Reflections on Democracy's Fragility

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> Fully to understand a conception of justice we must make explicit the conception of social cooperation from which it derives. But in doing this we should not lose sight of the special role of the principles of justice or of the primary subject to which they apply.
>
> — John Rawls, *A Theory of Justice*[2]

> In the absence of a certain measure of agreement on what is just and unjust, it is clearly more difficult for individuals to coordinate their plans efficiently in order to ensure that mutually beneficial arrangements are maintained. Distrust and resentment corrode the ties of civility, and temptation and hostility tempt men to act in ways they would otherwise avoid.
>
> — John Rawls, *A Theory of Justice*[3]

> Thus, if the liberal conceptions correctly framed from fundamental ideas of a democratic public culture are supported by and encourage deeply conflicting political and economic interests, and if there be no way of designing a constitutional regime so as to overcome that, a fully overlapping consensus cannot, it seems, be achieved.
>
> — John Rawls, *Political Liberalism*[4]

1. The Problem of Fragility

A Theory of Justice is a work of realistic utopianism, which defends "reasonable faith in the possibility of a just constitutional democratic regime" (PL, 172). Defending faith in a possibility is not arguing for a confident expectation. And Rawls's writings also suggest concerns about the fragility of democracy, with growing intensity in his later writings.[5] I want to explore the reasons for these concerns, even when we make the favorable

assumptions about people and social cooperation that provide the basis for his case for the possibility of a just constitutional democracy.

In focusing on fragilities that arise on favorable assumptions, this exploration provides a lens on democratic fragility different from views that emphasize the dangers of mutually-reinforcing social cleavages (Mason 2018, Haggard and Kaufman 2021, Abramowitz, 2018, Achen and Bartels 2016); or tensions between political accountability and state policy autonomy (Fukuyama 2014), or popular alienation from domestic political elites, engendered by the perception of those elites as the overeducated, self-satisfied, denatured cosmopolitan servants of global markets and transnational institutions, smugly indifferent to—sometimes contemptuous of—the lives of their compatriots. I do not mean to dismiss these concerns, but to supplement them.

The Rawlsian concern about democracy's fragility proceeds as follows: Assume *reasonable political pluralism,* that the politically active citizens in a society endorse competing, reasonable conceptions of justice. Each such conception requires basic liberties and opportunities, some form of democracy, and a decent level of resources for all. Still, we may see deep disagreement among these conceptions of justice, the forms of democracy they recommend, and the interests and identities of citizens who endorse those competing conceptions. Together, this polarization and fragmentation about justice and democracy, and correlated conflicts of interest and identity, may produce a downward spiral of distrust, resentment, and hostility.[6] To be sure, these political dynamics may not lead directly to withdrawal of support from democratic institutions. But they may result in an attenuated commitment to democracy. Thus its fragility.

I come to the topic partly because of its resonance with contemporary politics. To be clear: I do not think we are currently suffering from a surfeit of reasonableness. Perhaps current concerns about democracy all come from views that are, at their roots, anti-democratic, foundationally hostile to human equality. Maybe. But I do think we (and by "we," I mean likely readers of this paper as much as anyone else) suffer from the temptation to attribute troubles to (someone else's) unreasonableness. Thus my focus on fragilities that arise on favorable assumptions.

That said, talk about the "fragility of democracy" might have the feel of a rhetorical gesture. Democracy, after all, has been around for a while. During what Samuel Huntington called the Third Wave, it spread to more than 60% of the world's countries.[7] Yes, there are profound concerns now about democracy, sometimes expressed in worries about populism and electoral authoritarianism, sometimes associated with constructive arguments for fundamentally rethinking the basic institutions of representative democracy.[8] But just as fragile things are possible, robust things do break. Don't we have enough democratic experience—especially in wealthier countries, with "consolidated democracies"—to worry about its breaking without invoking its fragility?

Maybe not. Inclusive democracies, with universal suffrage, are barely 100 years old even in the longest-standing democracies.[9] And in this country, less than 60 years old, since the Voting Rights Act, which not only protected participation rights for Black Americans but also thereby ended 75 years of one-party rule in the South.[10] Similarly, what many people regard as a core democratic principle—one person, one vote—is of comparably recent vintage in the United States.[11] If we think of mass democracy as

involving inclusion as well as contestation, and as requiring some basic measures of political equality, then its life span is sufficiently short to sustain a genuine, unrhetorical concern for its fragility.[12]

I will proceed in three steps. In section 2, I discuss what I will describe as Rawls's "orientation to democracy," identifying three themes associated with that orientation: the *reality* of normative public reasoning, its *educative* effects, and its profound *consequences*. Next, I discuss the *fact of reasonable political pluralism* and the *contestability of democracy*, which together provide bridges to the fragility of democracy. Then finally, drawing on reasonable political pluralism and the contestability of democracy, I explore two kinds of fragility associated with *social unity* and *incentive compatibility*.

2. An Orientation to Democracy: Four Episodes

In "The Priority of Philosophy to Democracy," Richard Rorty celebrates John Rawls's membership in the Hegel-Dewey-Pragmatist circle—and more Dewey than Hegel because Rawls "puts democratic politics first, and philosophy second."[13] While I am not sure about "first and second," I do think that, from very early on—well before what has been described as his "political turn"—Rawls's philosophical writing had *an orientation to democracy*.[14]

Many political philosophers, of course, are democrats in being committed to the rightness of democracy and in thinking that there is a good philosophical *justification* of democracy. When I say that Rawls was oriented to democracy, I mean something different and stronger. Rawls thought of his philosophical work as continuous with and

as aiming to contribute to the public reasoning about justice and the common good that he saw as essential to a stable, well-functioning democracy. Rawls did not write as an observing philosophical judge, assessing democratic practice at the bar of justice. Instead, he writes as a member, a reflective citizen concerned with democracy's self-understanding and improvement.[15] That, at least, is his self-conception.

2.1 Dissertation. We see this democratic orientation early on, in Rawls's dissertation. Its presence there is surprising because the subject-matter seems so distant from democratic theory. Focused on judgments about the "moral worth of character," the dissertation aims to refute anti-rationalist sensibilities about ethics by showing that ethical judgments can be justified through reasoned discussion (SGEK, 11) Ethical anti-rationalism comes in "positivist" (emotivist) and "authoritarian" variants (SGEK, 1-4). Rawls's democratic orientation appears in his striking explanation of why this proof is important. These views "encourage in social life just those elements which, in democratic countries, we have tried to get rid of: the authoritarian, the arbitrary, and the irrational" (SGEK, 7). Positivism and authoritarianism about ethics are not simply misguided philosophical theories about moral thought. Instead they play a poisonous public role in democracies.

To clarify the threat, Rawls sketches a conception of democracy that emphasizes rational discussion. Because rational discussion is fundamental, "democratic theory and practice must consider the process of reasoning as one of the very crucial points in its whole program." The defense of moral *reasoning* is thus intended as a defense of the kind of public discussion that democracy depends on: "It is **because** the two views mentioned above [positivism and authoritarianism] strike at what is essential in

democratic theory **that the question about the rational foundation of ethical principles is worthy of our attention**" (emphases added, SGEK, 8). I am inclined to take this comment literally: the rational foundation of ethical principles is worthy of our attention *because of* its connection to democracy. An investigation of the principles governing our judgments of moral worth is thus "an addition to democratic theory, as well as to ethical philosophy."[16]

I begin in this remote precinct in order to underscore how powerfully Rawls thought of his work from the outset as oriented to democracy. I also start here because that orientation depends on a particular conception of democracy. Well before formulating a theory of public reason as part of political liberalism, Rawls thought that democracies involve in a fundamental way a kind of public reasoning about what is right and reasonable. Explicitly formulating a theory of public reason was essential in developing his later views about political liberalism because of the emphasis in those views on religious, moral, and philosophical disagreement. But theory or not, "the idea of public reason has often been discussed and has a long history, and in some form it is widely accepted."[17] Moreover, it is "part of the idea of democracy."[18] And a simple version of it is present in the dissertation.

