
NOTES

John Rawls' New Methodology: An Interpretive Account

Kai Nielsen*

In the years since the publication of *A Theory of Justice*, Rawls has elaborated on his project in a number of important articles and lectures. The author of this note contends that in these later works, where Rawls clarifies the nature of his political philosophy and ethical theory, a new methodological approach is evident. Through an interpretive reading of these later writings, the author sketches the outlines of this new methodology, characterised particularly by a new emphasis on the limitations on the scope of the undertaking and its practical intent as a political enterprise for pluralistic constitutional democracies.

Au cours des années suivant la publication de *A Theory of Justice*, Rawls a élaboré son projet philosophique dans plusieurs articles et conférences importants. L'auteur de cette note soutient que dans ces oeuvres récentes, où Rawls clarifie la nature de sa théorie éthique et sa philosophie politique, une nouvelle approche méthodologique est perceptible. Par une lecture interprétative de ces écrits de Rawls, l'auteur esquisse les grandes lignes de cette nouvelle méthodologie, qui se distingue par son insistance sur l'étendue limitée de son projet, ainsi que par son intention pratique en tant qu'entreprise politique visant surtout les démocraties constitutionnelles pluralistes.

* Department of Philosophy, Faculty of Humanities, University of Calgary.

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It is a moot point whether New Methodology should be put in scare quotes. My not doing so attests to my belief that John Rawls in his recent papers has made a significant new departure anticipated in part in *A Theory of Justice*,¹ but now taking a sufficiently distinct and determinate new turn to be legitimately so characterized. Rawls still pursues a contractarian approach and what he regards as a Kantian project, but its scope has been so limited as to disappoint the hopes of not a few philosophers. I, by contrast, believe that it has a welcome mark of realism that leaves it not unreasonable to hope that Rawls' account might actually be of no inconsiderable value in articulating the form and design of just social structures for societies such as our own.

Some have thought that by so circumscribing the scope and argumentative structure of political philosophy, Rawls has abandoned its basically Socratic conception, a conception that gives political philosophy its underlying rationale

¹J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

and importance.² I think this claim is false. What Rawls has actually done is to appropriately contextualize political philosophy. Without dropping the deployment of arguments (something essential to philosophy, no matter how narrative it might become) and the search for justifiable rational standards, he has given political philosophy a powerful and only partially utopian argumentative and critical role.

As impressive and carefully rendered as his account is, there is, the above notwithstanding, plenty of scope for a critique of Rawls. Central here, though this is by no means the only issue, is the unrealism of his sociological background assumptions.³ My task here shall be the preliminary one of giving a perspicuous representation of the methodological side of Rawls' frequently misunderstood later theory. I shall seek to give an elucidatory and interpretive account of it designed to bring out clearly its not inconsiderable importance and uniqueness. One can, of course, be more interested in being original than right. Not a few philosophers have been like that. But Rawls is original and arguably gives us a sound theory. I want to try to bring out clearly the very considerable import of its underlying methodology: an import that would remain even if the substantive content of his theory turns out to be flawed.

I. The New and the Old Rawls

Rawls seeks a way out of "the current impasse in the understanding of freedom and equality"⁴ which troubles what he calls "our democratic tradition"⁵. His manner of trying to find a way out of that impasse is indirect. Since the topic — freedom and equality and their relations — is of central interest in political philosophy and since Rawls is perhaps the major theoretician in such domains, I want to set out and then critically examine Rawls' indirections: his way around the bog.

Two features attracted many philosophers and social theorists to Rawls' *A Theory of Justice* and to his essays preceding it. First, Rawls presented a systematic alternative to utilitarianism which, while preserving many of utilitaria-

²J. Hampton, "Should Political Philosophy be Done Without Metaphysics?" (1989) 99 *Ethics* 791.

