

Justice as Fairness

A RESTATEMENT

John Rawls

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Editor's Foreword

In *A Theory of Justice* (1971), John Rawls proposed a conception of justice that he called "justice as fairness."¹ According to justice as fairness, the most reasonable principles of justice are those that would be the object of mutual agreement by persons under fair conditions. Justice as fairness thus develops a theory of justice from the idea of a social contract. The principles it articulates affirm a broadly liberal conception of basic rights and liberties, and only permit inequalities in wealth and income that would be to the advantage of the least well off.

In "Justice as Fairness: Political Not Metaphysical" (1985), Rawls began to develop the idea that an account of justice with liberal content is best understood as a *political* conception.² A political conception of justice is justified by reference to political values and should not be presented as part of a more "comprehensive" moral, religious, or philosophical doctrine. This idea is central to *Political Liberalism* (1993).³ Under the political and social conditions of free institutions, we encounter a plurality of distinct and incompatible doctrines, many of which are not unreasonable. Political liberalism acknowledges and responds to this "fact of reasonable pluralism" by showing how a political conception can fit into various and even conflicting comprehensive doctrines: it is a possible object of an overlapping consensus between them.

1. *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971; rev. ed., 1999).

2. "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14 (Summer 1985): 223–252.

3. *Political Liberalism* (New York: Columbia University Press, 1993).

Developing the idea of political liberalism has led Rawls to reformulate his presentation and defense of justice as fairness. Whereas *A Theory of Justice* presented justice as fairness as part of a comprehensive liberal outlook, this restatement shows how it can be understood as a form of political liberalism. Indeed, Rawls presents justice as fairness as the most reasonable form of political liberalism. In doing so, he recasts the basic arguments for the two principles of justice that are central to a conception of justice as fairness.

This book originated as lectures for a course on political philosophy that Rawls taught regularly at Harvard in the 1980s. The course included a study of the works of historically important figures (Hobbes, Locke, Rousseau, Kant, Hegel, Mill, and Marx) and also presented the fundamentals of Rawls's own view. The lectures on justice as fairness were distributed to the class in written form, at first to supplement reading assignments from *A Theory of Justice*. They addressed questions not taken up in *Theory*, and corrected what Rawls had come to see as mistakes in some of *Theory*'s arguments. Later the lectures were presented on their own, as a more or less complete restatement of the theory of justice as fairness. By 1989 the manuscript had evolved into something close to its current form.

Rawls did revise the manuscript again in the early 1990s as he completed *Political Liberalism*. It is not, however, substantially different from the 1989 version, except for the addition of §50 on the family. After the publication of *Political Liberalism*, Rawls turned his attention to a number of other works, including *The Law of Peoples*,⁴ which was originally to be Part VI of this restatement. The rest, now published, are "Reply to Habermas," an introduction to the paperback edition of *Political Liberalism*, and "The Idea of Public Reason Revisited."⁵ Ideas from those works are found here, though not always as fully developed as in their already published form.

Because of illness, Rawls has been unable to rework the manuscript in its final state, as he had planned. Still, most of the manuscript was nearly complete. Parts IV and V are the most unfinished, and with more time, surely Rawls would have filled out those sections and integrated them more fully with the first three parts. Part IV reads as addenda to the more detailed and

4. *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

5. "Reply to Habermas," *Journal of Philosophy* 92 (March 1995): 132-180, reprinted in the paperback edition of *Political Liberalism* (1996); "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (Summer 1997): 765-807, reprinted in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), and in *The Law of Peoples*.

free-standing Parts I-III. Part V is a preliminary effort to reformulate the arguments for the stability of justice as fairness that were presented in Part Three of *A Theory of Justice*. Using the notion of an overlapping consensus, Part V argues for the stability of justice as fairness as a political conception of justice, an idea pursued in *Political Liberalism* and the more recent works. Although they are unfinished, Parts IV and V present important pieces of the overall argument for justice as fairness. The editorial decision has been to leave them, as well as the other parts of the book, mostly untouched. Some sections were reordered so as to introduce basic distinctions earlier. What is now §42 originally followed §50, §47 followed §44, §§55 and 57 were reversed, and §56, which had been the last section of Part V, has been inserted between them.

Additional changes involved the following. References to Part VI, "The Law of Peoples," have been removed. Some exposition of basic concepts, such as the veil of ignorance, has been added. Where this was done, the wording was drawn from *A Theory of Justice* and *Political Liberalism*, and footnotes to those works have been added accordingly and bracketed. Throughout, the approach to making changes has been conservative. Revisions were kept to a minimum and care has been taken not to alter the substance of what Rawls wrote. All changes were made with the author's knowledge.

I am grateful for the help I received in preparing this manuscript. I would especially like to acknowledge Joshua Cohen and Mard Rawls, both of whom worked through the text with me in detail. Their critical judgment and numerous suggestions were extremely valuable. For their useful advice, I would also like to thank Arnold Davidson, Barbara Herman, Percy Lehning, Lionel McPherson, and T. M. Scanlon.

Preface

In this work I have two aims. One is to rectify the more serious faults in *A Theory of Justice*¹ that have obscured the main ideas of justice as fairness, as I called the conception of justice presented in that book. Since I still have confidence in those ideas and think the more important difficulties can be met, I have undertaken this reformulation. I try to improve the exposition, to correct a number of mistakes, to include some useful revisions, and to indicate replies to a few of the more common objections. I also recast the argument at many points.

The other aim is to connect into one unified statement the conception of justice presented in *Theory* and the main ideas found in my essays beginning with 1974. *Theory* itself was nearly six hundred pages and the more relevant essays (of which there are about ten) bring the total close to a thousand pages.² Moreover, the essays are not fully compatible, and ambiguities

1. In 1975 I made revisions for the first foreign translation of *A Theory of Justice* (1971, rev. ed. 1999). These have appeared in many subsequent foreign translations but never, before 1999, in English. The revised edition rectifies that situation (it contains no further revisions). When these lectures were given, the revisions, some of which address problems discussed in the lectures, were not available in English, and it was assumed the students had only the original text. Therefore, some references to *Theory* in this restatement may be to discussions that do not appear in the revised edition. In these cases, pages in the first edition are indicated. All other page references are to the revised edition. References will always include the section number, which is the same in both editions.

2. Here I list the more relevant essays for reference: "Reply to Alexander and Musgrave," *Quarterly Journal of Economics* 88 (November 1974): 633-655; "A Kantian Conception of

in stating various ideas—for example, that of an overlapping consensus—make it difficult to find a clear and consistent view. The interested reader is entitled to assistance in seeing how these essays and *Theory* might fit together, where the revisions go and what difference they make. This assistance I try to provide by presenting in one place an account of justice as fairness as I now see it, drawing on all those works. I have tried to make this reformulation more or less self-contained.

For those who have some acquaintance with *Theory*, the main changes are of three kinds: first, changes in the formulation and content of the two principles of justice used in justice as fairness; second, changes in how the argument for those principles from the original position is organized; and third, changes in how justice as fairness itself is to be understood: namely, as a political conception of justice rather than as part of a comprehensive moral doctrine.

To explain: two examples of changes of the first kind are these: one is a quite different characterization of the equal basic liberties and their priority, a change required to meet the forceful criticisms raised by H. L. A. Hart (§13); another is a revised account of primary goods which connects them with the political and normative conception of citizens as free and equal persons, so that these goods no longer appear (as many pointed out to me, including Joshua Cohen and Joshua Rabinowitz) to be specified solely on the basis of psychology and human needs (§17). I also try to meet objections raised by Amartya Sen (§51).

Equality," *Cambridge Review* 96 (1975): 94–99, and reprinted as "A Well-Ordered Society" in *Philosophy, Politics, and Society*, 5th ser., ed. Peter Laslett and James Fishkin (New Haven: Yale University Press, 1979); "Fairness to Goodness," *Philosophical Review* 84 (October 1975): 536–555; "The Basic Structure as Subject," *Values and Morals*, ed. Alan Goldman and Jaegwon Kim (Dordrecht: D. Reidel, 1978); "Kantian Constructivism in Moral Theory," *Journal of Philosophy* 77 (September 1980): 515–572; "Social Unity and Primary Goods," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982); "The Basic Liberties and Their Priority," *Tanner Lectures on Human Values*, vol. 3, ed. Sterling McMurrin (Salt Lake City: University of Utah Press, 1982); "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14 (Summer 1985): 223–252; "On the Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (February 1987): 1–25; "On the Priority of Right and Ideas of the Good," *Philosophy and Public Affairs* 17 (Fall 1988): 251–276; "The Domain of the Political and Overlapping Consensus," *New York Law Review* 64 (June 1989): 233–255. These essays are occasionally noted in the footnotes of the text, sometimes by an obvious abbreviation. Excepting "The Basic Structure as Subject" and "The Basic Liberties and Their Priority," these all appear in John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999).

The main change of the second kind is a division of the argument from the original position for the two principles of justice into two fundamental comparisons. In one comparison the two principles are compared with the principle of (average) utility. In the other comparison the two principles are compared with a modification of themselves formed by substituting for the difference principle the principle of (average) utility constrained by a minimum. These two comparisons enable us to separate the reasons for the first principle of justice, covering the basic liberties, and for the first part of the second, that of fair equality of opportunity, from the reasons for the other part of the second principle, the difference principle. In contrast to what the exposition in *Theory* may suggest, this division of the argument shows that the reasons for the difference principle do not rest (as K. J. Arrow and J. C. Harsanyi and others have not unreasonably thought) on a great aversion to uncertainty viewed as a psychological attitude (§§34–39). That would be a very weak argument. Rather, the appropriate reasons rest on such ideas as publicity and reciprocity.

Changes of the third kind arise in clarifying how justice as fairness is to be understood. *Theory* never discusses whether justice as fairness is a comprehensive moral doctrine or a political conception of justice. In one place it says (*Theory*, §3: 15) that if justice as fairness succeeds reasonably well, the next step would be to study the more general view suggested by the name "rightness as fairness." Even though the problems examined in *Theory* in any detail are always the traditional and familiar ones of political and social justice, the reader can reasonably conclude that justice as fairness was set out as part of a comprehensive moral doctrine that might be developed later should success encourage the attempt.

This restatement removes that ambiguity: justice as fairness is now presented as a political conception of justice. To carry out this change in how justice as fairness is to be understood forces many other changes and requires a family of further ideas not found in *Theory*, or at least not with the same meaning or significance. Besides the introduction of the idea of a political conception of justice itself, we need the idea of an overlapping consensus of comprehensive, or partially comprehensive, religious, philosophical, and moral doctrines in order to formulate a more realistic conception of a well-ordered society, given the fact of pluralism of such doctrines in a liberal democracy. We also need the ideas of a public basis of justification and of public reason, as well as certain general facts of commonsense political sociology, some of which are accounted for by what I call the burdens of judgment, again an idea not used in *Theory*.

Offhand, it may seem surprising that viewing justice as fairness as a political conception, and not as part of a comprehensive doctrine, should require a family of further ideas. The explanation is that now we must always distinguish between the political conception and various comprehensive doctrines, religious, philosophical, and moral. These doctrines usually have their own ideas of reason and justification. So likewise does justice as fairness as a political conception, namely, the ideas of public reason and of a public basis of justification. The latter ideas must be specified in a way that is appropriately political and hence distinct from the parallel ideas of comprehensive doctrines. Given the fact of reasonable pluralism (as I shall call it), we must keep track of different points of view if justice as fairness (or any political conception) is to have any chance of gaining the support of an overlapping consensus.

The meaning of these remarks will not be clear at this point. Their aim is simply to give an indication, to those already familiar with *Theory*, of the kinds of changes they will find in this brief restatement.

As always, I am grateful to many of my colleagues and students for their thoughtful and helpful commentaries and criticisms over the years. They are too numerous to mention here, but to all of them I am deeply indebted. I also wish to thank Maud Wilcox for her sensitive editing of the 1989 version of the text. Finally, I must express my deepest appreciation to Erin Kelly and my wife, Mardy, who made completion of the book possible despite my declining health.

