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GUIDELINES FOR A PLURALIST SOCIETY:
COULD RAWLS HELP WITH STRUGGLES OVER IDENTITY?

By

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Guidelines for a Pluralist Society: Could Rawls Help with Struggles Over Identity?

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According to Kwame Appiah, “the great liberal struggle” since the Enlightenment has concerned whether the state should treat citizens as self-directed individuals or acknowledge them in terms of social identities—ethnicity, culture, religion, or gender. Some thinkers, Appiah among them, have proposed solutions to this struggle and advocate for amending liberalism to include space for the recognition of difference. These “solutions” share at least one thing in common: critiques of John Rawls. However, Rawls seems to have a palatable answer to “the great liberal struggle,” though it seems he would frame it differently. Indeed, he acknowledges “the fact of pluralism,” as a permanent condition of our experience. In Part One I respond to three criticisms of Rawls’ ability to help with struggles over identity. I first explore Rawls’ understanding of a person in reference to Appiah’s discussion of the role of the state in “soul making,” inspired by J.S. Mill. Second, I consider Rawls’ understanding of “human nature” by responding to Will Kymlicka in considering among other things what Rawls’ “primary goods” might involve for cultural life. Finally, I will examine Rawls’ distinction between public political culture and the background culture in terms of the idea of public reason in response to Seyla Benhabib’s criticism that the distinction fails to elucidate guidelines in the face of many modern gender and familial issues. In Part Two, I offer two ways in which Rawls’ theory could be amended or extended in order to more adequately account for identity. First, Rawls’ theory could be amended to consider the role of comprehensive doctrines in the overlapping consensus. Second, Rawls’ theory could invite identity considerations into the political conception of primary goods.

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INTRODUCTION

According to Kwame Appiah, “the great liberal struggle” since the Enlightenment has concerned whether the state should treat citizens as self-directed individuals or acknowledge them in terms of social identities—ethnicity, culture, religion, or gender.¹ Many liberals argue that state consideration of identity is patently illiberal: state acknowledgement of identity results in arbitrary advantages or disadvantages. Multiculturalists argue that the state must recognize social identity because the individual stripped of social context is prohibited from living a meaningful life.² Several thinkers, Appiah among them, have proposed solutions to this struggle. Some have, for the most part, given up on liberalism.³ Others have given up on multiculturalism.⁴ And some have advocated amending liberalism to include space for the recognition of difference, albeit in vastly different ways.⁵ These “solutions” share at least one thing in common: critiques of John Rawls.* Rawls is faulted on his generally abstract theory and its inability to accommodate, acknowledge or recognize important social differences. However, Rawls seems to have a palatable answer to “the great liberal struggle,” though it seems he would frame it differently. Indeed, he acknowledges “the fact of pluralism,” as a permanent condition of our experience (*PL*). And he understands the fundamental problem of political liberalism in terms of that fact: “How is it possible that there exists over time a

* All citations of Rawls will occur in text according to the following abbreviations. All other citations appear in endnotes following each chapter.

TJ: John Rawls, *A Theory of Justice*, Revised ed. (Cambridge, MA: The Belknap Press of Harvard University, 1999).

PL: John Rawls, *Political Liberalism*, Expanded ed. (1993; New York: Columbia University Press, 2005).

CP: John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999).

JF: John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: The Belknap Press of Harvard University Press, 2001).

stable and just society of free and equal citizens profoundly divided by reasonable religious and moral doctrines?” (*PL* xxv). My contention is that Rawls offers far-sighted guidelines for life and politics in a multicultural, diverse society.⁶ My aim will be to pick out Rawlsian guidelines that a reasonable pluralist society could not do without. While I argue that Rawlsian guidelines are indispensable, I also gesture towards places in which Rawls’ theory could be extended or amended for the purpose of considering the role of the state in fostering good lives for all citizens.

This thesis will proceed by addressing the three major criticisms that Rawls takes seriously in order to discover and illustrate guidelines for dealing with some of the difficult social issues we face. Rawls’ liberalism is criticized “because it relies on an abstract conception of the person and uses an individualist, nonsocial, idea of human nature; or else that it employs an unworkable distinction between the public and the private that renders it unable to deal with the problems of gender and the family” (*PL* xxix). I will first explore Rawls’ understanding of a person in reference to Appiah’s discussion of the role of the state in “soul making,” inspired by J.S. Mill. Second, I will consider Rawls’ understanding of “human nature” by responding to Will Kymlicka in considering what Rawls’ “primary goods” might involve for cultural life. Finally, I will examine Rawls’ distinction between public political culture and the background culture in terms of the idea of public reason (*PL* 215). I do so in response to Seyla Benhabib’s criticism that the distinction fails to elucidate guidelines in the face of many modern gender and familial issues, especially when cultural practices conflict with constitutional essentials.⁷

After responding to these critiques, I will offer two ways in which Rawls' theory could be amended or extended to more adequately account for identity. First, Rawls' theory could be amended to consider the role of comprehensive doctrines in the overlapping consensus. Rawls introduces the idea of the overlapping consensus to provide a realistic vision of the well-ordered society in which citizens affirm the political conception of justice on its own terms of justification, even though they do so for very different reasons (*JF* §11). These reasons—religious belief, moral conviction, philosophical position, or cultural creed—are arguably excluded from some political considerations. While Rawls brackets the comprehensive doctrines to defend against the fact of oppression, such a move seems to have deleterious effects. There seems to be a valid cause for concern if political engagement requires checking such important aspects of human life at the door. I would like to argue that citizens could bring their comprehensive reasons to the political table and at the same time affirm a political conception of justice, which is consistent with the fact of pluralism. Second, I will consider the extent to which Rawls' theory could invite cultural considerations into the political conception of primary goods. Theorists about identity are often too quick to give up on the abstract principles of justice on the grounds that they are too neutral. Similarly, liberals often quickly overlook cultural and social notions of the good on the grounds that they are not neutral enough. I will explore whether Rawls' theory could be extended to consider different notions of the good held by various identities. I will make a case for the importance of abstract principles, but also invite theories of liberalism to acknowledge the way society, culture, and physical needs shape the lives of citizens. I would like to propose that even though Rawls understood primary goods within a

political conception of justice, considerations of identity may figure prominently in certain primary goods. Some primary goods, rights and liberties, are abstract and neutral. Other primary goods, opportunities, powers, and self-respect, seem to be shaped by context.⁸

Notes

¹ Kwame Anthony Appiah, *The Ethics of Identity* (Princeton: Princeton University Press, 2006) 70.

² Appiah 70

³ See Tariq Modood, *Multiculturalism*, (Cambridge: Polity, 2007) 7 and Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Basingstoke: MacMillan, 2000) 12

⁴ Brian Barry, *Culture and Equality* (Cambridge, MA: Harvard University Press, 2002) 317.

⁵ See Appiah; Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995); and Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002).

⁶ I include “life” along with politics taking a cue from Martha Nussbaum that the state also includes some “very important prerequisites of general well-being. Politics is not just about politics, it is about and for life.” Martha Nussbaum, “Political Soul-Making and the Imminent Demise of Liberal Education,” *Journal of Social Philosophy* 37-2 (2006): 303. Also, Rawls suggests that he provides, at the very least, guidelines in response to critics in the preface of *Political Liberalism*: “...a conception of justice worked up by focusing on a few long-standing classical problems should be correct, or at least provide guidelines for addressing further questions” (*PL* xxix).

⁷ See Benhabib 112. Constitutional essentials include both the general structure of government and the specification of equal basic rights and liberties. See *PL* Lecture IV, §5 “The Idea of Constitutional Essentials.”

⁸ See *JF* §17.2

PART ONE: THE LIMITS AND POWERS OF RAWLS' POLITICAL CONCEPTION

Rawls' conception of justice has often been criticized on the grounds that it is incapable of acknowledging the social and cultural settings in which people live.¹ Many critics offer alternative political theories, which prioritize the community and particular conceptions of the good life over the individual and justice.² However many of these critiques and alternatives are of a piece with a tendency to interpret the moral and political world through an insufficiently narrow model, which assumes that political thought can be *either* individually *or* socially oriented, but not both. For example, Amy Gutmann describes communitarian critics of Rawls in terms of "the tyranny of dualisms," which argues that "either our identities are independent of our ends, leaving us totally free to choose our life plans, or they are constituted by community, leaving us totally encumbered by socially given ends; either justice takes absolute priority over the good or the good takes the place of justice."³ Gutmann notices that the both poles of this dualism are tremendously limited, and that pitting them against each other prevents discovering improved conceptions of justice and identity.⁴

Indeed, guided by the tyranny of dualisms it is tempting to simply deny that Rawls could have anything meaningful to contribute to the question of identity at all. But this would be too fast. My goal in the first part of this thesis is to acknowledge the need to think through how to best balance individuals' identity with the social world they live in. This is a crucial task because it opens a space for considering how to best improve life in pluralist democracies and for refining our conceptions of justice and identity. Yet this task is also challenging because of the entrenched assumption that individuality and social embeddedness are mutually exclusive. This assumption is evident in the extensive literature on Rawls that finds his work to be individualistic and therefore antithetical to

explorations of identity. In spite of this assumption, I seek a more balanced interpretation of Rawls and shall illustrate that he has a lot to offer to contemporary struggles over identity. Of course, this contribution is not without its shortcomings. But as I shall show these criticisms are constructive and do not challenge Rawls' entire project. They help point the way toward improvements in his political conception and in our understanding of what is needed to simultaneously account for people's identities and their life in the social world.

Each of the three chapters of Part One respond to criticisms of Rawls by way of offering a more charitable and balanced interpretation aimed at discovering his contributions and shortcomings when it comes to helping with struggles over identity. Chapter one involves the question of whether Rawls' conception of the person is too abstract to account for social identity and of whether the Rawlsian state could foster ethically successful citizens. The second chapter asks whether Rawls' view of human nature is too individualistic to account for cultural identity. Finally, chapter three explores Rawls' distinction between public and private in light of critics who claim that it is too restricted to account for gender and the family. In the end, I hope to expose the limitations of Rawls' theory as well as disclose its guidelines for life in pluralist society.

Notes

¹ See Charles Taylor, "Atomism," *Philosophy and the Human Sciences: Philosophical Papers*, Volume 2 (Cambridge: Cambridge University Press, 1985) and Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth, 1988). Additionally, Alan Haworth provides a summary of critiques and a defense of Rawls in "Liberalism, Abstract Individualism, and the Problem of Particular Obligations," *Res Publica* 11 (2005): 371-401.

² See Michael Sandel, *Liberalism and the Limits of Justice* 2nd Edition (Cambridge: Cambridge University Press, 1998); Alasdair MacIntyre, *After Virtue* 2nd Ed (Notre Dame: Notre Dame University Press, 1984); and MacIntyre *Whose Justice*; and Marilyn Friedman, "Feminism and Modern Friendship: Dislocating Community," *Ethics* 99.2 (1989): 275-290.

³ Amy Gutmann, "Communitarian Critiques of Liberalism," *Philosophy and Public Affairs*. 14.3 (1985): 308-322, 317.

⁴ Gutmann 318

CHAPTER 1: IDENTITY AND THE POLITICAL CONCEPTION OF THE PERSON

This chapter explores the question of whether John Rawls' political conception of the person is compatible with a robust sense of social identity. In the usual sense of the term, social identity refers to self-conception, describes social or cultural group membership, or invokes a political project aimed at achieving equal rights or other social needs. However, there is yet another way to think of identity, which places it firmly at the center of our lives. Several concepts have been offered to grasp at the contours and complexities that characterize human life. Pierre Bourdieu's *habitus* and Charles Taylor's social imaginaries attempt to capture the richness of identity in interpersonal, social, and cultural contexts. Kwame Anthony Appiah shares this inclination and he offers yet another concept, "ethical identity." He holds that social identities—genders, sexual orientations, religions, ethnicities, nationalities, professions, and vocations—are "ethically central" and play a pivotal role in people's lives. "Your identity," Appiah explains, "your individuality, defines your ambitions, determines what achievements have significance in your own particular life."¹ In this sense, identity refers to who and what you are, who you want to be, and how you have come to understand your life and envision your future. Ethical identities have political significance too.² Recognizing that all lives are made in a social context, Appiah argues that the government has important duties to help citizens shape their ethical identities, improving their chances at an ethically successful life.

The prospect of Rawls' infamously abstract conception of the person acknowledging let alone fostering social identity in this sense may seem troubling. Rawls has contributed profoundly to the question of how to conceive of a just society, a question

important to everyone no matter his or her identity. But his admittedly abstract conception of the person is criticized for being too lofty and too sparse to account for the intricacies of identity. Further, Rawls is notorious for demanding that the state remain neutral with respect to comprehensive philosophical, moral and religious doctrines; we may be warranted in suspecting that the Rawlsian state could not do its duty to citizens, as Appiah believes ethical identity demands.

My contention is that many criticisms of Rawls' conception of the person are based on the misunderstanding that abstraction and neutrality rule out the possibility that it could be amenable to identity. Neutrality and abstraction may indeed be problematic traits in Rawls' political conception, but they may not warrant ruling out Rawls' potential contribution to our understanding of social identity. I argue that while the political conception has its limits, it is compatible with a sense of social identity richly conceived, and also requires that the state dutifully foster certain values, ambitions and characteristics in its citizenry. In the first section, I illustrate how Rawls' political conception of the person is complementary to his notion of moral identity, a candidate social identity concept. The second section explores whether the political conception of the person is too neutral to foster ethical success, as Appiah understands it. In conclusion, I disclose the strength of Rawls' political conception of the person as I interpret it, and I address two difficulties regarding abstraction and neutrality in hopes of offering a critique that more fully considers Rawls' position.

I. The Political Conception of the Person

The first step in my argument that Rawls' conception of the person and social identity are complementary requires tending to a popular misunderstanding. Many

thinkers have worried deeply over Rawls' notion of personhood as it relates to the original position. Michael Sandel offers perhaps its most famous expression. His main concern is that the Rawlsian person is an abstract Kantian metaphysical entity that is detached from any aims and commitments and, thus fails to capture meaningful human experience and value.³ In his eyes, Rawls paints human beings in a lonesome and disenchanting hue. This is especially true of the original position in which persons are placed behind the veil of ignorance where their knowledge of who and what they are, their identity, is abstracted from them for the purpose of making important political decisions.⁴ Stripped "of all possible constitutive attachments," Rawls' person is an ethically frail, thin image of a human being.⁵ If such a conception of the person is "wholly without character" as Sandel argues, it cannot be a friend to identity.⁶ Further, he states "The identity of the agent is barren of constituent traits so that no aims... can be essential to it."⁷ Indeed, if social identity pertains to a person's traits and defines her aims, then Rawls fails to capture it.

My argument must be able to meet the criticism that Rawls' understanding of the person is barren, thin, and incomplete insofar as it is abstract and metaphysical. Rawls is unwilling to give up on abstraction. However, his conception of the person need not be understood metaphysically. I shall show that when Rawls *political* conception of the person represents democratic citizens it also captures an important aspect of social identity. In route to this goal, I describe how Rawls sets up the original position to illustrate how persons go about deciding on principles of justice. And I argue that this does not require dependence upon metaphysical assumptions about the person.⁸

Rawls' justification of abstract points of view is helpful in making this case. He asserts that moving to greater levels of generality is useful for finding solutions to the most intractable social and political problems. As he states, "The work of abstraction... is not gratuitous" (*PL* 45). Instead, he considers the retreat to more abstract levels to be a solution to the breakdown of shared understandings at lower levels. This "retreat" in the face of conflict is simply an appeal to general principles and fundamental ideas. Rawls finds these ideas in the democratic tradition: in the conflict over toleration, for instance, which found its "footing in equality" (*PL* 45). He advocates looking to these general principles in the interest of conceiving of society "as a fair system of cooperation over time" (*PL* 46). Further, he asks that we do so democratically by seeking broad agreement about principles of justice. This ascendance to greater levels of generality is modeled in the original position in which representatives of citizens "agree to the fair terms of social cooperation (as expressed by the principles of justice)."⁹

Sandel's worry that Rawls' original position represents an abstract, barren self is based on a misunderstanding of the way in which citizens are represented there. Specifically, the original position is mistakenly understood to offer a metaphysical definition of the person. But it is clear especially given Rawls' clarification of the idea throughout his career that he never meant the original position to refer to persons in a metaphysical way.¹⁰ The original position is merely a device of representation. It is laid out for the purpose of simulating an agreement made by persons considered free and equal under fair terms and conditions. Thus Rawls insists that the original position is a point of view of political justice "removed from and not distorted by the particular

features and circumstances” of everyday life and thus free of prejudice and favoritism (*PL* 23).

The original position models impartiality with the veil of ignorance. Behind the veil, parties in the original position are restricted from knowing many aspects of themselves or each other; they are ignorant of the race, class, gender, talents, and endowments of the citizens they represent. Rawls is clear that the veil of ignorance is only meant to model the “acceptable restrictions” placed on the reasons that could be used to justify choosing particular principles of justice and rejecting others (*JF* 80). Any appeal to one’s own social position is unacceptable, on Rawls’ view. “The fact that we occupy a particular social position, say, is not a good reason for us to accept, or to expect others to accept, a conception of justice that favors a particular position” (*JF* 18). Instead, Rawls asks that the parties and the citizens they represent “take into account the good of all” (*PL* 106). The veil of ignorance ensures that parties in the original position could not promote their own interests without promoting all the other parties’ interests as well.¹¹ Bernard Williams describes this as “an elaborate and simple idea.”¹² Rawls specifies that a “fair system of arrangements is one that the parties can agree to without knowing how it will benefit them personally.”¹³ The original position simply models fair circumstances by imposing restrictions that require impartiality and thus eliminates prejudice and favoritism.

There may be several reasons to question whether the original position is the most sensible way to accomplish fair agreement about the principles of justice. However, an argument against it could not be built upon the premise that the original position distorts *real* persons’ in egregious ways. The original position is no place for real persons. It is

merely a point of view for considering what fairness requires. However, the original position certainly warrants the suspicion that Rawls could not account for social identity. He does, after all, ask us to imagine ourselves without one. To address this concern, I discuss Rawls' political conception of the person as free and equal.

Rawls' *political* conception of the person emerges in *Political Liberalism* where he further distances himself from metaphysical notions of personhood and responds to a mistake he made in *A Theory of Justice* where he offered a notoriously normative or comprehensive conception of the person (*PL* xvi).¹⁴ In *Political Liberalism* Rawls offers an understanding of the citizenship that assumes that persons are voluntarily engaged in social cooperation. That is, a person is someone who is engaged in social life with others. According to Samuel Freeman, he provides an "empirical basis for accepting an ideal of citizens as free and equal persons with the two moral powers."¹⁵ Thus he corrects his previously normative view of persons and further disabuses us of the erroneous metaphysical suspicions.

