes Ryn makes this neglect even more puzzling. In its most basic form, the thesis that the universal and the particular can be unified claims that creative human action gives concrete form to the universal. This thesis implies neither that the universal receives complete and final articulation in history nor that the universal is identical with all aspects of history. Instead, it states that history provides an indispensable, although often limited, manifestation of universality. Given the historical nature of human knowledge, individuals should search for universality in the realm of concrete experience rather than in some detached, transcendent
realm. Readers who desire a more thorough discussion of this issue should consult the relevant works of Burke, Hegel, Croce, and Ryn. It is not the purpose of this dissertation to investigate why Rawls and his interpreters have ignored this option, or to provide an alternative to Rawls’s abstract account of right. However, because the concept of a synthesis has been raised in the process of unveiling a central problem in Rawls’s philosophy, it is appropriate to indicate briefly how this deficiency may be ameliorated. The point of describing the possibility of a synthesis is not to argue that it is without its own difficulties or that it magically solves all of Rawls’s problems. Nor is the goal to provide a full defense of its merits. Rather, the purpose is to submit to the reader a potential alternative to the antithesis and a possible way forward for those who think that Rawls’s philosophy is not without promise. The question of whether the reconciliation proves to be an adequate substitute or compliment must be left to future studies.

**Universality and Particularity**

Throughout this dissertation, the terms universality and particularity have been used frequently without any extended discussion of their respective definitions. Because of the prominence of these terms in philosophical discourse, it has been assumed that the reader would have either a working understanding of them or, if not, would be able to acquire one from the context. At this point, it should be helpful to the reader to offer a short discussion of these terms, although the definitions here offered cannot be more than brief and suggestive. However, these definitions

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1 For a discussion of how tradition provides an important, although incomplete articulation of political justice, see Burke, *Reflections on the Revolution in France*; for an account of how universality or spirit has taken concrete form through creative human action in history, see Hegel, *Phenomenology of Spirit*; for an explanation of why the dichotomy between history and philosophy is dubious, see Croce, *History as the Story of Liberty*; for a discussion of how the finitude of human knowledge precludes the possibility of creating an absolute distinction between universality and particularity, see Claes G. Ryn, *Will, Imagination, and Reason: Babbitt, Croce, and the Problem of Reality, rev., exp. ed.* (New Brunswick, New Jersey: Transaction Publishers, 1997).
are not intended to be particularly rigorous or exhaustive. According to Ryn, the universal or universality can be thought of as referring to the “normative structures that invest existence with a higher and enduring significance.”

Perhaps another way of expressing this idea is to say that the universal is the end or goal that orders all excellent human action in history. Human life is a constant pursuit of this goal, and to the degree that the end is actualized through human work, existence takes on a higher and permanent value. The universal includes everything that may be subsumed under the term political justice, but the former is not exhausted by the latter. Instead, universality also encompasses other areas of human life, such as art, which attempts to express beauty, or philosophy, which seeks truth, or ethics, which investigates how human beings should live. Particularity may be understood as referring to all the aspects of human life that are individual, diverse, and unique. Such elements include the many differences between persons, nations, cultures, traditions, and religions.

These general definitions of the terms universality and particularity are probably not particularly controversial since many philosophers dating back to at least the time of Plato have adopted similar constructions. However, any attempt to provide a more precise analysis of these concepts will quickly become more controversial. For example, different political philosophers have defended conflicting claims about whether human beings can know the universal exhaustively, and whether the universal can be completely actualized at a particular point in history. Rorty is an example of a thinker who seems to think that the concept of universality suggests complete knowledge and the possibility of full implementation. Rorty tends to

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associate universality with the “enlightenment idea of ‘reason.’” As described by Rorty, the enlightenment approach claims that the faculty of human reason is able to discover the whole truth about moral, political, philosophical, and scientific questions. Once the correct answers are discovered, the main challenge is to find a practical way of ordering human institutions and actions so that they conform to the exhaustively known universal. When this task is completed, human life will reach its highest potential. Not surprisingly, Rorty recoils from this view. Rorty argues that advances in social science over the past several centuries have discredited the enlightenment faith in transcendent rationality. While Rorty’s skepticism about the enlightenment depiction of universality appears to be justified, one may wonder whether he has considered all other notions of universality. Rorty seems to think that the enlightenment conception is the only possible view of universality, and that its inadequacy renders universality untenable. However, Rorty never seems to consider seriously the question of whether the idea of universality necessarily entails something static that can be known exhaustively and the question of whether it can be understood in a more flexible and nuanced manner.