Although the dissertation is not about the substance of democratic public discussion, Rawls' philosophical writing is thus oriented to democracy because normative reasoning of the general type that he pursues about moral worth plays an essential role in public discussion in a well-functioning democracy. Thus, from the start, he locates himself at some distance from a social-psychological, group-identity conception of democracy as a team sport[19], or a minimalist conception of democracy as

a way to peacefully regulate the omnipresent competitive struggle for power or for resources[20], or as rational advantage-seeking by individuals in a non-market setting[21], or as a fair procedure for aggregating interests.[22] Because his topic is judgments of moral worth, Rawls does not discuss the content of democracy's public reason, either standards of justice or guidelines of inquiry for applying those standards. But as his reference to elements that democratic countries have tried "to get rid of" makes clear, he does think that public discussion about what is right, and public confidence in the capacity of such discussion to deliver on its promise of insight into what is right and reasonable, has profound practical importance for a successful democracy. Thus the concerns about positivism and authoritarianism, when they become widely shared views about normative discourse.

This democratic orientation—with its focus on philosophy's contribution to public reasoning—plays a central role in *Theory of Justice* and *Political Liberalism*. And I will consider the key elements of that role in a moment. But I want first to bookend this early statement about the practical importance of public reasoning with a vivid late discussion in Rawls's *Lectures on the History of Political Philosophy*.

2.2 The German Case[23]. Imagine someone saying: "yes, of course people go in for high-minded, public rhetoric about rightness and the common good. But why take it seriously?" "Why isn't politics," Rawls asks, "simply the struggle for power and influence —everyone trying to get their own way? Harold Lasswell said: 'Politics is the study of who gets what and how?' Why isn't that all there is to it. Are we naive, as the cynic says, to think that it could be anything else? If so, then why isn't all the talk of justice and the common good simply the manipulation of symbols that have the psychological effect of

getting people to go along with our view, not for good reasons, plainly, but somehow mesmerized by what we say?"

Rawls responds in three steps. First, as in the dissertation, he affirms the *reality of normative public reasoning:* that such reasoning is what it seems to be, namely the exploration of requirements of justice and the common good. If principles and ideals were simply discursive lipstick on the unprepossessing pig of power, then people would have long since dismissed them: "People are not so stupid as not to discern when those norms are being appealed to by certain groups and their leaders in a purely manipulative and group-interested fashion." Such manipulation is familiar, but it lives a parasitic existence "on those same principles being invoked sincerely by those who mean them and can be trusted." To be sure, exasperated cynics will shake their heads, roll their eyes, comment on human credulousness, and insist that they are simply being realistic. But perhaps they are simply being cynical.

Second, Rawls emphasizes the *educative effects* of normative public reasoning. We cannot expect broad allegiance to ideas of justice and the common good to arise simply from families, schools, and churches. Such allegiance depends also on public, political discussion. Reflecting on Wilhelmine and Weimar Germany, and echoing Max Weber's views about the destructive impact of Bismarck's legacy on Weimar politics[24], Rawls observes that German political parties functioned like "pressure groups," aiming to extract resources for their base. They did not make the more encompassing arguments about justice and the common good required to put together a stable working majority (PL, lxi-lxii). In a mass democracy, the attention of most citizens is not focused on politics. Democratic success depends on citizens' acquiring a sense of

justice, which happens (if at all) through public discussion of a kind that was absent in Weimar (TJ, chap. 8; PL, Lec. 4).

Which leads to the third point, about the *profound consequences* of normative public reasoning (or its absence). German officials and parties were not engaged in a public discussion focused on justice and the common good. The normal workings of the political system thus did not have the desired educative effect. The results were calamitous. "Since there were no genuine political parties, there were no politicians: people whose role is not to please a particular group but to put together a working majority behind a political and social democratic program." The problem, "fatal in the end to German democracy," was not—or not only—that parties were ideologically polarized, class interests fundamentally irreconcilable, cultural traditions deeply anti-democratic, or conflicting comprehensive doctrines politically explosive. Perhaps those were all true, too. But the fundamental and fatal problem was the absence from public discussion of the more or less sincere and more or less constraining appeals to and arguments about principles of justice and the common good. As a result, there was not broad citizen allegiance to principles of justice. And in the absence of that allegiance, democracy was doomed.[25]

2.3 **Theory of Justice**. When we turn back to *Theory of Justice*, we find these same three themes about normative public reasoning in a democracy.

First, we have the *reality* of normative political reasoning. *Theory of Justice* aims to contribute to democracy by identifying the most suitable principles of justice for public reasoning: "In a well-ordered society they must . . . represent their constituents in the substantive sense: they must first see to pass just and effective legislation, since this is

a citizen's first interest in government . . . . The principles of justice are among the main criteria to be used [by citizens] in judging a representative's record and the reasons he gives in defense of it" (TJ 199-200).

Second, this open appeal to principles of justice in public reasoning plays an *educative role* in forming a public will. It is essential to the *acquisition* of a sense of justice, thus to the stability of the well-ordered society of justice as fairness: "[T]he morality of association quite naturally leads up to a knowledge of the standards of justice. In a well-ordered society anyway not only do those standards define the public conception of justice, but citizens who take an interest in political affairs, and those holding legislative and judicial and other similar offices, are constantly required to apply and to interpret them. They often have to take up the point of view of others, not simply with the aim of working out what they will want and probably do, but for the purpose of striking a reasonable balance between competing claims and for adjusting the various subordinate ideals of the morality of association." By using these principles in public discussion, people acquire "a mastery of these principles," and understand "the values which they secure and the way in which they are to everyone's advantage" (TJ 414).

And third, while members of a well-ordered society have diverse, conflicting conceptions of the good, "Everyone has a similar sense of justice and . . . [p]olitical argument appeals to this moral consensus" (TJ 232). Moreover, this moral consensus has *profound* consequences: it is needed in making "a viable human community" possible. *"*In the absence of a certain measure of agreement on what is just and unjust, it is clearly more difficult for individuals to coordinate their plans efficiently in order to ensure that mutually beneficial arrangements are maintained. Distrust and resentment

corrode the ties of civility, and temptation and hostility tempt men to act in ways they would otherwise avoid" (TJ 6).

Like the philosophical argument of the dissertation, then, the philosophical argument in *Theory of Justice* is oriented to democracy, not simply by providing a justification of the rights that are essential to democratic politics (which of course it does), but by aiming to contribute to the public exercise of reasoning about what is right that Rawls sees as so essential to democratic will-formation and to functional democratic success.

2.4. Political Liberalism. In *Political Liberalism,* Rawls is "concerned with the survival, historically, of constitutional democracy" (CI 616). Moreover, the three themes I have mentioned are all present, but along with a new and fundamental question: How is the public reasoning about justice that is essential to democracy possible? It is essential, because "an enduring and secure democratic regime, one not divided into contending doctrinal confessions and hostile social classes, must be willingly and freely supported by at least a substantial majority of its political active citizens,"[26] the basis of that willing and free support is a political conception of justice that can "serve as a public basis of justification," and the acquisition of that conception depends on a well-functioning political system. But such reasoning seems at odds with the "pluralism of reasonable comprehensive religious, philosophical, and moral doctrines found in modern democratic societies." If it is to be possible, a conception of justice suited to a constitutional, democratic regime—a conception of justice that leads to willing and free support of the regime—must be one that can be endorsed by people who hold widely different and irreconcilable comprehensive doctrines, thus a specifically political

conception of justice, formulated independently of those conflicting comprehensive doctrines. If democracy is not only a system of rights and institutions, but essentially depends on public discussion about matters of justice, then how is democracy possible, given this pluralism?