The political conception of the person as free and equal is simply based on the fact of social cooperation and the capacities we must develop to engage in such social behavior.¹⁶ The two moral powers describe these capacities in the most basic sense:

- 1) The capacity to understand, to apply, and to act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social cooperation.
- 2) The capacity to have, to revise, and rationally to pursue a conception of the good. Such a conception is an ordered family of final ends and aims which specifies a person's conception of what is of value in human life, or...what is regarded as a fully worthwhile life. (*JF* 19)

Ideally, persons are *equal* because they possess an equal requisite amount of the moral powers. This guards against prejudice and favoritism in political considerations and

protects all identities from unequal treatment. No society that conceives of political persons as equal could justify slavery, castes, or other institutionalizations of inequality. Thus the political conception of the person as free and equal belongs to a society governed according to the political conception of justice, which guarantees basic rights and liberties (*PL* 33). Persons are *free* because they see each other and themselves as “having the moral power to have a conception of the good” (*PL* 30). As the second moral power states, people are not required to have the same conception of the good throughout their lives. One may convert religions, change her devotions, or join new affiliations. Regardless of such changes, citizens’ “political identity as free persons is not affected” (*PL* 30). Thus the political conception of the person as free and equal means that people of all identities must be treated equally regardless of their identity, and that political citizenship does not depend on a person’s conception of the good.

Rawls seems to have moved a step closer to offering a notion of personhood that could be compatible with a robust sense of social identity. However, there is still a sense in which large tracts of social identity are left out or even abstracted from in the political conception. There may be plenty of reasons for concern about this exclusion from the political point of view. I discuss two of these concerns in the third section of this chapter. For now, I would like to turn to how the political conception of the person is centrally important to the lives of citizens and relates to their self-conception. Thus, I offer the interpretation that the political conception of the person and social identity are complementary ideas. I also expose Rawls’ contribution to the notion of social identity itself.

Rawls offers three interpretations of the political conception of the person as *free*.¹⁷

In exploring the first, Rawls coins the term “moral identity,” which I interpret as an attempt to capture a robust sense of social identity.¹⁸ Rawls holds that moral identity is so centrally important to our lives that if it were suddenly lost, “we would be disoriented and unable to carry on” (*PL* 31). Indeed, not unlike Appiah’s ethical identity, Rawls understands moral identity to mean “our conception of ourselves” or “the kind of persons we want to be” (*PL* 31 n.34). However, a distinguishing feature of moral identity is that Rawls analyses the concept into “two kinds of moral commitments, which give shape to a persons’ life, what one sees oneself as doing and trying to accomplish in the social world” (*PL* 31). One set of commitments refers to a person’s political aims, the desire to see the values of justice embodied by the political institutions of their society (*PL* 30). The second type involves a person’s nonpolitical aims, her conception of the good, deep commitments, personal affairs, loyalties, devotions, and beliefs. It is important to note that moral identity is composed of both political and nonpolitical aims and commitments.

While the political and nonpolitical aims and values intermingle in moral identity, the political conception of the person only specifies citizens’ political aims and values. As free persons, citizens have the capacity and right to see themselves “as independent from and not identified with any particular conception [of the good] that they affirm at any given time” (*PL* 30). It is tempting to accuse Rawls of an untoward exclusion here. However, it is important to note that the conception of the person as free requires that one’s identity, as a matter of basic law remain unaffected by changes in nonpolitical identity. Hence, it refrains from invoking any nonpolitical aims. For example, the political conception of the person ensures each citizen’s freedom to change religions. When a person converts religions, her moral identity may change in profound ways.

Conversion certainly alters a person's conception of the good, and will most definitely affect her aims and her commitments. However, Rawls stipulates that her public identity—her basic rights and duties—ought to remain unaffected by such changes. (*PL* 31). That conversion implies no change in public identity requires that one's citizenship not be based upon her comprehensive conceptions of the good. It is based instead on her possession of the two moral powers, her capacity to engage in social cooperation.

In effect, the political conception of the person as free provides citizens great leeway in how they come to understand their moral identity and what life is best for them. At the same time, the political conception of the person is an attempt to “represent, theoretically, how we actually conceive of ourselves in our capacity as democratic citizens.”¹⁹ This political self-conception is nontrivially related to how Rawls understands social identity. This is because moral identity captures both the dynamic intricacies of our deeper nonpolitical aims and our political aims simultaneously. Thus an important aspect of our social identity is the sense we have of ourselves as “citizens.” Even while the political conception is detached from social identity, our understanding of ourselves as citizens exists along side our comprehensive understanding of ourselves. Within moral identity, political aims are understood to be as central to the lives of people as nonpolitical aims. The political conception of the person must be complementary with social identity, because it picks out and helps to represent our political aims, while safeguarding our freedom to pursue and revise our nonpolitical aims.

Rawls' great contribution to understanding the meaning of social identity is his insistence that political values like equal respect, liberty of conscience and freedom of thought are matters of central importance in the lives and self-conceptions of people in

pluralist democracies. However, even while Rawls gives the political an important seat in moral identity, we may still worry that the nonpolitical aspect of moral identity remains outside of the political conception. This consideration points to a deeper criticism regarding whether social identity ought to have a bigger role in the political. I return to this question in Section III. More immediately, I consider the role of the state in fostering the political aims of its citizens.

II. Appiah, Soul Making and Ethical Success

I now turn to the question of whether the Rawlsian state could help foster ethical success in its citizens. Appiah charges that Rawls is too neutral to allow for state interventions intended to foster citizens' ethical success. He states, Rawls "insisted that governments should be neutral among different reasonable conceptions of the good life, taking the fact of pluralism—the fact that there is a variety of such conceptions—to be an inevitable condition of modern democratic life."²⁰ According to Appiah, if Rawls is neutral with respect to conceptions of the good, then the state could have no interest in the quality of citizen's lives. Rawls indeed argues that the state must remain neutral by not endorsing or favoring any comprehensive doctrine.²¹ However, given Rawls' understanding of moral identity, it is not entirely clear whether Rawls' neutrality entails that the state must remain aloof to its citizen's success: the Rawlsian state could certainly foster and develop people's political aims and commitments. The task of this section is to clarify whether Rawls' neutrality prevents the state from acting in the interest of citizen's *ethical* success. In order to accomplish this I first consider Appiah's understanding of ethical success and what it would mean for a state to foster it through what he calls "soul making." Following Martha Nussbaum's cue, I then argue that Rawls' political

conception is a “partial ethical conception,” and therefore the state can help citizens succeed.²² While this does not entail directly impacting citizens’ comprehensive aims and commitments, I shall show that it certainly “improves their chances of an ethically successful life.”²³

The question of ethical success is intimately related to the role of others in shaping our notion of the good life. If a person constructed her notion of the good life all on her own, her success is measured according to whether *her* wants and desires are met. This is a popular tenet of modern morality, but it proves to be an inaccurate, if not dismal, view of life. Human lives are lived socially; we describe the good using a public language and make our way through life in a populated world. So Appiah articulates a notion of the good life in which others play a profound role. “A person’s shaping of her life flows from her beliefs and from a set of values, tastes, and dispositions of sensibility, all of these influenced by various forms of social identity.”²⁴ For Appiah, life is always shaped from a combination of social circumstance, personality, and experience. So ethical success is by and large determined by looking at a how well a person shapes her life out of the social material given to her by society. A life goes well “if a person has mostly done for others what is owed them (and is thus morally successful) and has succeeded in creating things of significance and in fulfilling her ambitions (and thus is ethically successful)” (162). The role of the state in the former is largely uncontroversial. In the latter the role of the state is hotly contested.

The state fosters ethical success in its citizens when it improves their chances of fulfilling their ambitions and creating things of significance. As a firm believer in individual autonomy, Appiah suggests “If we are the authors of ourselves, it is the state

and society that provide us with the tools and the contexts of our authorship; we may shape ourselves, but others shape our shaping.”²⁵ Appiah imagines a society characterized by individual liberty but also governed by a caring and carefully anti-paternalist perfectionist state. Perfectionists believe that what the state ought to do cannot be determined simply by referencing what citizens already desire.²⁶ Sometimes, Appiah notes, “it may well be that your good requires that your desires be changed.”²⁷ Perfectionists have a more-than-want-regarding or an ideal-regarding conception of human happiness, which defines human flourishing.²⁸ The ideal-regarding conception is usually discussed in terms of wants and desires. To support his position on individuality and ethical success, Appiah argues for an extension of this ideal-regarding view.²⁹ Rather than discuss well-being only in terms of desires, he argues that we should consider ethical identity, and that we should focus on “a consideration not (just) of what we want but of who we are.”³⁰ Such consideration moves the basic question of well-being from individual desires to include questions concerning “what sort of life one wants to make.”³¹ Thus, the state has a particular duty to influence “not merely the fulfillment of our ambitions, but the nature of our ambitions.”³² That is, the state has a role in helping to shape our identities such that we do what is best for ourselves and strive for success in whatever identity we decide to make.

Emphasis on the nature of our ambitions is certainly more than a want regarding; it is soul making. “By soul making I mean the project of intervening in the process of interpretation through which each citizen develops an identity—and doing so with the aim of increasing her chances of living an ethically successful life.”³³ Appiah is careful to distinguish soul making from the ways in which any state could affect a life, i.e. through

protection of person and property, the enforcement of contracts, the dissemination of information, providing resources and opportunities etc. Soul making requires intentional state action directed toward improving the ethical success of individuals. The project of soul making involves a particular set of interventions that seem for the most part agreeable to many liberals: the state should help citizens live more rational lives, the state should prohibit discrimination so that all citizens can enjoy a life of dignity free of prejudice, and the state should educate the young to become self-determined and ambitious citizens.

Appiah's suspicion that the Rawlsian state does not condone soul making seems well founded given Rawls' frequent rejection of perfectionism, and his preference for political autonomy over moral autonomy. To be sure, Rawls would reject soul making insofar as it based on a comprehensive liberalism. Similarly, Appiah would reject Rawls' ubiquitous comprehensive/political distinction, which finds its way into his notion of social identity itself when Rawls distinguishes between political and nonpolitical aims (*PL* 31). How these differences get settled will depend on whether we should prefer comprehensive or a political liberalism. Instead, of making an argument for one at the expense of the other, I would like to focus on how Appiah's contribution to our thinking on social identity could help us understand the reach of Rawls' moral identity. Indeed, Appiah's argument for soul making is an invitation to consider (1) whether Rawls' political conception of the person is also an *ethical* conception, (2) to what extent a state that understands citizens as such is capable of fostering ethical success, and (3) what the Rawlsian state's ethical project would entail. I consider each in turn.

Consideration (1) regards whether Rawls' political conception of the person is too neutral to be considered an ethical conception. Of course, it is easier to consider moral identity as an ethical concept. Insofar as ethics refers to wider considerations of what kinds of lives are good or bad, moral identity's concern with "what kind of person one wants to be" seems to invoke a wide and ethical sense.³⁴ Thus it can be inferred that the political conception of the person is a partial ethical conception, because it represents the political aspect of moral identity. Additionally, Nussbaum argues that regardless of its neutrality among comprehensive doctrines, "The Rawlsian state...is not ethically neutral. The political sphere is what Rawls repeatedly calls a 'partial moral conception; he also characterizes it as a 'module' that can be attached to the rest of one's comprehensive doctrine."³⁵ Nussbaum suggests that the political sphere is a partial ethical conception.³⁶ It is partial because it does not use ethical ideas like the "soul" or "moral autonomy" in political deliberation; these terms are controversial for many comprehensive doctrines (Nussbaum, 303). However, according to Nussbaum the political uses shared ethical concepts like equal respect, the priority of liberty, and the difference principle. She argues that regardless of its neutrality the Rawlsian state is quite capable of fostering political values in its citizens. Thus, the political conception of the person is a partial ethical conception and the values and aims that make up one's self-conception as a citizen are partially ethical ones.

Of course, Appiah's ethical identity is a fully ethical concept. Insofar as the state has a duty to foster it, there is no restriction on how and where the state can interfere, so long as it respects autonomy and individuality. That is, Appiah does not parse what aims and ambitions the state could perfect, and the Appiahian state would certainly look to

foster citizen's deeper aims. On the other hand, the Rawlsian state is restricted to the political conception of the person, and so it could only foster citizens' political aims and commitments. The nonpolitical aims and commitments are out of the bounds of state action. Thus, the line that restricts the Rawlsian political conception to a partial ethical conception is drawn down the middle of Rawls' notion of moral identity.

I now turn to consideration (2), regarding whether the Rawlsian state could foster ethical success. The answer turns on the question of whether or not focusing only on political aims is sufficient for helping people achieve ethical success. Recall that for Appiah people are ethically successful if they fulfill their ambitions and create things of significance. However, some of these ambitions and things of significance may be entirely related to a comprehensive doctrine. A person may desire to become a minister or write scholarly articles on Kant. While the Rawlsian state would certainly not inhibit these nonpolitical ambitions, it is hard to see how it could have a direct and intentional hand in cultivating these specific kinds of success. So it is not the case that focus on political identity is enough to foster full ethical success. It could however, foster partial ethical success. While not direct and intentional, partial ethical success entails fostering citizens' political identities and ensuring adequate material well-being. Fostering citizens' partial success will proceed along terms much narrower than Appiah's view. It will entail "ensuring continued support for the values that form part of the political conception itself," and thus cultivating citizens' political aims and commitments.³⁷ This would involve, among other things, educating citizens to understand and think critically about their own citizenship. Additionally, Rawls helps improve the chances of citizen's ethical success by focusing on material and economic conditions. According to Nussbaum, the

Rawlsian state has a duty to ensure that “general prerequisites of well-being” are met. The prerequisites are intended for the purpose of improving people’s lives in general by providing a just distributive scheme that ensures all persons receive basic needs.³⁸

In light of consideration (3) I would like to describe Rawlsian state projects that could promote (partial) ethical success. The Rawlsian state could participate in any project that concerns the module of political values that all citizens share as part of their moral or social identity. As Nussbaum says: “The state does not have to pussyfoot around with these things: it can teach them flat out, as the best ideas to live with together.”³⁹ She uses the example of teaching young students about anti-discrimination. Because our constitution forbids discrimination based on race, the state is justified in educating students about anti-discrimination laws themselves, but it also “should actively bring up small children as nonracist citizens.”⁴⁰ For that matter, steps toward political inclusion through anti-discrimination legislation is itself a powerful ethical project.

Antidiscrimination legislation could improve your chances at ethical success by ensuring that you have fair opportunities to gain employment and receive education. However, it could also improve your chance at ethical success by improving your self-conception and social identity. When the state extends its ideal of citizenship to those previously and unduly excluded, it invites them to change, develop, and actualize political aims that were once unavailable to them. Thus they are able to reshape their conception of themselves as citizens for the better (*PL* 84). As Rawls states “The ideal of citizenship can be learned, and may elicit an effective desire to be [a free and equal] person” (*PL* 71). Thus a state’s commitment to anti-discrimination and inclusivity partially fosters people’s social

identities when it inspires them to see themselves in terms of the political conception of the person: as a free and equal citizens.

III. Guidelines and Shortcomings

Throughout this chapter I have emphasized several strengths in Rawls' political conception of the person. There are at least two features of this conception that offer indispensable and helpful guidelines for struggles over social identity. First, the conception of the person as free and equal ensures that the basic institutions of society are set up in such a way as to benefit all citizens, regardless of identity. A person's nonpolitical identity does not affect her identity as a matter of basic law. Thus the political conception of the person takes into account the fact that people live in rich contexts and have deep ambitions that change and develop throughout making a life. Second, Rawls' moral identity understands political values to be at the center of human life, along with deeper aims and ambitions. This insight exposes a profound connection between the way in which people make their lives and their understanding of the terms of their citizenship. Thus the state can help citizens foster their political aims and commitments, which have a resoundingly positive effect on their self-conception.

My strategy in this chapter has been to respond to critiques of Rawls by offering clarification about the role of abstraction and neutrality in his political conception of the person. I now offer two shortcomings with respect to Rawls' ability to help with struggles over identity that emerge regardless of the compatibility of the political conception and moral identity. The first involves the original position and its veil of ignorance; the second addresses the possibility and appropriateness of neutrality. In light of these

shortcomings, I gesture toward reconsidering the sharp distinction between public and nonpolitical aims within political considerations.

In contrast to the critique of the original position I discussed in Section I, I now turn to an epistemological critique to reveal a severe shortcoming in the implementation of the veil of ignorance. Seyla Benhabib questions the extent to which Rawls succeeds in his goal of modeling impartiality when he invokes the veil of ignorance.⁴¹ Benhabib grants that being deprived of self-knowledge may cause individuals to be more considerate of other social positions, as Rawls hopes the veil of ignorance does. However she argues that restricting knowledge of others is detrimental when it comes to directly confronting and remedying social prejudices. Consider the two possible ways we could get to know one another in the original position.⁴² First, parties could know each other behind the veil of ignorance because they all are “similarly situated.” What you could know of others behind the veil is equivalent to what you know of yourself: you are a free and equal person who possesses the two moral powers (*JF* 80). That is, you could know each other in terms of the political conception of the person. Second, behind the veil we know of others because we bring information with us from our social life, including assumptions and prejudices we may have about them. But this information is a mere list of nonpolitical identities that are disassociated from persons once parties are behind the veil of ignorance. The heart of the problem, for Benhabib, is that this information is restricted, but it is not ever confronted or disposed of.

On the one hand selves in the ‘original position’ bring with them into the process of imaginary deliberation all the assumptions and prejudices which guide them in everyday life; on the other hand, these assumptions and prejudices are not really ‘defused,’ that is confronted, discussed, worked out and worked through in an open dialogue.⁴³

Under the epistemic restrictions of the original position, persons are simply unable to deal directly with prejudice. Without direct knowledge of the experiences of people of different nonpolitical identities, citizens could not confront their own prejudices. Doing so requires learning about the lives of other people.⁴⁴

In terms of the previous discussion of moral identity, the heart of this shortcoming lies in the fact that the content of nonpolitical identity is abstracted from in the political conception of the person. As I have shown, its absence is directly connected to the guideline that citizenship is not based on nonpolitical identity. An adequate Rawlsian response to Benhabib's critique requires working out how to include nonpolitical content in the political on one hand, while maintaining the guideline on the other. This may be possible because Rawls' own political conception of the person as free and equal requires first and foremost setting up fair terms and conditions. If Benhabib's epistemological critique holds and free exchange of information is required for confronting prejudice, then it seems that Rawls' political conception of the person may require rethinking the original position for deciding on the principles of justice. Indeed, Rawls' own political conception of the person may require the revision of the original position.⁴⁵ Nussbaum argues that the contract doctrine simply does not do justice to the inviolability of each person as a matter of justice.⁴⁶ Rather than seeing each other as rough equals behind the veil of ignorance with only political identity, Nussbaum suggests thinking of each other "as people with varying degrees of capacity and disability."⁴⁷ Doing so, of course, would require having information about one another, including our varying conceptions of the good life and deeper aims and ambitions. This critique suggests inviting the nonpolitical details of individual's lives into the political conception of citizenship. Indeed, it may

require understanding political and nonpolitical aims to be as entwined in political life as they are in nonpolitical life.⁴⁸

The second shortcoming concerns Rawls' appeal to the "unfortunate" term: neutrality (*PL* 191). Even though on Nussbaum's reading Rawls is not "ethically neutral," he still proffers a notion of neutrality, which he calls neutrality of aim. "Neutrality of aim means that those institutions and policies are neutral in the sense that they can be endorsed by citizens generally as within the scope of a public political conception" (*JF* 153 n.27). To garner this wide endorsement, the state must remain "neutral" with respect to different conceptions of the good; it must avoid controversial comprehensive issues.⁴⁹ Furthermore, the political conception of the person as free and equal requires that the political sphere remain "neutral" with respect to the intricacies of nonpolitical identity. As one of Rawls' guidelines suggests, the state would violate a person's equality if it based citizenship on identity, and it would violate a person's freedom to pursue their own conception of the good if it governed according to one such conception.