³K. Nielsen, *Equality and Liberty: A Defense of Radical Egalitarianism* (Totowa, N.J.: Rowman & Allanheld, 1985), Part II; K. Nielsen, "Capitalism, Socialism and Justice" in T. Regan & D. Van de Veer, eds, *And Justice for All* (Totowa, N.J.: Rowman & Allanheld, 1982) 277; K. Nielsen, "A Critical Notice of John Rawls's *A Theory of Justice*" (1973) 2 *Second Order* 101; K. Nielsen, "The Priority of Liberty Examined" (1977) 11 *Indian Political Science Review* 48; K. Nielsen, "Rawls and the Left" (1980) 1 *Analyse & Kritik*; K. Nielsen, "Ideological Mystification and Archimedean Points" (1979) 33 *Rev. Int. de Phil.*; K. Nielsen, "Morality and Ideology: Some Radical Critiques" (1982) 8 *Graduate Faculty Philosophy Journal*.

⁴J. Rawls, "Justice as Fairness: Political Not Metaphysical" (1985) 14 *Philosophy and Public Affairs* 222.

⁵*Ibid.*

nism's strengths, precisely identified its weaknesses and provided at least a seemingly cogent and unified account of the moral terrain where utilitarianism, in any of its forms, was defective.⁶ Second, when his work first appeared, Rawls' account seemed to hold out the promise of providing an Archimedean point in ethics, a point sought by both Kant and Sidgwick⁷. It would show how the fundamental principles of social justice for a well-ordered society could be derived from coming to know what rational agents would choose under conditions of moderate scarcity, where they could not fail to be impartial and had the best available *general* information about human nature, the world and society. What seemed so attractive to many was the claim that there was something determinate that all rational persons reasoning under those conditions would agree on. In that way Plato's old dream, one shared by Kant, of deriving morality from reason would be realized. On Rawls' account, the correct principles of justice for the design of the basic structure of a well-ordered society would be the principles chosen, but not discovered, by such rational contractors operating under a thick veil of ignorance in the original position. Rawls thought — or at least was taken to think — that there was a unique set of principles of justice that would be chosen by rational contractors reasoning under such constraints in conditions of moderate scarcity.

Such a claim to an Archimedean point both intrigued and attracted but also, understandably and predictably, generated considerable scepticism and criticism. Brian Barry and Robert Paul Wolff, among others, sought to show that no such derivation of morality from rationality was possible.⁸ But what also gradually became clear, from the explications of some of Rawls' sympathetic interpreters as well as from Rawls' own writings subsequent to *A Theory of Justice*, was that no such a rationalistic program was ever intended by Rawls. He was not trying to realize Plato's and Kant's grand dream. He had no intention of providing such an ahistorical and rationalist Archimedean point. While he does not say so explicitly, I think it is very likely that he would believe that this very dream of rationalistic philosophers is misconceived. Such a conception should, on good Quinean grounds, go into the dust bin of history along with foundationalist epistemology (if that is not pleonastic) and ontology.⁹

⁶This is clearly brought out by W. Kymlicka, "Liberal Individualism and Liberal Neutrality" (1989) 99 *Ethics* 883.

⁷I. Kant, *Groundwork of the Metaphysics of Morals*, trans., (Indianapolis: Bobbs-Merrill, 1964); H. Sidgwick, *Methods of Ethics* (London: MacMillan & Co., 1962).

⁸B. Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973). R.P. Wolff, *Understanding Rawls* (Princeton, N.J.: Princeton University Press, 1977). Barry very effectively criticizes Wolff's account and provides a lucid account of both Rawls's theory and the (then) state of Rawls's critique. B. Barry, "Understanding Rawls" (1978) 7 *Canadian Journal of Philosophy* 753.

⁹K. Nielsen, "On Being Ontologically Unserious" in J. Heil, ed., *Cause, Mind and Reality: Essays Honoring C.B. Martin* (Amsterdam: Degruyter, 1989).