To clarify the force of the question, I want to draw attention to Rawls's distinction between three types of conflict in a democratic society: conflicts deriving from the burdens of judgment, from conflicting comprehensive doctrines, and from our social positions, interests, and identities (PL lx; PRR 612-13; PLR 35). Putting aside for now the burdens of judgment, we have conflicts about comprehensive doctrines, which address "the highest matters" (PRR 614) and lie at the basis of "the most intractable struggles." And we have conflicts that come from differences in "citizens' fundamental interests—political, economic, and social," associated with "status, class position, or occupation, or differences in ethnicity, gender, or race" (PRR 612).

Conflicts of interest and identity are not about the highest things and are assumed to be more tractable. They need to be resolved, and can be, if the society satisfies principles of justice that members recognize as "reasonable (even if not the most reasonable)" (PRR 612). Something like this idea seems to lie at the basis of the third point illustrated by the German case, about the profound consequences of normative public reasoning.

The animating thought seems to be that interests are not naturally harmonious, nor, in the face of conflicting interests and identities, can we achieve stable cooperation on the basis of settled rules that are experienced as arbitrary, or by authoritative imposition, or on the basis of regulations established by an open and fair procedure.

Instead, those conflicts of interest and identity can be kept within bounds and not disrupt democracy, if—but only if—people recognize justice as fundamental, as the "first virtue," and have some measure of agreement about the requirements of justice. The tractable conflicts can be resolved because and so long as there is a shared superordinate allegiance to principles of justice, "the fundamental charter of a well-ordered human association."[27] Put otherwise, we need some measure of substantive justice in the society in the judgments of a substantial majority of politically active citizens, not simply traditional or procedural legitimacy.

But intractable conflicts about the highest things remain. Preserving an enduring and secure democratic regime—one that addresses the tractable conflicts—requires a sufficient measure of agreement on justice, consistent with those intractable disagreements.

The answer is an *overlapping consensus*. We can remain in unresolvable disagreement about the ultimate religious and moral convictions, so long as the conflicting doctrines have the resources to support, or are at least consistent with endorsing, a reasonable conception of justice—one of the family of reasonable conceptions of justice that can make the conflicts of interest and identity tractable.

But is such an overlapping consensus utopian? Answering this question requires a sense of what it would take for an overlapping consensus to be possible. Thus Rawls says: "In such a consensus, the reasonable doctrines endorse the political conception [justice as fairness], each from its own point of view. *Social unity* is based on a consensus on the political conception; and stability is possible when the doctrines making up the consensus are affirmed by the society's politically active citizens and the

requirements of justice are *not too much in conflict with citizens' essential interests* as formed and encouraged by their social arrangements" (PL 134, emphases added).[28]

We have two conditions here. First, we have consensus on a political conception of justice or family of political conceptions—which is a source of social integration or *social unity*. Such unity bounds the conflicts that arise from our interests and identities. Though interests and identities are not naturally harmonious, there is a possibility—with sufficient social unity—of achieving a reasonably just resolution of the tractable conflicts. So *Social Unity* requires that there be enough agreement about justice to contain the tractable conflicts.

Second, a political conception, which is the focus of an overlapping consensus, cannot make excessive demands on citizens, given their basic interests. Lets call this the *Incentive Compatibility* condition.

My discussion the fragility of democracy will focus on these two conditions. Can we reasonably expect to meet these two conditions?

3. Pluralisms and Democracies

As a bridge to that discussion, I want now to add two ideas that may create troubles for Social Unity and Incentive Compatibility, thus for an overlapping consensus.

3.1. Two Pluralisms. *Political Liberalism* distinguishes two kinds of reasonable pluralism. The *pluralism of reasonable comprehensive doctrines* is the fact that, under conditions favorable reflection and deliberation, reasonable people are drawn to a plurality of reasonable but incompatible comprehensive doctrines. Putting aside the complexities associated with the reasonableness of comprehensive doctrines, I will

assume that *reasonable* comprehensive doctrines are comprehensive doctrines endorsed by reasonable citizens. Because they are endorsed by reasonable citizens, such comprehensive doctrines are at least consistent with a *reasonable political conception of justice*—of which more in a moment.

*The fact of reasonable **political** pluralism* is the fact that, under conditions favorable for reflection and deliberation, reasonable citizens are drawn to competing reasonable political conceptions of justice (PL xlviii-xlix). This idea of reasonable political pluralism is less familiar in Rawls than the pluralism of reasonable comprehensive doctrines, but looms increasingly large in his later elaborations of political liberalism.[29] So I want to say more about it.

As I mentioned earlier, *Theory of Justice* defines a well-ordered society as a society with fully shared public knowledge that everyone accepts the same fundamental principles for "assigning basic rights and duties and determining what they take to be the proper distribution of the benefits and burdens of social cooperation." Moreover, the society satisfies and is publicly known to satisfy, as a general matter, those shared fundamental principles (TJ 4; JFR 8; PL 35; PLR, 26).

This conception of a well-ordered society is not simply a terminological stipulation. It reflects a broader set of substantive convictions about social cooperation. This is the force of Rawls's claim that: "Fully to understand a conception of justice we must make explicit the conception of social cooperation from which it derives. But in doing this we should not lose sight of the special role of the principles of justice or of the primary subject to which they apply."[30] We saw those convictions reflected in the discussion of the German case and in the associated account of tractable conflicts of

identity and interest. At the heart of that conception of social cooperation is the ideas that principles of justice play a special role in enabling social cooperation.[31] Shared standards of justice have a profound practical, functional importance in enabling social integration and bounding our disagreements.[32]

Thus, "some measure" of agreement on what is just and unjust makes a "secure association together possible." Absent a "certain measure of agreement," it is "clearly more difficult" to solve such practical problems as social coordination, efficient cooperation, and social stability. A well-ordered society enables us to avoid or resolve the tractable conflicts growing out of differences of interest and identity. Without sufficient agreement about justice "distrust and resentment corrode the ties of civility, and suspicion and hostility tempt men to act in ways they would otherwise avoid" (TJ 5-6). A well-ordered society, with its agreement on the assignment of rights and duties and the distribution of the benefits of social cooperation, makes it possible for us to avoid or resolve the tractable conflicts growing out of differences of interest and identity. A shared sense of justice saves us from a downward spiral of distrust and resentment, suspicion and hostility, that may emerge from those underlying conflicts. I do not mean to suggest that standards of justice are foreign to our nature, which puts us constantly on the precipice of social conflict. To the contrary, there is a powerful strand of natural law thinking in Rawls's view: norms of justice express our moral powers and grow from a reciprocity deeply rooted in our nature (TJ 433; PL 81-86). But the tractable conflicts are always present and depend for their resolution on a shared sense of justice. Reasonable political pluralism puts pressure on this shared sense.

Though Rawls does not say this, it seems safe to say that the troubles he identifies here—the practical challenges that can be resolved by shared standards of justice—could arise from a general insouciance or from the Thrasymachean nihilism about justice embraced by Hobbes's fool, who says in his heart, "there is no such thing as justice."[33] But they could also arise from widespread and strong commitments to justice among people who disagree deeply about what justice requires. If some measure of agreement about justice bounds our conflicts of interest and identify, deep disagreement about justice may increase the stakes in social conflicts and make otherwise resolvable disagreements even less tractable.