However, neutrality is notoriously called into question. Appiah explains that it is simply impossible for states to act neutrally: "necessarily, many state acts will have differential impacts on people of different identities, including religious identities."⁵⁰ At the same time, Appiah offers "neutrality as equal respect" as a neutrality concept that I argue is similar to neutrality of aim and is salvageable from criticisms of other neutrality concepts.⁵¹ Neutrality as equal respect, "insists that state acts should treat people of diverse social identities with equal respect."⁵² This is the idea that the state should be neutral among identities such that the state does not disadvantage anyone on the basis of

his or her identity. Appiah's analysis of this neutrality concept helps us to see the difficulty in Rawls more clearly.

Neutrality as equal respect problematically relies upon a tremendously general consideration of identity. Appiah attaches neutrality as equal respect to a particular test: "where an act disadvantages people of identity L, they can reasonably ask whether they could have been treated better, had they not been regarded as L's."⁵³ The test is useful in discerning when a state inadvertently advantages certain identities and thus fails to act in accordance with neutrality as equal respect.⁵⁴ The state does so when it overtly or inadvertently treats different identities unequally. So the test is useful in cases of blatant discrimination against social groups. For example, if voting rights within a state are differentially based on identity, then the state fails to satisfy neutrality as equal respect. Before suffrage, the state's treatment of women in the US did not pass the test. Women would have been treated better had they not been regarded as women—they would have been treated better had they been regarded as men. Neutrality as equal respect's important strength is that it demands: "The government should not aim...to constrain...identity as such."⁵⁵

However, Appiah notes that the test is unhelpful under circumstances in which the specificity of an individual's identity is at issue. Consider Mr. Thomas, a Jehovah's Witness who quit his job for religious reasons after being transferred by his company to a position that manufactured military weapons.⁵⁶ He was refused unemployment payments, because an Indiana court held that his pacifism did not warrant an exemption from unemployment law. In applying the neutrality of equal respect test, Appiah points out that the relevant question is "whether he would have been granted unemployment pay if he

had quit his job for a reason of conscience other than a Jehovah's Witness's."⁵⁷ But what corollary identity should we consider? We could consider how he would have been treated had he been a secular pacifist or a person who quit his job because of a more mainstream religious conviction, such as the Sabbath.⁵⁸ But depending on which we choose, the test provides us with no clear answer: he would have fared better had he been a member of a mainstream religion and worse had he been considered a secular pacifist.⁵⁹ Indeed on closer inspection, Appiah notes that both of the tribunals that rejected Mr. Thomas' claim were acting consistently with neutrality as equal respect: *his faith* as a Jehovah's witness played less of a role in the decision than the fact that other Jehovah's Witnesses permitted work on armaments. That is, they interpreted his particular act of pacifism as it were a result of "personal" beliefs rather than religious ones.⁶⁰ Appiah concludes that we should not defend this outcome just because it is consistent with neutrality as equal respect. But we can also conclude that neutrality as equal respect is helpful only when applied to identities generally. The shortcoming, for Appiah, amounts to the inability of neutrality as equal respect to consider the particularity of individual identities in subtle and nuanced, but important contexts. Neutrality as equal respect fails to acknowledge that Mr. Thomas faces a serious and ethically undeserved dilemma: He can either live according to his religious convictions or feed his family. A state that respects Mr. Thomas has a duty to prevent this bleak choice. Neutrality as equal respect is insufficient.

While it may not be a perfect analogy for Rawls' neutrality of aim, Appiah's consideration of the shortcoming of neutrality as equal respect is quite similar to a one we find in Rawls. From within the political conception, Rawls would consider any citizen

according to her political identity as if she was any other citizen, and, thankfully her identity would not dictate the terms of her citizenship. This is a quite necessary protection, and it is indispensable for life in a pluralist society. But is it enough? The political conception of the person is only capable of accounting for moral identity generally. It acknowledges that you have one and that you ought to be free to define it or alter it as you see fit. But the nonpolitical aspect of your moral identity is kept out of view. Neutrality of aim and the political conception of the person are simply insufficient insofar as they fail to politically consider persons in their specificity, in terms of the deeper aims and commitments of moral identity.

Appiah's contention is that identity-derived interests deserve serious attention within the political sphere, and this includes conceptions of citizenship. Rawls seems to err on the side of caution with his neutrality of aim and his political conception of the person. He worries that invoking rich social identities in formulating a conception of citizenship will lead to state endorsement or favoritism and restrict the freedom and equality of persons in democratic society. However good his intentions, this stanches the flow of social learning and prevents the political consideration of individual's self-conception and social location. The question remains whether the attempt to include the complex contours of nonpolitical identity within political considerations could amount to endorsement, restriction, or exclusion. But so long as nonpolitical identity never fixes the terms of citizenship, it seems unlikely that the political consideration of the central matters of a person's moral identity as a whole could be dangerous. Indeed, in many of the complex struggles over identity emerging in our growing pluralist society, justice seems to require inviting comprehensive identity issues to the political table.

Notes

¹ Appiah 163.

² Note that Appiah's ethical identity has a much more positive political significance than other political notions of identity. Ethical identity suggests that the state has a duty to improve citizens' lives. Ordinarily, identity is invoked politically in order to secure basic rights of equality and protection from discrimination, while usually maintaining a boundary between state action and individual prerogative.

³ Samuel Freeman, *Rawls* (New York: Routledge, 2007) 332. Also see Joshua Cohen, "A more Democratic Liberalism" *Michigan Law Review* 92.6 (1994): 1503-1546. Cohen's account of Sandel's argument emphasizes that Rawls' original position "relies in the end on a particular account of the best life and a particular view of the person" (1514).

⁴ It is important to note that Appiah does not, at least explicitly share this concern. In discussing the liberal tendency toward abstraction, Appiah states, "The leaving-out was purposeful; and the purpose was not a negligible one. It was to make possible something that liberals talk about a good deal—respect for persons. And the ambit of 'respect' is precisely where the habit of liberal abstraction shows its strength" (xv). My treatment of it here is for wider considerations apart from Appiah's argument for soul making.

⁵ Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (Cambridge: Cambridge University Press, 1998) 179.

⁶ Sandel, *Liberalism* 179

⁷ Sandel, *Liberalism* 164

⁸ In the following discussion, I read Rawls' discussion of the original position from *Political Liberalism* and later works. I do not intend this to be a direct response to Sandel's critique of *A Theory of Justice*. My purpose here is to illustrate that the understanding of the self that Sandel imbues him with is exactly the idea that Rawls clearly seeks to avoid. See Freeman 333.

⁹ In addition, the original position "models what we regard—here and now—as acceptable restrictions on the reasons on the basis of which parties...situation in those fair conditions, may properly put forward certain principles of justice and reject others" (*JF* 80).

¹⁰ Many of Sandel's concerns regard the discussion of the original position in *A Theory of Justice*. After this work, Rawls clarified and revised many of his claims. He especially put distance between his conception of justice and "claims about the essential nature and identity of persons." See *JF*

¹¹ Thomas W. Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989) 93

¹² Bernard Williams, *Ethics and the Limits of Philosophy*. 1st ed. (Cambridge, MA: Harvard University Press, 1986) 78.

¹³ Williams 78

¹⁴ *Political Liberalism* draws a sharp distinction between political and comprehensive doctrines. Comprehensive doctrines consist of a person's moral, religious or philosophical point of view. People in a pluralist society rightfully disagree over conceptions of the good whether they are religious, philosophical, or moral. So there are many conflicting and irreconcilable comprehensive doctrines. In contrast, according to Rawls, everyone agrees on the political conception. Each reasonable comprehensive doctrine is able and willing to affirm the political conception for their own reasons. The content of the political conception "belong to and help articulate" the political conception of the person (*PL* 84). At the same time, the political conception is a "module" attached to every doctrine involved in the consensus. As I shall show, for Rawls, there is as tight relationship between the deep comprehensive aims and commitments of persons and the political values themselves.

¹⁵ Freeman 334

¹⁶ Freeman 335

¹⁷ The first sense of the citizen as free refers to citizens' capacity to have a conception of the good, the second regards citizens as self-authenticating sources of valid claims, and the third understands citizens as responsible for their ends (*PL* 30-33). Also, Freeman notes that in offering these three senses of freedom Rawls is attempting to reconcile Lockean and Rousseauian understandings of freedom. The first and third are positive freedoms. While the third refers to a status that citizens have as a matter of legitimacy. See Freeman 336-337

¹⁸ Moral identity is synonymous for nonpolitical identity and non-institutional identity (*PL* 30). However, I often use "nonpolitical" identity as shorthand for the nonpolitical aspect of moral identity and political

identity to refer to the political aspect of moral identity. I use moral identity to refer to both political and nonpolitical aspects of moral identity.

¹⁹ Freeman 135

²⁰ Appiah 158

²¹ Rawls calls this neutrality of aim and carefully distinguishes it from procedural neutrality. Justice as fairness is not procedurally neutral because it relies on more than the non-moral values such as consistency and impartiality. The principles of justice are substantive and express moral values, and are thus consistent with neutrality of aim; citizens can endorse them generally (*JF* 153 n.27).

²² Martha Nussbaum, "Political Soul-Making and the Imminent Demise of Liberal Education," *Journal of Social Philosophy* 37-2 (2006): 303.

²³ Appiah 164

²⁴ Appiah 163

²⁵ Appiah 156

²⁶ Appiah 157

²⁷ Appiah 157

²⁸ While a want-regarding conception refers only to what a person currently wants, an ideal-regarding conception regards what a person *ought* to want. This is after Brian Barry in Appiah 177.

²⁹ Appiah positions his argument for soul making in the context of informed-desire theory. See Appiah 170-178.

³⁰ Appiah 181

³¹ Appiah 180

³² Appiah 164

³³ Appiah 164

³⁴ Appiah defines ethics by way of Dworkin: "ethics 'includes convictions about which kinds of lives are good or bad for a person to lead...'" See p. xiii. Also see *PL* 31 n.34.

³⁵ Nussbaum, Political 303

³⁶ For an example of what it means to be a partial ethical conception, Nussbaum suggests that the Rawlsian state could: "Make it possible for all citizens to have decent health care, but it will not penalize unhealthy choices" and "it will give political rights and opportunities to all, but not compulsory voting" (Nussbaum, Political 305).

³⁷ Nussbaum, Political 304

³⁸ The second principle of justice requires that all social inequalities meet the conditions of fair equality of opportunity and the difference principle. The second principle of justice reads: "Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity and second, they are to be to the greatest benefit to the least-advantaged members of society (the difference principle). (*JF* 43). For Rawls a "workable list of primary goods" is specified by, among other things, the political conception of the person (*PL* 178). But this is problematic. Rawls asks: "Given the conflicting comprehensive conceptions of the good, how is it possible to reach such a political understanding of what are to count as appropriate claims?" (*PL* 179). Thus Rawls must find a way to specify all citizens' interests without reliance on any comprehensive doctrine. So he limits the primary goods to what people need as free and equal persons interested in socially advancing their view of the good. Questions abound regarding whether the list Rawls enumerates is complete and whether it could be applicable to every citizen. (See Chapter 5 below.) Indeed, Nussbaum notes that Rawls grappled with the enumeration of the primary goods throughout his life. It is enough for my purposes here to simply suggest, with Nussbaum, that the primary goods are evidence for the Rawlsian state's partial ethical concern for citizens. The primary goods stem from ethical concern about the opportunities afforded to citizens and the ability of individuals to live ethically successful lives.

³⁹ Nussbaum, Political 306

⁴⁰ Nussbaum, Political 306

⁴¹ Seyla Benhabib, *Situating The Self* (New York: Routledge, 1992). It is important to note that Benhabib's argument does not focus on the metaphysical character of the persons in the original position, as the critiques I previously considered did. She is quite aware of the representational sense of the original position and Rawls' constructivist project. She states, "we certainly never are and neither will we ever be in an "original position"" (Self 167). The focus of her criticism is largely epistemological. Additionally,

Benhabib's concern is directly parallel to Habermas' disagreement with Rawls. Charles Larmore notes that the famous conversation between Rawls and Habermas amounts to disagreement over the origin of the principles of justice. For Habermas, who Benhabib tends to follow, principles result from an actual consensus among real citizens acting according to the norms of discourse ethics. See Charles Larmore, *The Autonomy of Morality* (Cambridge: Cambridge University Press, 2008) 139-164.

⁴² Benhabib, *Self*

⁴³ Benhabib, *Self* 167

⁴⁴ Benhabib, *Self* 168

⁴⁵ Rawls himself suggests that the original position may not be the only way to reasonably decide and justify principles of justice. John Rawls, "The Idea of Public Reason Revisited" in *PL* 450.

⁴⁶ Nussbaum, *Enduring*

⁴⁷ Nussbaum, *Enduring*. Also see Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge MA: Harvard University Press, 2006), 30-31.

⁴⁸ For a defense of Rawls on this point see Samuel Freeman, "Frontiers of Justice: Contractarianism vs. the Capabilities Approach," *Texas Law Review*, 85.2, 2006, 385-430.

⁴⁹ But this is not to say, as I discussed above, that Rawls is ethically neutral. Rawls insists that this type of neutrality is to be distinguished from procedural neutrality, which does not appeal to any moral values. The principles of justice, the political conception of the person express substantive ethical values, like equal respect, and are not to be understood in terms of procedural neutrality.

⁵⁰ Appiah 89

⁵¹ See Appiah's discussion of Nagel pp 92-93

⁵² Appiah 81

⁵³ Appiah 91

⁵⁴ Appiah 99

⁵⁵ Appiah 100

⁵⁶ *Thomas v. Review Board of the Indiana Employment Security Division* (1980), 450 U.S. 701, 101 S.Ct. 1425, 67 L.Ed.2d 624. in Appiah 96

⁵⁷ Appiah 97

⁵⁸ Appiah 97

⁵⁹ In *Sherbert v. Verner* 374 US 398 (1963) the court ruled that unemployment benefits cannot be denied to a person who turns down a job that would require them to work on the Sabbath.

⁶⁰ Appiah 98

CHAPTER 2: THE SOCIAL NATURE OF HUMAN BEINGS

Political thinkers have offered several different accounts of human nature. Some emphasize the social and communal character of human life. Others take a more atomistic view, taking the individual alone as the political unit. Notoriously, the individualist warns that too much emphasis on social groups constrains individual liberty. Isaiah Berlin describes the desire “for a life of common dependence” within social groups as a fallacious attempt to achieve liberty, and he identifies collectivities with totalitarianism and dictatorships.¹ Proponents of the communal view of human nature, however, fear that the latter is so individualistic that it strips human beings from the cultural and social context that constitute them.² This causes people to become estranged from one another and creates divisions between the multiple facets that make up an individual life. Thus, individualist political theories are criticized for purporting a view of human nature that lends itself quite easily to undemocratic bureaucracies.³ While the individualist view is often associated with liberalism and the communally oriented view is often described as illiberal, it is not the case that liberalism necessitates one or the other. Indeed, this chapter concerns attempts on behalf of two liberals, John Rawls and Will Kymlicka, to reconcile these views within a liberal framework.

The question of how Rawls can help with cultural identity can be answered simply by determining the extent to which he acknowledges the importance of culture and community in human life. Kymlicka points out that Rawls fails to take the importance of culture seriously enough. So he seizes this opportunity to offer an extension of Rawls’ theory of justice that can accommodate the needs of minority

cultures and remedy the injustices committed against them by majority cultures.⁴ While I agree that there may be serious shortcomings in Rawls' ability to accommodate cultural claims, I argue that Kymlicka's appropriation of Rawls is contradictory and mistaken. My argument begins with a reading of Rawls' understanding of human nature. Doing so sets the tone for a discussion of Kymlicka who argues on Rawlsian grounds that minority cultures ought to be granted group rights. Even while I argue that Kymlicka's argument is suspicious, it reveals an important Rawlsian guideline for life in a pluralist society and exposes a potential shortcoming regarding the capacity of Rawls' political liberalism to sufficiently accommodate individuals of various cultures.

I. Human Nature and Society

Rawls' *Political Liberalism* "begins by taking the facts of social group membership seriously."⁵ Rawls does so, as Iris Marion Young suggests, largely in response to the communitarian criticism that *A Theory of Justice* relies so heavily on the individual that it fails to make sense in reference to the gregarious nature of human life. It failed, that is, to recognize the fact that human beings have "responsibilities and allegiances—families, clans, nations, ethnic groups, religious communities, occupational groups, cultural communities defined by region or social class."⁶ Young rightly notes that Rawls comes to acknowledge this fact, and that he does so in a much different fashion than the communitarians who focus on the good as the unifying nexus of communal political life. Given that *Political Liberalism* focuses on the fact that there is a plurality of different conceptions of the good that are possibly irreconcilable, Rawls faces the difficult problem of how to conceive of a stable society while at the same time taking a plethora of social groups and their members seriously. He expresses the problem of

political liberalism as: “How is it possible that there may exist over time a stable and diverse society of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines?” (*PL* xxv) For Rawls, solving this problem requires first and foremost not viewing political society as a community. So if Rawls indeed takes the fact of group membership seriously, he must do so in such a way that is compatible with individualism. His solution to this seeming contradiction is the overlapping consensus. Prior to discussing this solution, it is important to understand Rawls’ argument against the notion of political community.

Rawls defines community as a “special kind of association, one united by a comprehensive doctrine” (*PL* 40 n.43). He argues that treating political society in terms of community contradicts the fact of pluralism—the fact that society is made up of a diversity of conceptions of the good. Given the fact of reasonable pluralism, citizens simply should not be expected to accept a single comprehensive doctrine. “If we think of political society as a community unified in affirming one and the same comprehensive doctrine, then the oppressive use of state power is necessary for political community” (*PL* 37). This is the fact of oppression, and Rawls maintains that historical precedent for it was set during the Middle Ages and the Inquisition, in which the suppression of opinion and personal belief reigned supreme. So understanding political society in terms of a community requires the oppression of any commitments and opinions that deviate from the single comprehensive doctrine imposed by the community. Political community is inevitably unjust. Thus, Rawls demands that only a conception of justice that can be endorsed by all citizens can be justified.