In writings subsequent to *A Theory of Justice*, Rawls makes it quite clear that his program is more modest. His ethical theory and his normative political philosophy is not something for all possible worlds or even for all present day societies but for democratic societies (constitutional democracies) such as we know them in Western capitalist societies and possibly in democratic socialist societies. The only Archimedean point he is seeking is one which would provide an underlying rationale for the fundamental public norms and ways of ordering for such a constitutional democracy: a rationale which could provide direction for such societies becoming well-ordered with thoroughly fair institutions. There is no search here for an overarching Archimedean point. The first principles of justice are, as Rawls puts it in his Dewey Lectures, "used to settle the appropriate understanding of freedom and equality for a modern democracy."¹⁰

In a way that many of his critics (including Robert Nozick¹¹) did not keep firmly enough in mind, the subject matter of Rawls' discussion of justice is *the basic structure of society*. That, he stresses, and not individual justice, is the first subject of justice. As Rawls puts it himself, "The first subject of justice is the basic structure of society."¹² Once we have that clear we can, perhaps in rather different ways than has been traditionally done, tackle questions of individual justice with some confidence. But the first order of business is to clearly characterize what a just society would look like: what the basic structure of its network of institutions would be.

II. Rawls' Theory as a Political Enterprise

The limitation and the practical intent of Rawls' endeavour comes out most clearly in three revealing essays, "Justice as Fairness: Political Not Metaphysical"¹³, "The Idea of an Overlapping Consensus"¹⁴ and "The Domain of the Political and Overlapping Consensus".¹⁵ He takes his underlying conception of justice as fairness, as providing a "political conception of justice for a constitutional democracy."¹⁶ He stresses, as he did five years earlier in his Dewey Lectures, "that the justification of a conception of justice is a practical social task rather than an epistemological or metaphysical problem."¹⁷

¹⁰*Ibid.* at 554.

¹¹R. Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

¹²J. Rawls, "Kantian Constructivism in Moral Theory" (1980) 77 *Journal of Philosophy* 515 at 552.

¹³(1985) 14 *Philosophy and Public Affairs* 223.

¹⁴(1987) 7 *Oxford J. Leg. Stud.* 1.

¹⁵(1989) 64 *N.Y.U.L. Rev.* 233.

¹⁶*Supra*, note 13 at 223.

¹⁷*Ibid.* at 224.

Realizing that his views have changed in various ways and remarking that they may have also changed in ways of which he is not fully aware, he sets aside the question of whether *A Theory of Justice* requires the reading of justice as fairness he provides in "Justice as Fairness: Political Not Metaphysical" and "The Idea of an Overlapping Consensus" or whether it is equally compatible with other readings. What he seeks to do in those two essays is

first, to show how a conception of justice with the structure and content of justice as fairness can be understood as political and not metaphysical and second, to explain why we should look for such a conception of justice in a democratic society.¹⁸

As Rawls himself points out, what he failed to do in *A Theory of Justice* is to stress sufficiently how "justice as fairness is intended as a political conception of justice."¹⁹ He seeks in "Justice as Fairness: Political Not Metaphysical" to work out, in a way which stands in stark contrast to the work of say Derek Parfit²⁰ or of Thomas Nagel²¹, a theory of justice which for him must be a public conception of justice for a constitutional democracy, which, as such, should "so far as possible" be "independent of controversial philosophical and religious doctrines."²²

It appeared to many that *A Theory of Justice* depended on certain distinctive philosophical claims, particularly, as Derek Parfit and Michael Sandel stressed, on certain *philosophical* conceptions of the self.²³ But that was not Rawls' intent. Whether or not such a conception slipped into *A Theory of Justice*, Rawls seeks, perfectly self-consciously, in "Justice as Fairness: Political Not Metaphysical" and in "The Idea of an Overlapping Consensus" to develop that conception of justice, as a thoroughly political conception which avoids "claims to universal truth, or claims about the essential nature of identity of persons."²⁴

In explaining why it does not and in trying to justify why his account can and indeed should set aside such philosophical questions, he first describes what he takes to be "the task of political philosophy at the present time."²⁵ He then surveys "how the basic intuitive ideas drawn upon in justice as fairness are com-

¹⁸*Ibid.*

¹⁹*Ibid.*

²⁰D. Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984).