Rawls, it also seems safe to assume, always thought that realism requires a recognition that no society will ever be fully well-ordered, in that members will never all share the same principles of justice.[34] *Political Liberalism* makes that realism about political disagreement fully explicit. But the fact of reasonable political pluralism says much more. Not simply an expression of *realism* about human disagreement, it is, Rawls says in the unfinished revisions to *Political Liberalism,* one of "two pluralisms" that is ingredient in political liberalism, along with the pluralism of reasonable comprehensive doctrines.[35]

The "two pluralisms" (PLR 3) have a common explanation. The pluralism of conflicting reasonable comprehensive doctrines reflects the "burdens of judgment" faced by reasonable citizens (PL 54-57). The aim in invoking the burdens of judgment is to identify sources of disagreement, while operating in a tolerant spirit. The idea is to explain disagreements consistent with acknowledging that people are reasonable: they have developed their moral powers; are able to draw inferences, consider evidence,

weigh competing considerations and interpret values categories; have a settled interest in offering and respecting fair terms of cooperation; and recognize the difficulty of resolving certain fundamental questions.

Specifically, reasonable people may disagree at least in part because we evaluate, weigh, interpret, and judge in light of our "total experience, our whole life course up to now (PL 57). "Thus, in a modern society with its numerous offices and positions, its various divisions of labor, its many social groups and their ethnic variety, citizens' total experiences are disparate enough for their judgments to diverge, at least some degree, on many if not most cases of any significant complexity (PL 57). Moreover, people with shared social positions and common identities may have sufficiently common experiences for their judgments and evaluations to cluster, consistent with their being fully reasonable, not simply solidaristic members of their tribe.

The same burdens of judgment that account for the pluralism of reasonable comprehensive doctrines may also help to account for reasonable political pluralism. Rawls says that the burdens of judgment apply "considerable less forcefully" to principles of justice than to comprehensive doctrines (PLR 47). Perhaps the thought is that the criterion of reciprocity—which I will come to in a moment—limits the variation in how reasonable conceptions of justice may assign weights to conflicting values or interpret open-ended political values (liberty, equality, general welfare). So the burdens of judgment apply less forcefully to reasonable political conceptions because they are subject to tighter constraints than reasonable comprehensive doctrines, in part because

the range of ideas implicated in a political conception is much narrower than the range implicated in a comprehensive doctrine.

Whatever the differences, both comprehensive doctrines and conceptions of justice face the burdens of judgment. In both cases, we have disagreements that need not be explained by pointing to moral or epistemic vices. Moreover, reasonable disagreements may reflect differences in the social experience of individuals and groups.

Reasonable political conceptions must all satisfy the "criterion of reciprocity," roughly, that the conception presents terms of cooperation that adherents think others can reasonably accept as free and equal citizens (PL xliv, 49-50, 54; PRR 578). To satisfy this criterion, the conceptions need to meet three conditions: specify certain liberties and opportunities, give "a special priority" to those liberties and opportunities, and assure "adequate all-purpose means to make intelligent and effective use of their liberties and opportunities," including their political liberties (PL xlviii). With reasonable political pluralism, a well-ordered society is now understood always to involve a family of such political conceptions of justice, all regarded as at least reasonable, "even if barely so," by proponents of other views (PRR 578). The best we can hope for by way of social unity is that the basic structure meets the conditions set out by one member of this family (or some blend of them), that "an enduring majority" of citizens embrace some reasonable conception or other, and that political active citizens regard the regnant conception as reasonable.

How do the members of this family differ? Rawls's two principles of justice are an egalitarian version of liberalism. The egalitarianism is expressed in the difference

principle's requirements of justifying inequalities by showing that they work to the maximum benefit of the least well-off, and in the conception of fair equality of opportunity and the fair value of the political liberties. Other views, less egalitarian views on each of those dimensions, appear to meet the three conditions on a reasonable political conception.

The liberalism is expressed in the priority of a family of basic liberties: the family of basic liberties includes both personal and political liberties, and the priority is lexical. Here, there is room for reasonable disagreement on the nature of the priority rules and the substance of the liberties. Thus, lexical priority is an especially strong priority rule: an alternative, reasonable view would give the liberties great weight, but not lexical priority (Sen 2009, 63). And on the substance of the liberties, some reasonable political conceptions may give especially significant weight to religious liberties because of the special reasons that adherents have for complying with religious obligations, as they understand them, and be prepared to restrict the scope of political liberty to ensure appropriate protections (PL 310-12). Others may see those restrictions as destructive of political liberties, which have a special importance.

3.2. Contestability of Democracy. All reasonable conceptions of justice endorse some form of democracy. To be more specific, I will assume that a "democracy" must meet at least four conditions: regular, competitive elections for law and policy making positions; protections of rights of speech and assembly; a government chosen through elections that actually makes law and policy; and universal suffrage. Those conditions leave a great deal open. With reasonable political pluralism, we should expect proponents of different political conceptions to favor different forms of democracy.

So consider a well-ordered society in which different groups are drawn to different reasonable conceptions of justice. The less egalitarian conceptions might reject the difference principle in favor of an assurance of a decent minimum, or reject the requirements of the fair value of political liberty or fair equality of opportunity in favor of weaker assurances of opportunities that are adequate for meeting some specified target. Or they may weaken the priority rules or offer a different account of an adequate set of basic liberties, perhaps with special emphasis on religious liberty. All these views seem consistent with the three conditions on a reasonable political conception that Rawls associates with the criterion of reciprocity. Moreover, these different political conceptions of justice lead different groups to support competing conceptions of democracy, as an authoritative form of collective decision-making.

As a general matter, the selection of a just, democratic constitution needs to look both to the justice of political process and to the justice of outcomes that issue from that process. Consider the case of justice as fairness. Here, justice of process is defined by the rights and liberties covered by the first principle, especially those covered by the principle of participation: "all citizens are to have an equal right to take part in, and determine the outcome of constitutional processes that establish the laws with which they are to comply" (TJ 194). Justice of outcomes is assessed both in terms of preserving the basic liberties and by reference to the need to ensure adequate income and wealth.

Rawls's case for political democracy is based in the first instance on the first principle—both the principle of participation, and the requirement of a process that protects other basic liberties. The second principle reinforces the case for political

democracy, at least if we suppose that greater equality of political power means a smaller likelihood of class legislation. But the second principle has more than a reinforcing role. It helps to define what scheme of democracy is most suitable: majoritarian or consensual; more constraints on forming stable and assertive majorities or greater ability of majorities to experiment; more representative or more direct; more proportionality to reflect social diversity and foster representativeness, or more majoritarian to better enable accountability. All of these variants are compatible with the four basic features of democracy, but they may well have very different institutional consequences.

Consider now the fact of reasonable political pluralism, with a range of reasonable conceptions of justice. Those differences lead to conflicting views about the appropriate form of democracy is. A more egalitarian view of justice might support a more majoritarian constitutional democracy, to ensure that entrenched economic power is not in a position to prevent legislation required for economic fairness. But other reasonable political conceptions of justice provide good reasons for supporting different conceptions of democracy.

4. Political Pluralism, Overlapping Consensus, Fragility

Lets now consider the idea of overlapping consensus and its implications for democratic fragility in light of reasonable political pluralism and the contestability of democracy. To better define the issue, I want to draw attention to three dimensions of overlapping consensus that distinguish it from what Rawls calls "constitutional consensus": breadth, depth, and specificity.

4.1 Specificity. A constitutional consensus is, essentially, an agreement on political procedures for authoritatively resolving disagreements. An overlapping consensus has greater *breadth* than a constitutional consensus because it extends beyond matters of political procedure. So an overlapping consensus will require the protection of some non-political liberties—say, liberty of conscience—as well as some kind of assurances about education and material well-being. The assurances will vary across different members of the family of reasonable conceptions. But all reasonable conceptions need to develop greater breadth as they try to win adherents by speaking to "the fundamental political questions that will be debated" (PL 166).

An overlapping consensus is also *deeper* than a constitutional consensus. It is not simply an agreement on standards of justice, but on fundamental ideas as well, such as the idea of society as a fair system of cooperation, or of persons as free and equal citizens in virtue of their possessing to a sufficient degree the capacities required for being social cooperators. Once again, efforts to broaden political support through public argument pushes politically-active groups to appeal to more fundamental ideas, such as the idea of fairness or a conception of citizens as free and equal.