Rawls' rejection of the idea of a political community should not be read as a denigration of community or group membership. Indeed, Rawls devises the overlapping consensus precisely in order to safeguard the coexistence of several social allegiances, groups, and communities from the fact of oppression, while at the same time allowing for the possibility of reasonable political agreement and stability. According to Rawls, political liberalism assumes that citizens have "two views: a comprehensive and a political view." The political consists of the basic framework of social life, the values of justice, including equality and civil liberty, fair equality of opportunity, the values of economic reciprocity; and the social basis of mutual respect (*PL* 139). The comprehensive point of view consists of the personal, familial, and cultural values a person embraces, including her conception of the good as well as philosophical, moral, and religious doctrines. These two points of views must be understood separately or else the political could favor or establish a comprehensive doctrine and demand too much of its citizens who must endorse it. Thus, there are certain questions that should be solved only within the political sphere without reliance on any particular comprehensive doctrine (e.g. questions related to the liberty of conscious). Similarly, there are certain questions, which should be left to individuals to settle within their comprehensive doctrines (e.g. questions concerning the content of religious beliefs).

The separate consideration of the two points of view should not be mistaken for their incommensurability. The political and comprehensive are complementary. While the political must never endorse a single comprehensive doctrine, many comprehensive doctrines could endorse the same political conception. Indeed, people's reasonable comprehensive doctrines provide justification and support for political values. The

overlapping consensus is the intersection of all the political values that all reasonable comprehensive doctrines could agree to. Because the political view is freestanding, individuals are free to justify and support these political values from within their comprehensive doctrine. As Rawls states,

The history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political as specified by a political conception of justice. (*PL* 140)

For any conception of justice to be considered stable, it must be agreeable to all members of society, and it must be possible for this agreement to be entirely based on any given comprehensive doctrine (*PL* 143). Thus, the political view is a “module” that figures as an essential part of various reasonable comprehensive doctrines.

So taking the “fact of group membership” seriously does not require considering political society as a community. Moreover, Rawls’ individualism does not come at the high cost of ignoring social and cultural life. If a comprehensive doctrine consists of a person’s religious, philosophical, or personal affiliations, then it is quite clear that sociality and group identification is central to Rawls’ understanding of human nature. Further, the political values that are the focus of the overlapping consensus are intended to guide the setting up of the basic structure of society. The role of the basic structure is to settle the question: “by what principle can free and equal moral persons accept the fact that social and economic inequalities are deeply influenced by social fortune, and natural and historical happenstance?” (*PL* 281) So even the political content, which gains the agreement of people from diverse cultures, is social in nature and directed towards fairly settling deep social concerns. Rawls’ understanding of the social nature of human

relationships is observable in the difference principle, the basic structure of society, and in the political conception of the person as free and equal.⁷

II. Kymlicka, Cultural Membership and Group Rights

Kymlicka often lauds Rawls' acknowledgement of the importance of culture. He agrees with Rawls that the idea of a political community imposes and assumes that society is culturally monolithic.⁸ Kymlicka's project extends Rawlsian justice to those who have been excluded and treated unjustly as a result of their cultural identity. Minority cultures—defined by territorial concentration and shared language—have suffered egregious injustices as a result of the historical events of colonization and assimilation as well as political conventions that favor the majority culture by instituting majoritarian official languages and educational curricula, public holidays etc.⁹ While he notes that contemporary liberals are silent about the rights of minorities, Kymlicka often cites Rawls' tendency to prioritize the important role of culture in individual liberty. However, Kymlicka is unsatisfied with Rawls' failure to directly consider the rights of minority cultures. So he extends Rawls' political liberalism to accommodate minority cultures through group rights. In response, I argue that Kymlicka takes too many liberties with central tenets in Rawls' philosophy; his extension amounts to an appropriation.

In *Multicultural Citizenship* Kymlicka suggests that Rawls implicitly acknowledges that societal culture is a “basic unit of liberal political theory.”¹⁰ Kymlicka suggests that he and Rawls share the assumption that membership in one's own culture is of utmost importance to an individual's life. “According to Rawls, then, the ties to one's culture are normally too strong to give up, and this is not to be regretted.”¹¹ Arguably, Kymlicka takes some liberties here when he imbues Rawls' view with the perspective

that cultural groups are the basic political unit. Social groups by way of comprehensive doctrines do figure strongly in the overlapping consensus, but it is not clear that they are more basic to the political conception than the political conception of the person.

Regardless, it is important to note that Kymlicka and Rawls do seem to agree that culture is important for individuals. Rawls acknowledges the importance of culture ties and attachments to others within communities (*PL* 277). Similarly, Kymlicka argues that culture is the context of choice in people's development of life plans. With this understanding of the role of culture, he makes two arguments for group-differentiated rights, which he takes to be a logical extension of Rawlsian justice.

First, Kymlicka argues that Rawls' theory should be extended to include minority cultural rights by considering culture as a primary good. He argues that "Rawls's own argument for the importance of liberty as a primary good is also an argument for the importance of cultural membership as a primary good."¹² The analogy between cultural membership and liberty is drawn because Kymlicka understands both to serve as preconditions for carrying out a life plan. Culture provides the context of choice from which we create a life plan that is "worth carrying out," just as liberty provides for our ability to pursue and revise our beliefs about value. Rawls' leaving out of culture from his index of primary goods is a travesty: "It's only through a rich and secure cultural structure that people can become aware in a vivid way, of the options available to them."¹³ It is our culture that determines the range of options for such a plan. Kymlicka states, "We decide how to lead our lives by situating ourselves in these cultural narratives, by adopting roles that have struck us as worthwhile ones, as ones worth

living.”¹⁴ Thus, Kymlicka argues for extending Rawls’ list of primary goods to include culture as a context of choice.

If culture is a primary good, then liberals should be deeply concerned about the status of cultures, which, if undermined, would jeopardize individuals’ ability to create a worthwhile live plan.¹⁵ Because minority cultures are disadvantaged and are in greater risk of losing their culture all together, liberalism requires their protection. “Liberal values require both individual freedom of choice and a secure cultural context from which individuals can make their choices.”¹⁶ Thus, group-differentiated rights must be granted to minority cultures. Such rights could include rights to exemptions from policy, extra rights to representation, and the right to self-government.

Second, Kymlicka offers the Equality Argument. He argues that minority cultures suffer the kinds of disadvantage that Rawls aims to equalize in his egalitarian theory of justice. Kymlicka argues that minority cultures or colonized indigenous cultures are disadvantaged because the dominant culture holds not only more political power, but also shares substantially more similarities with the political culture. Thus, the dominant culture receives majority rule on many political decisions that negatively affect minority cultures. For instance, minority cultures may be “outbid for important resources involving the land or means of production on which their community depends;” or minority cultures may be outvoted on crucial policy decisions such as what language will be used and “whether public works programs will support or conflict with aboriginal work patters.”¹⁷ Kymlicka offers group-differentiated rights as way to “compensate for the unequal circumstances, which put members of minority cultures at a systematic disadvantage in the cultural marketplace.”¹⁸ While he insists that group-differentiated

rights be enumerated on a case-by-case basis, he offers several examples, which include granting under-represented groups special rights to political representation.¹⁹ These include limiting the authority of the federal government by offering minority cultures self-government rights and the right to special exemptions from federal law.²⁰

There are important reasons why Kymlicka's extension of Rawls is mistaken. It is problematic analytically, because it seems to contradict central tenets in Rawls' theory. But it also leads to seemingly illiberal implications. Whether viewed in terms of culture as a primary good or in terms of the Equality Argument, group-differentiated rights have the serious illiberal consequence of limiting the individual's power to change or redefine their culture.

The Equality Argument assumes that cultural membership is an appropriate criterion for distributing political rights. This violates a central tenet in Rawls' understanding of citizenship—citizenship is independent of comprehensive considerations. So civil rights are open equally to all, regardless of group membership. Further, it is not entirely clear why culture is the appropriate criterion for determining whose group deserves special rights. Kymlicka justifies his protection of culture based on equal respect for individuals. But it is not clear that group rights are capable of ensuring equality of respect. This is because Kymlicka assumes that what is good for the group is also good for the individuals within it. However, cultures are dynamic and marked by internal disagreements and power struggles even over cultural norms. So granting group rights is no way to ensure that all individuals' contexts of choice are protected. It may even lead to or increase restrictions on the basic liberties of certain members of the group.²¹

In addition, considering culture as a primary good is inconsistent with Rawls' understanding of culture and leads to absurd consequences. It is important to note here that Kymlicka's inclination to amend primary goods such that they include identity-based context may have some merit. I explore this in Chapter 5. It is specifically Kymlicka's inclusion of culture itself as a primary good that is problematic. Rawls does not consider culture to be a good that could be distributed. Like the two moral powers, having a culture is a basic characteristic of human life. As Appiah argues, considering culture as a primary good leads to strange circumstances, because culture is not a resource that can be distributed.²² You cannot have more or less culture. It is simply impossible to imagine a living human being without a culture, even if their culture is undergoing serious changes. So even if we granted Kymlicka's allocation of culture as a primary good, it would be a completely uninteresting one. As John Tomasi states, "cultural membership is a primary good only in the same uninteresting sense as say, oxygen: since (practically) no one is differentially advantaged with respect to that good, it generates no special rights."²³ We could, however, get around this consequence by stipulating that *stable* culture is a primary good, as Kymlicka often ambiguously suggests. However, Tomasi holds that this leads to an unfortunate slippery slope that could justify group rights simply to protect the "character" of a community in the face of change. This would simply deny persons' individual liberty to reaffirm themselves or to make intentional cultural changes.²⁴

III. Guidelines and Shortcomings

In considering Rawls, Kymlicka's argument for group-differentiated rights is simply unnecessary. An important guideline inherent in Rawls' overlapping consensus

obviates the need for group rights. The overlapping consensus focuses on political values for the basic structure of society: equal political and civil liberty, fair equality of opportunity, the value of economic reciprocity, and the social values of mutual respect between citizens. Rawls demands that the basic structure of society is set up in such a way that it is fair to everyone, regardless of cultural membership. The political values at the focus of the overlapping consensus must be open to all equally, or else political liberalism fails to be just. Political liberalism is arbitrarily biased and unjust only if it fails to “specify fair background conditions wherein different conceptions of the good can be affirmed and pursued” (*JF* 156). Fairness demands that the basic structure of society maintains fair background conditions such that all citizens can foster whatever reasonable conceptions of the good they choose. This implicitly includes reasonable members of minority cultures.

Many of Kymlicka’s concerns could be remedied through creating just institutions within the basic structure of society that do not violate the rights of individuals of minority cultures. Indeed, the two principles of justice “specify an ideal form for the basic structure” (*PL* 284). Each and every citizen deserves fair equality of opportunity. If some members in society have greater basic rights or greater opportunities than others, then these must be to the advantage of the least well off and “acceptable from their point of view” (*JF* 65). A notable issue with Rawls’ account is that he trades in ideal theory within an ideal account of what it would mean to be least advantaged. He admits, for example, that “the serious problems arising from existing discrimination” were left off the agenda of *A Theory of Justice*, and any enumeration of them in subsequent works certainly do not contain the detailed prescriptions Kymlicka wishes to see. However this

is not to say that their omission is a fault (*JF* 66). Rawls holds that justice as fairness “would certainly be seriously defective should [it] lack the resources to articulate the political values essential to justify the legal and social institutions needed to secure the equality of women and minorities” (*JF* 66). While the basic structure of society cannot secure group-differentiated-rights that ensure cultural survival or stability, it does require society to be fair such that all reasonable people are able to pursue their idea of good, no matter how they identify culturally.²⁵

At the same time as rights and liberties provide the capacity for every citizen to pursue their idea of the good the specification of some primary goods may be shaped by context. That is, opportunities, powers, and self-respect seem to rely heavily on the specificity of person’s identity and their cultural context. Culture itself is not a primary good as I have argued. The problem seems to be that primary goods are not flexible enough to account for the multifarious needs of minority cultures. Rawls comes up short in enumerating the primary goods because he fails to accommodate variations between individuals when he focuses primarily on an index practicable for social institutions (*PL* 181). Kymlicka’s deep concerns about minority cultures could be remedied through amending Rawls’ enumeration of the primary goods. (See Chapter 5 below.)

In addition, Rawls may come up short when it comes to cultural practices that by their very nature conflict with political liberalism. Rawls acknowledges that unreasonable comprehensive doctrines conflict with political liberalism, and he argues that these doctrines will simply fail to gain prominence in the well-ordered society. Reasonable persons seek fair terms of social cooperation with others and expect people to disagree about fundamental matters (*PL* 60-61). So they refrain from forcing their comprehensive

views on other people. Unreasonable people, however, do not seek fair social cooperation and actively push their comprehensive doctrine on others. For Rawls, unreasonable comprehensive doctrines will simply become unpopular in a stable well-ordered society and go extinct.²⁶ Until then, they are excluded from the political conception, and can be repressed (*PL* 61). There seems to be a serious shortcoming here for two reasons: first, Rawls' insistence on exclusion may be too fast, and second, his criterion for reasonableness is too vague.

First, Kymlicka argues that political liberalism fails to promote the liberalization of illiberal minority cultures.²⁷ For Rawls not all reasonable comprehensive doctrines are liberal. Illiberal comprehensive doctrines "can still be compatible for the right reasons with a liberal political conception" (*PL* xxxvii). Rawls sees no reason to assimilate *reasonable illiberal* cultures into liberalism, but does not argue for their exclusion either.²⁸ In contrast, Kymlicka aims to actively liberalize such cultures.²⁹ This seems to be an unnecessary imposition. Because a liberal political conception may be compatible with reasonable illiberal cultures, members of such cultures are seemingly willing to be exposed to liberal ideas on their own. There are of course unreasonable *and* illiberal comprehensive doctrines of cultures that Rawls would certainly exclude. And while Kymlicka doesn't draw this distinction, we can assume that rather than allow unreasonable illiberal cultures to dissolve, he would argue that we ought to liberalize them. To do otherwise would be "illiberal," "ethnocentric," and "ahistorical."³⁰ It would suggest that cultures could not be reformed. Kymlicka argues firmly against not allowing such cultures to dissolve and requires that the cultures themselves remain intact during liberalization. But it is not clear that Kymlicka's requirement to protect culture during

liberalization is even possible. Given that Kymlicka derives the right to culture from individual liberty and autonomy, he must also admit that the right to culture “entails the right to say ‘no’ to various cultural offers made by one’s upbringing, one’s nation, one’s religious or familial community.”³¹ He may have to admit that certain comprehensive doctrines (and thus, presumably, cultures) may go extinct as Rawls suggests as their own members come to take advantage of the right to exit. However, when it comes to comprehensive doctrines that Rawls would exclude from the get go, Kymlicka’s point is simply that we should do more before completely excluding them. For Kymlicka, this requires open engagement and willingness to teach people about liberal ideals. It is unclear how convincing this is. Given that many of the comprehensive doctrines that fit into these criteria are fundamentalist ones, they may be unwilling to receive Kymlicka’s education.³²

There may be another reason to be wary of excluding comprehensive doctrines too quickly: Rawls’ criteria to justify the exclusion of unreasonable persons are too vague. There are certainly clear cases of unreasonableness on Rawls’ account. Most people would welcome the exclusion of racist, sexist, homophobic, and otherwise oppressive views from the political conception. However, Marylyn Friedman worries that Rawls’ conception of unreasonableness cannot pick out the malign from the benign.³³ Rawls’ rubric for unreasonableness runs the risk of unjustifiably excluding historically disenfranchised people. “Some of the groups historically denied the rights and privileges of liberal citizenship were disenfranchised at least partly because they were regarded as poor reasoners, as people who could not achieve the detached impartiality needed to reflect the common good.”³⁴ Among these groups are the poorest classes in society.

According to Friedman, the poor have been unjustly excluded from political participation due to the assumption on behalf of political theorists that they are “so absorbed with their own plights” that they cannot consider the wider public good.³⁵ Friedman argues that they would count as unreasonable and run the risk of being excluded on Rawls’ criteria. Clearly, on Rawls’ own terms this would be a mistake.³⁶ Rawls’ distinction between the reasonable and unreasonable seems to be flawed, and this may inhibit the extension of political and civil rights to some citizens. Further, it may unjustifiably exclude them from participating in the overlapping consensus, and thus they have no opportunity to endorse the political power that coerces them. The criteria for unreasonableness require some clarification to prevent untoward exclusions.

Rawls, however, notes that he leaves his account of reasonable comprehensive doctrines deliberately loose in order to “avoid excluding doctrines as unreasonable without strong grounds based on clear aspects of the reasonable itself. Otherwise our account runs the danger of being arbitrary and exclusive” (*PL* 59). So this shortcoming may prove to have an easy fix—namely loosening the criteria to account for when it is perfectly reasonable for people to press political aid for their plight, even at the expense of their impartiality. Moreover, it should be strongly noted in response to Friedman that Rawls’ intent in proffering the notion of reasonableness is to illustrate that the burdens of judgment in the political sphere require limiting what could be justified to others and specifying how it ought to be justified. That is, it specifies that reasonable persons must endorse some form of liberty of conscience and freedom of thought. According to Rawls, those who insist on using only a single comprehensive justification fail to endorse any form of liberty of conscience and freedom of thought (*PL* 61). It’s unclear whether any of

Friedman's examples of vaguely "unreasonable" social positions explicitly fail to endorse these liberal values. So their exclusion may not be so inevitable on Rawls' criteria.³⁷

While Kymlicka and Friedman's arguments may not quite capture the uneasiness that piques in discussing the notion of reasonableness, it points us toward a deeper problem. Namely, the burdens of judgment limit justification to political reasons only. This limit may inadvertently exclude potentially reasonable novel or minority justifications. In addition such limitations may create difficulties with respect to the capacity of political liberalism to respond to conflicts between liberal institutions and cultures. The question of Rawls' ability to help with struggles over identity depends strongly upon the extent to which political liberalism can provide guidance in dealing with the serious conflicts between cultural practices and quintessential liberal ideals. In the next chapter, this issue will be treated in greater detail in terms of the capacity of political liberalism to help with familial and gender issues in pluralist society.