Ryn is an example of a political theorist who does not think that the concept of universality implies either exhaustive knowledge or full realization. For Ryn, universality should be understood as both permanent and developing. Ryn explains that universality is “unchanging” in the sense that it “inspires and promises life of a certain, intrinsically satisfying quality,” and that it is “changing” in the sense that the precise form of the realization or actualization of this life will vary on the basis of time and place. For Ryn, the idea that the universal is simultaneously changing and unchanging is not a contradiction in terms, but rather a

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recognition of the fact that in order for human beings to encounter universality, it must exist in concrete form. As a result, the universal is in one sense finished, but in another, unfinished. Also, Ryn argues that human beings have finite and limited knowledge of the universal. Since human knowledge is incomplete, individuals can both know and “not know” universality simultaneously.\(^5\) Ryn contends that the universal is not completely achieved in human history. As Ryn describes it, human life is characterized by the “striving for” rather than the final “achievement of” universality.\(^6\) The consequence of a final articulation and implementation of universality would be the termination of this struggle, which constitutes life itself. Consequently, Ryn and Rorty concur that the enlightenment conception of universality is deficient, but they diverge on whether the notion of universality should be rejected altogether.

Rawls’s view of political justice appears to have more in common with the enlightenment conception of the universal than with Ryn’s construction of it. Although Rawls rejects the notion that political right is a prior and independent standard that is grasped by human reason, and although he doubts that it is possible for free persons to reach a final consensus on all theological, philosophical, and moral questions, he seems to accept an overly rigid and inflexible description of social justice. According to Rawls, if individuals deliberate under suitably specified conditions, they will reach unanimous agreement on principles of right. It should be noted that Rawls admits that since these rules are dependent upon general facts, and that since it is conceivable that the facts may change, it is theoretically possible that the principles of justice may also change. However, Rawls never really explores this issue, and thus leaves the reader with the impression that this scenario is both improbable and unimportant. Once established,

\(^5\) Ibid., 65.
\(^6\) Ibid., 68.
these axioms serve as the highest authority in political society for adjudicating political disputes. Also, the constitution, the laws, and all judicial decisions must conform to these rules of right. Under ideal conditions in a well-ordered society, all individuals accept and honor these principles of justice. In his writings on international affairs, Rawls suggests that all political societies around the globe should be organized on the basis of the same or similar axioms of right. As a result, Rawls appears to believe that political justice is uniform and probably unchanging, and that it can be known more or less comprehensively by human beings. Rawls has effectively replaced the fixed and independent moral order defended by intuitionism with a constant standard of justice discovered through constructivism. Although Rawls may disagree with where intuitionism looks for ethics, Rawls appears to agree with intuitionism that justice is known in advance. Rawls does not seem to take seriously the idea that diversity and mutability are not necessarily antithetical to justice and universality. In other words, Rawls does not consider the possibility that human beings must always struggle to provide a more profound and precise articulation of right.

**Historical Evidence and Human Knowledge**

It is necessary to say a few words about the nature of historical or concrete evidence and the extent of human knowledge, as they are particularly relevant to the question of the interplay between the universal and the particular. It is possible to define historical evidence narrowly so that it includes only statistical data or empirical information such as the total population of a country, the percent of citizens who voted in the last election, or the aggregate annual tax revenue collected by a government. This understanding is posited and privileged by many so-called positivists. A much broader view of concrete evidence, such as the one offered by Ryn,
includes all that falls within the realm of “human consciousness,” or the entire range of knowledge that is available to human beings.⁷ This includes information gathered through statistical analysis, conclusions produced by the natural sciences such as chemistry, physics, or biology, but also what is studied by the humane disciplines such as philosophy, theology, and literature.