Specificity is the key condition for our purposes. The intuitive idea is that a consensus is more or less specific (or wide) depending on how different the reasonable political conceptions of justice are that win adherents in a democratic system. In the revised version of *Political Liberalism*, Rawls states the condition this way: "Thus, the focus of an overlapping consensus is a family of liberal conceptions that vary within the range allowed by the criterion of reciprocity. The more restricted the range, the more specific the consensus. In a political society with a consensus of this kind, several

conceptions of justice will normally be political rivals, no doubt favored by different interests and strata" (PLR 131). So the normal condition is a plurality of reasonable conceptions, with differences along both the equality and liberty dimensions.

Moreover, differences of interest correlate with the differences in conception of justice. And these differences of interest are especially important in thinking about Incentive Compatibility. Assume, for example, that wealthier citizens are ordinarily less inclined than the least wealthy to support an egalitarian conception of justice; that people with lower social status may be more inclined to support a stronger formulation of fair equality of opportunity; that people with less widely held religious convictions will be more like to be drawn to a conception of basic liberties that gives great weight to the protection of religious freedom. Thus "different social and economic interests may be assumed to support different liberal conceptions. The differences between conceptions expresses, in part, a conflict between these interests. . . . The width of the range of liberal conceptions will be determined by the degree of opposition among these interests" (PL 167; PLR 134).

This observation about how people with different interests may be drawn to different conceptions of justice may seem surprising. After all, doesn't Rawls think that we should argue about principles of justice under conditions—say, the veil of ignorance — that prevent us from focusing on our own interests? And putting aside the particulars of Rawls' view: If differences of interest draw people to different conceptions of justice, does that not suggest that conceptions of justice are expressions of or rationalizations for interests, lacking the kind of independence and objectivity that we require of standards of justice? Perhaps Harold Lasswell and the cynics are right after all.

That conclusion is too quick. The cynics do not have a corner on the market for obvious truths. The correlation between interests and conceptions of justice is important, and a sensible source of concern. But it does not force the conclusion that conceptions of justice are simply rationalizations of interests. Each of the conceptions of justice under consideration is assumed to have something to be said for it. Each satisfies, and is understood to satisfy, the criterion of reciprocity and the three conditions required of a reasonable conception of justice. The issue under consideration here is what draws different people to different conceptions, each independently cognizable as a reasonable conception. What explains the observed (partial) correlation? Do we need to think that the observed correlation is explained by the fact that people are drawn to the view that best serves their interests?

Perhaps not. For example, someone who has experienced the burdens of restrictions on opportunity may have a better understanding of those burdens, and be drawn to a conception of justice with a stronger formulation of fair equality of opportunity. They say that they are drawn to it because their life experience and the experience of people comparably situated provides normatively relevant insight. Similarly, someone with experience running businesses may think that they have normatively relevant experience of the burdens that come from laws and policies required to achieve more equal conditions. They think they understand something that others fail to understand.

Returning then to the width or specificity of an overlapping consensus: we may be inclined to focus on variant conceptions of fair distribution, thus to think of the width as bounded by Rawls's two principles and "mixed conceptions" of justice that offer

alternatives to there difference principle. But as I said earlier, this way of bounding the width is too narrow. Reasonable political pluralism includes political conceptions that vary along both the equality and liberty dimensions.

Now we know (or can assume) a few things that will be important to the exploration of the Social Unity and Incentive Compatibility discussion that follows:

1. **Three Conditions**: Reasonable conceptions of justice must include the three provisions identified earlier as required by the criterion of reciprocity.

2. **Rivalry**: Normally, we expect a rivalry among different conceptions that differ on both the liberal and egalitarian axes.

3. **Acquisition**: People acquire conceptions of justice through political participation.

4. **Correlation**: Groups with different interests and identities are drawn to different conceptions.

5. **Width**: The greater the opposition of interests and differentiation of identities in the society, the greater the width of the overlapping consensus and the corresponding disagreements about justice.

I want now to consider the reasons for concern about democratic fragility that come from the Social Unity condition and the Incentive Compatibility condition.

4.2 Social Unity: Religious Exemptions. People (at least those with appropriate religious convictions) have reason to care about their salvation; about public security; about the quality of the public environment that they live in and about the preservation of the earth. And their concerns about each of these can come into conflict with a commitment to democracy. They care (with good reason) about democracy, but

they care about—and have reason to care about—some good whose realization may conflict with it.

Lets focus on the religious case, and consider a simple example.[36] To be clear, the concern I wish to explore is not about a tension between a comprehensive religious doctrine and principles of justice but about the content of the principles of justice themselves, in particular how they conceive of the protection of religious liberty.

Suppose I live in a community in which most people keep a Sunday sabbath. I am a Saturday sabbatarian. A regulation is passed that denies me unemployment benefits if I refuse, from a sense of obligation jobs that require me to work on Saturday. The administrative denial is made pursuant to a law enacted through a democratic process, and there is no evidence that the legislation is driven by animus against people like me. Of course there are other, more complex cases of religious exemptions, concerning contraception, gender equality, and marriage equality. In these cases, the claim for an exemption is motivated by a concern not to be complicit in what is judged to be a moral violation and the regulations are understood to serve the value of civic equality.[37] But the simpler case suffices to clarify the logic of the issue.

I might initially complain that the decision was wrong, not that the process was undemocratic. The decision is wrong because of the nature of the burden it imposes, but the process is independently recognizable as a democratic process. But there is an alternative way to present the case, attentive both to reasonable political pluralism and the contestability of democracy. We know that there are a range of reasonable conceptions of justice, and these conceptions may disagree about their understanding

of religious liberty as a basic liberty and in particular how to treat claims for religious exemptions from generally applicable law.

Lets say that some reasonable conceptions treat those exemptions as mandatory. Because of the importance of religious reasons, these conceptions require especially compelling public reasons for overriding them. Others think that burdens on religious exercise are an inevitable consequence of making general rules of conduct for a pluralistic society, with different and conflicting comprehensive doctrines. People drawn to the first view may be inclined to find it compelling because it provides them with special protections. But that does not of itself make their endorsement self-serving. Instead, in the spirit of the burdens of judgment, we can say that the nature of their experience—shared with others in their group—gives them a special awareness of the severity of burdens on religious exercise, and that this awareness draws them to a view that promises more stringent protections.

Moreover, because the design of a democratic constitution is guided by a conception of justice, we now have a potentially deep disagreement about the kind of democracy that we ought to have. Should the protection of religious freedom be left largely to a majoritarian process that permits burdens on religious freedom so long as they come from generally applicable laws? Or should there be a design of democratic process that gives greater weight to the protection of religious freedom, with mandatory exemptions from regulations that burden religious exercise? People disagree about the justness of regulations, which leads them also to disagree about the appropriate processes for adjudicating these disagreements. There is no shared basis because the

differences in conceptions of justice provide a basis for different conceptions of what an appropriate democratic constitution should look like.

Moreover, there is not only a disagreement, but a basis for mutual suspicion and mistrust. Consider the person with religious convictions who faces a conception of justice and associated form of democracy that does not provide especially stringent protections for religious freedom. They see that a reasonable case can be made for this view, but wonder if the secular co-citizens are drawn to it because they have an anti-religious animus. And they see that suitable protections may be provided by a majoritarian political process, but worry that more secular citizens do not have a sufficiently strong sense of what religious convictions are. When they are told that the regulations are adopted democratically, that does not provide them with a strong reason because they think that the kind of democracy that authorizes the rules is the wrong kind, recommended by the wrong view of justice, and may itself be an expression of the anti-religious animus. They embrace reciprocity, but not being suckers.