Notes

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- ¹ Isaiah Berlin, *Liberty*, ed. Henry Hardy (1969 Oxford: Oxford University Press, 2005) 204-205
- ² See Sandel, *Liberalism*
- ³ Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame: University of Notre Dame Press) 34-35
- ⁴ Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989).
- ⁵ Iris Marion Young, "Rawls' Political Liberalism," *The Journal of Political Philosophy*, 3.2 (1995): 182.
- ⁶ Young, Rawls 182
- ⁷ Rawls enumeration of these "three ways in which the social aspect to human relationships" directly concerns the criticism that his original position as the idea of a social contract is anti-social (*PL*). The principles of justice agreed to there guide the basic institutions of society, much like the political values that are the focus of an overlapping consensus.
- ⁸ Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995) 34.
- ⁹ Kymlicka, *Multicultural* 76
- ¹⁰ Kymlicka, *Multicultural* 87
- ¹¹ Kymlicka, *Multicultural* 87
- ¹² Kymlicka, *Liberalism* 166
- ¹³ Kymlicka, *Liberalism* 165
- ¹⁴ Kymlicka, *Liberalism* 165
- ¹⁵ It is important to note here that Kymlicka relies heavily on a very specific definition of culture. Rather than thinking of cultural membership in terms of what it means to live a good life from a particular community's perspective, he insists that culture is simply a shared heritage (language, history, etc) that provides a context of choice. The former definition invites arguments about preserving the character of the community by preserving a public morality, like those infamously attributed to Lord Devlin. Kymlicka is concerned with the preservation of particular culture, not with the character of such cultures. However, I shall argue that his position on cultural survival is also a slippery slope to the conservative view.
- ¹⁶ Kymlicka, *Liberalism* 169
- ¹⁷ Kymlicka, *Liberalism* 183
- ¹⁸ Kymlicka, *Multicultural* 113
- ¹⁹ Kymlicka, *Multicultural* 137
- ²⁰ Kymlicka, *Multicultural* 142
- ²¹ Benhabib makes a similar point against Kymlicka when she states: "cultures are not homogenous wholes; they are self-definitions and symbolizations that their members articulate in the course of partaking of complex social and significance practices, which rarely reach the level of coherence and clarity a theorist may seek" (*Liberal Imagination*, 407). According to Benhabib, Kymlicka fails to argue why some cultural identity markers should be privileged over others, say gender or sexual identity. Inter-cultural differences have relevance to questions of justice.
- ²² Appiah 121
- ²³ John Tomasi, "Kymlicka, Liberalism, and Respect for Cultural Minorities," *Ethics* 105.3 (1995): 589.
- ²⁴ Tomasi 593
- ²⁵ Fairness may entail amending the notion of cultural goods to include identity concerns. I take this up in Chapter 5.
- ²⁶ This is largely because the burden of judgment is on the unreasonable doctrine, placing limits on what can be publically justified (*PL* 61)
- ²⁷ It is of course, misleading to speak of cultures as if they are either liberal or illiberal. As Kymlicka says, "liberality is a matter of degree" (*MC* 94).
- ²⁸ Kymlicka would argue that Rawls allows too much here. Whether he does so or not depends on how far Rawls' notion of public reason is assumed to extend. I will attend to this in Chapter 3 where I discuss whether political liberalism can help with issues concerning the family and the private sphere.
- ²⁹ Kymlicka, *Multicultural* 93
- ³⁰ Kymlicka, *Multicultural* 94
- ³¹ Seyla Benhabib, "The Liberal Imagination and the Four Dogmas of Multiculturalism," *The Yale Journal of Criticism* 12.2 (1999): 401-413.

³² Rawls states that political liberalism does not engage those who “struggle to win the world for the whole truth” (*PL* 442). This includes fundamentalist views of any religious conviction.

³³ Marylyn Friedman, “John Rawls and the Political Coercion of Unreasonable People,” *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham: Rowman & Littlefield, 2000) 26.

³⁴ Friedman 24

³⁵ Friedman 26

³⁶ Friedman also suggests that articulating a principled and politically neutral justification for exclusion is difficult even in clear-cut unreasonable cases (29). This concern, however, loses its force when considering the ethical content in Rawls’ understanding of the political (See Chapter 1). So in clear-cut cases, unreasonable persons (racist, sexist, or otherwise oppressive) could be justifiably excluded according to political principles. Rawls does not require neutrality about these matters. See Nussbaum, *Political*

³⁷ Samuel Freeman offers a different response to arguments against Rawls’ criterion of reasonableness on the grounds that it leads to the unfair coercion of the unreasonable. He worries that the unreasonable unfairly coerce the reasonable. He sates: “what is at issue here is the political unfairness of coercion among the dictates of one’s religion or philosophy that cannot be justified according to the political values of public reason” (413). That is, its unfair to require the reasonable to accept decisions that cannot be publically justified.

CHAPTER 3 PUBLIC REASON, GENDER, AND THE FAMILY

Feminist critics of liberal justice seek to dismantle the severe dichotomy between private and public. Susan Moller Okin points out that when political theorists reinforce this dichotomy, the family and the severe injustices and inequalities that often transpire there are shielded from public view.¹ Thus the separate spheres tradition fails to recognize the extreme injustices perpetrated in the home, usually against women and children. Of course, the separate spheres tradition is by and large an anachronism. The twentieth century witnessed huge leaps forward in terms of extending justice into the private sphere, as many nations passed legislation to remedy the historical mistreatment of women and children. Regardless, Okin notes that prominent political theorists continue to leave familial and gender relations out. She states, “In the most influential of all twentieth-century theories of justice, that of John Rawls, family life is not only assumed, but is assumed to be just—and yet the prevalent gendered division of labor within the family is neglected, along with the associated distribution of power, responsibility and privilege.”² Okin’s claim is that Rawls assumes that the familial is within the purview of justice, but he focuses only on an external view of the family as it relates as an institution to other institutions. Or he considers the family only through the perspective of the presumably male head of the household.³ She charges that Rawls neglects the internal dimension of the family itself, and worries that this tacitly ushers in a notion of separate spheres.⁴

Okin’s critique largely stems from *A Theory of Justice*, which Rawls admits was not explicit enough in establishing that justice as fairness implies equal rights for women as well as for men (*PL* 466). Rawls reasserts that the family is well within the realm of

the political as an institution of the basic structure of society, and makes quite clear how justice as fairness applies to the internal relations between family members (*PL* 466-474; *JF* 162-168). While this makes Rawls' break with the separate spheres tradition abundantly clear, criticisms of the status of the family and of the so-called "private sphere" continue to flourish.⁵ Benhabib's critique asserts that Rawls' separation of the public political culture from the background culture is incoherent and unhelpful in the face of many inevitable conflicts within pluralist societies, several of which pertain directly to women and the family.

Before describing and evaluating Benhabib's critique, I explain Rawls' defense of political liberalism against Okin's charge. This requires a discussion of Rawls' notion of public reason, its application in public political culture, and its incoherence in the background culture. With a clear idea of Rawls' distinction in hand, I turn to Benhabib's criticism. After some conceptual clarification, I argue that a mutual elucidation of Rawls and Benhabib on these issues may be possible. The two thinkers share an important guideline for life in pluralist society. Where they differ, I find an important shortcoming in Rawls' view, but it is not as severe as Benhabib charges.

I. Rawls' Public Reason and the Family

Rawls' discussion of the family has two edges. First, it directly responds to Okin's main concerns regarding the applicability of political justice to the internal relations of the family. Second, his discussion of the family serves as an example for the wide extent and application of public reason. "The range of questions about the family covered by this political conception will indicate the ample space for debate and argument comprehended by public reason as a whole" (*PL* 467). The two edges are

importantly connected, because the application of public reason to the family requires that it be included within political justice (*PL* 478). I discuss Rawls' response to Okin and explain how it figures as an exemplar for public reason.

Ever since *A Theory of Justice*, Rawls has included the family as part of the basic structure of society. The family is well within the range of application of the principles of justice.⁶ Okin notes that the initial inclusion is “surprising in light of the history of liberal thought.” She adds that this places Rawls' commitment to the “public/domestic dichotomy momentarily in doubt.”⁷ However, the family and its members are largely absent from the rest of *Theory*, and Okin argues that Rawls' assumption that families are just institutions is a glaring flaw. Some families are not just; they are relics of “caste or feudal societies.”⁸ The worry here is that justice does not apply to families internally. As Rawls clarifies in “The Idea of Public Reason Revisited,” justice applies to social arrangements, but not directly to the internal business and internal life of associations (*PL* 468). So political principles do not constrain the internal lives of families with respect to their cultural or religious atmosphere. However, the principles of justice do impose constraints on the family in order to guarantee the basic rights, liberties, freedoms and opportunities of its members (*PL* 469). Rawls states, “Just as the principles of justice require that wives have all the rights of citizens, the principles of justice impose constraints on the family on behalf of children, who as society's future citizens, have basic rights as such” (*PL* 470). He goes on to argue for the requisite reforms in family law needed to counteract the “long and historical injustice to women.” Thus, Okin's concern that Rawlsian justice fails to reach the family is aptly treated.

Additionally, Rawls clearly rejects the separate spheres tradition: “when political liberalism distinguishes between political justice that applies to the basic structure and other conceptions of justice that apply to the various associations within that structure, it does not regard the political and the nonpolitical domains as two separate, disconnected spaces, each governed solely by its own distinct principles” (*PL* 470). While the various associations may adopt internal criteria for justice based on comprehensive doctrines, Rawls is clear that the members of such associations are “citizens first” (*PL* 471). Institutions cannot violate anyone’s rights as citizens. Justice has broad application such that there is no sphere of society to which it could not apply. “If the so called private sphere is alleged to be a space exempt from justice, then there is no such thing” (*PL* 471).

However, the extent and power of a political conception of justice is more limited than Okin would have it. Rawls argues that justice may allow for traditional divisions of labor in families so long as it is “voluntary and does not result from or lead to injustice” (*PL* 471).⁹ Okin, may not be satisfied with this because she is convinced that the family itself is an unjust institution, and the “lynchpin” of gender related injustices.¹⁰ So she attempts to utilize Rawls’ principles of justice to alter the gendered division of labor and argue for the abolishment gender all together. This seems to be quite an extension and may amount to an unwarranted appropriation.¹¹ Regardless, it is enough for my purposes to show that Rawlsian justice does impose certain constraints on the internal life of the family. There will be more to say about the extent of its application in Section II.

Since the family is seen as a matter of political justice, public reason applies to it. Prior to showing how the enumeration of the values of public reasons attached to the family exemplifies the breadth of public reason, it is necessary to discuss how Rawls

defines public reason. “The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government’s relation to its citizens and their relationship to one another” (*PL* 441-442). Importantly, public reason does not apply to all of the public political culture, it only applies to questions of the public political forum: judges, government officials, and candidates for public office.¹² He distinguishes parts of public discussion for the purpose of allowing for the acknowledgement of important differences in the political sphere. For instance, “between a religious leader’s preaching or promoting pro-life organization and leading a major political movement or running for political office” (*PL* 443). Maintaining this distinction allows Rawls to narrow the content and rules for justification in the political sphere without constraining the freedoms of different comprehensive views in civil society. The religious leader can preach however she likes. However, the leaders of political movements and candidates for public office must offer “public reasons” for their claims. For Rawls, political liberalism requires that “public reasons” support our justifications for any claims that may come to underscore important and possibly binding political decisions. The political values of public reason characterize political institutions and it characterizes citizen’s reasoning about constitutional essentials (*PL* 441, 448).¹³

Public reason is incoherent when applied to what Rawls calls “the background culture.” “This is the culture of civil society” (*PL* 443). It includes churches, associations, institutions, and institutions of learning at all levels (*PL* 443, n13). Public reason could not apply to the background culture of civil society because it is made up of so many different ideas that citizens could not possibly agree on. That is, unlike the political, it is not guided by any one idea or conception, which all citizens can affirm. Nor should the

background culture be expected to agree about such ideas, given the fact of reasonable pluralism. Like the preacher in the example above, when not making political claims, citizens can justify themselves however they like.

Regardless of the specific content of public reason, Rawls does not wish to construe it too narrowly. Its application to familial issues serves to demonstrate the wide range of public reason. He lists the values of public reason which cover the family: “the freedom and equality for women, the equality of children as future citizens, the freedom of religion,” and “the value of the family in securing the orderly production and reproduction of society and of its culture from one generation to the next” (*PL* 474). The application of public reason to the family exemplifies the way in which political values that apply to the single institution of the basic structure also “cover” many of society’s institutions and associations (*PL* 474). They cover those elements of persons that are always politically protected: persons’ freedom, equality, freedom of thought and conscience, etc. And they apply insofar as the institution plays an important role in reproducing the political culture over time, e.g., educational institutions. Public reason has a wide range of application, and could help in many conflicts. Rawls concludes in a letter to his editor at Columbia University Press in 1998: “thus public reason and political liberalism have considerable relevance to highly contested questions of our contemporary world” (*PL* 438).

II. Benhabib, the Deliberative Model and Civil Society

Rawls’ discussion of public reason, its application to the public political culture, and its incoherence in the background culture inspires many questions. There may be room to doubt Rawls’ optimism about the relevance of public reason and political

liberalism to the deep conflicts inevitable in contemporary society. Benhabib argues that the “separation between the background culture and the public political culture, attractive as it may be, is institutionally unstable and analytically untenable.”¹⁴ Indeed, she asserts that political liberalism is incapable of dealing with the inevitable clashes, in a multi-faith, multicultural, multiethnic society, which emerge among “the highly contested questions of our contemporary world” (*PL* 438). Several of these contestations involve women, children, and the family, including: “gender equality, bodily integrity, freedom of the person, education of children, and the practices of certain minority cultures.”¹⁵ According to Benhabib, Rawls fails to provide guidance on how to reestablish consensus in the event of such clashes. His idea of public reason is too restrictive to foster the open conversations required to aid in the interpretation and application of constitutional essentials.¹⁶

For Benhabib, political liberalism is too permissive *and* too prohibitive when it comes to cultural practices. While this may seem to be a contradiction at first glance, the underlying problem regards the extent to which citizens are capable of discussing such issues in public in a politically salient manner. It is important to note that Benhabib is not making a substantive critique about limiting or allowing certain cultural practices. As she states, “It is the normative model of public reason that I am critiquing.”¹⁷ So it is not the case that she would advocate for the loosening or tightening of restrictions against cultural practices that could negatively affect women and children. Rather, Benhabib is arguing for citizens’ ability to publically and politically deliberate on such rights, especially during times of deep conflict.

Rawls' political liberalism is too permissive because certain issues get "pushed into the private sphere and precluded from consideration."¹⁸ Like, Okin, Benhabib is concerned that some practices within the family will fail to be addressed by political liberalism because they are "privatized." This seems possible on Rawls' revised reading of the family, because political liberalism does not require the reordering of gendered divisions of labor in the family. Further, Rawls differentiates between political and moral autonomy. In *A Theory of Justice*, justice as fairness considers persons in terms of their moral autonomy, as sources of valid moral claims. However, in *Political Liberalism*, Rawls worried that this conception of personhood asks too much of comprehensive doctrines that appeal to higher authorities and may not value moral autonomy. So Rawls offers, instead, political autonomy, and he understands persons according to the political conception of persons as free and equal.¹⁹ Benhabib worries that political liberalism would allow hierarchical subordination within the family, which could allow for the oppression of women's moral autonomy. Allowable subordinations could include not allowing daughters to attend school or prohibiting them from freely choosing their careers or marriage partners. These oppressions would be allowed in private, on Benhabib's reading of Rawls, so long as women's political autonomy was upheld publically. Public political conversations regarding the morality and justness of such practices would be precluded. Benhabib worries such practices could continue in silence within the background culture of civil society.

For Benhabib, Rawls is too permissive of harmful cultural practices in the family, because public reason and the principles of justice do not apply so long as the requirement of political autonomy is met for all family members. However, Rawls uses

the family as the exemplar for how far public reason can reach. So while Benhabib and Rawls might disagree about the nature of autonomy, Rawls only allows those traditional practices to continue in the family that are “voluntary” and do not stem from or cause injustice. There may be plenty of room to discuss whether Rawls’ notion of voluntariness is strong enough when compared to moral autonomy. Regardless, justice does in fact apply to many of the cases that concern Benhabib. Several public reasons are available for such public political discussions, including equal opportunity, freedom of religion, and others.

Benhabib’s stronger critique regards Rawls’ inability to allow for wide and open public political discussions about not only the constitutional essentials themselves, but also about the cultural practices that may (inevitably) contradict them in multicultural society. Constitutional essentials include the general structure of government and the political process as well as equal rights and liberties of citizenship, such as the right to vote, the right to participate in politics, liberty of conscience, freedom of thought and association, and the rule of law (*PL* 227). Benhabib suggests that political liberalism is too prohibitive with respect to cultural practices, which directly conflict with constitutional essentials. “For example, political liberalism could not permit marriage between non-consenting minors; nor condone the sale of young women by their families for prostitution; nor accept the infliction of irreversible bodily wounds...”²⁰ Because the constitutional essentials presuppose the illegitimacy of certain cultural practices from the start, Benhabib worries that the emerging conflict could never be appropriately adjudicated in political liberalism. There is simply too much disagreement about the constitutional essentials themselves for Rawls’ restricted view of public reason to be

helpful, and there simply are no public reasons available for people to defend or explain their cultural practices.²¹ For example, when asked about why they condone practices of unilateral polygamy and divorce (which privilege the male), “The most frequent reasons that women themselves give as an answer is that this is their tradition and their way of life.”²² This is not a public reason on Rawls’ criterion. But it is a good reason that should be considered politically. Thus, Benhabib labels public reason as a restricted agenda: It operates as a regulative standard rather than as a deliberative process and it considers only basic political issues and constitutional essentials, which contain a cultural bias.

In response, I offer two caveats about public reason, which may weaken this criticism, however slightly. First, a fundamental disagreement between Rawls and Habermas as well as Benhabib concerns the origin of the principles of justice themselves. For Habermas, Rawls’ appeal to liberal rights and principles that “have a status prior to the democratic process” prohibits citizens from being able “to see all their political principles, even those establishing individual rights, as rooted in their autonomous political will.”²³ Habermas further states that because Rawls’ principles of justice emerge from a hypothetical contract situation in the original position, “citizens are unable to ‘reignite the radical democratic embers...in the civic life of their society.’”²⁴ I do not intend to respond to the famous Rawls-Habermas debate here. However, it is important to note that many of these issues are at stake when Benhabib worries public reason is an imposed standard, rather than an ongoing process. Benhabib’s concern is that people involved in debates over constitutional essentials are not able to autonomously agree to the political values and principles that guide public reason. Her deliberative model, instead, invites and considers a plurality of public reasons.

Rawls, of course, does understand citizens to have endorsed public reason insofar as he requires them to meet the criterion of reciprocity as it is expressed in public reason.

The criterion requires that

Citizens are to conduct their public political discussions of constitutional essentials and matters of basic justice within the framework of what each sincerely regards as a reasonable political conception of justice, a conception that expresses political values that others as free and equal might also be expected to reasonably endorse. (*PL* xlviii)

Further, Rawls came to be quite open with respect to how these principles are to be identified. He gestures to a “family” of such ideas that can meet the criterion of reciprocity, and so he does not insist that his own contractarian methods are required to do justice. So while public reason and the criterion of reciprocity is a standard that governs public deliberations, it also could be understood as a process. Rawls is explicit when he stipulates that public reason and the principles, ideals and standards that it appeals to must change over time. “Social changes over generations also give rise to new groups with different political problems” (*PL* li). He cites race, gender, and ethnicity as examples. So it may not be that public reason and its application in public political culture is so inflexible as to be restrictive in application.

Additionally, Benhabib may worry that Rawls’ limitation of public reason to issues of constitutional essentials restricts discussion in civil society. It is important to note, that on Rawls’ distinction between public political culture and the background culture this is explicitly not the case. Rawls makes clear that asserting the “need for full and open discussion in the background culture” must not be confused with the rejection of the idea public reason (*PL* 444). Indeed, he notes in response to Benhabib’s prior work, that her view is perfectly consistent--indeed “hard to distinguish”--from political

liberalism, because she advocates for a model of deliberation in the public sphere *a la* Habermas. The public sphere is compatible with political liberalism along with several other conceptions of civil society. Since the ideal of public reason does not apply to the background culture of civil society, her worries about public reason, according to Rawls, have no bearing on her argument for how deliberation should go in civil society (*PL* 451 n.28). In civil society, citizens can deliberate about whatever they like, and offer whatever reasons they see fit according to their comprehensive doctrines. Rawls' view on civil society is, then, more unrestricted than Benhabib's argument that the norms of discourse ethics must apply to it.