²¹T. Nagel, *The View From Nowhere* (New York: Oxford University Press, 1986).

²²*Supra*, note 13 at 223.

²³D. Parfit, "Later Selves and Moral Principles" in A. Montefiore, ed., *Philosophy and Personal Relations* (London: Routledge & Kegan Paul, 1973) and M. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).

²⁴*Supra*, note 13 at 223.

²⁵*Ibid.* at 222.

bined into a political conception of justice for a constitutional democracy."²⁶ In the course of doing these two things (particularly the latter), he shows how justice as fairness "avoids certain philosophical and metaphysical claims."²⁷

Whatever may have been true for a person doing political philosophy at the height of the Middle Ages, where a certain reflective consensus could reasonably be assumed on metaphysical doctrines, no such consensus obtains, or is likely to obtain, in our secularized liberal societies. A public conception of justice, for a political philosophy must, if it is to have any hope at all of being publicly accepted, be a conception which is *philosophically neutral*. That is to say, applying the principle of toleration to philosophy itself, it must make no epistemological, metaphysical or meta-ethical claims or at least not make any such claims if they are the least bit controversial in contemporary democracies. If a political philosophy does not observe these constraints, it will have no chance of being an account of justice gaining any kind of extensive consensus. It is vital, Rawls argues, that justice as fairness or any political conception of justice that aspires to be more than idle utopian prattle, be *philosophically neutral*.

III. A Political Conception of Justice

In speaking of a society's basic structure, Rawls is referring to its "main political, social and economic institutions, and how they fit together into one unified system of social cooperation."²⁸ Justice as fairness, as a political and public conception of justice, is "framed to apply to what I have called the 'basic structure' of a modern constitutional democracy" to its "main political, social and economic institutions."²⁹ As a political conception it is also, Rawls points out, a moral conception but that does not mean that political philosophy collapses into moral philosophy for justice as fairness, as other political conceptions of justice, is "a moral conception worked out for a specific kind of subject, namely, for political, social and economic institutions."³⁰ Indeed its application is even narrower than that, since Rawls constructs it for societies which are constitutional democracies. *It is a theory of justice for our time with our distinct tensions between liberty and equality and for a society which does not have, and has no likelihood of having, an authoritative conception of the good.* Rawls makes no claim about whether his account could be extended to a more

²⁶*Ibid.* at 223.

²⁷*Ibid.*

²⁸*Ibid.* at 225.

²⁹*Ibid.*

³⁰See also for a similar conception I. Berlin, "On The Pursuit of the Ideal," 35 *The New York Review of Books* (March 17, 1988) 11 and I. Berlin, *Two Concepts of Liberty* (Oxford: Oxford University Press, 1969).

general political conception for different kinds of societies existing under different historical and social conditions, or whether it can be extended to a general moral conception, or a significant part thereof.³¹

Rawls takes it to be an obvious sociological fact about our societies that “as a practical political matter no general moral conception can provide a publicly recognized basis for a conception of justice in a modern democratic state.”³² Given the ‘stalemated resolution’ of the wars of religion following the Reformation and given the development of capitalism with its distinctive superstructural requirements, workable conceptions of political justice “must allow for a diversity of doctrines and the plurality of conflicting and indeed incommensurable conceptions of the good affirmed by the members of existing democratic societies.”³³ In this important sense, justice as fairness is plainly a conception of justice for liberal societies where the principle of tolerance is incrementally and gradually extended, as it is in Rawls’ account, to all even remotely controversial conceptions of the good and to all conceptions of rational life plans compatible with publicly confirmed principles of justice. This last restriction is, of course, vital.