October 2000

JUSTICE AS FAIRNESS

A Restatement

PART I

Fundamental Ideas

§1. Four Roles of Political Philosophy

1. ordering/cooperation
2. orientation
3. reconciliation
4. utopian

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1.1. We begin by distinguishing four roles that political philosophy may have as part of a society's public political culture. Consider first its practical role arising from divisive political conflict and the need to settle the problem of order.

There are long periods in the history of any society during which certain basic questions lead to deep and sharp conflict and it seems difficult if not impossible to find any reasoned common ground for political agreement. To illustrate, one historical origin of liberalism is the Wars of Religion in the sixteenth and seventeenth centuries following the Reformation; these divisions opened a long controversy about the right of resistance and liberty of conscience, which eventually led to the formulation and often reluctant acceptance of some form of the principle of toleration. The views in Locke's *Letter on Toleration* (1689) and Montesquieu's *The Spirit of Laws* (1748) have a long prehistory. Hobbes's *Leviathan* (1652)—surely the greatest work of political philosophy in English—is concerned with the problem of order during the turmoil of the English civil war; and so also is Locke's *Second Treatise* (also 1689). To illustrate in our own case how divisive conflict may lead to political philosophy, recall the extensive debates between Federalists and Anti-Federalists in 1787–88 over ratification of the Constitution, and how the question of the extension of slavery in the years before the Civil War called forth fundamental discussions of that institution and of the nature of the union between the states.

We suppose, then, that one task of political philosophy—its practical role, let's say—is to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered. Or if such a basis of agreement cannot be found, perhaps the divergence of philosophical and moral opinion at the root of divisive political differences can at least be narrowed so that social cooperation on a footing of mutual respect among citizens can still be maintained.

To fix ideas, consider the conflict between the claims of liberty and the claims of equality in the tradition of democratic thought. Debates over the last two centuries or so make plain that there is no public agreement on how basic institutions are to be arranged so as to be most appropriate to the freedom and equality of democratic citizenship. There is a divide between the tradition derived from Locke, which stresses what Constant called “the liberties of the moderns”—freedom of thought and liberty of conscience, certain basic rights of the person and of property, and the rule of law—and the tradition derived from Rousseau, which stresses what Constant called “the liberties of the ancients”—the equal political liberties and the values of public life.¹ This overstylized contrast brings out the depth of the conflict.

This conflict is rooted not only in differences of social and economic interests but also in differences between general political, economic, and social theories about how institutions work, as well as in different views about the probable consequences of public policies. Here we focus on another root of the conflict: the different philosophical and moral doctrines that deal with how the competing claims of liberty and equality are to be understood, how they are to be ordered and weighed against each other, and how any particular way of ordering them is to be justified.

1.2. I note briefly three other roles of political philosophy which we consider further as we proceed. One is that political philosophy may contribute to how a people think of their political and social institutions as a whole, and their basic aims and purposes as a society with a history—a nation—as opposed to their aims and purposes as individuals, or as members of families and associations. Moreover, the members of any civilized society

1. See “Liberty of the Ancients Compared with That of the Moderns” (1819), in Benjamin Constant, *Political Writings*, trans. and ed. Biancamaria Fontana (New York: Cambridge University Press, 1988). Constant's dates: 1767–1830. The phrase “liberties of the ancients” refers to the liberties of native-born male citizens specified by the rights of political participation in the Athenian democracy at, say, the time of Pericles.

need a conception that enables them to understand themselves as members having a certain political status—in a democracy, that of equal citizenship—and how this status affects their relation to their social world.

This need political philosophy may try to answer, and this role I call that of orientation.² The idea is that it belongs to reason and reflection (both theoretical and practical) to orient us in the (conceptual) space, say, of all possible ends, individual and associational, political and social. Political philosophy, as a work of reason, does this by specifying principles to identify reasonable and rational ends of those various kinds, and by showing how those ends can cohere within a well-articulated conception of a just and reasonable society. Such a conception may offer a unified framework within which proposed answers to divisive questions can be made consistent and the insights gained from different kinds of cases can be brought to bear on one another and extended to other cases.

1.3. A third role, stressed by Hegel in his *Philosophy of Right* (1821), is that of reconciliation: political philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood from a philosophical point of view, are rational, and developed over time as they did to attain their present, rational form. This fits one of Hegel's well-known sayings: “When we look at the world rationally, the world looks rationally back.” He seeks for us reconciliation—*Versöhnung*—that is, we are to accept and affirm our social world positively, not merely to be resigned to it.

We shall be concerned with this role of political philosophy in several respects. Thus I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive, doctrine. The fact of reasonable pluralism which characterizes a society with free institutions makes this impossible.³ This is the fact of profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life. But this fact is not always easy to accept,

2. The term and its meaning is suggested by Kant's use of it in his essay “Was Heisst: Sich im Denken orientieren?” *Kant's gesammelte Schriften*, Preußischen Akademie der Wissenschaften, vol. 8 (Berlin, 1912). For him, reason is similarly the faculty of orientation as very briefly characterized in the text.

3. For the meaning of “reasonable” as used in the text, see §§2, 11, 23.

and political philosophy may try to reconcile us to it by showing us the reason and indeed the political good and benefits of it.

Again, political society is not, and cannot be, an association. We do not enter it voluntarily. Rather we simply find ourselves in a particular political society at a certain moment of historical time. We might think our presence in it, our being here, is not free. In what sense, then, can citizens of a democracy be free? Or as we shall ask eventually, what is the outer limit of our freedom (§26)?

One can try to deal with this question by viewing political society in a certain way, namely, as a fair system of cooperation over time from one generation to the next, where those engaged in cooperation are viewed as free and equal citizens and normal cooperating members of society over a complete life. We then try to formulate principles of political justice such that if the basic structure of society—the main political and social institutions and the way they fit together as one scheme of cooperation—satisfies those principles, then we can say without pretense and fakery that citizens are indeed free and equal.⁴

1.4. The fourth role is a variation of the previous one. We view political philosophy as realistically utopian, that is, as probing the limits of practicable political possibility. Our hope for the future of our society rests on the belief that the social world allows at least a decent political order, so that a reasonably just, though not perfect, democratic regime is possible. So we ask: What would a just democratic society be like under reasonably favorable but still possible historical conditions, conditions allowed by the laws and tendencies of the social world? What ideals and principles would such a society try to realize given the circumstances of justice in a democratic culture as we know them? These circumstances include the fact of reasonable pluralism. This condition is permanent as it persists indefinitely under free democratic institutions.

The fact of reasonable pluralism limits what is practicably possible under the conditions of our social world, as opposed to conditions in other historical ages when people are often said to have been united (though perhaps they never have been) in affirming one comprehensive conception.

4. The idea of political philosophy as reconciliation must be invoked with care. For political philosophy is always in danger of being used corruptly as a defense of an unjust and unworthy status quo, and thus of being ideological in Marx's sense. From time to time we must ask whether justice as fairness, or any other view, is ideological in this way; and if not, why not? Are the very basic ideas it uses ideological? How can we show they are not?

Eventually we want to ask whether the fact of reasonable pluralism is a historical fate we should lament. To show that it is not, or that it has its very considerable benefits, would be to reconcile us in part to our condition. Of course, there is a question about how the limits of the practicable are discerned and what the conditions of our social world in fact are; the problem here is that the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions, and much else. However, I shall not pursue this deep question here.

§2. Society as a Fair System of Cooperation

2.1. As I said above, one practicable aim of justice as fairness is to provide an acceptable philosophical and moral basis for democratic institutions and thus to address the question of how the claims of liberty and equality are to be understood. To this end we look to the public political culture of a democratic society, and to the traditions of interpretation of its constitution and basic laws, for certain familiar ideas that can be worked up into a conception of political justice. It is assumed that citizens in a democratic society have at least an implicit understanding of these ideas as shown in everyday political discussion, in debates about the meaning and ground of constitutional rights and liberties, and the like.⁵

Some of these familiar ideas are more basic than others. Those we use to organize and to give structure to justice as fairness as a whole I count as fundamental ideas. The most fundamental idea in this conception of justice is the idea of society as a fair system of social cooperation over time from one generation to the next (*Theory*, §1: 4). We use this idea as the central organizing idea in trying to develop a political conception of justice for a democratic regime.

This central idea is worked out in conjunction with two companion fundamental ideas. These are: the idea of citizens (those engaged in cooperation) as free and equal persons (§7); and the idea of a well-ordered society, that is, a society effectively regulated by a public conception of justice (§3).

As indicated above, these fundamental intuitive ideas are viewed as being

5. The exposition of justice as fairness starts with these familiar ideas. In this way we connect it with the common sense of everyday life. But because the exposition begins with these ideas does not mean that the argument for justice as fairness simply assumes them as a basis. Everything depends on how the exposition works out as a whole and whether the ideas and principles of this conception of justice, as well as its conclusions, prove acceptable on due reflection. See §10.

this is for Rawls's conception of what a pol. sh. do -- develop a utopian ideal that others should strive for.

*concept of social cooperation used to develop the idea of justice as fairness
 †Rawls's idea of social cooperation

familiar from the public political culture of a democratic society. Even though such ideas are not often expressly formulated, nor their meanings clearly marked out, they may play a fundamental role in society's political thought and in how its institutions are interpreted, for example, by courts and in historical or other texts regarded as being of enduring significance. That a democratic society is often viewed as a system of social cooperation is suggested by the fact that from a political point of view, and in the context of the public discussion of basic questions of political right, its citizens do not regard their social order as a fixed natural order, or as an institutional structure justified by religious doctrines or hierarchical principles expressing aristocratic values. Nor do they think a political party may properly, as a matter of its declared program, work to deny any recognized class or group its basic rights and liberties.

2.2. The central organizing idea of social cooperation has at least three essential features:

- (a) Social cooperation is distinct from merely socially coordinated activity—for example, activity coordinated by orders issued by an absolute central authority. Rather, social cooperation is guided by publicly recognized rules and procedures which those cooperating accept as appropriate to regulate their conduct.
- (b) The idea of cooperation includes the idea of fair terms of cooperation: these are terms each participant may reasonably accept, and sometimes should accept, provided that everyone else likewise accepts them. Fair terms of cooperation specify an idea of reciprocity, or mutuality: all who do their part as the recognized rules require are to benefit as specified by a public and agreed-upon standard.
- (c) The idea of cooperation also includes the idea of each participant's rational advantage, or good. The idea of rational advantage specifies what it is that those engaged in cooperation are seeking to advance from the standpoint of their own good.

Throughout I shall make a distinction between the reasonable and the rational, as I shall refer to them. These are basic and complementary ideas entering into the fundamental idea of society as a fair system of social cooperation. As applied to the simplest case, namely to persons engaged in cooperation and situated as equals in relevant respects (or symmetrically, for short), reasonable persons are ready to propose, or to acknowledge when

proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation. Reasonable persons also understand that they are to honor these principles, even at the expense of their own interests as circumstances may require, provided others likewise may be expected to honor them. It is unreasonable not to be ready to propose such principles, or not to honor fair terms of cooperation that others may reasonably be expected to accept; it is worse than unreasonable if one merely seems, or pretends, to propose or honor them but is ready to violate them to one's advantage as the occasion permits.

Yet while it is unreasonable, it is not, in general, not rational. For it may be that some have a superior political power or are placed in more fortunate circumstances; and though these conditions are irrelevant, let us assume, in distinguishing between the persons in question as equals, it may be rational for those so placed to take advantage of their situation. In everyday life we imply this distinction, as when we say of certain people that, given their superior bargaining position, their proposal is perfectly rational, but unreasonable all the same. Common sense views the reasonable but not, in general, the rational as a moral idea involving moral sensibility.⁶

2.3. The role of the principles of justice (as part of a political conception of justice) is to specify the fair terms of social cooperation (*Theory*, §1). These principles specify the basic rights and duties to be assigned by the main political and social institutions, and they regulate the division of benefits arising from social cooperation and allot the burdens necessary to sustain it. Since in a democratic society citizens are regarded from the point of view of the political conception as free and equal persons, the principles of a democratic conception of justice may be viewed as specifying the fair terms of cooperation between citizens so conceived.