These two competing definitions are predicated upon very different epistemologies. The more limited definition adopts the view that the realm of phenomena that human beings can have certain or sure knowledge about is confined to statistical data and the findings of the natural sciences. Eric Voegelin argues that this view is derived from “two fundamental assumptions.”⁸ The first is that since the “methods” of the natural sciences possess some “inherent virtue,” they should be adopted by social scientists, and the second is that the “criterion” for determining whether a field of study can produce genuine knowledge is whether it is able to use the “methods” of the natural sciences.⁹ Voegelin contends that the combination of these two assumptions produces the conclusion that all disciplines that are unable to employ these methodologies are not “scientific.”¹⁰ As a result, the findings of the so-called soft sciences such as philosophy, theology, and literature are relegated to a secondary epistemological status. Arend Lijphart is a prominent social scientist who represents this long-dominant position. According to Lijphart, “scientific explanation” is “the establishment of general empirical relationships among two or more variables,” while all other “variables” are simultaneously

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⁷ Ibid., 85.
⁹ Ibid.
¹⁰ Ibid.
“controlled” or “held constant.”\textsuperscript{11} Lijphart argues that the “experimental method,” which is commonly used in the natural sciences, is the “most nearly ideal method for scientific exploration.”\textsuperscript{12} For Lijphart, the nature of the subjects studied by the social sciences has the unfortunate consequence of erecting “practical and ethical impediments” to the use of the experimental method.\textsuperscript{13} Thus, social scientists are forced to use the inferior “comparative method,” which is a “very imperfect substitute.”\textsuperscript{14} In contrast to this restrictive view of evidence, the more expansive definition claims that human beings can have reliable knowledge about the subjects studied in the humane fields. It denies that there is a single method of inquiry that is valid for and applicable to all scholarly fields, and it denies that the criterion for determining whether the findings of a particular discipline qualify as genuine knowledge is a specific, predefined methodology. Instead, it contends that the subject matter determines the appropriate mode of analysis. While it is imperative to have rigorous and reliable methods of inquiry, these must be derived from rather than imposed upon the subject of study.

To illustrate these contrasting views of human knowledge and historical evidence, it may be helpful to offer a brief discussion of G. A. Cohen’s and Croce’s approaches to these problems. Cohen argues that the content of fundamental principles of ethics should be completely insulated from facts. The validity of Cohen’s dichotomy between facts and moral principles depends on his definition of the former. If Cohen is saying that the content of ethical truth is not determined solely by the factual or empirical evidence offered by the statistical and natural sciences, but

\textsuperscript{11} Arend Lijphart, “Comparative Politics and the Comparative Method,” \textit{The American Political Science Review} 65, no. 3 (September 1971): 683.
\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid., 684.
\textsuperscript{14} Ibid.
rather on the basis of the historical evidence provided by the humane disciplines, the antithesis may be Cohen’s way of attempting to defend a broader understanding of knowledge and evidence. However, if Cohen is arguing that moral principles are independent from historical evidence provided by fields such as politics, his disjunction may inadvertently accept the same limited definition of facts and evidence that is espoused by positivists. Since Cohen argues that the term “fact” can be defined however his “opponents” in this debate wish, he leaves open the possibility that the term “fact” could mean either the narrower definition given by positivists, or the broader meaning defended by a thinker such as Ryn. If the latter definition of the term is adopted, Cohen’s position appears to be that the most basic axioms of justice are fundamentally divorced from the concrete evidence procured by the humane sciences. As a result, Cohen’s view produces a puzzle. Presumably, Cohen thinks that it is possible to have authentic knowledge of the first principles of justice. However, if these axioms cannot be justified by any facts provided by the humane sciences, it is not obvious what serves as the evidentiary basis for possessing genuine understanding of these principles. In other words, how do human beings know that these fact-insensitive principles are authoritative? Through different means, both Cohen and the positivists end up casting doubt on the validity of knowledge about the humane pursuits. Positivism reaches this conclusion by defining knowledge so narrowly that it excludes all findings from the humane fields of study, while Cohen approaches it by insisting that historical evidence is irrelevant to the basic axioms of ethics.

According to Croce, since all judgments rendered by human beings concern historical facts or evidence, all human judgments are by definition “historical.”\textsuperscript{16} Since all human knowledge is ultimately for the sake of practical action, and since decisions are necessary for action, all authentic knowledge is a form of “historical judgment.”\textsuperscript{17} Croce thinks that in order for human beings to make evaluations, they must be able to make distinctions between different classes of actions. Philosophy is the discipline that articulates the “categories” that are a prerequisite for rendering sound decisions.\textsuperscript{18} Croce argues that philosophy and history are mutually dependent, and any attempt to separate them leaves human beings with only half of what is necessary for genuine knowledge. From Croce’s perspective, although the positivists and Cohen arrive at different conclusions, they both commit the same error of divorcing philosophy and historical evidence. The positivists argue that it is necessary to disentangle the two, since empirical data collected according to the required method provides reliable knowledge, while the humane sciences do not. Cohen contends that it is essential to isolate the two, since authentic first principles of ethics are not sensitive to or determined by facts. A Crocean would argue that the refusal of the positivists to consider seriously the evidence provided by philosophy forces them to constrict unnecessarily the field of human knowledge, and that Cohen’s insistence on insulating morality from history causes him to undermine the relevance of ethical norms for human beings.