But what justice is and which principles and practices of justice are to guide society are not matters for tolerance where anything goes, but are matters upon which it is imperative that we attain a rational consensus for a democratic society under modern conditions. Justice as fairness starts from a democratic political tradition and must, in seeking validation, continue to touch base with that tradition. To achieve validation it must accord with most of the deeply embedded political and moral beliefs — considered convictions — of that tradition.³⁴

IV. Rawls’ Principles of Justice

In the second section of “Justice as Fairness: Political Not Metaphysical” Rawls describes what he takes to be the central task of political philosophy in societies such as our own. He notes that in our societies there are sharp and seemingly intractable political divisions. Certain “fundamental questions give rise to sharp and divisive political controversy, and it seems difficult, if not impossible, to find any shared basis of political agreement.”³⁵ In such a context, one

task of political philosophy in a democratic society is to focus on such questions and to examine whether some underlying basis of agreement can be uncovered and a mutually acceptable way of resolving these questions publicly established.³⁶

³¹*Supra*, note 13 at 225.

³²*Ibid.*

³³*Ibid.*

³⁴*Ibid.* at 225-26.

³⁵*Ibid.* at 226.

³⁶*Ibid.*

With that task firmly in mind, Rawls looks to the profound disputes in our society about the respective scope and value of liberty and equality and at our deep disagreements “as to how the values of liberty and equality are best realized in the basic structure of society.”³⁷ In democratic societies there is a strong tendency to believe in something that Rawls calls democratic equality, namely that there should be an equal citizenship where “citizens are conceived as free and equal persons”³⁸. We also want a society which secures liberty and the basic rights of all citizens. But we are unclear about how institutions can be arranged, or even if they can be arranged so that both of these principles can be sustained. We have strong and considered convictions here but some of them seem to conflict and we do not see, how, if at all, they can be made to fit together coherently. Rawls concretizes the issue thus:

To simplify, we may think of this disagreement as a conflict within the tradition of democratic thought itself, between the tradition associated with Locke, which gives greater weight to what Constant called “the liberties of the moderns”, freedom of thought and conscience, certain basic rights of the person and of property, and the rule of law, and the tradition associated with Rousseau, which gives greater weight to what Constant called “the liberties of the ancients”, the equal political liberties and the values of public life. This is a stylized contrast and historically inaccurate, but it serves to fix ideas.³⁹

Taking justice as fairness

as a reasonably systematic and practicable conception of justice for a constitutional democracy, a conception that offers an alternative to the dominant utilitarianism of our liberal tradition of thought⁴⁰,

Rawls seeks to adjudicate between the contending Lockean and Rousseauian traditions in such a way as to provide a perspicuous and soundly argued basis for a democratic social order. Justice as fairness will show how these various basic considered convictions of liberal democratic society are not just a jumble, but fit together into a coherent whole. What it seeks to provide is a coherent package for our constitutional principles and for our basic rights and liberties. Utilitarianism and some forms of perfectionism have also sought to do that, along with something far more comprehensive, but Rawls contends that their bases were insecure. Justice as fairness provides a more adequate rationale.

It does this first by proposing two principles of justice which are “to serve as guidelines for how basic institutions are to realize the values of liberty and equality...”⁴¹ Secondly, it specifies a point of view from which these two prin-

³⁷*Ibid.* at 227.

³⁸*Ibid.*

³⁹*Ibid.*

⁴⁰*Ibid.*

⁴¹*Ibid.* at 227.

ciples of justice can be seen as more appropriate than other familiar principles of justice to the nature of democratic citizens viewed as free and equal persons.⁴²

Rawls states his principles in a more streamlined way than he stated them in *A Theory of Justice* and in a way in which they are less vulnerable to certain objections that were made to his earlier formulations. Yet it is also evident that they have the same underlying thrust as the earlier statements of his principles. In "Justice and Fairness: Political Not Metaphysical" they read as follows:

1. Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all.
2. Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.⁴³

When we are talking about societies of moderate scarcity the first principle is given priority over the second. That is to say, only if the first principle actually successfully guides behaviour in the sense that the basic institutions require it, can recourse be had to the second principle to similarly guide behaviour. And the second principle, which has two parts, is to be read so that only if fair equality of opportunity is actually met can we rightly move from a benchmark of strict equality and allow social or economic inequalities that are "to the greatest benefit of the least advantaged members of society."⁴⁴ This is what is meant when we speak of the lexical ordering of Rawls' principles.