By way of these specifications, the principles of justice provide a response to the fundamental question of political philosophy for a constitutional democratic regime. That question is: what is the most acceptable po-

6. This kind of distinction between the reasonable and the rational was made by W. M. Sibley in "The Rational versus the Reasonable," *Philosophical Review* 62 (October 1953): 554-560. The text connects the distinction closely with the idea of cooperation among equals and specifies it accordingly for this more definite idea. From time to time we come back to the distinction between the reasonable and the rational. See §23.2 and §23.3. It is of central importance in understanding the structure of justice as fairness, as well as T. M. Scanlon's general contractualist moral theory. See his "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982).

litical conception of justice for specifying the fair terms of cooperation between citizens regarded as free and equal and as both reasonable and rational, and (we add) as normal and fully cooperating members of society over a complete life, from one generation to the next.⁷ This question is fundamental because it has been the focus of the liberal critique of monarchy and aristocracy and of the socialist critique of liberal constitutional democracy. It is also the focus of the present conflict between liberalism and conservative views over the claims of private property and the legitimacy (as opposed to the effectiveness) of social policies associated with the so-called welfare state.⁷

In using the conception of citizens as free and equal persons we abstract from various features of the social world and idealize in certain ways. This brings out one role of abstract conceptions: they are used to gain a clear and uncluttered view of a question seen as fundamental by focusing on the more significant elements that we think are most relevant in determining its most appropriate answer. Unless explicitly stated otherwise, we do not try to answer any question except the fundamental question stated above.

§3. The Idea of a Well-Ordered Society

3.1. As stated in §2.1, the fundamental idea of a well-ordered society—a society effectively regulated by a public conception of justice—is a companion idea used to specify the central organizing idea of society as a fair system of cooperation. Now to say that a political society is well ordered conveys three things:

First, and implied by the idea of a public conception of justice, it is a society in which everyone accepts, and knows that everyone else accepts, the very same political conception of justice (and so the same principles of political justice). Moreover, this knowledge is mutually recognized: that is, people know everything they would know if their acceptance of those principles were a matter of public agreement.

Second, and implied by the idea of effective regulation by a public conception of justice, society's basic structure—that is, its main political and social institutions and the way they hang together as one system of coopera-

7. I say "so-called welfare state" because Part IV distinguishes between a property-owning democracy and a capitalist welfare state and maintains that the latter conflicts with justice as fairness.

tion—is publicly known, or with good reason believed, to satisfy those principles of justice.

Third, and also implied by the idea of effective regulation, citizens have a normally effective sense of justice, that is, one that enables them to understand and apply the publicly recognized principles of justice, and for the most part to act accordingly as their position in society, with its duties and obligations, requires.

In a well-ordered society, then, the public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another.

3.2. The idea of a well-ordered society is plainly a very considerable idealization. One reason we form this idea is that an important question about a conception of justice for a democratic society is whether, and how well, it can serve as the publicly recognized and mutually acknowledged conception of justice when society is viewed as a system of cooperation between free and equal citizens from one generation to the next. A political conception of justice that could not fulfill this public role must be, it seems, in some way seriously defective. The suitability of a conception of justice for a well-ordered society provides an important criterion for comparing political conceptions of justice. The idea of a well-ordered society helps to formulate that criterion and to specify further the central organizing idea of social cooperation.

The idea of a well-ordered society has two meanings. Its general meaning is given above in §3.1: a well-ordered society is a society effectively regulated by some public (political) conception of justice, whatever that conception may be. But the idea has a particular meaning when we refer to the well-ordered society of a particular conception of justice, as when we say that all members of society accept and know that all the others accept the same political conception of justice, for example, a particular natural rights doctrine, or a form of utilitarianism, or justice as fairness. Note that, given the fact of reasonable pluralism, a well-ordered society in which all its members accept the same comprehensive doctrine is impossible. But democratic citizens holding different comprehensive doctrines may agree on political conceptions of justice. Political liberalism holds that this provides a sufficient as well as the most reasonable basis of social unity available to us as citizens of a democratic society.

§4. The Idea of the Basic Structure

4.1. Another fundamental idea is the idea of the basic structure (of a well-ordered society). This idea is introduced so as to formulate and present justice as fairness as having an appropriate unity. Along with the idea of the original position (§6), it is needed to complete other ideas and to order them into a perspicuous whole. The idea of the basic structure may be seen in that light.

As indicated above in §3, the basic structure of society is the way in which the main political and social institutions of society fit together into one system of social cooperation and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time (*Theory*, §2: 6). The political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy (for example, as a system of competitive markets with private property in the means of production), as well as the family in some form, all belong to the basic structure. The basic structure is the background social framework within which the activities of associations and individuals take place. A just basic structure secures what we may call background justice.

4.2. One main feature of justice as fairness is that it takes the basic structure as the primary subject of political justice (*Theory*, §2). It does so in part because the effects of the basic structure on citizens' aims, aspirations, and character, as well as on their opportunities and their ability to take advantage of them, are pervasive and present from the beginning of life (§§15-16). Our focus is almost entirely on the basic structure as the subject of political and social justice.

Since justice as fairness starts with the special case of the basic structure, its principles regulate this structure and do not apply directly to or regulate internally institutions and associations within society.⁸ Firms and labor unions, churches, universities, and the family are bound by constraints arising from the principles of justice, but these constraints arise indirectly from just background institutions within which associations and groups exist, and by which the conduct of their members is restricted.

8. This seems obvious in most cases. Clearly the two principles of justice (§13) with their political liberties are not supposed to regulate the internal organization of churches and universities. Nor is the difference principle to govern how parents are to treat their children or to allocate the family's wealth among them. See Part IV, §50, on the family.

his point is crucial: Rawls is defining his project as addressing the artificial subject of the basic structure, not the real subject of political reality. Is this a well-formulated artefact? What is its relation to actual political reality?

4. The Basic Structure

For example, while churches can excommunicate heretics, they cannot burn them; this constraint is to secure liberty of conscience. Universities cannot discriminate in certain ways: this constraint is to help to establish fair equality of opportunity. Parents (women equally with men) are equal citizens and have equal basic rights including the right of property; they must respect the rights of their children (which the latter have as prospective citizens) and cannot, for instance, deprive them of essential medical care. Moreover, to establish equality between men and women in sharing the work of society, in preserving its culture and in reproducing itself over time, special provisions are needed in family law (and no doubt elsewhere) so that the burden of bearing, raising, and educating children does not fall more heavily on women, thereby undermining their fair equality of opportunity.

One should not assume in advance that principles that are reasonable and just for the basic structure are also reasonable and just for institutions, associations, and social practices generally. While the principles of justice as fairness impose limits on these social arrangements within the basic structure, the basic structure and the associations and social forms within it are each governed by distinct principles in view of their different aims and purposes and their peculiar nature and special requirements. Justice as fairness is a political, not a general, conception of justice: it applies first to the basic structure and sees these other questions of local justice and also questions of global justice (what I call the law of peoples) as calling for separate consideration on their merits.

The principles of justice to be followed directly by associations and institutions within the basic structure we may call principles of local justice.⁹ Altogether then we have three levels of justice, moving from inside outward: first, local justice (principles applying directly to institutions and associations); second, domestic justice (principles applying to the basic structure of society); and finally, global justice (principles applying to international law). Justice as fairness starts with domestic justice—the justice of the basic structure. From there it works outward to the law of peoples and inward to local justice. The law of peoples has been discussed elsewhere.¹⁰ No attempt will be made here to deal systematically with local justice. In general, principles for the basic structure constrain (or

9. I follow here Jon Elster's illuminating work, *Local Justice* (New York: Russell Sage Foundation, 1992).

10. See Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

limit), but do not determine uniquely, the suitable principles of local justice.

4.3. Note that our characterization of the basic structure does not provide a sharp definition, or criterion, from which we can tell what social arrangements, or aspects thereof, belong to it. Rather, we start with a loose characterization of what is initially a rough idea. As indicated above, we must specify the idea more exactly as seems best after considering a variety of particular questions. With this done, we then check how the more definite characterization coheres with our considered convictions on due reflection.

The role of a political conception of justice, however, is not to say exactly how these questions are to be settled, but to set out a framework of thought within which they can be approached. Were we to lay down a definition of the basic structure that draws sharp boundaries, not only would we go beyond what that rough idea could reasonably contain but we would also risk wrongly prejudging what more specific or future conditions may call for, thus making justice as fairness unable to adjust to different social circumstances. For our judgments to be reasonable, they must usually be informed by an awareness of those more specific circumstances.¹¹

Finally, to anticipate, since justice as fairness presents itself as a possible focus of a reasonable overlapping consensus (§11), and since the basic structure is the primary subject of justice, the boundaries and aspects of this structure must eventually be drawn and specified in ways that, if possible, at least permit, if not encourage, such a consensus. So generally stated, it is not evident what this condition requires; but these matters we try to answer as we take up a wider range of questions.

§5. Limits to Our Inquiry

5.1. Before discussing the other fundamental ideas of justice as fairness, let us note some limits to our inquiry. The first limit, as has been indicated, is that we must fix on the basic structure as the primary subject of political justice and leave aside questions of local justice. We view justice as fairness not as a comprehensive moral doctrine but as a political conception to apply to that structure of political and social institutions?

11. I am indebted to Erin Kelly for discussion on the points in this and the preceding paragraph.

The second limit is that we are concerned for the most part with the nature and content of justice for a well-ordered society. Discussion of this case is referred to in justice as fairness as ideal, or strict compliance, theory. Strict compliance means that (nearly) everyone strictly complies with, and so abides by, the principles of justice. We ask in effect what a perfectly just, or nearly just, constitutional regime might be like, and whether it may come about and be made stable under the circumstances of justice (*Theory*, §22), and so under realistic, though reasonably favorable, conditions. In this way, justice as fairness is realistically utopian: it probes the limits of the realistically practicable, that is, how far in our world (given its laws and tendencies) a democratic regime can attain complete realization of its appropriate political values—democratic perfection, if you like.

We focus on ideal theory because the current conflict in democratic thought is in good part a conflict about what conception of justice is most appropriate for a democratic society under reasonably favorable conditions. This is clear from what, for our purposes, we called the fundamental question of political philosophy (§2.3). Nevertheless, the idea of a well-ordered society should also provide some guidance in thinking about nonideal theory, and so about difficult cases of how to deal with existing injustices. It should also help to clarify the goal of reform and to identify which wrongs are more grievous and hence more urgent to correct.

A third limit to our inquiry, mentioned before, is that we shall not here discuss the important question of the just relations between peoples, nor how the extension of justice as fairness to these relations illustrates the way in which it is suitably universal. I assume Kant's view ("Perpetual Peace" (1795)) is correct and that a world government would be either an oppressive global despotism or a fragile empire torn by frequent civil wars as separate regions and cultures tried to win their political autonomy.¹² A just world order is perhaps best seen as a society of peoples, each people maintaining a well-ordered and decent political (domestic) regime, not necessarily democratic but fully respecting basic human rights.¹³

In justice as fairness the question of justice between peoples is postponed until we have an account of political justice for a well-ordered democratic society. Observe, though, that beginning with the justice of the basic

12. As Robert A. Dahl puts it in *Dilemmas of Pluralist Democracy* (New Haven: Yale University Press, 1982), p. 16: "today no unit smaller than a country can provide the conditions necessary for a good life, while no unit larger than a country is likely to be as democratically governed as a modern polyarchy."

13. This larger topic is discussed at length in *The Law of Peoples*.

structure does not imply that we cannot revise our account for a democratic society (domestic justice) in view of what justice between peoples turns out to require. The two parts of a more complete political conception—the justice of domestic society as well as of the relations between societies—can be adjusted to each other in the course of working them out.