Rawls’s view of the relationship between facts and principles of justice is somewhere between Cohen’s and Croce’s. Rawls argues that the two principles of justice selected in the

\textsuperscript{16} Croce, \textit{History as the Story of Liberty}, 23.
\textsuperscript{17} Ibid.
\textsuperscript{18} Ibid., 29.
original position must be insulated from some but not all facts. Similarly, Rawls thinks that the arguments presented by citizens participating in the public sphere should rely upon a limited body of factual information. In the original position, the parties are permitted to know the general facts established by social sciences such as sociology, psychology, and law, but they are not allowed to know particular facts about themselves or the society in which they reside. When honoring the ideal of public reason, citizens are supposed to avoid invoking controversial evidence from the humane sciences such as philosophy, theology, and ethics, unless they are able to support it with information drawn from non-controversial authorities and sciences. Rawls’s stated reason for placing constraints on the evidence that is available to individuals who are deliberating about justice is to reduce personal bias that impedes rational consensus. However, this approach is open to serious objection. It may be argued that in the attempt to exclude information that may encourage personal bias, Rawls is prohibiting historical evidence that is highly relevant to deliberations about justice. Also, it is possible to contend that instead of removing personal bias from deliberations about justice, Rawls has simply injected his own biases under the guise of impartiality. In either case, Rawls has rendered the connection between justice and historical evidence tenuous, and thus has opened himself up to the positivist criticism that the arguments and conclusions of the humane sciences lack rigorous methodological and evidentiary standards.

In his earlier works, Rawls seems to think that the findings of the social sciences constitute authentic knowledge, and thus he appears to reject the positivistic definition of knowledge. However, in his later writings, Rawls deliberately detaches his conception of justice from controversial epistemological debates over the nature of truth. Although Rawls claims that
he made this move for the pragmatic purpose of removing obstacles that may prevent people from accepting his view of justice, one of its consequences is to render the epistemological status of justice as fairness ambiguous. It is not clear whether Rawls’s view of right constitutes genuine knowledge or whether it is nothing more than a collection of opinions. As a result, Rawls’s philosophy may unintentionally lend support to the positivist claim that the humane disciplines, which do not employ the methods of the natural sciences, are unable to arrive at genuine knowledge.

**The Dubious Antithesis of Universality and Particularity**

Ryn argues that the underlying reason for why so many philosophers throughout the history of western thought have either assumed or explicitly insisted on a fundamental dichotomy between universality and particularity is a certain way of thinking that he calls “‘blockheadedness.’”¹⁹ The term is not intended to be pejorative or insulting, but rather to provide a description of a certain manner of viewing the world. The defining characteristic of this way of thinking is to conceive of all of reality as a collection of discrete objects or “building blocks” that can be examined in isolation from both other entities and the context in which they exist.²⁰ This approach claims that a whole or entity is nothing more than the sum of its parts, that the best way of understanding the whole is to split it into parts, and that the most effective method of comprehending the parts is to evaluate them in isolation from both the whole and each other. The underlying assumption is that the meaning or content of each individual part does not depend on its relation to the other parts or the whole. According to Ryn, Aristotelean formal

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²⁰ Ibid.
logic is a prime example of this way of thinking. There are three laws of logic. The first is the law of identity, which states that A is A. The second is the law of non-contradiction, which specifies that A cannot be both A and non-A in the same manner at the same time. The third is the law of the excluded middle which says that something is either A or non-A. Ryn argues that Aristotle believed that thought which failed to observe these laws would be incoherent or a “confused blur.” If something can be both itself and something else in the same way at the same time, meaningful inquiry would be impossible.