The consequence of the lack of restriction in civil society is that important limitations are placed on public reason. An over-encompassing ideal of public reason would narrow freedoms in civil society by proscribing certain ways of thinking or types of speech. For Rawls, for example, when a Supreme Court Justice considers an opinion on sex discrimination, she should appeal to the political value that men and women are equal as citizens.²⁵ She should not, however appeal to the notion that men and women are equal by nature or in a metaphysical sense. This is an appeal to a comprehensive notion; one opposed in many churches and others in the background culture. No doubt this proposition is controversial, but as Nussbaum suggests, it shows "people the respect of letting them sort out for themselves how to integrate their political and moral ideals."²⁶

And this brings us to Benhabib's deeper point. She seems to argue that political theorists themselves have a duty to help "sort out" the relationship between the political principles and the background culture of civil society.

[I]n Rawls' theory there is a certain impatience in analyzing the relationship between liberal political principles and the background culture. This dismissive

attitude toward the work of culture in liberal politics and society produces a stunted vision of democracy and the relationship between legislative action and democratic struggle.²⁷

Indeed, Rawls seems to leave such analysis to people to figure out for themselves.

Benhabib's main concern regards the "space" in which public reason applies. It is in what she calls the public sphere that moral and political debates take place, and discussions that occur there are often important politically. Thus, Benhabib argues that Rawls overlooks both the political difficulties and the political opportunities present in the background culture of civil society.

III. Guidelines and Shortcomings

Benhabib points to a shortcoming in Rawls. Namely, he restricts public reason to fundamental political questions and constitutional essentials. This restricted domain is troubling because it unduly limits the range of political discussion on constitutional essentials to the public political forum. That is, restrictive public reason limits public deliberation to those questions before the legislature, judges, political candidates, and voters. The restricted domain serves to ignore a swath of serious cultural issues in civil society that, per Benhabib, ought to be politically considered. Of course, Rawls stipulates that issues in civil society could be treated however one likes. However, it is not clear that he gives sufficient reason to maintain the limitation of public reason to such fundamental questions. For that matter, as Patrick Neal points out, he does not seem to even firmly hold the limit.²⁸ Rawls notes, "Most political questions do not concern fundamental matters," and he lists examples: legislation, property regulations, environmental protections, wilderness preservation and land conservation, and funding for the arts (*PL* 214). He then immediately goes on to say that they may involve

fundamental matters, and if they do public reason may apply to them less strictly. So the shortcoming is caused in part by conceptual ambiguity.

I will pursue clarification of this conceptual ambiguity and point out subsequent shortcomings along the way. Doing so will provide clarity for articulating the guideline inherent in public reason: public (political) deliberation ought to proceed according to shared political values. This is a strong Rawlsian guideline. But it is accompanied by the unfortunate and unnecessary shortcoming that important nonpublic reasons are neglected.

By way of clarification, Rawls offers three interpretations of public reason, including a wider view, which leaves only a very thin distinction between the background culture of civil society and the public political culture. According to the exclusive interpretation of public reason a person “oversteps the bounds of public reason” when they bring comprehensive, religious or secular, reasons into political debates.”²⁹ Or as Rawls states: “On fundamental political matters, reasons given explicitly in terms of comprehensive doctrines are *never* to be introduced into public reason” (italics added *PL* 247). The exclusive interpretation of public reason only involves citizens as voters, legislators, officials or judges when they discuss fundamental issues that will come or could come to have the force of law.³⁰ Justification of such decisions must come from a common political point of view, and the political values to which public reason refers reflects this point of view. So on the exclusive view when Martin Luther King Jr. quoted the gospel while arguing for the end segregation he overstepped public reason.³¹ Benhabib’s argument about the limits of Rawls’ division of public space has quite a lot of force against this interpretation. It is clearly too restrictive both on the kinds of reasons that people can *meaningfully* endorse to support political terms and also on the range

possible topics of political conversation on fundamental issues. However, Rawls did not see the exclusive interpretation as the only way. Indeed, he argued it had relevance only in the ideal well-ordered society; ideal consensus would obviate the need for public debates.

Rawls pits the second, inclusive view, directly against the exclusive view and claims that “under different political and social conditions, the [ideal of public reason] must surely be advanced and fulfilled in different ways” (*PL* 248). The inclusive view recognizes that “when a society is deeply at odds with itself about constitutional essentials...there exists no generally accepted language of public reason.”³² In such situations, citizens can bring their comprehensive reasons to bear on political decisions *only if* they believe that society would become more just because of it (*PL* 247, 251). Rawls offers the abolitionists, who argued that slavery was contrary to God’s law, as an example. The abolitionists of the antebellum South could not appeal to The Constitution of their time in order to make an argument against slavery. They lived in an unjust society. Their nonpublic reason was all they had to rely on to bring about social justice (*PL* 249). On the inclusive view, these nonpublic reasons are well within the bounds of public reason, even if they could never become public reasons themselves. “The comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized” (*PL* 251). Thus Rawls explicitly states that public reason is not limited to the law and statutes. It is limited instead by the “ideal of democratic citizens trying to conduct their political affairs on terms supported by public values” (*PL* 253). On the inclusive view, comprehensive reasons are welcome in political debates during times of conflict over constitutional essentials. Some of the issues

that Benhabib raises could fall under the domain of public reason, even if they contradict constitutional essentials. Appealing to a plurality of reasons, even religious or cultural ones, may be required to change or expand the constitutional essentials in question. This responds to a portion of Benhabib's concern, although she certainly might wonder why the background culture of civil society is ignored during other times, when extreme conflict can emerge in the interpretation and application of existing constitutional essentials or over nonfoundational issues.

In the third interpretation of public reason, Rawls modifies his inclusive view of public reason. He calls this the "wide view of public reason" (*PL* 1).³³ On this view, citizens can bring comprehensive explanations and justifications into the political debates about constitutional essentials at any time so long as the proviso requirement is met (*PL* 463). The proviso requires that citizens justify their claims with public reasons "in due course." (*PL* 1). Rawls seems to be intentionally vague about when a person would have to provide the proviso. He does so on my reading to make room for debates driven by nonpublic reason during time of injustice. He states, "I do not know whether the Abolitionists and King ever fulfilled the proviso" (*PL* 1 n.27). It is abundantly clear; he goes on to say, "they could have" (*PL* 1 n.27).

The proviso is what makes public political culture distinct from the background culture of civil society. This is a notably thinner boundary than Rawls is often considered to make. It certainly seems thinner than Benhabib's concerns intimate. Indeed, he seems to almost completely open the public political culture to the background culture. For this reason, the wide view of public reason is controversial among political liberals. Charles Larmore argues that Rawls was "misled by his own terminology" when he invites the

“freewheeling arguments” of the background culture into the public political culture.³⁴

Larmore sees this as a mistake. The wide view of public reason, according to Larmore, virtually collapses the boundary between public political culture and the background culture, and he fears this will weaken the public justification for coercive decisions.

Larmore’s concern is certainly important. However, I think that Rawls’ wide view of public reason has important merits. It would allow for a richer analysis of the seemingly ambiguous relationship between the political and civil society. It could be that Rawls simply came to see public political culture as a roomy place, open to deliberations over emergent issues in the public life of democracies. Indeed, the wide view opens political discussion up to many of the controversial issues that have traditionally been kept silent, as Benhabib, Okin, and many other feminist critics of justice charge.

Yet the proviso is Rawls’ final connection to the boundary between the public political culture and the background culture. And Benhabib may still argue that requiring the proviso could close many opportunities for “genuine deliberation” about changing cultural understandings. She argues that any deliberative model must acknowledge and actively invite a “plurality of public reasons,” which would allow for wider discussion in the public sphere.³⁵ Thus, a shortcoming in Rawls is that the proviso requirement alone is not sufficient for inviting and encouraging the political discussion of issues in the background culture of civil society. Indeed, Rawls seems to prefer to let such issues be settled in civil society. But this impatience, as Benhabib calls it, for analyzing the relationship between the background culture of civil society and the public political culture may in effect be a cold shoulder to contentious clashes that deserve political

attention. “Culture matters; cultural evaluations are deeply bound up with our interpretations of our needs, our visions of the good life, and our dreams for the future.”³⁶

For example, Benhabib considers the scarf affair in which the French state intervened on behalf of Muslim girls, who wore headscarves to school. The state did so, according to Benhabib to “dictate more autonomy and egalitarianism” in the public sphere.³⁷ The French public education system assumed that the girls’ act was one of subservience to the patriarchal structures of their religion. Assuming their actions were religious ones, the state penalized them, rather than encouraging “discourses among youth about what it means to be a Muslim citizen in a laic French Republic.”³⁸ However, Benhabib suggests that had the girls’ reasons been publically heard, the action of the state would have proven seriously misdirected. Indeed, “it would have become clear that the meaning of wearing the scarf itself was changed from a religious act to one of cultural defiance and increasing politicization.”³⁹ The state unintentionally restricted the girls’ capacity to define their actions for themselves. During times in which many cultures are undergoing transitions, the state must be ready to hear the plurality of reasons for peoples’ practices and actions lest it fail to discern which political values are in question. Rawls comes up short when he cannot provide a positive attempt to hear, consider, and engage nonpublic reasons about constitutional essentials, even if they do not have the final say in political decisions.

Are the proviso requirement and open political discourse mutually exclusive? It does not seem to be the case that the proviso necessarily requires public reason at the expense of actively encouraging and inviting the expression of nonpublic reasons. It simply excludes those reasons that would not be agreeable to citizens of a pluralist

society—“those who believe that fundamental political questions should be decided by what they regard as the best reasons according to their own idea of the whole truth” (*PL* 447). Such fundamentalism is simply inconsistent with democratic citizenship and could not meet the criterion of reciprocity. Unless they are fundamentalist, when people offer tradition and religion as reasons to justify their practices, it is most likely the case that a public reason is available to accompany it, religious freedom and liberty of conscience come to mind. If there are clashes to which no political values apply, then citizens have deliberative work to do in sorting out more just constitutional essentials.

In effect, the proviso requirement provides a helpful guide for political conversations by requiring the appeal to common political values. Public reasons may help to shape fundamental institutions and “to protect the basic liberties and to prevent social and economic inequalities from being excessive” (*PI* lvii). As a form of public political deliberation, public reason helps to foster the political relation of civic friendship. Benhabib seems to share this view when she offers the deliberative model as a way to shape the public practices and habits of citizens as autonomous participants in the deliberative process. Additionally, like Rawls, she also appeals broadly to “political” values when she argues that deliberative norms must proceed according to the “guarantee of basic human, civil and political rights.”⁴⁰

Insofar as the proviso refers to political values that the public could agree to, I suggest that the proviso itself represents a guideline for life in pluralist society. Public reason sets a bottom-line requirement to respect the basic rights and liberties of persons when it comes to binding political decisions. Further, as Benhabib says, Rawls’ political liberalism views “the legitimation of political power and the examination of the justice of

institutions to be a public process, open to all citizens.”⁴¹ Life in a pluralist democratic society requires that the political process remain open to the scrutiny, examination, and reflection of citizens in deliberation (*PL* lvii).⁴² With the idea of public reason, Rawls requires that political decisions be made according to premises to which all citizens could freely agree upon and which demand equal respect for others via the criterion of reciprocity.

Notes

¹ Susan Moller Okin, *Justice Gender, and the Family* (New York: Basic Books, 1989).

² Okin 9

³ Okin 93

⁴ Okin 9

⁵ Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002). Also see Amy R. Baehr, "Toward a New Feminist Liberalism: Okin, Rawls, Habermas," *Hyaptia* 11.1 (1996): 49-66.

⁶ The family is part of the basic structure of society because it ensures the continuance of generation after generation of citizens with a sense of justice and political virtue. Raising and caring for children and fostering their moral development are required for society.

⁷ Okin 93

⁸ Okin 99

⁹ Rawls defines voluntary in terms the reasonable and the rational. An action is voluntary rationally if it is the rational thing to do even in unjust conditions. An action is voluntary reasonably if it is the rational thing to do in fair conditions. The second notion is the preferred one. What counts as voluntary is an important and enormous question. See *PL* pp. 221-222 and n.68, p. 472.

¹⁰ Okin 170

¹¹ Okin 103-104

¹² Rawls' "wide view of public political culture" will be discussed in Section III.

¹³ Rawls' parsing of the political sphere leads to several ambiguities that shall be addressed throughout this chapter.

¹⁴ Benhabib, *Claims* 111

¹⁵ Benhabib, *Claims* 111

¹⁶ Benhabib, *Claims* 111

¹⁷ Benhabib, *Claims* 204 n.4

¹⁸ Benhabib, *Claims* 110

¹⁹ Political autonomy "is realized in public life by affirming the political principles of justice and enjoying the protections of the basic rights and liberties..." (*PL* 77).

²⁰ Benhabib, *Claims* 111

²¹ If there is a cultural practice for which there are no public reasons, then either those practices are unreasonable or there is reason to doubt the constitutional essentials and political values at hand. If the former is the case, then how far unreasonable doctrines or practices are to be tolerated is to be settled by political principles of justice (*PL* 478).

²² Benhabib, *Claims* 116

²³ Larmore 158

²⁴ Habermas in Larmore 158

²⁵ This example is from Nussbaum, *Enduring*.

²⁶ Nussbaum, *Enduring*

²⁷ Benhabib, *Claims* 114

²⁸ Patrick Neal, "Is Political Liberalism Hostile to Religion?" *Reflections on Rawls: An Assessment of his Legacy*, ed. Shaun P. Young (Surrey: Ashgate Press, 2009) 156.

²⁹ Larmore 214

³⁰ Larmore 212

³¹ A more positive result of the exclusive view is that it excludes comprehensive doctrines that would opt for violating the civil rights of some citizens. Consider, for example, same-sex marriage. There are many possible comprehensive reasons to prohibit same-sex marriages appealing to supposedly religious arguments regarding the sanctity of marriage between opposite genders or to secular notions of the human good. Rawls argues that neither religious nor secular comprehensive reasons could pass muster as *political* arguments, because they do not offer public reasons. They do not appeal to appropriate political values. Resting the argument *only* on political principles and values, "the government would appear to have no interest in the particular form of family life" (*PL* 457). The question rests, instead on whether this withholding infringes on the civil rights of free and equal democratic citizens (*PL* 458).

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- ³² Larmore 214
³³ Also see Larmore 214
³⁴ Larmore 215
³⁵ Benhabib, *Claims* 143
³⁶ Benhabib, *Claims* 129
³⁷ Benhabib, *Claims* 117
³⁸ Benhabib, *Claims* 117
³⁹ Benhabib, *Claims* 117
⁴⁰ Benhabib, *Claims* 107
⁴¹ Benhabib, *Claims* 108
⁴² Benhabib, *Claims* 108

PART II: AMENDMENTS AND EXTENSIONS OF POLITICAL LIBERALISM

In Part One, I approached the question of whether Rawls can help with struggles over identity through an interpretative approach that attempted to strike the difficult balance between individuals' pursuit of meaningful and flourishing identities and the stability of the society we live in. I find that although there are shortcomings, Rawls' political conception offers such a balanced view. Part Two suggests an amendment and an extension of Rawls' political liberalism in order to strengthen this balance.

My focus here concerns two issues that came up repeatedly in Part One. First, Rawls' distinction between the political and the comprehensive seems to be too rigid to be helpful in finding political solutions to struggles over identity that pertain to religious, cultural, and familial issues. Instead of simply leveling Rawls' distinction and bridging this gap, Chapter 4 seeks to establish and maintain the political/comprehensive distinction. In an effort to maintain the vitality of the political conception, I argue for amending it without diminishing it. I shall illustrate how Rawls' political conception could be improved if it were more inviting towards the concerns and demands of identities. Second, Rawls' enumeration of the primary goods plays an important role in the extent to which the Rawlsian state could meet the needs of a diversity of citizens and help them to foster ethical identities. However, his political enumeration of the primary goods places serious limitations not only on how the Rawlsian state understands its citizens, but also on the state's ability to do justice by meeting certain basic needs. Chapter 5 argues for an extension of Rawls' primary goods in such a way as to acknowledge the diversity of citizens' needs as a matter of identity and capability. My suggestions may seem too meager to make a tremendous difference. My attempt here is

meant to reflect the care and consideration that is required to appropriately balance the seemingly disparate relationship between of individuals and society

CHAPTER 4: THE DEMANDS OF COMPREHENSIVE REASONS

Throughout this thesis I have argued that in order to adequately help with struggles over identity Rawls must provide a space for comprehensive reasons in all political considerations. I have endeavored to show that Rawls offers political guidance on many of the issues faced by pluralist society regarding social identity, culture, and the family. However, he comes up short when his political conception seems to exclude comprehensive doctrines. If Rawls' political liberalism could be helpful to these struggles and those to come, it must foster a public political culture open to hearing the legitimate claims and concerns of comprehensive doctrines. My suggestions have included doing so by way of recognizing the demands of nonpolitical identity and by actively inviting concerns of comprehensive doctrines and nonpolitical identity into political debates about constitutional essentials.

For some it may seem patently impossible to suggest that Rawls could invite nonpolitical identity into the political as I am recommending. Indeed, it is tempting to charge that the overlapping consensus, and subsequently public reason, confines political debates to the values that citizens could share: political values.¹ Charles Larmore labels this the straitjacketed view of political debate.² He argues that it is simply not Rawls' view. Indeed, Rawls allows for open and unrestricted discussions on political issues that do not involve the constitutional essentials and questions of basic justice. Further, Larmore argues that the straitjacketed view is unappealing (and would be for Rawls) for three reasons. First, citizens need to know each other and understand each other's convictions about controversial issues. We need to do so in order to debate with each other at all, but we also need to do so in order to establish the confidence that we could

agree to a common point of view. Second, exposure to the ideas and views of others may persuade one to change her mind about her own view, or it may simply strengthen or clarify her understanding of her doctrine. Third, people must be allowed and able to freely and openly exchange their ideas about the good.³

So on Rawls' view people should have wide and unrestricted conversations about many political issues that appeal to their comprehensive doctrines and thus to their identity. However, when it comes to issues of constitutional essentials and question of basic justice, Rawls requires that the conversation be more or less restricted to public reason. My goal in this chapter will be to support Rawls' motivation in restricting the conversation on these matters, but I also argue that doing so need not be done at the exclusion of comprehensive reasons. Rawls' political conception could be amended in such a way that it is capable of taking seriously comprehensive reasons and guiding citizens in learning about each other in open political exchange.

I consider two places where Rawls considers nonpolitical identity and comprehensive doctrines, but insufficiently. First, nonpolitical identities by way of the comprehensive doctrines play an important role in the endorsement of the political values in the overlapping consensus. Second, comprehensive doctrines may be included in political deliberations over constitutional essentials at any time so long as they are accompanied by public reasons under the proviso requirement (See Chapter 3 above). I will discuss each of these in turn. I then offer ways in which Rawls' theory can be amended such that comprehensive doctrines, and thus nonpolitical identity, play an adequate role in both the endorsement and justification of political values and in political deliberations.