5.2. Finally, I stress a point implicit in what we have said: namely, that justice as fairness is not a comprehensive religious, philosophical, or moral doctrine—one that applies to all subjects and covers all values. Nor is it to be regarded as the application of such a doctrine to the basic structure of society, as if this structure were merely another subject to which that comprehensive view is to be applied. Neither political philosophy nor justice as fairness is, in that way, applied moral philosophy. Political philosophy has its own distinctive features and problems. Justice as fairness is a political conception of justice for the special case of the basic structure of a modern democratic society. In this respect it is much narrower in scope than comprehensive philosophical moral doctrines such as utilitarianism, perfectionism, and intuitionism, among others. It focuses on the political (in the form of the basic structure), which is but a part of the domain of the moral.

§6. The Idea of the Original Position

6.1. So far we have discussed three fundamental ideas introduced in *Theory*, §§1–2, the idea of a society as a fair system of cooperation and the idea of a well-ordered society, and the idea of the basic structure of society. Next we discuss two other fundamental ideas, introduced in *Theory*, §§3–4. One is the idea of the original position; the other is the idea of citizens as free and equal persons. The sixth fundamental idea, that of public justification, is discussed in §§9–10.

Let us begin with how we might be led to the original position and the reasons for using it. The following line of thought might lead us to it: we start with the organizing idea of society as a fair system of cooperation between free and equal persons. Immediately the question arises as to how the fair terms of cooperation are specified. For example: Are they specified by an authority distinct from the persons cooperating, say, by God's law? Or are these terms recognized by everyone as fair by reference to a moral order of values,¹⁴ say, by rational intuition, or by reference to what some

14. This order I assume to be viewed as objective as in some form of moral realism.

have viewed as “natural law”? Or are they settled by an agreement reached by free and equal citizens engaged in cooperation, and made in view of what they regard as their reciprocal advantage, or good? (the good)

Justice as fairness adopts a form of the last answer: the fair terms of social cooperation are to be given by an agreement entered into by those engaged in it. One reason it does this is that, given the assumption of reasonable pluralism, citizens cannot agree on any moral authority, say a sacred text or a religious institution or tradition. Nor can they agree about a moral order of values or the dictates of what some view as natural law. So what better alternative is there than an agreement between citizens themselves reached under conditions that are fair for all? (the good)

6.2. Now this agreement, like any other, must be entered into under certain conditions if it is to be a valid agreement from the point of view of political justice. In particular, these conditions must situate free and equal persons fairly and must not permit some to have unfair bargaining advantages over others. Further, threats of force and coercion, deception and fraud, and so on must be ruled out. So far, so good. These considerations are familiar from everyday life. But agreements in everyday life are made in determinate situations within the background institutions of the basic structure; and the particular features of these situations affect the terms of the agreements reached. Clearly, unless those situations satisfy the conditions for valid and fair agreements, the terms agreed to will not be regarded as fair.

Justice as fairness hopes to extend the idea of a fair agreement to the basic structure itself. Here we face a serious difficulty for any political conception of justice that uses the idea of contract, whether or not the contract is social. The difficulty is this: we must specify a point of view from which a fair agreement between free and equal persons can be reached; but this point of view must be removed from and not distorted by the particular features and circumstances of the existing basic structure. The original position, with the feature I have called the “veil of ignorance” (*Theory*, §24), specifies this point of view. In the original position, the parties are not allowed to know the social positions or the particular comprehensive doctrines of the persons they represent. They also do not know persons' race and ethnic group, sex, or various native endowments such as strength and intelligence, all within the normal range. We express these limits on information figuratively by saying the parties are behind a veil of ignorance.¹⁵

15. [See Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 24–25.]

One reason why the original position must abstract from the contingencies—the particular features and circumstances of persons—within the basic structure is that the conditions for a fair agreement between free and equal persons on the first principles of justice for that structure must eliminate the bargaining advantages that inevitably arise over time within any society as a result of cumulative social and historical tendencies. “To persons according to their threat advantage” (or their de facto political power, or wealth, or native endowments) is not the basis of political justice. Contingent historical advantages and accidental influences from the past should not affect an agreement on principles that are to regulate the basic structure from the present into the future.¹⁶

6.3. The idea of the original position is proposed, then, as the answer to the question of how to extend the idea of a fair agreement to an agreement on principles of political justice for the basic structure. That position is set up as a situation that is fair to the parties as free and equal, and as properly informed and rational. Thus any agreement made by the parties as citizens’ representatives is fair. Since the content of the agreement concerns the principles of justice for the basic structure, the agreement in the original position specifies the fair terms of social cooperation between citizens regarded as such persons. Hence the name: justice as fairness.

Observe that, as stated in *Theory*, the original position generalizes the familiar idea of the social contract (*Theory*, §3). It does so by making the object of agreement the first principles of justice for the basic structure, rather than a particular form of government, as in Locke. The original position is also more abstract: the agreement must be regarded as both hypothetical and nonhistorical.

- (i) It is hypothetical, since we ask what the parties (as described) could, or would, agree to, not what they have agreed to.
- (ii) It is nonhistorical, since we do not suppose the agreement has ever,

16. This is an essential feature of justice as fairness as a form of the contract doctrine. It differs from Locke’s view in this respect, and also from the contract views of Robert Nozick in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), of James Buchanan in *The Limits of Liberty* (Chicago: University of Chicago Press, 1975), and of David Gauthier in *Morals by Agreement* (Oxford: Oxford University Press, 1986). In these three works citizens’ basic rights, liberties, and opportunities, as secured by the basic structure, depend on contingencies of history, and social circumstance and native endowment, in ways excluded by justice as fairness. We come back to this in §16.1.

or indeed ever could actually be entered into. And even if it could, that would make no difference.

The second point (ii) means that what principles the parties would agree to is to be decided by analysis. We characterize the original position by various stipulations—each with its own reasoned backing—so that the agreement that would be reached can be worked out deductively by reasoning from how the parties are situated and described, the alternatives open to them, and from what the parties count as reasons and the information available to them. We return to this in Part III.

6.4. Here there may seem to be a serious objection: since hypothetical agreements are not binding at all, the agreement of the parties in the original position would appear to be of no significance.¹⁷ In reply, the significance of the original position lies in the fact that it is a device of representation or, alternatively, a thought-experiment for the purpose of public- and self-clarification. We are to think of it as modeling two things:

First, it models what we regard—here and now—as fair conditions under which the representatives of citizens, viewed solely as free and equal persons, are to agree to the fair terms of cooperation whereby the basic structure is to be regulated.

Second, it models what we regard—here and now—as acceptable restrictions on the reasons on the basis of which the parties, situated in fair conditions, may properly put forward certain principles of political justice and reject others.

Thus if the original position suitably models our convictions about these two things (namely, fair conditions of agreement between citizens as free and equal, and appropriate restrictions on reasons), we conjecture that the principles of justice the parties would agree to (could we properly work them out) would specify the terms of cooperation that we regard—here and now—as fair and supported by the best reasons. This is because, in that case, the original position would have succeeded in modeling in a suitable

17. This question is discussed by Ronald Dworkin in §1 of his critical review entitled “Justice and Rights,” *University of Chicago Law Review* (1973), reprinted in *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), as chap. 6. I have discussed his interpretation briefly in “Justice as Fairness: Political Not Metaphysical,” *Philosophy and Public Affairs* 14 (Summer 1985): 236f., n. 19; reprinted in Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), 400f., n. 19.

manner what we think on due reflection are the reasonable considerations to ground the principles of a political conception of justice.

6.5. To illustrate regarding fair conditions: the parties are symmetrically situated in the original position. This models our considered conviction that in matters of basic political justice citizens are equal in all relevant respects: that is, that they possess to a sufficient degree the requisite powers of moral personality and the other capacities that enable them to be normal and fully cooperating members of society over a complete life (§7). Thus, in accordance with the precept of formal equality that those equal (similar) in all relevant respects are to be treated equally (similarly), citizens' representatives are to be situated symmetrically in the original position. Otherwise we would not think that position fair to citizens as free and equal.

To illustrate regarding appropriate restrictions on reasons: if we are reasonable, it is one of our considered convictions that 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 those in that position. If we are wealthy, or poor, we do not expect everyone else to accept a basic structure favoring the wealthy, or the poor, simply for that reason. To model this and other similar convictions, we do not let the parties know the social position of the persons they represent. The same idea is extended to other features of persons by the veil of ignorance.

In short, the original position is to be understood as a device of representation. As such it models our considered convictions as reasonable persons by describing the parties (each of whom is responsible for the fundamental interests of a free and equal citizen) as fairly situated and as reaching an agreement subject to appropriate restrictions on reasons for favoring principles of political justice.

§7. The Idea of Free and Equal Persons

7.1. To this point we have simply used the idea of free and equal persons; we must now explain its meaning and role. Justice as fairness regards citizens as engaged in social cooperation, and hence as fully capable of doing so, and this over a complete life. Persons so regarded have what we may call "the two moral powers," explained as follows:

(i) One such power is the capacity for a sense of justice: it is 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.

(ii) The other moral power is a capacity for a conception of the good: it is 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, alternatively, of what is regarded as a fully worthwhile life. The elements of such a conception are normally set within, and interpreted by, certain comprehensive religious, philosophical, or moral doctrines in the light of which the various ends and aims are ordered and understood.

7.2. In saying that persons are regarded as having the two moral powers, we are saying that they have the requisite capacities not only to engage in mutually beneficial social cooperation over a complete life but also to be moved to honor its fair terms for their own sake. In *Theory*, these two powers are taken as defining "moral persons" and "moral personality" (*Theory*, §§3-4). What is meant, though, by saying that persons are free and equal?

Here it is important to keep in mind that justice as fairness is a political conception of justice: that is, it is designed for the special case of the basic structure of society and is not intended as a comprehensive moral doctrine. Therefore, the idea of the person, when specified into a conception of the person, belongs to a political conception. (A fundamental idea becomes a conception if we specify its elements in a particular way.) This means that the conception of the person is not taken from metaphysics or the philosophy of mind, or from psychology; it may have little relation to conceptions of the self discussed in those disciplines. It must of course be compatible with (one or more) such philosophical or psychological conceptions (so far as they are sound), but that is another story. The conception of the person itself is meant as both normative and political, not metaphysical or psychological.

As noted earlier (§2.1-2), the conception of the person is worked up from the way citizens are regarded in the public political culture of a democratic society, in its basic political texts (constitutions and declarations of human rights), and in the historical tradition of the interpretation of those texts. For these interpretations we look not only to courts, political parties, and statesmen, but also to writers on constitutional law and jurisprudence,

and to the more enduring writings of all kinds that bear on a society's political philosophy.

7.3. In what sense are citizens regarded as equal persons? Let's say they are regarded as equal in that they are all regarded as having to the essential minimum degree the moral powers necessary to engage in social cooperation over a complete life and to take part in society as equal citizens. Having these powers to this degree we take as the basis of equality among citizens as persons (*Theory*, §77): that is, since we view society as a fair system of cooperation, the basis of equality is having to the requisite minimum degree the moral and other capacities that enable us to take part fully in the cooperative life of society. Thus the equality of citizens is modeled in the original position by the equality of their representatives: that is, by the fact that these representatives are symmetrically situated in that position and have equal rights in its procedure for reaching agreement.

I note that in taking the moral powers as the basis of equality we in effect distinguish between a political society and the many associations within it and across it. The latter are associations that cross political boundaries, such as churches and scientific societies. Some of these associations are communities: churches and scientific societies again illustrate this; but universities and other cultural institutions are also communities. The members of a community are united in pursuing certain shared values and ends (other than economic) that lead them to support the association and in part bind them to it. In justice as fairness a democratic political society has no such shared values and ends apart from those falling under or connected with the political conception of justice itself. The citizens of a well-ordered society affirm the constitution and its political values as realized in their institutions, and they share the end of giving one another justice, as society's arrangements require.

The significance of this distinction between a democratic society and the communities within it will become evident later and rests on a number of its special features. For example, we are born into society, and while we may be born into communities also, into religions and their distinctive cultures, only society with its political form of government and its law exercises coercive power. While we can leave communities voluntarily (the constitutional liberties guarantee this: apostasy is not a crime), there is a sense in which we cannot leave our political society voluntarily (§26). Also a community can reward or single out its members in proportion to their contribution to its shared values and ends; but a democratic society has no such shared val-

ues and ends (falling under the good) by which its citizens can be distinguished.¹⁸ All who can be fully cooperating members of political society count as equals and can be treated differently only as the public political conception of justice allows.