There is an important connection between the blockheaded approach to political philosophy and the belief that universality and particularity are dichotomous. According to Ryn, the application of the rules of formal logic to the question of the relationship between the universal and the particular leads to the conclusion that they are mutually exclusive. The reasoning is as follows: in order to conform to the law of identity, the universal must be identical with itself, and the particular must be identical with itself. To be consistent with the law of non-contradiction, the universal cannot be both the universal and the non-universal in the same way at the same time, and the particular cannot be both the particular and the non-particular in an identical manner at the same point in time. A less technical and more common version of this argument is presented by Strauss. For Strauss, there is a fundamental separation between “natural right” or universality, on the one hand, and “history” or tradition, on the other. Since the former is absolute and unchanging, it is able to provide a global standard of right, but since the latter is relative and transient, it is not able to provide universal principles of justice. If the

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21 Ibid.
22 Ibid.
23 Ibid., 64.
24 Strauss, Natural Right and History, 9.
two are conflated, the possibility of the existence of “objective norms” or universal standards of justice is compromised, and the ultimate consequence is moral “nihilism.”

According to Ryn, actual human reflection is best understood as “dialectical.” Thought is dialectical in the sense that while it perpetually struggles to articulate truth, it is never able to do so in a complete and exhaustive way. Ryn contends that cognition is inextricably connected with “history.” Thought begins with expressions of truth that have been developed over time, and it attempts to refine and hone them so that they provide a better articulation of reality. However, these fresh and revised articulations of truth cannot be considered to be complete, since it is possible for future reflection to discover improvements and clarifications that were neglected or overlooked in the past. Also, these new articulations of truth are indebted to the insights of the past. Ryn observes that as a result, human thought is “indistinguishably old and new.” To illustrate this point, Ryn points to the historical evolution of the philosophical concept of “democracy.” Ryn notes that Plato’s understanding of democracy was influenced significantly by the historical circumstances in ancient Greece. Similarly, the conceptions of democracy held by subsequent thinkers were affected by the historical conditions of the time periods in which they lived. Ryn thinks that while the events that have occurred since the time of Plato have permitted modern intellectuals to revise and improve on his view of democracy, present understandings are still indebted to his initial insights.

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25 Ibid., 17, 18.
26 Ryn, Will, Imagination, and Reason, 120.
27 Ibid.
28 Ibid., 127.
29 Ibid., 129.
Ryn argues that the dialectical nature of human thought and knowledge does not completely conform to the three laws of formal logic. According to Ryn, human cognition could achieve complete identity with itself only if it realized “Truth with a capital T.” Omniscience is the prerequisite for being able to determine in a definitive and final way that an idea or concept is completely identical with itself and totally separate from all others. However, since even the most advanced and complete human formulations of truth can be improved upon, they have not obtained full identity with themselves. Ryn argues that this leads to the conclusion that human cognition “both has and does not have identity with itself.” As a result, human reflection is probably better understood as having the characteristic of “becoming” rather than being. Ryn is quick to point out that the finite nature of human knowledge does not have to lead to skepticism or the denial of universality. On the contrary, it is still possible for human beings to possess knowledge of “truth” or reality. That individuals are unable to have exhaustive understanding of the world does not mean that they cannot understand anything about it. This point can be illustrated by returning to the previously mentioned example of the growth of the concept of democracy. Plato’s inability to anticipate all future advancements in the concept of democracy made by subsequent thinkers does not lead to the conclusion that he was wholly unenlightened about it. Instead, it means that he was able to make many profound, yet incomplete, observations about democracy that were improved upon by later philosophers. In a sense, Plato both knew and did not know the nature of democracy.

30 Ibid., 131.
31 Ibid.
32 Ibid.
33 Ibid., 126.
The dialectical nature of human cognition and knowledge has important implications for the relationship between universality and particularity. If it is true that human knowledge is in a process of developing rather than in some state of finality, it does not appear to be possible for human beings to have access to an exhaustive and complete standard that allows them to distinguish absolutely between what is universal and what is particular. If this is the case, then it appears that universality and particularity should be viewed as complimentary rather than antithetical. The best way for human beings to discover universality is by looking for its particular manifestations in history. Through the careful study of the whole history of concrete human experience, individuals can develop a sense of universality, and through creative action, they can provide additional expressions of it. This dialectical interplay between past articulations of universality and current attempts to improve them can lead to a more complete, although often far from exhaustive, manifestation of universality.