I. The Overlapping Consensus and Stability for the Right Reasons

Comprehensive doctrines have an undoubtedly important role in endorsing the political conception in an overlapping consensus. I explore in this section how Rawls understands this endorsement as it relates to stability for the right reasons. I then pose the objection that Rawls' inclusion of the comprehensive doctrines is insufficient because their role diminishes once the overlapping consensus is established.

Rawls' overlapping consensus is an attempt to illustrate the possibility that reasonable democratic citizens could endorse a liberal conception of justice for *moral* reasons. This is not an easy task. As Freeman points out "Even if we want to cooperate on terms others can accept, toleration for moral reasons of other's speech and ways of life we find morally and religiously repugnant can seem to be a peculiar position."⁴ In this sense, the possibility of the overlapping consensus is both hopeful and pessimistic. It is hopeful because it seeks to establish political values that people can share across tremendous cultural, religious, philosophical, and moral differences, and seemingly irreconcilable disagreements. It is pessimistic because it assumes that once the consensus is established there need not be improvements in our social relations with each other: we could continue feeling disgusted or hateful towards each other in perpetuity. I shall focus on Rawls' hopeful solution to the problem of discovering shared values amongst extreme differences. I then discuss what I take to be pessimism as my critique of the insufficient consideration of identity in the overlapping consensus.

An overlapping consensus is possible only if people are able to agree to it for their own moral reasons.

All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical and moral grounds

it provides. The fact that people affirm the same political conception on those grounds does not make their affirming it any less religious, philosophical, or moral, as the case may be, since the grounds sincerely held determined the nature of their affirmation. (*PL* 148)

Importantly, comprehensive doctrines do not have to be of a similar nature or creed to endorse the political conception. Rather, Rawls argues that people's motivation to endorse the political conception comes from their own understanding of the good. At the same time, Rawls conjectures that citizens will incorporate support for just institutions into their own conceptions of the good and that doctrines will "evolve" to endorse the liberal conceptions of justice while living within a just society.⁵

The endorsement of the political conception of justice on behalf of citizens for their own moral reasons leads to stability for the right reasons. I shall compare the stability of the overlapping consensus to two methods of acquiring stability for the wrong reasons. First, the social world could be managed exclusively according to shared political values, united by a single comprehensive view. Second, a once contentious social world could find stability as a matter of compromise resulting from exhaustion in the face of violent conflict, or even "mortal combat."⁶ Rawls rejects both of these extremes. For our day and age, the first is too coercive, and given the fact of pluralism, can only be maintained by the oppressive use of state power. The second, also known as a *modus vivendi*, is both too precarious and too hopeless. It is too precarious because it results from a compromise on political values, rather than a full-fledged endorsement. It is too hopeless because we are entitled to want more from public life than giving in to periods of relative peace out of frustration and fatigue. Stability for the right reasons is not simply a matter of happenstance resulting from a circumstantial "balance of relative forces" (*PL* 148). Rawls' overlapping consensus is meant to represent a middle ground

between these extremes. It can result in stability without requiring the impossible or settling for a compromise, because it allows people from different views to accept the political values for their own sake. That is, the political values at the focus of the overlapping consensus are compelling enough as moral reasons in and of themselves to garner agreement in both breadth and depth. Thus the overlapping consensus allows for not just stability, but stability for the right reasons (*PL* 385).

However, because the political values themselves must be acceptable to many conflicting doctrines for their own sake, the content of the political is limited. The focus of the overlapping consensus must “put no obstacles in the path of all reasonable doctrines endorsing a political conception by eliminating from this conception any idea that goes beyond the political, and which not all reasonable doctrines could reasonably be expected to endorse” (*PL* 389). Thus it must not contain values that belong exclusively to comprehensive doctrines. As Rawls states, “By avoiding comprehensive doctrines we try to bypass religion and philosophy’s profoundest controversies so as to have some hope of uncovering a basis for a stable overlapping consensus” (*PL* 152). To be clear, this avoidance of controversy internal to the political values does not imply that Rawls restricts the political agenda in social life.⁷ And while we may like to see our pet comprehensive notion of political justice to hold the focus of others, to do so is to we may be expect too much: we would be asking others to endorse their own political coercion on terms they disagree with. Additionally, recall that the content of the political values are also importantly related to individuals’ identities and their conceptions of themselves (See Chapter 1 above). The political values figure in more or less deep ways in the lives of all reasonable citizens. So they must not be too narrowly construed.

I do not take issue with the idea that the political values must be agreeable to all to satisfy a criterion of endorsement. However, for Rawls, once the political values are endorsed, the content of the political conception reigns supreme in our consideration of other comprehensive doctrines. Indeed, even when it comes to the public justification of the political conception itself, the content of the comprehensive doctrines are closed off from view. Rawls elaborates on this in response to a question by Habermas, “What bearing do doctrines within an overlapping consensus have on the justification of the political conception—once citizens see that conception as both reasonable and freestanding?” (PL 385).⁸ Public justification entails public affirmation of the political conception by citizens of different comprehensive doctrines. And while citizens from all walks of life publically justify the conception by embedding it into their comprehensive doctrines, the doctrines themselves have “no normative role in public justification” (PL 386). Citizens are able to see each other as reasonable co-endorsers only on the terms of the political conception itself. This is so because “citizens do not look into the content of others’ doctrines and so remain within the bounds of the political” (PL 386). It is tempting to view this as a straitjacket preventing citizens from engaging with each other’s deeper beliefs and how these relate to the political. To be fair, Rawls is responding here to the idea of justification as it was presented in *A Theory of Justice*, which depended “on everyone holding the same comprehensive doctrine” (PL 387 n.21). Taking into consideration the fact of pluralism, justification must not assume a single comprehensive doctrine. Indeed, it must involve several. Why does the fact of pluralism drive Rawls to fill the space once occupied by a comprehensive doctrine (justice as fairness *a la A Theory of Justice*) with the *single* political conception insulated from the content of

comprehensive doctrines? This seems to be a mistake: the shared space of the political conception might also be a space for interchange between the comprehensive doctrines.

Rawls seems to be concerned that the content of the doctrines is a source of contention. Indeed, Rawls specifically asks, “How is it possible for there to exist over time a just and stable society of free and equal citizens, who *remain* profoundly divided by reasonable religious, philosophical, and moral doctrines?” (Italics added *PL* 4). Rawls seems to assume that after the overlapping consensus is endorsed, people necessarily remain as divided as they were before. This pessimistic view of the overlapping consensus requires mending because political activities, such as public justification, must allow for adequate interchange between different people in order to help with struggles over identity. To be clear, this does not require utopian daydreams about civil peace, which Rawls is certainly not entertaining. I suggest simply that perhaps the overlapping consensus is an opportunity for people of different backgrounds to learn how to live together and this may involve sharing their reasons for endorsing the shared political conception to begin with.

II. The Duty of Civility

Rawls acknowledges comprehensive doctrines in a second way in his later work, “The Idea of Public Reason Revisited.” There he stipulates that in the wide view of public political culture people can raise concerns and argue from their comprehensive doctrines at any time, so long as a proviso is forthcoming (See Chapter 3 above). To be clear, the proviso requirement is indispensable because it demands that in debates over decisions that are coercive in character (i.e. will have the force of law) citizens and public officials must appeal to reasons that all have endorsed. My comments are not meant to

question this requirement. Rather, my concern entails the consideration given to the expression of comprehensive reasons when they arise in political deliberation. In this section I explore the moral duty of civility and the role it plays in public reason. I argue that the duty of civility is insufficient, because it falls short of fostering a climate of open listening in political deliberations over the most severe conflicts: those having to do with basic questions of justice and the constitutional essentials.

The values of political justice that form the focus of the overlapping consensus can be broken down into two categories: the principles of justice themselves and the values of public reason.⁹ Public reason can be understood as “guidelines for applying the principles of justice that presumably all reasonable persons accept in a well-ordered society.”¹⁰ A feature of public reason is that different comprehensive doctrines will utilize and employ the political conception in different ways. A list of public reasons can be compiled for any political question; it is simply a matter of applying the political conception to a particular problem. (For example, in Chapter 3 I illustrated Rawls’ enumeration of public reasons as they pertain to the family. Different specifications could surely exist). Of utmost importance, then, is that citizens’ political claims and decisions are accompanied by public reasons to which all other citizens agree. People meet the proviso requirement when they appeal to these reasons alongside comprehensive reasons to support their arguments. In doing so they also fulfill their moral duty of civility. It is to this duty that I now turn.

The duty of civility is a moral not a legal duty. Rawls defines it as the duty “to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public

reason” (PL 217). This duty is directly related to the principle of legitimacy, which defines legitimate political power in terms of a criterion of endorsement, referring of course to the overlapping consensus. Freeman points out that there is a certain ambiguity around the duty of civility regarding the extent to which one needs to justify political decisions in the terms of public reason. In some instances, we may not know what the root motivation for our political belief is, or we may not fully understand it, or we may only have knowledge of it in terms of our comprehensive doctrine. Whatever the case, Freeman argues that it is enough to suppose that Rawls simply meant that people must believe in earnest that they *could* appeal to shared political values in presenting their political position. Thus, the duty of civility can be understood as meeting the proviso requirement.

So Rawls’ duty of public civility is met simply by giving reasons that can be agreed upon by citizens who form a consensus on a political conception of justice. For example, political debates over abortion cannot refer to the soul of the fetus or the sacredness of human life, because these notions could not be accompanied by the proviso: they are not defensible according to political values.¹¹ Similarly, political debates over same-sex marriage should neither appeal to the fear of difference nor to the purported sinfulness of homosexual relations.¹² As Nussbaum states, “Not all reasons for opposing same-sex marriage are based on irrational fear. But the reasons that are not based on fear do not look like public reasons, part of the shared ethical space we share together; they look like theological reasons that are inside the private domain of the religions in question.”¹³ The upshot here is that the duty of civility, along with public reason and the proviso, prevents people from attacking, criticizing or trespassing upon

each other's comprehensive doctrines. Indeed, what could enter the debate is restricted by public reason, and neither public reason nor the political conception itself is capable of attacking, criticizing, or trespassing against any comprehensive doctrines. (*PL* 441, 490). Public dialogue must be so restricted because citizens cannot "even approach mutual understanding;" there are irreconcilable differences between their comprehensive doctrines (*PL* 441).

So the duty of civility plays an important role in preventing citizens from unduly criticizing people's most cherished beliefs or ways of life. Certainly political debates about such serious issues should be guided by public reason and not repugnant sentiments. However, I would like to suggest that we also could legitimately expect an atmosphere of open dialogue in debating such issues. This of course, would require that people listen to each other when discussing issues that they may not agree with and some may find insulting to the core. Indeed, citizens may have to develop a habit of empathy when in contact with those who they may not understand or even despise. But learning how to live in a pluralist society requires listening and considering diametrically opposed views; neither of these requirements entails endorsement nor requires agreement. And since the *moral* duty of civility is not a strict requirement there is no harm in extending its spirit towards empathy.

Rawls seems to suggest this when he defines the duty of civility. He makes a positive recommendation for how citizens should act towards one another when he states that the duty of civility also involves a "willingness to listen to others" and requires fair-mindedness in the face of the need to accommodate others' views (*PL* 217). He again makes similar suggestion when describing how the principle of legitimacy is based on the

criterion of reciprocity, which requires that “our exercise of political power is proper only when we *sincerely* believe that the reasons we would offer for our political actions are sufficient and we also reasonably think other citizens might reasonably accept those reasons” (italics added PL 447). Together, the criterion of reciprocity and the duty of civility requires considering other people’s beliefs as well as listening to them. This suggests more than Rawls’ more frequently expressed motivation to prevent trespass and criticism. Curiously, Rawls does not ever seem to capture this spirit in the political conception. Instead of making the political a place of listening, fair-minded accommodation, and sincere belief, he again and again refers to the political as a place of inevitable and embroiled disagreement. There will no doubt be disagreement, but this is all the more reason to understand our civic duty to each other in terms of learning and understanding instead of preventing offense. This inclination serves as a springboard for fostering a political sphere that welcomes the consideration of identity, complete with sufficient guidance for considering each other’s political claims, even across vast differences.

III. Political Amendments

It is important to remember that Rawls’ project is to offer answers to the problem of political justice. At its core this problem concerns how citizens in a pluralist society can live together under the same political conception of justice. My intention here is to offer an amendment to Rawls’ position that could improve the overall quality of this life together. To do so I consider the two concerns that seem to motivate Rawls’ restricting of the political sphere to a place of coexistence among inevitable and deep disagreement. The first is the need to dissolve any obstacles that would prevent some comprehensive

doctrines from endorsing the political conception; and I take this to be related to Rawls' insulating of the justification process itself. The second is Rawls' desire to make the political a safe and free place where people can engage in political debate without the risk of being insulted or criticized. I discuss these in turn.

The first concern requires an amendment to the overlapping consensus itself so that agreeing upon political values can be seen as compatible with knowing about each other's comprehensive doctrines. I suggest two ways in which this could be done. The first is simply a matter of interpretation and the second challenges Rawls' insistence that the overlapping consensus is freestanding.

Claudia Mills suggests that people in a pluralist democracy could come upon an overlapping consensus "based on the experience of living together and liking it."¹⁴ She argues that Rawls' insistence on the overlapping consensus places the focus only on the endorsement of the "rules" of justice. She stresses instead that the focus be on the "quality of our shared life together," which places emphasis not only on why we endorse the political conception, but that we truly endorse it.¹⁵ She takes her cue from Rawls' argument for how the overlapping consensus could grow out of a mere *modus vivendi*. A mere *modus vivendi* could evolve to a constitutional consensus, and then eventually to an overlapping consensus (*PL* 153-158). So the overlapping consensus on her view is not simply a matter of endorsing compelling political values. It is a wholehearted embrace on behalf of people who have experienced life together and come to agree on shared values by way of this experience. For Mills, Rawls' mistake lies in his insistence that the overlapping consensus is composed of comprehensive doctrines. "We do not need a story about how our allegiance to our principles of justice is rooted in our comprehensive

doctrines, but about how it is rooted in the shared experienced of our life together.”¹⁶

This shift in emphasis does not entail a (communitarian) community of shared comprehensive views. It simply requires valuing principles of justice simply because they make living together better and more possible. This view certainly answers my concern about Rawls’ insistence on closing the political conception after its endorsement. Mill’s wholehearted consensus certainly would not require citizens to refrain from referencing or knowing about each other’s comprehensive doctrines. The unfortunate issue, however, is that the experience of life together could be miserable and insufficient for instigating the will to consensus.¹⁷ I turn to another option in which there may be normative bases to undergird an optimistic view of life in pluralism.

Larmore suggests that Rawls’ overlapping consensus is not freestanding, and identifies Rawls’ latent appeal to moral authority as the moral basis of political liberalism. He argues, “our commitment to democracy or political self-determination cannot be understood except by appeal to a higher moral authority, which is the obligation to respect one another as persons.”¹⁸ Larmore notes that commitment to the principle of equal respect has become a matter of second nature and that Rawls may have not given it the treatment it deserves in his own thought, even as it underlies the main aspects of his theory of justice from the notion of fairness to the criterion of reciprocity. Indeed, Larmore notes that we often “look through it” and reflect instead on the constitutional rules of a democracy or assess the numerous ways people can come to tolerate each other regardless of difference. One reason for overlooking this is that self-determination enjoys an incredible moral prestige in our time. Rawls perhaps relies on it when he demands that endorsement should stem from a person’s comprehensive views,

and not from some higher value she shares with others. But it may be that endorsement is motivated from a value that democratic peoples have come to share: the normative value of equal respect.¹⁹

Larmore argues that the value of equal respect is foundational in the overlapping consensus, not because it is found to be agreeable to every reasonable comprehensive doctrine, but because it is the moral value that motivates citizens to join an overlapping consensus in the first place. He states, “In reality equal respect defines the specific moral ‘we’ we have come to be in the democratic world, even as we remain divided by important differences about other fundamental matters.”²⁰ Thus Rawls would not need to worry so deeply about clearing the political conception of obstacles to endorsement. Reasonable comprehensive doctrines could work out the content of the political conception under the guidance of equal respect. So there would be no need for restricting the public justification from the normative concerns of comprehensive doctrines. Doing so is publically justifiable in appeal to the principle of equal respect, and thus no harm would be done if people placed their comprehensive reasons in full view of each other. This is because those comprehensive doctrines that could form an overlapping consensus share the normative value of equal respect.²¹ This value could guide them through learning to respect each other even across the most intractable differences.

Both of the amendments allow for the fact that citizens could agree about a wider range of values. Motivated by the value of equal respect, they could, perhaps, as Nussbaum suggests form a consensus around the value of appropriate compassion.²² For Nussbaum a compassionate society would entail both compassionate institutions and compassionate individuals. My interest in the idea, however, regards what it could mean

for the moral duty of civility as understood in terms of public reason. If part of the reason for limiting the introduction of comprehensive reasons into political debates is respect for people's cherished beliefs, then public reasons which appeal to the value of appropriate compassion would allow not only for such protections, but also help ensure active listening and even empathy in the political sphere. Further, the value of appropriate compassion may demand that comprehensive reasons be heard out and considered fully, even though the ultimate binding decision would require the proviso. As Nussbaum suggests, "we will continue to need compassion as an appropriate response and as a motive to attend with concern to the needs of our fellows, a motive that needs recognition in the design of the political conception."²³ Indeed, if it were part of a consensus, compassion could form part of public reason and help guide political debates over constitutional essentials, which also welcome contentious and sensitive comprehensive reasons. With appropriate compassion as a value of public reason, when Rawls' invites people and their identities into to serious discussion in public political culture he could ensure that they are listened to openly, respected, and treated compassionately, even while some in their audience may once have found their views "repugnant."

These amendments would allow for the consideration of issues of identity in the political insofar as they avoid what I take to be Rawls' reasons for excluding them. This has the double effect of making Rawls' solution to the question of justice both more optimistic, and open to disagreements and conflict. This may seem like a contradiction, but working out life in a pluralist society requires both the outlook that it is possible and the willingness to confront disagreements and work out just solutions to them. Imagining the possibility of wholehearted acceptance of an overlapping consensus founded on the

principle of equal respect has a deep effect on how we receive the views of others with whom we may disagree in the political forum and it may also afford us the momentum to disclose our own potentially unpopular comprehensive views when pertinent. Moreover, given these amendments, discussing these views is quite compatible with the political conception and could not effect our endorsement of it nor its public justification. In a certain sense, acting respectfully and compassionately towards each other as endorsers of a shared conception of political justice simply serves to strengthen the political bonds of life in pluralist society. Openness to the possibility of the best possible life in pluralism could have a profound effect on how we come to political debates. “The answer that we give to the question of whether a just democratic society is possible and can be stable for the right reasons affects our background thoughts and attitudes about the world as a whole. And it affects thoughts and attitudes before we come to actual politics, and limits or inspires how we take part in it” (*PL* lix).