It is a serious error not to distinguish between the idea of a democratic political society and the idea of community. Of course, a democratic society is hospitable to many communities within it, and indeed tries to be a social world within which diversity can flourish in amity and concord; but it is not itself a community, nor can it be in view of the fact of reasonable pluralism. For that would require the oppressive use of government power which is incompatible with basic democratic liberties. From the start, then, we view a democratic society as a political society that excludes a confessional or an aristocratic state, not to mention a caste, slave, or a racist one. This exclusion is a consequence of taking the moral powers as the basis of political equality.

7.4. In what sense are citizens free? Here again we must keep in mind that justice as fairness is a political conception of justice for a democratic society. The relevant meaning of free persons is to be drawn from the political culture of such a society and may have little or no connection, for example, with freedom of the will as discussed in the philosophy of mind. Following up this idea, we say that citizens are regarded as free persons in two respects.

First, citizens are free in that they conceive of themselves and of one another as having the moral power to have a conception of the good. This is not to say that, as part of their political conception, they view themselves as inevitably tied to the pursuit of the particular conception of the good which they affirm at any given time. Rather, as citizens, they are seen as capable of revising and changing this conception on reasonable and rational grounds, and they may do this if they so desire. As free persons, citizens claim the right to view their persons as independent from and not identified with any particular conception of the good, or scheme of final ends. Given their moral power to form, to revise, and rationally to pursue a conception of the good, their public or legal identity as free persons is not affected by changes over time in their determinate conception of the good.

For example, when citizens convert from one religion to another, or no

18. On this point see "The Basic Structure as Subject," in Rawls, *Political Liberalism*, lect. VII, §8, pp. 279ff.

longer affirm an established religious faith, they do not cease to be, for questions of political justice, the same persons they were before. There is no loss of what we may call their public, or legal, identity—their identity as a matter of basic law. In general, they still have the same basic rights and duties, they own the same property and can make the same claims as before, except insofar as these claims were connected with their previous religious affiliation. We can imagine a society (indeed history offers numerous examples) in which basic rights and recognized claims depend on religious affiliation and social class. Such a society has a different political conception of the person. It may not have a conception of citizenship at all; for this conception, as we are using it, goes with the conception of society as a fair system of cooperation for reciprocal advantage between free and equal citizens.

There is another sense of identity specified by reference to citizens' deeper aims and commitments. Let's call it their nonlegal or moral identity.¹⁹ Now citizens usually have both political and nonpolitical aims and commitments. Thus they affirm the values of political justice and want to see them embodied in political institutions and social policies. They also work for the other nonpolitical values and ends of the associations to which they belong. These two aspects of their moral identity citizens must adjust and reconcile. It can happen that in their personal affairs, or in the internal life of their associations, citizens may regard their final ends and attachments very differently from the way the political conception supposes. They may have, and often do have at any given time, affections, devotions, and loyalties that they believe they would not, indeed could and should not, stand apart from and evaluate objectively. They may regard it as simply unthinkable to view themselves apart from certain religious, philosophical, and moral convictions, or from certain enduring attachments and loyalties.

These two kinds of commitments and attachments—political and nonpolitical—specify moral identity and give shape to a person's way of life, what one sees oneself as doing and trying to accomplish in the social world. If we suddenly lost them, we would be disoriented and unable to carry on. In fact, there would be, we might think, no point in carrying on. Our conceptions of the good may and often do change over time, however, usually slowly but sometimes rather suddenly. When these changes are sudden, we are particularly likely to say that we are no longer the same person. We

19. I am indebted to Erin Kelly for the distinction between the two kinds of aims that characterize citizens' moral identities as described in this and the next paragraph.

know what this means: we refer to a profound and pervasive shift, or reversal, in our final ends and commitments; we refer to our different moral (which includes our religious) identity. On the road to Damascus Saul of Tarsus becomes Paul the Apostle. Yet such a conversion implies no change in our public or legal identity, nor in our personal identity as this concept is understood by some writers in the philosophy of mind. And in a well-ordered society supported by an overlapping consensus, citizens' (more general) political values and commitments, as part of their noninstitutional, or moral, identity are roughly the same.

7.5. A second respect in which citizens view themselves as free is that they regard themselves as self-authenticating sources of valid claims. That is, they regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good (provided these conceptions fall within the range permitted by the public conception of justice). These claims citizens regard as having weight of their own apart from being derived from duties and obligations specified by a political conception of justice, for example, from duties and obligations owed to society. Claims that citizens regard as founded on duties and obligations based on their conception of the good and the moral doctrine they affirm in their own life are also, for our purposes here, to be counted as self-authenticating. Doing this is reasonable in a political conception of justice for a constitutional democracy, for provided the conceptions of the good and the moral doctrine citizens affirm are compatible with the public conception of justice, these duties and obligations are self-authenticating from a political point of view.

When we describe the way in which citizens regard themselves as free, we are relying on how citizens tend to think of themselves in a democratic society when questions of political justice arise. That this aspect belongs to a particular political conception is clear from the contrast with a different political conception in which the members of society are not viewed as self-authenticating sources of valid claims. In this case their claims have no weight except insofar as they can be derived from the duties and obligations owed to society, or from their ascribed roles in a social hierarchy justified by religious or aristocratic values.

To take an extreme case, slaves are human beings who are not counted as sources of claims, not even claims based on social duties or obligations, for slaves are not counted as capable of having duties or obligations. Laws that prohibit the abuse and maltreatment of slaves are not founded on claims

* However, one might say that power apart from a political conception would give the 'power' a different sense.

made by slaves in their own behalf, but on claims originating either from slaveholders or from the general interests of society (which do not include the interests of slaves). Slaves are, so to speak, socially dead: they are not recognized as persons at all.²⁰ This contrast with a political conception of justice that allows slavery makes clear why conceiving of citizens as free persons in virtue of their moral powers and their having a conception of the good goes with a particular political conception of the justice.

7.6. I emphasize that the conception of the person as free and equal is a normative conception: it is given by our moral and political thought and practice, and it is studied by moral and political philosophy and by the philosophy of law. Since ancient Greece, both in philosophy and in law, the concept of the person has been that of someone who can take part in, or play a role in, social life, and hence who can exercise and respect its various rights and duties. In specifying the central organizing idea of society as a fair system of cooperation, we use the companion idea of free and equal persons as those who can play the role of fully cooperating members. As suits a political conception of justice that views society as a fair system of cooperation, a citizen is someone who can be a free and equal participant over a complete life.

This conception of the person is not to be mistaken for the conception of a human being (a member of the species *homo sapiens*) as the latter might be specified in biology or psychology without the use of normative concepts of various kinds, including, for example, the concepts of the moral powers and of the moral and political virtues. Moreover, to characterize the person, we must add to these concepts those used to formulate the powers of reason, inference, and judgment. These are essential companion powers to the two moral powers and are required for their exercise and for the practice of the virtues.

§8. Relation between the Fundamental Ideas

8.1. The five fundamental ideas we have discussed so far are closely related when laid out in the sequence by which they were introduced: from society as a fair system of cooperation to the idea of a well-ordered society,

20. For the idea of social death, see Orlando Patterson, *Slavery and Social Death* (Cambridge, Mass.: Harvard University Press, 1982), esp. pp. 5-9, 38-45, 337.

to the idea of the basic structure of such a society, to the idea of the original position, and finally to the idea of citizens, those engaged in cooperation, as free and equal.

In this sequence we start with the organizing idea of society as a fair system of cooperation and then make it more determinate by spelling out what results when this idea is fully realized (a well-ordered society), and what this idea applies to (the basic structure). We then say how the fair terms of cooperation are specified (by the parties in the original position) and explain how the persons engaged in cooperation are to be regarded (as free and equal citizens).

8.2. This spelling out of the central organizing idea of social cooperation is not a deductive argument. The steps starting with that idea and proceeding to the next are not said to follow from, or to be derived from, it. We specify the organizing idea and make it more determinate as we connect it with the other ideas.

To illustrate: there are various ways of specifying the central idea of social cooperation. As we noted, we might say that the fair terms of cooperation are fixed by natural law viewed either as God's law or as given by a prior and independent moral order publicly known by rational intuition. Such ways of fixing those terms have not been excluded by deductive argument: for instance, by showing them to be incompatible with the idea of social cooperation. Instead, they are ruled out by the historical conditions and the public culture of democracy that set the requirements for a political conception of justice in a modern constitutional regime. Among those historical conditions is the fact of reasonable pluralism, which rules out comprehensive doctrines as a basis for a workable political agreement on a conception of justice. Since justice as fairness looks for such a basis, it follows a different course.

8.3. We cannot tell in advance whether the idea of social cooperation, and its two companion ideas, will provide the organizing ideas we need for a workable political conception of justice. The public political culture is not unambiguous: it contains a variety of possible organizing ideas that might be used instead, various ideas of liberty and equality, and other ideas of society. All we need claim is that the idea of society as a fair system of cooperation is deeply embedded in that culture, and so it is not unreasonable to examine its merits as a central organizing idea. The point is that what

ever idea we select as the central organizing idea cannot be fully justified by its own intrinsic reasonableness,²¹ as its intrinsic reasonableness cannot suffice for that. Such an idea can be fully justified (if at all) only by the conception of political justice to which it eventually leads when worked out, and by how well that conception coheres with our considered convictions of political justice at all levels of generality in what we may call wide (and general) reflective equilibrium (§10). The idea of reflective equilibrium connects with that of public justification, to which we now turn.

§9. The Idea of Public Justification

9.1. So far we have discussed five fundamental ideas beginning with the central organizing idea of society as a fair system of social cooperation. Now we turn to a sixth and last fundamental idea, the idea of public justification, and three other ideas related to it: those of reflective equilibrium (§10),²² of an overlapping consensus (§11), and of free public reason (§26). The aim of the idea of public justification is to specify the idea of justification in a way appropriate to a political conception of justice for a society characterized, as a democracy is, by reasonable pluralism.

The idea of public justification goes with the idea of a well-ordered society, for such a society is effectively regulated by a publicly recognized conception of justice (§3). From the preceding discussion, we see that to fill this role a conception of justice should have three features. These make it a political conception of justice:

(a) While it is, of course, a moral conception, it is worked out for a specific subject, namely, the basic structure of a democratic society. It does not apply directly to associations and groups within society, and only later do we try to extend it to connect it with the principles of local justice and to cover the relations between peoples.

(b) Accepting this conception does not presuppose accepting any particular comprehensive doctrine. A political conception presents itself as a rea-

21. Intrinsic reasonableness, or acceptability, is a difficult idea. It means that a judgment or conviction strikes us as reasonable, or acceptable, without our deriving it from, or basing it on, other judgments. Of course, that a conviction strikes us as reasonable may indeed turn out to depend on our other beliefs and convictions, but that is not how it strikes us. On due reflection we may affirm the conviction as having a certain reasonableness, or acceptability, on its own.

22. See also *Theory*, §§4, 9.

sonable conception for the basic structure alone and its principles express a family of political values that characteristically apply to that structure.

(c) A political conception of justice is formulated so far as possible solely in terms of fundamental ideas familiar from, or implicit in, the public political culture of a democratic society: for example, the idea of society as a fair system of cooperation and the idea of citizens as free and equal. That there are such ideas in their public culture is taken as a fact about democratic societies.

9.2. We saw that in a well-ordered society effectively regulated by a publicly recognized political conception of justice, everyone accepts the same principles of justice. These principles provide, then, a mutually acceptable point of view from which citizens' claims on the main institutions of the basic structure can be adjudicated. An essential feature of a well-ordered society is that its public conception of political justice establishes a shared basis for citizens to justify to one another their political judgments: each cooperates, politically and socially, with the rest on terms all can endorse as just. This is the meaning of public justification.