**Conclusion**

Chapter seven described some of the difficulties that Rawls’s assumption of a dichotomy between universality and particularity has produced, and how they weaken his defense of liberal democracy. Also, it drew attention to some aspects of Rawls’s philosophy that indicate that right and history may be codependent. If developed further, these elements of Rawls’s thought could have led him toward the recognition of the potential of a synthesis of universality and particularity. This chapter has provided a brief explanation of how one may approach the possibility of unifying the universal and the particular. The purpose of presenting that possibility has not been to provide a defense of it, but rather to indicate to the reader how some of the problems associated with the antithesis that are present in the philosophy of Rawls might be
mitigated. Determining whether this synthesis is viable is beyond the scope of this dissertation. It is hoped that by drawing attention to both the challenges that the antithesis creates for Rawls and his interpreters and the possibility of synthesis, this dissertation will spark new interest in reconsidering the predominant view of the relationship between right and history.
CONCLUSION

This dissertation has attempted to answer two questions. The first concerns what Rawls’s philosophy suggests about the relationship between universality and particularity, and the second pertains to how this implied connection affects his defense of liberal democracy. This dissertation has argued that the vast majority of Rawls’s work suggests that he assumes a dichotomy between the two. It arrives at this conclusion in the following way. Throughout his writings, Rawls makes copious use of detached ideals and ahistorical notions such as the conception of the person, the idea of the well-ordered society, the idea of society as a fair system of cooperation, the original position, the two principles of justice, and the ideal of public reason. Rawls admits that many, if not all, of these ideals have never existed in any historical political orders, and he provides little evidence to indicate that they could ever come into being. The fact that Rawls insulates the main concepts of justice as fairness from the influence of concrete, historical evidence strongly suggests that he thinks that in order for a standard of right to be authoritative, it must be detached from the society that it is evaluating. That Rawls accepts the more specific premise that right and history are dichotomous strongly indicates that he adopts the more general premise that there is an inevitable separation between universality and particularity. This dissertation has drawn attention to aspects of Rawls’s theory that can be construed to point in the direction of a synthesis of universality and particularity. However, since these elements compose such a small portion of his overall work, and since he never developed them into a unification of universality and particularity, it seems that their presence does not contradict the main conclusion of this dissertation.
This dissertation has also contended that Rawls’s uncritical acceptance of an antithesis between universality and particularity weakens his attempt to provide a theoretical justification for liberal democracy. By disconnecting political right from the circumstances of real social systems, Rawls tends to undermine the relevance of the former for the latter. In addition, the sharp separation between the ideal of justice as fairness and the reality of historical democracies may induce in citizens a sense of disappointment with the conditions of their political institutions. Further, it is not clear that Rawls’s appeal to abstract standards is able to settle disputes between conflicting ahistorical views of justice. Finally, Rawls’s claim that liberal democracy is the only just form of political order may serve to facilitate hostility and animosity between liberal and non-liberal states.

Perhaps the limited value of Rawls’s ahistorical thought can be illustrated by considering it in conjunction with David Walsh’s attempt to defend liberal democracy. In *The Growth of the Liberal Soul*, Walsh argues that there is a puzzling “disconnection” between the success of the liberal tradition and the failure of its most capable apologists to formulate adequate theoretical justifications for its existence.\(^1\) Walsh contends that while there are no longer any serious ideological rivals to liberalism, contemporary theorists have been unable to express adequately the “sustaining strength” of liberal democracy.\(^2\) According to Walsh, one of the key resources that has “sustained” liberal democracy from its beginning is the recognition that each individual human being has infinite “value” or worth.\(^3\) Walsh thinks that the inability of liberal theorists to articulate the deeper resources of liberalism has simultaneously contributed to the past successes

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2 Ibid.
3 Ibid., 231-232.
and current crisis of liberal order. Proponents of liberalism have deliberately avoided discussing its foundations in order to avoid unnecessary controversies that may threaten the minimal “consensus” necessary for the existence of liberal society.\footnote{Ibid., 105.} However, the failure to articulate a justification of liberalism has led it to the point of “crisis.”\footnote{Ibid., 22.} For Walsh, the best way for liberal societies to overcome this difficulty is to “evoke more adequate formulations” of the underlying resources that exist within the liberal tradition.\footnote{Ibid., 239.}