Correspondingly, more secular citizens may see the reasonableness of the conception of justice and design of democracy that provides stronger protections. But they may also suspect that the disagreement about justice and the design of democracy is animated by an interest in being free of reasonable requirements that we all are bound by. They are struck by the correlation between the conception of justice and democracy advanced by the religious citizens who favor stronger protections and the interests and identities of those citizens who may wish to be freed from being burdened by general regulations. They have a sense of the burdens of judgment: perhaps the

allegiance is not self-serving, but is born of insight about the magnitude of a burden. But there is cause for concern. They are all for reciprocity, but not for being suckers.

Each side has some basis for concern about the democratic commitments of the other side. Each is concerned that the other side is bending democracy to their advantage. They do not have an agreed basis in an understanding of justice or in a conception of democracy as the basis for resolving their disagreements. Instead, they have a less structured concern about the reasonableness of the people they disagree with. They strains are symmetrical. Each side may understandably lose confidence in the democratic convictions of the other side. Invocations of values of trust and civility may seem like invitations to a mug's game. And they may then think it is permissible to break the democratic rules both because of their substantive commitments and because they are concerned that the other side is breaking the rules.

4.3. Incentive Compatibility, Inequality, and Democracy. Though Rawls does not say very much in *Theory of Justice* about the conduct of democratic politics, two things are clear: first, that he rejects the economic theory of democracy, which sees voters as voting for candidates on the basis of utility maximizing judgments about which candidate is closer to their preferred point in policy space (TJ 431). Instead, voters make judgments based, in the first instance, on their conception of justice: in the well-ordered society of justice as fairness, everyone is assumed to be basing on those judgments on the same conception of justice. Second, Rawls thinks that democracy itself is required by justice and that the stability of democracy depends on citizens acting to uphold a democratic regime because they regard it as a requirement of justice.

The story in political liberalism is similarly distant from an economic theory of democracy. Citizens are guided by a sense of justice, whose content is given by some member of a family of reasonable conceptions of justice. Justice as fairness, with its specifically egalitarian elements, is said to be the most reasonable conception. But the fact of reasonable political pluralism means that different citizens will endorse different conceptions, and there is no assurance that the dominant conception will be justice as fairness.

How different are the competing reasonable conceptions of justice? In *Political Liberalism*, Rawls says "several conceptions of political justice will be political rivals and no doubt favored by different interests and different strata." Moreover, we are assuming that this pluralism of reasonable political conceptions is not simply what we can realistically expect: instead, the focus of the overlapping consensus is a family of conceptions "that vary within the range allowed by the criterion of reciprocity." So here, we have a plurality of reasonable political conceptions.

In part, the question here is philosophical: what are the views that respect the criterion of reciprocity, and can be elaborated from the fundamental ideas of society as a fair system of cooperation, free and equal persons as full participants in such a fair scheme, and a well-ordered society as a society that is effectively regulated by a public conception of justice or a family of such conceptions? As I emphasized in the discussion of reasonable political pluralism, we should expect to see, even under favorable conditions, a range of reasonable conceptions varying on both the equality and liberty axes.

But there is also a question about the relationship between convictions about justice and political, economic, and social interests and identities. Thus "different social and economic interests may be assumed to support different liberal conceptions. The differences between conceptions expresses, in part, a conflict between these interests" (PL 167; PLR 34).

This claim about economic and social interests drawing people to different, competing conceptions of justice fits well with the account of the burdens of judgment and reasonable political pluralism. Recall the idea that differences in total experience lead to disagreements about how best to evaluate evidence, weigh conflicts of value, and interpret open-ended categories. Such disagreements need not impugn anyone's reasonableness. But there is a concern. Suppose a reasonable political conception encourages "deeply conflicting political and economic interests," and those conflicting interests, in turn, draw people to political conceptions that further expand the width of the overlapping consensus. Perhaps, then, "a full overlapping consensus cannot it seems be achieved" (PL 168). Here we have the Incentive Compatibility concern.

Though Rawls does not, as I said, endorse an economic conception of democracy, his concerns here do overlap with those of an economic conception. To illustrate, consider the Acemoglu-Robinson theory of democratization and democratic stability (Acemoglu and Robinson, 2006). Focusing on democratic transitions (I will be extending their point to the stability of a consolidated democracy), they argue that democratic institutions serve as a commitment device for economic and political elites. Rather than forestalling political resistance and revolution by offering discrete payoffs, elites can avoid political revolution by institutionally—thus more or less durably—

enshrining some measure of political equality for less well-off citizens. The enhanced political power is of instrumental importance—whatever other importance it may have—because it enables poorer citizens to win greater benefits than under autocratic political institutions. Thus, less well-off citizens want a greater share of resources; having more political power increases their expected share of resources; democracy enhances that power; and because democracy is an institution, the increase in power, thus in expected benefits, is relatively durable.

Of course, democratic transitions do not always occur, and democratic consolidation is not permanent. One of the conditions that increases the chances of democratic transition (and consolidation) is a significant but not excessive degree of inequality. With too little inequality, there is not enough to be gained for less well-off citizens to need to fight for greater political power. With too much inequality, elites have too much to lose, and will opt for repression (see also Moore 1966; Fukuyama 2014).[38] But there is a range of inequality over which different classes all find democracy in their interest: less well-off citizens, because it enhances their political power enough to win sufficiently significant advantages; elites, because they want to forestall costly revolution and will not be ruined by institutional concessions of power.

To bring the argument closer to our animating concerns about democratic fragility, lets add that people may have intrinsic commitments to democracy as well: what Acemoglu and Robinson call "ideological preferences" for democracy as a requirement of justice (Acemoglu and Robinson 2006, 211-14). Still, the basic story about the "right level" of economic inequality fostering democratic transition holds up, so long as ideological preferences are "not large enough to totally swamp the relevant

economic concerns of individuals." Thus, the greater the inequality, the more economically costly democracy is for elites. So to achieve a democratic transition, their ideological preference for democracy would need to be correspondingly stronger.

Suppose then that we have a political society with a range of conflicting political conceptions of justice, including justice as fairness with its egalitarian elements and alternative views of justice that do not have those elements: all views include some account of an adequate minimum, but the alternatives to justice as fairness have a lower minimum, great dispersion, less stringent requirements on socio-economic and political opportunity. And lets say that the leading views politically speaking are the least egalitarian alternatives, and that those views are favored by the economically advantaged groups. Because these views are, by stipulation, reasonable (if only barely so), the arrangements are viewed by adherents to justice as fairness as legitimate though seriously unjust.

Now suppose I belong to the Justice as Fairness party. I have views about justice and about the design of a just, democratic constitution. And my views differ, perhaps sharply, from the views of what I see as the Party (or Parties) of Unjust Inequality. Maybe I think that a shift to proportional representation—or to some more majoritarian form of democracy—would have the effect of weakening what I see as the Party of Unjust Inequality. Focusing on proportionality: I think it fully satisfies the principle of participation, fosters representativeness, and would better advance the most reasonable principles of socio-economic justice. I do not think there is a way to settle on the best form of constitutional democracy apart from using these standards of justice. So I fight to change the rules of the democratic process to move the results in a

direction that I think is less likely to create serious injustices. I understand that the Party of Unjust Inequality will resist the changes. I understand that they will say that my efforts are animated by class interest, that they are acting in service of democracy while my efforts are distorting democracy. And I see that their views of justice and democracy are reasonable, if barely so. But I also think that maybe they are being self-serving, and am not prepared to be—nor am I required to be—a sucker. And I am concerned that the kinds of inequalities that their views permit are precisely the kinds of inequalities that yield Acemoglu-Robinson temptations push back against democracy because as the inequalities grow, democracy, even as they understand it, is too costly. The "deeply conflicting political and economic interests" permitted by the dominant conception of justice strike me as a threat to democracy itself.