So understood, justification is addressed to others who disagree with us (*Theory*, §87). If there is no conflict in judgment about questions of political justice—judgments about the justice of certain principles and standards, particular institutions and policies, and the like—there is nothing so far to justify. To justify our political judgments to others is to convince them by public reason, that is, by ways of reasoning and inference appropriate to fundamental political questions, and by appealing to beliefs, grounds, and political values it is reasonable for others also to acknowledge. Public justification proceeds from some consensus: from premises all parties in disagreement, assumed to be free and equal and fully capable of reason, may reasonably be expected to share and freely endorse.

Public justification is not, then, simply valid argument from given premises (though of course it is that). Valid argument is instructive in setting out the relations between statements: it joins basic ideas and general statements with one another and with more particular judgments; it exhibits the overall structure of conceptions of any kind. By connecting the elements of a conception into an intelligible and perspicuous whole, it serves as a mode of exposition. But when the premises and conclusions are not acceptable on due reflection to all parties in disagreement, valid argument falls short of public justification. For justice as fairness to succeed, it must be acceptable, not only to our own considered convictions, but also to those of others, and

osophy as reconciliation; for seeing that the conditions of a social world at least allow for that possibility affects our view of the world itself and our attitude toward it. No longer need it seem hopelessly hostile, a world in which the will to dominate and oppressive cruelties, abetted by prejudice and folly, must inevitably prevail. None of this may ease our loss, situated as we may be in a corrupt society. But we may reflect that the world is not in itself inhospitable to political justice and its good. Our social world might have been different and there is hope for those at another time and place.

PART II

Principles of Justice

§12. Three Basic Points

12.1. In Part II we discuss the content of the two principles of justice that apply to the basic structure, as well as various grounds in favor of them and replies to a number of objections. A more formal and organized argument for these principles is presented in Part III, where we discuss the reasoning that moves the parties in the original position. In that argument the original position serves to keep track of all our assumptions and to bring out their combined force by uniting them into one framework so that we can more easily see their implications.

I begin with three basic points which review some matters discussed in Part I and introduce others we are about to examine. Recall first that justice as fairness is framed for a democratic society. Its principles are meant to answer the question: once we view a democratic society as a fair system of social cooperation between citizens regarded as free and equal, what principles are most appropriate to it? Alternatively: which principles are most appropriate for a democratic society that not only professes but wants to take seriously the idea that citizens are free and equal, and tries to realize that idea in its main institutions? The question of whether a constitutional regime is to be preferred to majoritarian democracy, we postpone until later (Part IV, §44).

12.2. The second point is that justice as fairness takes the primary subject of political justice to be the basic structure of society, that is, its main

political and social institutions and how they fit together into one unified system of cooperation (§4). We suppose that citizens are born into society and will normally spend their whole lives within its basic institutions. The nature and role of the basic structure importantly influence social and economic inequalities and enter into determining the appropriate principles of justice.

In particular, let us suppose that the fundamental social and economic inequalities are the differences in citizens' life-prospects (their prospects over a complete life) as these are affected by such things as their social class of origin, their native endowments, their opportunities for education, and their good or ill fortune over the course of life (§16). We ask: by what principles are differences of that kind—differences in life-prospects—made legitimate and consistent with the idea of free and equal citizenship in society seen as a fair system of cooperation?

12.3. The third point is that justice as fairness is a form of political liberalism: it tries to articulate a family of highly significant (moral) values that characteristically apply to the political and social institutions of the basic structure. It gives an account of these values in the light of certain special features of the political relationship as distinct from other relationships, associational, familial, and personal.

- (a) It is a relationship of persons within the basic structure of society, a structure we enter only by birth and exit only by death (or so we may assume for the moment). Political society is closed, as it were; and we do not, and indeed cannot, enter or leave it voluntarily.
- (b) Political power is always coercive power applied by the state and its apparatus of enforcement; but in a constitutional regime political power is at the same time the power of free and equal citizens as a collective body. Thus political power is citizens' power, which they impose on themselves and one another as free and equal.

The idea of political liberalism arises as follows. We start from two facts: first, from the fact of reasonable pluralism, the fact that a diversity of reasonable comprehensive doctrines is a permanent feature of a democratic society; and second, from the fact that in a democratic regime political power is regarded as the power of free and equal citizens as a collective body. These two points give rise to a problem of political legitimacy. For if the fact of reasonable pluralism always characterizes democratic societies and if

political power is indeed the power of free and equal citizens, in the light of what reasons and values—of what kind of a conception of justice—can citizens legitimately exercise that coercive power over one another?

Political liberalism answers that the conception of justice must be a political conception, as defined in §9.1. Such a conception when satisfied allows us to say: political power is legitimate only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens, as reasonable and rational, can endorse in the light of their common human reason. This is the liberal principle of legitimacy. It is a further desideratum that all legislative questions that concern or border on these essentials, or are highly divisive, should also be settled, so far as possible, by guidelines and values that can be similarly endorsed.

In matters of constitutional essentials, as well as on questions of basic justice, we try to appeal only to principles and values each citizen can endorse. A political conception of justice hopes to formulate these values: its shared principles and values make reason public, while freedom of speech and thought in a constitutional regime make it free. In providing a public basis of justification, a political conception of justice provides the framework for the liberal idea of political legitimacy. As noted in §9.4, however, and discussed further in §26, we do not say that a political conception formulates political values that can settle all legislative questions. This is neither possible nor desirable. There are many questions legislatures must consider that can only be settled by voting that is properly influenced by nonpolitical values. Yet at least on constitutional essentials and matters of basic justice we do try for an agreed basis; so long as there is at least rough agreement here, fair social cooperation among citizens can, we hope, be maintained.¹

12.4. Given these three points, our question is: viewing society as a fair system of cooperation between citizens regarded as free and equal, what principles of justice are most appropriate to specify basic rights and liberties, and to regulate social and economic inequalities in citizens' prospects over a complete life? These inequalities are our primary concern.

To find a principle to regulate these inequalities, we look to our firmest considered convictions about equal basic rights and liberties, the fair value

1. It is not always clear whether a question involves a constitutional essential, as will be mentioned in due course. If there is doubt about this and the question is highly divisive, then citizens have a duty of civility to try to articulate their claims on one another by reference to political values, if that is possible.

of the political liberties as well as fair equality of opportunity. We look outside the sphere of distributive justice more narrowly construed to see whether an appropriate distributive principle is singled out by those firmest convictions once their essential elements are represented in the original position as a device of representation (§6). This device is to assist us in working out which principle, or principles, the representatives of free and equal citizens would select to regulate social and economic inequalities in these prospects over a complete life when they assume that the equal basic liberties and fair opportunities are already secured.

The idea here is to use our firmest considered convictions about the nature of a democratic society as a fair system of cooperation between free and equal citizens—as modeled in the original position—to see whether the combined assertion of those convictions so expressed will help us to identify an appropriate distributive principle for the basic structure with its economic and social inequalities in citizens' life-prospects. Our convictions about principles regulating those inequalities are much less firm and assured; so we look to our firmest convictions for guidance where assurance is lacking and guidance is needed (*Theory*, §§4, 20).

§13. Two Principles of Justice

13.1. To try to answer our question, let us turn to a revised statement of the two principles of justice discussed in *Theory*, §§11–14. They should now read:²

- (a) Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) 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

2. This section summarizes some points from "The Basic Liberties and Their Priority," *Tanner Lectures on Human Values*, vol. 3, ed. Sterling McMurrin (Salt Lake City: University of Utah Press, 1982), §I, reprinted in *Political Liberalism*. In that essay I try to reply to what I believe are two of the more serious objections to my account of liberty in *Theory* raised by H. L. A. Hart in his splendid critical review essay, "Rawls on Liberty and Its Priority," *University of Chicago Law Review* 40 (Spring 1973): 551–555, reprinted in his *Essays in Jurisprudence and Philosophy* (Oxford: Oxford University Press, 1983). No changes made in justice as fairness in this restatement are more significant than those forced by Hart's review.

be to the greatest benefit of the least-advantaged members of society (the difference principle).³

As I explain below, the first principle is prior to the second; also, in the second principle fair equality of opportunity is prior to the difference principle. This priority means that in applying a principle (or checking it against test cases) we assume that the prior principles are fully satisfied. We seek a principle of distribution (in the narrower sense) that holds within the setting of background institutions that secure the basic equal liberties (including the fair value of the political liberties)⁴ as well as fair equality of opportunity. How far that principle holds outside that setting is a separate question we shall not consider.⁵

13.2. The revisions in the second principle are merely stylistic. But before noting the revisions in the first principle, which are significant, we should attend to the meaning of fair equality of opportunity. This is a difficult and not altogether clear idea; its role is perhaps best gathered from why it is introduced: namely, to correct the defects of formal equality of opportunity—careers open to talents—in the system of natural liberty, so-called (*Theory*, §12: 62ff.; §14). To this end, fair equality of opportunity is said to require not merely that public offices and social positions be open in the formal sense, but that all should have a fair chance to attain them. To

3. Instead of "the difference principle," many writers prefer the term "the maximin principle," or simply "maximin justice," or some such locution. See, for example, Joshua Cohen's very full and accurate account of the difference principle in "Democratic Equality," *Ethics* 99 (July 1989): 727–751. But I still use the term "difference principle" to emphasize first, that this principle and the maximin rule for decision under uncertainty (§28.1) are two very distinct things; and second, that in arguing for the difference principle over other distributive principles (say a restricted principle of (average) utility, which includes a social minimum), there is no appeal at all to the maximin rule for decision under uncertainty. The widespread idea that the argument for the difference principle depends on extreme aversion to uncertainty is a mistake, although a mistake unhappily encouraged by the faults of exposition in *Theory*, faults to be corrected in Part III of this restatement.

4. See *Theory*, §36: 197–199.

5. Some have found this kind of restriction objectionable; they think a political conception should be framed to cover all logically possible cases, or all conceivable cases, and not restricted to cases that can arise only within a specified institutional context. See for example Brian Barry, *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), p. 112. In contrast, we seek a principle to govern social and economic inequalities in democratic regimes as we know them, and so we are concerned with inequalities in citizens' life-prospects that may actually arise, given our understanding of how certain institutions work.

specify the idea of a fair chance we say: supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason. In all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed. ^{endowments are class-specific?}

Fair equality of opportunity here means liberal equality. To accomplish its aims, certain requirements must be imposed on the basic structure beyond those of the system of natural liberty. A free market system must be set within a framework of political and legal institutions that adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth, especially those likely to lead to political domination. Society must also establish, among other things, equal opportunities of education for all regardless of family income (§15).⁶

13.3. Consider now the reasons for revising the first principle.⁷ One is that the equal basic liberties in this principle are specified by a list as follows: freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law. That the basic liberties are specified by a list is quite clear from *Theory*, §11: 61 (1st ed.); but the use of the singular term "basic liberty" in the statement of the principle on *Theory*, §11: 60 (1st ed.), obscures this important feature of these liberties.

This revision brings out that no priority is assigned to liberty as such, as if the exercise of something called "liberty" had a preeminent value and were the main, if not the sole, end of political and social justice. While there is a general presumption against imposing legal and other restrictions on conduct without a sufficient reason, this presumption creates no special priority for any particular liberty. Throughout the history of democratic

6. These remarks are the merest sketch of a difficult idea. We come back to it from time to time.

7. This principle may be preceded by a lexically prior principle requiring that basic needs be met, as least insofar as their being met is a necessary condition for citizens to understand and to be able fruitfully to exercise the basic rights and liberties. For a statement of such a principle with further discussion, see R. G. Peffer, *Marxism, Morality, and Social Justice* (Princeton: Princeton University Press, 1990), p. 14.

thought the focus has been on achieving certain specific rights and liberties as well as specific constitutional guarantees, as found, for example, in various bills of rights and declarations of the rights of man. Justice as fairness follows this traditional view.

13.4. A list of basic liberties can be drawn up in two ways. One is historical: we survey various democratic regimes and assemble a list of rights and liberties that seem basic and are securely protected in what seem to be historically the more successful regimes. Of course, the veil of ignorance means that this kind of particular information is not available to the parties in the original position, but it is available to you and me in setting up justice as fairness.⁸ We are perfectly free to use it to specify the principles of justice we make available to the parties.