Notes

¹ See Michael Sandel's review of Political Liberalism in *Public Philosophy*. Cambridge, MA: Harvard University Press, 2005) and Claudia Mill's discussion in "'Not a mere modus Vivendi': The bases for allegiance to the just state" in Davion & Wolf pp. 191-192.

² Larmore 211

³ Larmore 211

⁴ Freeman 365

⁵ Freeman 366-367

⁶ Claudia Mills sets up a helpful interpretation of Rawls' intention on adjudicating between the extremes of monolithic community and modus vivendi. Claudia Mills "'Not a mere modus vivendi': The Bases for Allegiance to a Just State," *The Idea of a Political Liberalism: Essays on Rawls*, eds. Victoria Davion and Clark Wolf (New York: Rowman & Littlefield Publishers, 2000) 190-204.

⁷ "Questions are not removed from the political agenda, so to speak, solely because they are a source of conflict" (*PL* 151).

⁸ This is Rawls' summary of Habermas' concern as to whether the comprehensive doctrines have a role in the justification of the overlapping consensus.

⁹ Freeman 372

¹⁰ Freeman 372

¹¹ Freeman 414

¹² For a discussion on the relationship between political values and comprehensive religious doctrines with respect to debates on same sex marriage see Martha C. Nussbaum, *Liberty of Conscience* (New York: Basic Books, 2008) 334-346. (343).

¹³ Nussbaum, *Liberty* 336

¹⁴ Mills 198

¹⁵ Mills 198

¹⁶ Mills 202

¹⁷ Mills acknowledges this in reference to the historical divisions between races and racism in the United States. She states, "If stability is easier to get in some ways than Rawls suggests, it is also harder. When we share a common history and culture, we can build on those to establish a political community as well. But when common history and culture are lacking, no amount of shared allegiance to political principles may be enough to bridge the gap. This may be why race continues tragically to divide a nation that fought a civil war to stay united in the principles of justice affirmed at its founding" (203).

¹⁸ Larmore 167

¹⁹ On this point Larmore is clear that to have grasped the reasons for equal respect's validity may require having had "a certain history and gone through certain experiences" (165). Indeed he denies that human beings acquire this fundamental moral through "foundationalist" means. It is not *a priori* or rationally indubitable; it is historically contingent. This is where I find a connection to Mill's argument. However, Larmore's is more robust in the sense that the historical experience "living together" brings with it an autonomous moral principle shared across several conceptions of the good.

²⁰ Larmore 166

²¹ It is important to note that Larmore would not interpret his suggestion this way. He strongly warns against inviting comprehensive concerns into the political, holding instead that some issues are to be worked out in civil society. The assumption is that discussion in civil society would be fully unrestricted. That is all well and good, but I believe there comes a point where people do need to work some things out politically. And inviting such political discussions could help foster a political attitude of open mindedness toward the unfamiliar and empathy or compassion toward the "repugnant."

²² Compassion is to be appropriate, because "a compassionate society might still be an unjust society. It might weep about the fact that taxes cause people to miss out on luxury goods such as peacock's tongues. And it might fail to weep about the Joads, forced into destitution by the absence of a social safety net. It might blame the poor for their plight and fail to blame those who exploit them." Martha Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001) 414.

²³ Martha Nussbaum, *Upheavals* 405. The reference here to the Joads refers to John Steinbeck's *The Grapes of Wrath*.

CHAPTER 5: PRIMARY GOODS AND CONSIDERATIONS OF IDENTITY

I now consider whether Rawls' index of primary goods is adequate for ensuring that citizens' basic needs can be met in such a way as to acknowledge variations in social identity. I have offered a cursory treatment of this question both in considering the role of the primary goods in fostering ethical success (Chapter 1 above) and also in discussing the variation of needs that emerge among different cultural ways of life (Chapter 2 above). It seems doubtful that Rawls' index is adequate. Rawls offers primary goods as the "all-purpose means" for citizens to pursue their conception of the good, whatever else their interests. For Rawls, regardless of the specificity of their identity, each citizen's needs as free and equal persons can be considered according to the same index of primary goods. For Rawls, justice requires making these goods available not by considering individuals in terms of their identity, social circumstance, geography, physical ability, etc., but by creating social institutions that are able to supply all-purpose resources. Yet it is dubious whether such goods could do justice to social inequalities: the needs of a diversity of citizens could not possibly fit into a one-size-fits-all institutional agenda. Indeed, primary goods alone seem to be incapable of picking out and alleviating inequalities pertaining both to people's identities and to their physical abilities.

In light of the inadequacies of Rawls' primary goods I will discuss a rival view, the capabilities approach, as it is understood by Amartya Sen. My intention in doing so is not to argue that one approach is better than the other, but rather to explore each view's strengths and weaknesses. Indeed, I argue that primary goods and capabilities are complementary notions and that extending the range of primary goods by invoking the capabilities approach allows for accommodating the variation in degree and kind of needs

in diverse societies. In making this argument I will show that Rawls offers one type of primary good that stands without the need of extension; basic rights and liberties are by nature one-size-fits-all. However, the other primary goods, opportunities, powers, and the social bases of self-respect are context dependent and require the addition of the capabilities approach for appropriate accommodations. After a detailed discussion of the primary goods, I briefly describe Sen's criticism and alternative to the primary goods. Finally, I argue that primary goods and capabilities are complementary and that justice requires extending some primary goods to consider capabilities.

I. The Primary Goods

In offering a list of primary goods, Rawls is intent on describing what kinds of claims are appropriate for citizens to make, and what is required by justice to support those claims. Rawls seeks a shared understanding of what such claims could amount to, and so he must answer the following question: "Given the different and opposing, and even incommensurable conceptions of the good in a well-ordered society, how is such a public understanding possible?" (*CP* 361). Rawls' answer to this question changed over the course of his life. He first answers the question by an appeal to the original position, and then in terms of the political conception of the person.

The first answer I consider to the question at hand appears in the 1982 article, "Social Unity and Primary Goods." There Rawls describes the primary goods from the perspective of the original position, which views the person as free and equal in terms of the two moral powers—the capacity for a sense of justice and a the capacity to pursue and revise a conception of the good. Parties in the original position rationally discover the primary goods, which are "necessary conditions for realizing the powers of moral

personality and are all-purpose means for sufficiently wide range of final ends'' (CP 267). This presupposes a partial similarity between all persons' wants, abilities, character, requirements of nurture, and relations of social dependence, etc. (CP 267). The similarity is represented by the parities in the original position as free and equal. The primary goods are as follows:

- (i) The basic liberties (freedom of thought and liberty of conscience, etc.) are the background institutions necessary for the development and exercise of the capacity to decide upon and revise, and rationally to pursue a conception of the good. Similarly, these liberties allows for the development and exercise of the sense of right and justice under political and social conditions that are free.¹
- (ii) Freedom of movement and free choice of occupation against a background of diverse opportunities and required for the pursuit of final ends as well as to give effect to a decision to revise and change them, if one so desires.
- (iii) Powers and prerogatives of offices of responsibility are needed to give scope to various self-governing and social capacities of the self.
- (iv) Income and wealth, understood broadly as they must be, are all-purpose means (having an exchange value) for achieving directly or indirectly a wide range of ends, whatever they happen to be.
- (v) The social bases of self-respect are those aspects of basic institutions that are normally essential if citizens are to have a lively sense of their own worth as moral persons and to be able to realize their highest-order interests and advance their ends with self-confidence. (CP 366)

These primary goods are offered as the solution to a public understanding of what can be appropriately claimed in questions of justice among citizens with conflicting and "incommensurable" conceptions of the good. When these all-purpose means are met, all citizens are able to develop and exercise their highest order interest, their notion of the good.

In *Political Liberalism*, Rawls came to see citizens as having "irreconcilable" conceptions of the good, which he understood as commensurable in as much as they can engage in a mutual agreement on the political conception. However, with few exceptions, his list and understanding of primary goods remained much the same.² It is important to

note that *Political Liberalism* presents primary goods independently of the original position. Rawls notes there that several background conditions help to specify citizens' needs. These include the political conception of the person, a person's rational life plan (also known as "goodness as rationality"), the basic facts of social life, and the conditions of human growth and nurture. This background, however, does not presuppose any comprehensive doctrines and is still fairly abstracted from people's actual identities. The primary goods enumerate needs that can be recognized as advantageous to all, regardless of the content of their life plans. That is, the primary goods are based on the objective circumstances of every citizen. The primary goods themselves show how a public understanding is possible to determine what can be considered advantageous in political justice (*PL* 187). This means that we can "present a scheme of equal basic liberties and fair opportunities, which when guaranteed by the basic structure, ensures for all citizens the adequate development, and full exercise of the two moral powers and a fair share of the all-purpose means" (*PL* 187). Thus the index of primary goods can be practicably incorporated into social institutions.

There are two questions I would like to pursue regarding this understanding of the primary goods. The first, addressed in the next section, concerns how it is possible for a single scheme of primary goods to cover the incredible range of diverse circumstances that citizens find themselves in. I argue that more needs to be said about the relationship between actual persons and the good. The second, addressed in the final section, regards whether or not it makes sense to apply each of the primary goods the same way to all citizens. The basic liberties apply to all as a matter of understanding persons as free and equal. However, opportunities, powers, and self-respect seem to be contextual matters. I

shall argue in the end that primary goods and capabilities are complementary; primary goods are practicable for social institutions, while capabilities allow for the consideration of specificity in terms of physicality, social position, and identity.

II. The Capabilities Approach

Sen's critique of Rawls' primary goods does not simply pertain to the variation that exists between people in pluralist societies with respect to their comprehensive doctrines. Rather it regards the variations that may exist in one's ability to convert primary goods into actual freedom. Such variations may involve a person's physical ability, sex, age, genetic endowments, etc.³ Sen holds that "equality of holdings of primary goods or of resources can go hand in hand with serious inequalities in actual freedoms enjoyed by different persons."⁴ He argues that these inequalities are not compatible with the political conception of justice.

Instead, Sen offers a capabilities-based assessment of inequalities. Sen defines capabilities in terms of the achievement of functioning. "The functionings can vary from the most elementary ones, such as being well-nourished, avoiding escapable morbidity and premature mortality, etc., to quite complex and sophisticated achievements, such as having self-respect, being able to take part in life of the community, and so on."⁵ So talking in terms of capabilities means that a person's actual situation must be accounted for and that the assurance of *available* resources is insufficient for accounting for actual functionings. The capability-based assessment of justice considers individual claims in terms of "the freedoms that they actually enjoy to choose their lives that they have reason to value."⁶ The advantage of the capability-based approach is that it is able to pick out inequalities that primary goods fail to acknowledge. For instance, a person who has a

disability may have more primary goods but less capability to utilize them because of a handicap. Or a person may have more income and available nutrition but have less capability to become well nourished because of illness, or even because of pregnancy. The upshot is that regardless of a person's comprehensive doctrine, they may simply get less from an optimal distribution of primary goods.

On the other hand, capabilities are based upon people's actual freedom and take into account the particularities of their life. This may involve ways in which people choose to identify, for example as mothers, as people with disabilities, or as Deaf. Or it may apply to racial, ethnic, or cultural identifications within societies that privilege a majority culture or in cases in which language or geographical boundaries exist between people and their basic needs.⁷ Sen's capability-based approach can recognize disparities in people's ability to transfer available goods to actual freedoms. This approach has an advantage over primary goods, because the latter are understood as means or resources only. Such means are simply too fixed to ensure justice. Sen's focus on actual freedom involves seeking both equality of means and equality of results.⁸

III. Shaping Institutions and Meeting Diverse Needs

In offering his capabilities approach, Sen also defends the special nature of liberty and argues that it deserves special treatment over and above its status as a primary good. That is, the principle of liberty has a special priority over other principles of justice. He acknowledges the difference between reducing a person's capabilities by way of a violation of his liberty and a reduction caused by suffering from an internal or natural debilitation.⁹ Sen discloses that the capability approach is not "entirely adequate" for a theory of justice, because these two cases are not distinguishable on the capabilities

approach. Indeed he states: “The importance of *over-all* freedom to achieve cannot eliminate the special significance of *negative* freedom.”¹⁰ Sen discusses this largely in response to HLA Hart’s criticism of the priority of liberty in order to simply emphasize the demands of liberty over and above Rawls’ understanding of it as a resource or primary good.

Given the special status of liberty, I hold that liberty as a primary good does entail the social unity Rawls attempted to discover in enumerating the primary goods. Liberty has the dual status of a principle and an effective “resource” or good for all persons understood as free and equal, regardless of their identity. At the same time, while there seems to be a social unity in terms of people’s claims of liberty, the other primary goods need not be limited to the narrow specification people share in common with others. I argue for extending Rawls’ understanding of the other primary goods so as to include a capabilities-based assessment. Opportunity, powers, wealth (in a broad sense), and self-respect require both institutional practicability and the consideration of the particular relationship between a person and the good. My argument for the extension of the last four primary goods will proceed in two steps. First, I discuss the complementary nature of primary goods and capabilities. Second, I gesture toward how Rawls’ notion of primary goods needs to be extended to accommodate capabilities considerations. My argument for liberty as a primary good emerges within this discussion.

If primary goods are complementary with capabilities, then it must be shown that they offer something for which capabilities cannot account and which a just society cannot do without. Indeed, the primary goods have a particular advantage over the capabilities approach. Namely, the index of primary goods is designed to be practicable

for institutions and thus they are “well suited for providing a *public* criterion of justice.” Henry Brighthouse and Elaine Unterhalter argue that focusing on the subjective states of individuals is ill suited for this task because they are not easily publically monitored.¹¹ They hold that the capabilities approach has this difficulty because it is very hard to publically compare people’s enjoyment of similar capabilities sets. This is compounded by the difficulty of providing an index of capabilities. While Sen relies more on the notion of actual functioning, Nussbaum enumerates a list of general prerequisites (not actual functionings) for the state to make available to individuals.¹² But her thorough and impressive list arguably fails to meet Rawls’ criterion of simplicity and may be difficult to actualize. Rawls’ index, on the other hand, is actionable in such a way as to also be transparent.

But this benefit only goes so far. As Brighthouse and Unterhalter point out, “Publicity is an advantage, and it is one that the primary goods approach usually enjoys. But it enjoys it less, the more plausible it gets.”¹³ This because in order to become plausible in the face of the kind of variations Sen considers, it must appeal to how primary goods actually affect people’s lives. And involvement in such private matters is surely not capable of full transparency. If doing justice requires diminished transparency, so be it. What is important to note, is the complementary nature of primary goods and capabilities. “Each approach has advantages over the other when considering particular contexts.”¹⁴

Indeed, in response to Sen, Rawls utilizes the notion of capabilities as an alternative explanation of the two moral powers (*JF* 169). In doing so he exposes the distinct advantage of maintaining liberty as a primary good that applies to the political

conception of the person with its restricted set of capabilities. He states: “The equal political liberties, and freedom of speech and freedom of assembly and the like, are necessary for the development and exercise of citizens’ sense of justice and are required if citizens are to make rational judgments in the adoption of just political aims and in the pursuit of effective social policies” (*JF* 169). Further he notes that the equal civil liberties, liberty of conscience and freedom of association have an important role in citizens’ capacity to revise and pursue a conception of the good. Liberty as a primary good when limited to these two “capabilities” appears to be quite available to people regardless of variation.

However, the other goods, opportunities, powers, wealth, and self-respect are contingent on the specific conditions of a person’s life. They do not involve our general ability to develop as citizens or pursue one good rather than another, but pertain to our sense of who we are, our identity, and our carrying out of the particular life we have the liberty to choose. Additionally, as Sen often discusses, the last four primary goods may have nothing to do with our full conception of our selves as such, but concern our physical ability or health. But of course, the notion of functionings covers this range.

I now turn to a consideration of how to extend Rawls’ primary goods in order to specify how they complement capabilities. A more thorough discussion is needed to discuss all four individually. For my purposes, a discussion of extending opportunities should suffice as a model for similar extensions in the others. Norman Daniels argues that the primary social goods could be extended to meet all relevant citizens’ needs by illustrating how opportunity could be connected with the idea of normal functioning.¹⁵ He argues that impairments in normal functioning reduce people’s ability to pursue their

plans of life. If opportunity is understood in terms of “the arrays of life plans that it is reasonable for [a person] to choose, given their talents and skills, assuming normal functioning,” then poor health and disability (which decrease normal functioning) radically reduce a person’s fair share of opportunities.¹⁶ Thus, Daniels argues that protection of fair equal opportunity also requires comprehensive health care, which covers not only inequalities in health status, but improvements in people’s health: “normal functioning is important to the capabilities of citizens in a democracy.”¹⁷ The extension includes an element of positive freedom (capability) into Rawls’ understanding of primary goods, which for Daniels means that meeting people’s needs through (extended) primary goods converges on capabilities. To balance this extension and make it more plausible, simply consider Sen’s demand that inequalities between capabilities be assessed in order to ensure individual liberty. The two notions of the good converge, even if from different directions.

There may be plenty of room to argue that the index of primary goods should be altered in order to accommodate changes or developments in the social world or to more appropriately represent the needs and claims of citizens. Any such index, so long as it is also extendable to consider the capabilities individuals have for utilizing social goods, could also succeed in creating institutions capable of meeting people’s needs and appropriately adjudicating between competing claims. In conclusion, the complementary relationship between the index and capabilities-based assessment allows for extending primary goods in order to consider variations in the needs of individuals whether resulting from identity, physical ability, or social circumstance. This enables primary goods to acknowledge numerous variations between people within a diverse society when

it comes to their capabilities in utilizing opportunities, powers, wealth, and self-respect. Basic liberties, however, can be understood to apply to each person equally and enjoys a special status both as a primary good and as a principle of justice.

Notes

¹ The full enumerations of the basic liberties is given by this list: “freedom of thought and liberty of conscious; freedom of association; and the freedom defined by the liberty and integrity of the person; as well as by the rule of law; and finally the political liberties” (*CP* 362).

² See his discussion on leisure as an adjustment to his list of primary goods in *JF* §53.

³ Amartya Sen, *Inequalities Reexamined* (Cambridge, MA: Harvard University Press, 1992) 85.

⁴ Sen 81.

⁵ Sen, 5

⁶ Sen 81

⁷ I mention geography here thinking about variations in rural and remote healthcare access.

⁸ Sen 87

⁹ Sen 87

¹⁰ Sen 87

¹¹ Harry Brighouse and Elaine Unterhalter, “Primary Goods versus Capabilities: Defending the Good against the Equally Good,” ed. Shaun P. Young, *Reflections on Rawls: An Assessment of his Legacy* (Surrey: Ashgate publishing Limited, 2009) 45-60.

¹² See Nussbaum, *Frontiers* and Martha Nussbaum, *Women and Human Development* (Cambridge: Cambridge University Press, 2000)

¹³ Brighouse and Unterhalter 58

¹⁴ Brighouse and Unterhalter 58

¹⁵ Norman Daniels, “Democratic Equality: Rawls’ Complex Egalitarianism,” *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003) 241-276.

¹⁶ Daniels 257

¹⁷ Daniels 257

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