If Walsh’s thesis is correct, it is not clear that Rawls’s political philosophy has been successful, since it has not been able to evoke the deeper resources of liberalism more effectively than previous defenders of liberal democracy. Many of Rawls’s predecessors including Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant attempted to base their justifications of liberal democracy upon abstract notions such as the state of nature, the social contract, and the notion that persons are naturally free and equal.\footnote{See Hobbes, \textit{Leviathan}; Locke, \textit{Second Treatise of Government}; Rousseau, \textit{Discourse on the Origin of Inequality}; Rousseau, \textit{On the Social Contract}; Immanuel Kant, \textit{The Metaphysics of Morals}, trans. and ed. Mary J. Gregor (New York, NY: Cambridge University Press, 1996).} The problem with previous social contract theorists, according to Rawls, is that they failed to specify clearly that their basic ideas were intended to be abstractions rather than descriptions of historical situations, agreements, or individuals. As a result, their arguments were susceptible to Hume’s criticism that the dearth of historical original agreements means that political society is not based on consent. Rather than countering Hume’s argument by demonstrating that liberal democracy can be validated on the basis of concrete experience, Rawls tries to overcome Hume’s objections by making the central ideas of justice as fairness even more abstract than those of previous social
contract thinkers. If the views of the person and society articulated by previous social contract theorists are indeed abridgments of profound truths about human beings and political orders, it is not clear how Rawls’s attempt to reformulate them in even more detached terms gives a more profound expression of these underlying realities. For example, it can be argued, as Walsh does, that the liberal practice of treating citizens as equals and granting them rights is a faint echo of the Christian idea that persons have inviolable dignity. However, it is not evident how Rawls’s claim that citizens of liberal democracies should be viewed as free and equal either expands and enlarges the Christian idea of human worth or expresses this notion in a deeper way than previous social contract thinkers. If Rawls is aware of the existence of the inner resources that sustain liberal society, his proclivity toward ahistorical reasoning conceals it from the reader. Like his predecessors, Rawls appears to be content to borrow from rather than add to the capital that makes liberal order possible. It is reasonable to argue that Rawls’s philosophy is animated by these underlying ideas, but it is less plausible to claim that he makes any meaningful contribution to them.

The aforementioned defects of Rawls’s abstract approach to political theory raise the following question: does Rawls provide an actual defense of liberal democracy or does he present a vision for how he desires the world to be? Since Rawls’s description of the ideal of a well-ordered, liberal democratic society does not describe any historical democracies, it seems that his work is not so much an apology for the actual practice of democracy as a defense of an ideal of democracy that has never existed in history. However, it is not clear that Rawls offers much of an argument for why his ideal should be accepted. Rawls’s theory is an attempt to construct political, social, and economic institutions that recognize the freedom and equality of
citizens. Throughout his works, Rawls takes it for granted that people in liberal democracies either already accept or can easily be persuaded to accept his views of the person and society. As a result, Rawls provides few or no reasons for why individuals who do not already share his understandings of the person and society should change their minds. By rationalizing what people in liberal democracies already believe, is Rawls not preaching to the choir and assuming what he is allegedly trying to prove? Since his writings do not offer much evidence to support his ideal of liberal democracy, it seems that it is more accurate to characterize Rawls’s philosophy as an effort to lay out a vision of how society could be than to depict it as an attempt to defend the tradition of liberal democracy.

The enormous attention that current academics have lavished upon Rawls’s political thought raises interesting questions about the state of contemporary democratic theory. Certainly, the responses to Rawls’s ideas have ranged from staunchly critical to strongly supportive. However, as this dissertation has attempted to demonstrate, many prominent critics and defenders of Rawls accept his abstract approach to political justice, and even the communitarian critics who find his ideas excessively detached have advanced only truncated and weak objections to these ahistorical proclivities. The lack of strong opposition to Rawls’s ahistorical methodology is further amplified by the fact that since the communitarians who criticized his work for unnecessary abstraction in the 1980s, few or no scholars have seriously entertained the idea that Rawls’s thought is unnecessarily abstract. Instead, many academics have tried to show that despite its seemingly ahistorical terminology, Rawls’s philosophy is historically rooted. If most contemporary academics accept Rawls’s abstract approach to political theory, is it implausible to suggest that the work of many current scholars may suffer
from the same deficiencies as Rawls’s philosophy? It is certainly beyond the scope of this dissertation to investigate adequately the veracity of this suggestion. However, if this is the case, Rawls’s shortcomings are merely a microcosm of a pervasive problem. The upshot of these observations is that the currently available mainstream defenses of liberal democracy may have grave deficiencies and that contemporary democratic theory may be quite impoverished. One must ask whether the condition of democratic theory is a good measure of the state of modern democratic society.
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