A second way of drawing up a list of basic rights and liberties is analytical: we consider what liberties provide the political and social conditions essential for the adequate development and full exercise of the two moral powers of free and equal persons (§7.1). Following this we say: first, that the equal political liberties and freedom of thought enable citizens to develop and to exercise these powers in judging the justice of the basic structure of society and its social policies; and second, that liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and in rationally pursuing (individually or, more often, in association with others) their conceptions of the good.

Those basic rights and liberties protect and secure the scope required for the exercise of the two moral powers in the two fundamental cases just mentioned: that is to say, the first fundamental case is the exercise of those powers in judging the justice of basic institutions and social policies; while the second fundamental case is the exercise of those powers in pursuing our conception of the good. To exercise our powers in these ways is essential to us as free and equal citizens.

8. Here I should mention that there are three points of view in justice as fairness that it is essential to distinguish: the point of view of the parties in the original position, the point of view of citizens in a well-ordered society, and the point of view of you and me who are setting up justice as fairness as a political conception and trying to use it to organize into one coherent view our considered judgments at all levels of generality. Keep in mind that the parties are, as it were, artificial persons who are part of a procedure of construction that we frame for our philosophical purposes. We may know many things that we keep from them. For these three points of view, see *Political Liberalism*, p. 28.

13.5. Observe that the first principle of justice applies not only to the basic structure (both principles do this) but more specifically to what we think of as the constitution, whether written or unwritten. Observe also that some of these liberties, especially the equal political liberties and freedom of thought and association, are to be guaranteed by a constitution (*Theory*, chap. IV). What we may call “constituent power,” as opposed to “ordinary power,”⁹ is to be suitably institutionalized in the form of a regime: in the right to vote and to hold office, and in so-called bills of rights, as well as in the procedures for amending the constitution, for example.

These matters belong to the so-called constitutional essentials, these essentials being those crucial matters about which, given the fact of pluralism, working political agreement is most urgent (§9.4). In view of the fundamental nature of the basic rights and liberties, explained in part by the fundamental interests they protect, and given that the power of the people to constitute the form of government is a superior power (distinct from the ordinary power exercised routinely by officers of a regime), the first principle is assigned priority.

This priority means (as we have said) that the second principle (which includes the difference principle as one part) is always to be applied within a setting of background institutions that satisfy the requirements of the first principle (including the requirement of securing the fair value of the political liberties), as by definition they will in a well-ordered society.¹⁰ The fair value of the political liberties ensures that citizens similarly gifted and motivated have roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class.¹¹ To explain the priority of the first principle over the second:

9. This distinction is derived from Locke, who speaks of the people’s power to constitute the legislative as the first and fundamental law of all commonwealths. John Locke, *Second Treatise of Government*, §§134, 141, 149.

10. It is sometimes objected to the difference principle as a principle of distributive justice that it contains no restrictions on the overall nature of permissible distributions. It is concerned, the objection runs, solely with the least advantaged. But this objection is incorrect: it overlooks the fact that the parts of the two principles of justice are designed to work in tandem and apply as a unit. The requirements of the prior principles have important distributive effects. Consider the effects of fair equality of opportunity as applied to education, say, or the distributive effects of the fair value of the political liberties. We cannot possibly take the difference principle seriously so long as we think of it by itself, apart from its setting within prior principles.

11. [See *Political Liberalism*, p. 358.]

this priority rules out exchanges (“trade-offs,” as economists say) between the basic rights and liberties covered by the first principle and the social and economic advantages regulated by the difference principle. For example, the equal political liberties cannot be denied to certain groups on the grounds that their having these liberties may enable them to block policies needed for economic growth and efficiency.

Nor can we justify a selective service act that grants educational deferments or exemptions to some on the grounds that doing this is a socially efficient way both to maintain the armed forces and to provide incentives to those otherwise subject to conscription to acquire valuable skills by continuing their education. Since conscription is a drastic interference with the basic liberties of equal citizenship, it cannot be justified by any needs less compelling than those of the defense of these equal liberties themselves (*Theory*, §58: 333f.).

A further point about priority: in asserting the priority of the basic rights and liberties, we suppose reasonably favorable conditions to obtain. That is, we suppose historical, economic and social conditions to be such that, provided the political will exists, effective political institutions can be established to give adequate scope for the exercise of those freedoms. These conditions mean that the barriers to constitutional government (if such there are) spring largely from the political culture and existing effective interests, and not from, for instance, a lack of economic means, or education, or the many skills needed to run a democratic regime.¹²

13.6. It is important to note a distinction between the first and second principles of justice. The first principle, as explained by its interpretation, covers the constitutional essentials. The second principle requires fair equality of opportunity and that social and economic inequalities be governed by the difference principle, which we discuss in §§17–19. While some principle of opportunity is a constitutional essential—for example, a principle requiring an open society, one with careers open to talents (to use the eighteenth-century phrase)—fair equality of opportunity requires more than that, and is not counted a constitutional essential. Similarly, although a

12. The priority (or the primacy) of the basic equal liberties does not, contrary to much opinion, presuppose a high level of wealth and income. See Amartya Sen and Jean Dreze, *Hunger and Public Action* (Oxford: Oxford University Press, 1989), chap. 13; and Partha Dasgupta, *An Inquiry into Well-Being and Destitution* (Oxford: Oxford University Press, 1993), chaps. 1–2, 5 and passim.

social minimum providing for the basic needs of all citizens is also a constitutional essential (§38.3-4; §49.5), the difference principle is more demanding and is not so regarded.

The basis for the distinction between the two principles is not that the first expresses political values while the second does not. Both principles express political values. Rather, we see the basic structure of society as having two coordinate roles, the first principle applying to one, the second principle to the other (*Theory*, §11: 53). In one role the basic structure specifies and secures citizens' equal basic liberties (including the fair value of the political liberties (§45)) and establishes a just constitutional regime. In the other role it provides the background institutions of social and economic justice in the form most appropriate to citizens seen as free and equal. The questions involved in the first role concern the acquisition and the exercise of political power. To fulfill the liberal principle of legitimacy (§12.3), we hope to settle at least these questions by appeal to the political values that constitute the basis of free public reason (§26).

The principles of justice are adopted and applied in a four-stage sequence.¹³ In the first stage, the parties adopt the principles of justice behind a veil of ignorance. Limitations on knowledge available to the parties are progressively relaxed in the next three stages: the stage of the constitutional convention, the legislative stage in which laws are enacted as the constitution allows and as the principles of justice require and permit, and the final stage in which the rules are applied by administrators and followed by citizens generally and the constitution and laws are interpreted by members of the judiciary. At this last stage, everyone has complete access to all the facts. The first principle applies at the stage of the constitutional convention, and whether the constitutional essentials are assured is more or less visible on the face of the constitution and in its political arrangements and the way these work in practice. By contrast the second principle applies at the legislative stage and it bears on all kinds of social and economic legislation, and on the many kinds of issues arising at this point (*Theory*, §31: 172-176). Whether the aims of the second principle are realized is far more difficult to ascertain. To some degree these matters are always open to reasonable differences of opinion; they depend on inference and judgment in assessing complex social and economic information. Also, we can expect more agreement on constitutional essentials than on issues of distributive justice in the narrower sense.

13. [See *Theory*, §31: 172-176, and *Political Liberalism*, pp. 397-398.]

Thus the grounds for distinguishing the constitutional essentials covered by the first principle and the institutions of distributive justice covered by the second are not that the first principle expresses political values and the second does not. Rather, the grounds of the distinction are four:

- (a) The two principles apply to different stages in the application of principles and identify two distinct roles of the basic structure;
- (b) It is more urgent to settle the constitutional essentials;
- (c) It is far easier to tell whether those essentials are realized; and
- (d) It seems possible to gain agreement on what those essentials should be, not in every detail, of course, but in the main outlines.

13.7. One way to see the point of the idea of constitutional essentials is to connect it with the idea of loyal opposition, itself an essential idea of a constitutional regime. The government and its loyal opposition agree on these constitutional essentials. Their so agreeing makes the government legitimate in intention and the opposition loyal in its opposition. Where the loyalty of both is firm and their agreement mutually recognized, a constitutional regime is secure. Differences about the most appropriate principles of distributive justice in the narrower sense, and the ideals that underlie them, can be adjudicated, though not always properly, within the existing political framework.

While the difference principle does not fall under the constitutional essentials, it is nevertheless important to try to identify the idea of equality most appropriate to citizens viewed as free and equal, and as normally and fully cooperating members of society over a complete life. I believe this idea involves reciprocity¹⁴ at the deepest level and thus democratic equality properly understood requires something like the difference principle. (I say "something like," for there may be various nearby possibilities.) The re-

14. [As understood in justice as fairness, reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which all who are engaged in cooperation and do their part as the rules and procedures require are to benefit in an appropriate way as assessed by a suitable benchmark of comparison. The two principles of justice, including the difference principle with its implicit reference to equal division as a benchmark, formulate an idea of reciprocity between citizens. For a fuller discussion of the idea of reciprocity, see *Political Liberalism*, pp. 16-17, and the introduction to the paperback edition, pp. xliv, xlvi, li. The idea of reciprocity also plays an important part in "The Idea of Public Reason Revisited," *University of Chicago Law Review*, 64 (Summer 1997): 765-807, reprinted in *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999) and *Collected Papers*.]

maining sections of this part (§§14–22) try to clarify the content of this principle and to clear up a number of difficulties.

§14. The Problem of Distributive Justice

14.1. The problem of distributive justice in justice as fairness is always this: how are the institutions of the basic structure to be regulated as one unified scheme of institutions so that a fair, efficient, and productive system of social cooperation can be maintained over time, from one generation to the next? Contrast this with the very different problem of how a given bundle of commodities is to be distributed, or allocated, among various individuals whose particular needs, desires, and preferences are known to us, and who have not cooperated in any way to produce those commodities. This second problem is that of allocative justice (*Theory*, §11: 56; §14: 77).

To illustrate: accepting the assumptions implied by interpersonal cardinal comparisons of well-being, we might, for example, allocate the bundle of commodities so as to achieve the greatest satisfaction summed over these individuals from the present into the future. As a political conception of justice, the classical principle of utility (as found in Bentham and Sidgwick) can be seen as adapting the idea of allocative justice so as to be a single principle for the basic structure over time.

14.2. We reject the idea of allocative justice as incompatible with the fundamental idea by which justice as fairness is organized: the idea of society as a fair system of social cooperation over time. Citizens are seen as cooperating to produce the social resources on which their claims are made. In a well-ordered society, in which both the equal basic liberties (with their fair value) and fair equality of opportunity are secured, the distribution of income and wealth illustrates what we may call pure background procedural justice. The basic structure is arranged so that when everyone follows the publicly recognized rules of cooperation, and honors the claims the rules specify, the particular distributions of goods that result are acceptable as just (or at least as not unjust) whatever these distributions turn out to be.

To elaborate: within the framework of background justice set up by the basic structure, individuals and associations may do as they wish insofar as the rules of institutions permit. Observe that particular distributions cannot be judged at all apart from the claims (entitlements) of individuals earned by their efforts within the fair system of cooperation from which those distributions result. In contrast to utilitarianism, the concept of allocative jus-

tice has no application. There is no criterion for a just distribution apart from background institutions and the entitlements that arise from actually working through the procedure.¹⁵ It is background institutions that provide the setting for fair cooperation within which entitlements arise.

14.3. These points can be made clearer as follows. The word “background” in the phrase “background procedural justice” above is intended to indicate that certain rules must be included in the basic structure as a system of social cooperation so that this system remains fair over time, from one generation to the next.¹⁶

Consider an example. The draft rule in a professional sport such as basketball ranks teams in the opposite order from their standing in the league at the end of the season: championship teams go last in the draft of new players. This rule provides for regular and periodic changes in the roster of teams and is designed to ensure that teams in the league are more or less evenly matched from year to year, so that in any given season each team can give any other a decent game. These changes of players are necessary to achieve the aims and attractions of the sport and are not foreign to its purpose.