The situation is symmetrical. The Party of Unjust Inequality thinks of me as belonging to the party of Unjust Envy. Drawing on their experience, they think I underappreciate the burdens of the kinds of restrictions and regulations I favor. They see that the results of a shift to a proportional system will work to their disadvantage, so they resist it. They reject the claim that proportionality has democratic advantages—because the conception of democracy they regard as most appropriate is (like mine) guided by their conception of justice. I worry that their resistance is a precursor to pushing back against any kind of democracy, because they see the costs to them as too great. They think they we may be acting self-servingly, and insist that my group is insufficiently respectful of democratic process and are concerned that we are aiming to manipulate it to our advantage, as I say of them. Our conflict about standards of socio-economic fairness has now produced a conflict about the right way to ensure a

democratic process. Neither side in the conflict thinks of themselves as indifferent to democracy. Indeed, they think of their own preferred form of democracy as the right variant of democratic institutions.

So we have a conflict—perhaps of considerable width—about principles, policy, democratic process, and interests. And because the disagreements are correlated, each side has some grounds for suspicion about the democratic commitments of their opponents, and some reasons for concern about political cooperation. They understand the case for the reasonableness of the commitments, but they may each regard the opposing commitments as just barely reasonable: and because of the connections between reasonableness and reciprocity, each wonders about the other's commitment to reciprocity. And these concerns can only be fueled by the correlation of differences of experience and interest with differences of principles of justice and conceptions of democracy.

Suppose I am in the Party of Unjust Inequality. I observe my opponents working hard for a proportional system. Because their convictions about proportionality have grown stronger in the wake of their troubles winning in a non-proportional system, I think they care sufficiently much about something other than democracy that they are prepared to promote a form of democracy not really because it is more just, but simply because it better advances their interests. I am concerned about the conditionality of their democratic commitments. I do not think that *anyone* is unconditionally committed to democracy, and I worry that I am accepting the constraints of democracy as I understand those constraints, and paying a price for that commitment. My opponents, whatever their public rhetoric, are treating democratic process as something to be bent

to other values. And if that is what they are doing, then the strain on my democratic commitments becomes too great. Preserving democracy is costing me a great deal relative to what I think justice entitles me too, given the conception of justice that I am drawn to. And I am not confident that the other side is committed to democracy. Once more, the disagreements fuel distrust and greater caution. Moreover, the distrust and caution foster correspondingly difficulties in basic democratic functioning—like passing legislation that addresses large public problems.

Here again, when the conflict about the proper form of democracy is so closely associated with a conflict about which substantive policy is the best, each side may understandably lose confidence in the democratic convictions of the other side. And they may then think it is permissible to break the democratic rules both because of their substantive commitments, because they are concerned that the other side is breaking the rules, and because they are concerned that the political logjams resulting from the disagreement and mistrust are debilitating to effective government.

5. Conclusion

I have described how reasonable people might develop a set of disagreements, a form of ideological polarization about basic issues of justice and an associated mistrust and democratic dysfunction that strains democracy.

In conclusion, I want to make three points: about the practical relevance of the argument; about the plausibility of the theory; and about how we might constructively address the challenges I have described.

My concern about *practical relevance*: I *do* think that lots of people—and I am thinking partly here of people I broadly agree with on substance—are too quick to think that other people are not only wrong, but unreasonable, and unreasonable because they are indifferent to a concern about justification to others. That said, there is lots of unreasonableness around. My concern about practical relevance is that it may be a distraction from the troubles for democracy that arise from unreasonableness to focus on the sources of fragility on favorable assumptions that have occupied me here. Perhaps these are theoretical exercises of no practical interest.

Maybe. But I am not so sure. The political world is complicated and, in practice, different sources of concern are always blended together. In practice, it is difficult to distinguish reasonable from unreasonable persons and views, not least because people with apparently reasonable views may enter into political coalitions with people who have, to all appearances, unreasonable views. What I have been assuming, for the sake of argument, is that we can analytically separate out different strands that are in practice intertwined—thus, assume no unreasonableness—and that doing so might help in understanding and perhaps responding to our circumstances.

My concern about *theoretical plausibility*: maybe democratic success, as social-psychologically inflected views of politics and democracy suggest, is less about agreement on justice and more about cross-cutting social cleavages that dampen social conflict. Correspondingly, maybe democratic fragility is more about mutually-reinforcing cleavages than about disagreement on standards of justice. Democracy has troubles now, but—if much democratic theory and much study of American politics is right—

Rawls does not illuminate them, because he has always tied democratic success to an implausibly elevated picture of public reasoning.

I do not propose to address this disagreement here. The social-psychologically inflected views are important and worth exploring. The same is true for normatively elevated views of public reasoning of the kind that helped to define Rawls's orientation to democracy. A fuller understanding will, I think, come from exploring them in tandem.

Finally, a *constructive gesture*: what kind of Rawlsian resources are available for addressing democracy's fragility? The response must be founded on the idea of reciprocity, which belongs both to the world of justification and to the world of motivation. In the world of justification, Rawls emphasizes that reasonable political conceptions must satisfy the criterion of reciprocity. They must present terms of cooperation that adherents think others can reasonably accept as free and equal citizens, with moral powers and a concern with their own good. In the world of motivation, reciprocity is essential in developing the political motivations—including trust and civility—that preserve a legitimate, democratic society in the face of disagreements in conceptions of the good, comprehensive doctrines, and conceptions of justice. Reciprocity links the world of norm and the world of fact. In the normative order, "the theory of right and justice is founded on the notion of reciprocity which reconciles the points of view of the self and of others as equal moral persons" (TJ 424). In the world of fact, reciprocity is central to moral psychology, where "the basic idea is one of reciprocity, a tendency to answer in kind. . . . A capacity for a sense of justice built up by responses in kind would appear to be a condition of human sociability" (TJ 433).

In explaining the role of reciprocity in motivation, Rawls emphasizes the importance of observing the evident intention of others to take your good into account. Thus a crucial step in the acquisition of a sense of justice is that people see others acting on principles of justice that arguably include their good (TJ 154-56). Because they see this in how others act and explain their conduct, they respond in kind, offering terms that others can similarly see as embracing their good. Moreover, the experience of cooperation of these terms fosters in turn a sense of trust and confidence in others.

Under conditions of reasonable political pluralism, the story about reciprocity, trust, and confidence is more complicated, more strained. If people who have a different understanding of justice from mine treat me as their conception of justice requires, I am less likely to see the treatment as manifesting an intention to ensure my good as an equal moral person. The difficulty grows when I observe the correlation between their interests and their principles. And our situations are entirely symmetrical: they are also less likely to see me as manifesting an intention to embrace their good. Reciprocity in the formation of motivations—along with the associated trust and confidence—requires that I understand how their conception of justice, misguided by my lights, meets the criterion of reciprocity. I must come to see that it is not unreasonable for them to think that they are acting on and advancing a conception of justice that I could reasonably accept as suited to a society of equals. If I *do* see how their conception of justice meets the criterion of reciprocity—that in view of the burdens of judgment, it is a view that a reasonable person might advance as a basis for social cooperation among equal persons—then I may be prepared to "respond in kind," not by accepting their views of justice but by treating them as a good faith, trustworthy partner in our public political life.

In short, it is not sufficient that they have a reasonable view. I must understand it as reasonable and as genuinely constraining.

How might I and others come to see this? The answer imposes great expectations on public reason and the associated duty of civility. The duty of civility is here understood not as a requirement of politeness but as a requirement of explaining political views and conduct by reference to public values and listening to the explanations offered by others (PL 217). Citizens in a democracy must be prepared not only to explain their views on fundamental political questions by reference to public values. There also must be occasions for them to explain why they think their views meet the criterion of reciprocity: how they offer terms of cooperation that others can reasonably accept as free and equal citizens. Rawls emphasizes that ideas of fair cooperation and of moral persons as free and equal are fundamental ideas in the public culture of democratic societies. I am suggesting now that an appreciation of reasonable disagreement on the fundamentals of justice—of the fact of reasonable political pluralism—must itself have a genuine practical grip on the public, political culture for reciprocity to work its effects. While social cooperation requires that people take justice very seriously, it also requires that they acquire through public discussion a tolerant and patient understanding of disagreements about justice.

That is a great deal to expect. It sounds like turning politics into philosophy. Gramsci said that we are all philosophers. Lets hope that he was right.

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2 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), p. 9.

3 Ibid., p. 6.

4 John Rawls, "The Idea of Public Reason Revisited," in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), p. 614. Hereafter PRR.

5 This mood strikes me as especially strong in a 1998 draft of a revised version of *Political Liberalism* (References to this draft will be abbreviated in the text as PLR.) In 1998, Rawls sent two letters to Anne Miller, the editor at Columbia University Press, about the revised draft. He explains that political liberalism is focused on a family of reasonable political conceptions that satisfy "the criterion of reciprocity," not on justice as fairness. "Justice as fairness" is replaced nearly everywhere by "a family of reasonable political conceptions." He continues to assert that justice as fairness is the most reasonable conception, but he does not explain what role that assertion might play in political liberalism.

6 The literature on polarization is vast. See McCarty 2019; Abramowitz 2018; Fiorina 2017; Rosenfeld 2017; Mason 2018. Some of the literature treats polarization as disagreement in beliefs and convictions; some is social-psychological and focuses on the alignment of social cleavages. I am focused here on differences of belief and conviction.

7 Samuel Huntington, *The Third Wave: Democratization in the Late 20th Century* (1993).

8 For a powerful statement of concern, see Larry Diamond, *Ill Winds* (2019). On constructive arguments, see, for example, Helene Landemore, *Open Democracy*.

9 Only New Zealand, Finland, and Norway achieved universal adult suffrage prior to World War I.

10 I am dating the beginning of one party rule with the Mississippi Plan of 1890, which provided a model of disfranchisement. On racial hierarchy, one-party rule in the south, and the implications of one party rule for national politics, see VO Key, *Southern Politics in State and Nation* and Bateman, Katznelson, and Lipinski, *Southern Nation*.

11 For an illuminating discussion of the sources and implications of the apportionment cases in the 1960s, see Stephen Ansolabehere and James Snyder, *The End of Inequality* (New York: Norton). For an illuminating history of voting in the United States, see Alexander Keyssar, *The Right to Vote* (2000).

12 On inclusion and contestation as two fundamentals dimensions of democracy, See Robert Dahl [tk].

13 Richard Rorty, "The Priority of Philosophy to Democracy," p. 269 [tk]. Rorty did not think that Rawls shifted views post-*Theory of Justice*, but that readers had misunderstood what he was up to.

14 I agree fully with Paul Weithman, when he says "Thus even before his political turn, Rawls started from within—and addressed his work to—the liberal democratic world." Paul Weithman. *Why Political Liberalism?: On John Rawls's Political Turn* (Oxford Political Philosophy) (Kindle Locations 211-212). Kindle Edition.

15 See the discussion of the four roles of political philosophy in *Justice as Fairness: A Restatement*, pp. 1-5.

16 Ibid., p. 8.

17 PL 213.

18 PRR 573.

19 Achen and Bartels, Kinder and Kalmoe [ref].

20 Schumpeter [ref[.

21 Anthony Downs, *The Economic Theory of Democracy* [ref].

22 Robert Dahl, *Democracy and Its Critics* [ref].

23 These remarks draw on LHPP, 7-9.

24 Max Weber, "Parliament and Government in a Reconstructed Germany," *Economy and Society*, vol. 3, pp. 1385-92. Because of Bismarck "the nation has been unaccustomed to sharing, through its elected representatives, in the determination of its affairs. Such participation, after all, is the precondition for developing political judgment."

25 "The parties have been the peacemakers of the American community, the unwitting but forceful suppressors of the 'civil-war potential' we carry always in the bowels of our diverse nation. Blessed are the peacemakers, I am tempted to conclude." Clinton Rossiter, *Parties and Politics in America* (Ithaca: Cornell University Press, 1960), p 59. Though it needs to be said that Rossiter's book celebrated the non-ideological qualities of American parties.

26 PI 38.

27 TJ 5.

28 This passage changes in PLR 105 in ways we will come back to.

29 See especially PL xlviii-xlix. The fact of reasonable political pluralism looms largest in the unfinished revisions to *Political Liberalism*, which says that political liberalism involves "two pluralisms." But all the elements of this second pluralism are stated at least briefly in the Introduction to the paperback edition of *Political Liberalism* and "The Idea of Public Reason Revisited."

30 TJ, p. 9.

31 The relationship between social integration based in norms and functional social effectiveness is a central theme in Habermas. For example, "Disturbances of system integration endanger continued existence only to the extent that social integration is at stake, that is, when the consensual foundations of normative structures are so much impaired that the society becomes anomic." Juergen Habermas, *Legitimation Crisis [tk].*

32 There is a large issue that I am simply side-stepping here about the plausibility of this conception of democratic politics. Many Americanists emphasize what Philip Converse called the "ideological innocence" of the American public: that citizens do not have structured, durable, constraining systems of normative and factual beliefs. For an illuminating discussion of ideological innocence, see Donald Kinder and Nathan Kalmoe, *Neither Liberal nor Conservative: Ideological Innocence in the American Public* (Chicago: University of Chicago Press, 2017). Kinder and Kalmoe endorse a "group-centered account of public opinion," as an alternative to an ideology-centered view. See pp.136ff. And see Achen and Bartels for a sustained defense of the group-centered view as an alternative to what they call the "folk theory" of democracy. The "group theory of democracy . . . portrays citizens first and foremost as members of social groups, with (no doubt numerous and complex) social identities and group attachments figuring crucially in their political loyalties and behavior. Christopher H. Achen and Larry Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton: Princeton University Press), pp. [tk]. On the group-centered view, the point of elections is not to translate public ideas into law and policy, but to settle who has the right to govern, disentrench power, and foster a more civic character and culture.

33 Thomas Hobbes, *Leviathan,* chap. 15 [tk].

34 Thus he talks about people having a "similar" sense of justice, or "some measure of agreement." In the Introduction to *Political Liberalism*, Rawls says that "as used in *Theory*, the idea of a well-ordered society of justice as fairness is unrealistic" (xix). The idea as used there is unrealistic because it assumes that the members of the well-ordered society of justice as fairness all endorse that conception of justice because they endorse the same comprehensive doctrine. He is thus not calling out the unrealism that I am referring to here. He does mention that a "more realistic" possibility than that everyone shares the same conception of justice is that there is an overlapping consensus on a "class of liberal conceptions that vary within a certain more or less narrow range" (164). In the revised version, this changes to the claim that the focus of the overlapping consensus "is a family of liberal conceptions that vary within the range allowed by the criterion of reciprocity" (PLR 131). For reasons I will explain later, the range allowed by the criterion of reciprocity seems fairly wide.

35 The idea of two pluralisms is stated at PLR, 3. The essential point, including the connection with the burdens of judgment (see below, p. XX), is made briefly and with less emphasis in the Introduction to the paperback edition of *Political Liberalism.*

36 My example is a simplified version of the issues in Sherbert 1963.

37 See Employment Division 1990; Fulton 2021; Burwell 2014; Masterpiece 2018; Little Sisters 2020. For helpful discussion of the constitutional, philosophical, and political issues, see McConnell 1990; Tebbe 2021a; Tebbe 2021b.

38 Moore's point is not simply about inequality, but about labor-repressive agriculture. But inequality is an important part of the story. See also Acemoglu and Robinson, chap. 9 on the importance of different asset classes.