The required background rules are specified by what is necessary to fulfill the two principles of justice. Later on we survey some of these as found in a property-owning democracy (Part IV).¹⁷ For example, background institutions must work to keep property and wealth evenly enough shared over time to preserve the fair value of the political liberties and fair equality of opportunity over generations. They do this by laws regulating bequest and inheritance of property, and other devices such as taxes, to prevent excessive concentrations of private power (*Theory*, §43: 245ff.).

14.4. Since the difference principle applies to institutions as public systems of rules, their requirements are foreseeable. They do not involve any more continuous or regular interference with individuals’ plans and actions than do, say, familiar forms of taxation. Since the effects of those rules are foreseen, they are taken into account when citizens draw up their plans in

15. See *Theory*, §14: 74–77, and note the distinction made there between the three kinds of procedural justice.

16. The term “background” is introduced here and is not used in *Theory*.

17. Property-owning democracy is discussed in *Theory*, chap. V, but unfortunately the contrast between it and welfare-state capitalism is not made clear enough. This defect I aim to correct in Part IV.

Back ground
of background
as a concept of
social cooperation
of social cooperation
of social cooperation

14.54
This point is
crucial - Rawls
offers a concept
of fair procedure
first and a
pattern of allocation
only as derived
from procedure

the first place. Citizens understand that when they take part in social cooperation, their property and wealth, and their share of what they help to produce, are subject to the taxes, say, which background institutions are known to impose. Moreover, the difference principle (as well as the first principle and the first part of the second principle) respects legitimate expectations based on the publicly recognized rules and the entitlements earned by individuals (*Theory*, §§47-48).¹⁸

The rules of background institutions required by the two principles of justice (including the difference principle) are designed to achieve the aims and purposes of fair social cooperation over time. They are essential to preserve background justice, such as the fair value of the political liberties and fair equality of opportunity, as well as to make it likely that economic and social inequalities contribute in an effective way to the general good or, more exactly, to the benefit of the least-advantaged members of society. Like the draft rule in professional sports, the arrangements required by the difference principle are part of, and not foreign to, the conception of fair social cooperation in justice as fairness. Even with these rules of background justice, distributive justice may still be understood as a case of pure procedural justice.

§15. The Basic Structure as Subject: First Kind of Reason

15.1. A characteristic feature of justice as fairness as a political conception is that it takes the basic structure as its primary subject. I note two broad kinds of reasons for this: the first notes how social institutions work and the nature of the principles required to regulate them over time to maintain background justice.

Consider an important criticism of Locke. Suppose we begin, as it seems he does, with the attractive idea that persons' social circumstances and their relations with one another should develop over time in accordance with fair agreements fairly arrived at. Much as with Locke's conception of ideal history, we might use certain principles to specify various rights and duties of persons, as well as their rights to acquire and transfer property. Now suppose we start with a just initial state in which everyone's possessions are justly held. We then say that when everyone respects persons' rights and

18. The remarks in this paragraph reply to the kind of objection Nozick raises to the difference principle in *Anarchy, State, and Utopia*. His description of the Wilt Chamberlin example, chap. 7, pp. 160-164, suggests that to apply that principle to government must involve continual interference with particular individual transactions.

duties, as well as the principles for acquiring and transferring property, the succeeding states are also just, no matter how distant in time. Call this an ideal historical process view.¹⁹

To work out this idea we need an account not only of the just initial state and of fair agreements, but also of just social conditions under which fair agreements are to be reached. Even though the initial state may have been just, and subsequent social conditions may also have been just for some time, the accumulated results of many separate and seemingly fair agreements entered into by individuals and associations are likely over an extended period to undermine the background conditions required for free and fair agreements. Very considerable wealth and property may accumulate in a few hands, and these concentrations are likely to undermine fair equality of opportunity, the fair value of the political liberties, and so on. The kind of limits and provisos that in Locke's view apply directly to the separate transactions of individuals and associations in the state of nature are not stringent enough to ensure that fair background conditions are maintained.²⁰

15.2. To preserve these conditions is the task of the rules of pure procedural background justice. Unless the basic structure is regulated over time, earlier just distributions of assets of all kinds do not ensure the justice of later distributions, however free and fair particular transactions between individuals and associations may look when viewed locally and apart from background institutions. For the outcome of these transactions taken together is affected by all kinds of contingencies and unforeseeable consequences. It is necessary to regulate, by laws governing inheritance and bequest, how people acquire property so as to make its distribution more equal, to provide fair equality of opportunity in education, and much else. That such rules of background justice are in force over time does not detract from but rather makes possible the important values expressed by free and fair agreements reached by individuals and associations within the basic structure. This is because principles applying to these agreements directly (for example, the law of contract) do not alone suffice to preserve background justice.

What is needed, then, is a division of labor between two kinds of princi-

19. Nozick's *Anarchy, State, and Utopia* is an example of this kind of view.

20. For example, in Locke's case they fail to guarantee the equal political liberties, as we can tell from *Second Treatise*, §158. See Joshua Cohen, "Structure, Choice, and Legitimacy: Locke's Theory of the State," *Philosophy and Public Affairs* 15 (Fall 1986): 301-324.

ples, each kind suitably specified: first, those that regulate the basic structure over time and are designed to preserve background justice from one generation to the next; and second, those that apply directly to the separate and free transactions between individuals and associations. Defects in either kind of principle can result in a serious failure of the conception of justice as a whole.

15.3. Once the many transactions and agreements of individuals and associations are framed within a just basic structure, we have an ideal social process view, of which justice as fairness is an example. The contrast with Locke's ideal historical process view is in part this: while both views use the concept of pure procedural justice, they specify this concept in different ways. The historical process view focuses on the transactions of individuals and associations as these are constrained by the principles and provisos applying directly to the parties in particular transactions.

By contrast, as a social process view, justice as fairness focuses first on the basic structure and on the regulations required to maintain background justice over time for all persons equally, whatever their generation or social position. Since a public conception of justice needs clear, simple, and intelligible rules, we rely on an institutional division of labor between principles required to preserve background justice and principles that apply directly to particular transactions between individuals and associations. Once this division of labor is set up, individuals and associations are then left free to advance their (permissible) ends within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the regulations necessary to preserve background justice are in force.

Taking the basic structure as the primary subject enables us to regard distributive justice as a case of pure background procedural justice: when everyone follows the publicly recognized rules of cooperation, the particular distribution that results is acceptable as just whatever that distribution turns out to be (§14.2). This allows us to abstract from the enormous complexities of the innumerable transactions of daily life and frees us from having to keep track of the changing relative positions of particular individuals (*Theory*, §14: 76f.). Society is an ongoing scheme of fair cooperation over time without any specified beginning or end relevant for political justice. The principles of justice specify the form of background justice apart from all particular historical conditions. What counts is the workings of social institutions now, and a benchmark of the state of nature—the level of well-be-

ing (however specified) of individuals in that state—plays no role. It is a historical surd, unknowable, but even if it could be known, of no significance.²¹

§16. The Basic Structure as Subject: Second Kind of Reason

16.1. The second kind of reason for taking the basic structure as the primary subject derives from its profound and pervasive influence on the persons who live under its institutions. Recall that in explaining the emphasis put on the basic structure as subject, we said that we view citizens as born into society: it is there that they will lead a complete life. They enter that social world only by birth, leave it only by death. And since any modern society, even a well-ordered one, must rely on some inequalities to be well designed and effectively organized, we ask what kinds of inequalities a well-ordered society would allow or be particularly concerned to avoid.

Justice as fairness focuses on inequalities in citizens' life-prospects—their prospects over a complete life (as specified by an appropriate index of primary goods)—as these prospects are affected by three kinds of contingencies:

- (a) their social class of origin: the class into which they are born and develop before the age of reason;
- (b) their native endowments (as opposed to their realized endowments); and their opportunities to develop these endowments as affected by their social class of origin;
- (c) their good or ill fortune, or good or bad luck, over the course of life (how they are affected by illness and accident; and, say, by periods of involuntary unemployment and regional economic decline).

Even in a well-ordered society, then, our prospects over life are deeply affected by social, natural, and fortuitous contingencies, and by the way the basic structure, by setting up inequalities, uses those contingencies to meet certain social purposes.

Pointing out these three kinds of contingencies is not enough, of course, to show conclusively that the basic structure is the appropriate subject of political justice. No such decisive arguments are available, as everything de-

21. See *Theory*, §12: 69, though the point is not stated sufficiently sharply.

depends on how the conception of justice as fairness hangs together as a whole. Yet if we ignore the inequalities in people's prospects in life arising from these contingencies and let those inequalities work themselves out while failing to institute the regulations necessary to preserve background justice, we would not be taking seriously the idea of society as a fair system of cooperation between citizens as free and equal. This reminds us that what we are asking is precisely: what principles of background justice are presupposed in taking seriously that idea of society (§12.1)? *cf. 104*

16.2. If citizens of a well-ordered society are to recognize one another as free and equal, basic institutions must educate them to this conception of themselves, as well as publicly exhibit and encourage this ideal of political justice. This task of education belongs to what we may call the wide role of a political conception.²² In this role such a conception is part of the public political culture: its first principles are embodied in the institutions of the basic structure and appealed to in their interpretation. Acquaintance with and participation in that public culture is one way citizens learn to conceive of themselves as free and equal, a conception which, if left to their own reflections, they would most likely never form, much less accept and desire to realize.

Consider further how the three contingencies (noted above) affect the content of people's final ends and purposes, as well as the vigor and confidence with which they pursue them. We assess our prospects in life according to our place in society and we form our ends and purposes in the light of the means and opportunities we can realistically expect. So whether we are hopeful and optimistic about our future, or resigned and apathetic, depends both on the inequalities associated with our social position and on the public principles of justice that society not merely professes but more or less effectively uses to regulate the institutions of background justice. Hence the basic structure as a social and economic regime is not only an arrangement that satisfies given desires and aspirations but also an arrangement that arouses further desires and aspirations in the future. This it does by the expectations and ambitions it encourages in the present, and indeed over a complete life.

Moreover, native endowments of various kinds (say, native intelligence

22. By contrast, the narrow role might be something like that of specifying the basic principles and most essential rules that must be followed for political society to be enduring and stable. H. L. A. Hart's idea of the minimum content of natural law, which draws on Hume, is an example. See *The Concept of Law* (Oxford: Oxford University Press, 1961), pp. 189-195.

and natural ability) are not fixed natural assets with a constant capacity. They are merely potential and cannot come to fruition apart from social conditions; and when realized they can take but one or a few of many possible forms. Educated and trained abilities are always a selection, and a small selection at that, from a wide range of possibilities that might have been fulfilled. Among what affects their realization are social attitudes of encouragement and support, and institutions concerned with their early discipline and use. Not only our conception of ourselves, and our aims and ambitions, but also our realized abilities and talents, reflect our personal history, opportunities and social position, and the influence of good and ill fortune.

16.3. To sum up: for the two kinds of reasons noted in this and the preceding section, we take the basic structure as the primary subject. This structure comprises social institutions within which human beings may develop their moral powers and become fully cooperating members of a society of free and equal citizens. And as a framework that preserves background justice over time from one generation to the next it realizes the idea (central to justice as fairness) of pure background procedural justice as an ideal social process (as explained under the first kind of reason). It also answers to the public role of educating citizens to a conception of themselves as free and equal; and, when properly regulated, it encourages in them attitudes of optimism and confidence in their future, and a sense of being treated fairly in view of the public principles which are seen as effectively regulating economic and social inequalities (as explained under the second kind of reason).

So far, then, starting with the basic structure seems to accord with the other ideas of justice as fairness, something we could not have foreseen at the outset. A sharp definition of that structure might have gotten in the way of fitting it into these other ideas, just as a sharp definition of them would have gotten in the way of fitting them to it. (Recall the remarks in §4.3.)

§17. Who Are the Least Advantaged?

17.1. We have referred to the least advantaged, but who are they and how are they singled out? To answer these questions we introduce the idea of primary goods. These are various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good. Here we look to the social requirements and the nor-