As Rawls points out, each principle applies to a different part of the basic structure of liberal society. Though in different ways, both are concerned with liberty and equality. While the two principles are centrally concerned with "basic rights, liberties and opportunities"⁴⁵, they are also concerned, equally centrally, with "the claims of equality"⁴⁶. And the second part of the second principle — the difference principle — is also concerned with "the worth of these institutional guarantees".⁴⁷

V. Methodological Considerations

Rawls now turns to some central methodological considerations and to a further delineation of what he means by a *public philosophy*. As a philosophy, it is not conceived to compete with the various traditional philosophies but is constructed for a political theory, utilizable by people in constitutional democ-

⁴²*Ibid.*

⁴³*Ibid.*

⁴⁴*Ibid.*

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷*Ibid.* at 228.

racies deliberating over fundamental issues of social justice and social ordering.

In seeking to determine how such societies might find a reasonable “public basis of political agreement”⁴⁸ Rawls shows how the appeal to considered judgements in wide reflective equilibrium is fundamental to him.

We must now ask: how might political philosophy find a shared basis for settling such a fundamental question as that of the most appropriate institutional forms for liberty and equality? Of course, it is likely that the most that can be done is to narrow the range of public disagreement. Yet even firmly held convictions gradually change: religious toleration is now accepted, and arguments for persecution are no longer openly professed; similarly, slavery is rejected as inherently unjust, and however much the aftermath of slavery may persist in social practices and unavowed attitudes, no one is willing to defend it. We collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent conception of justice. We can regard these convictions as provisional fixed points which any conception of justice must account for if it is to be reasonable for us. We look, then, to our public political culture itself, including its main institutions and the historical traditions of their interpretation, as the shared fund of implicitly recognized basic ideas and principles. The hope is that these ideas and principles can be formulated clearly enough to be combined into a conception of political justice congenial to our most firmly held convictions. We express this by saying that a political conception of justice, to be acceptable, must be in accordance with our considered convictions, at all levels of generality, on due reflection (or in what I have called “reflective equilibrium”).⁴⁹

Here Rawls makes a very fundamental appeal to those considered judgements of ours which would remain most firmly fixed given informed reflection. But central as those are, taken one by one they are still not beyond all question. Any of them may be rightly challenged in an attempt to gather them into a coherent whole in the face of other moral convictions, argumentation and any factual knowledge. Rawls refers to them as “provisional fixed points [of] which

⁴⁸*Ibid.*

⁴⁹Richard Rorty in a powerfully argued paper develops similar points though in a more wide ranging fashion. R. Rorty, “The Priority of Democracy to Philosophy” in M.D. Peterson & R.C. Vaughan, *The Virginia Statute for Religious Freedom* (Cambridge: Cambridge University Press, 1988) 257. See also K. Nielsen, “Searching for an Emancipatory Perspective: Wide Reflective Equilibrium and the Hermeneutical Circle” in E. Simpson, ed., *Anti-Foundationalism and Practical Reasoning* (Edmonton: Academic Printing and Publishing, 1987) 143 and K. Nielsen, “In Defense of Wide Reflective Equilibrium” in D. Odegard, ed., *Ethics and Justification* (Edmonton: Academic Printing and Publishing, 1988) 19.

There are two obvious points in Rawls’s remarks that might be worrisome to at least some radicals, either on the Right or on the Left. These are, first, the restriction in this context to what is “reasonable to us” where the “us” in question are the people of our own culture and cultures like ours, and second, to the appeal “to our public political culture itself, including its main institutions and historical traditions.” *Supra*, note 13 at 228. This seems to leave little *Lebensraum* for the likes of Nietzsche and Foucault or Bakunin and Kropotkin or Marx and Gramsci.

any conception of justice must account for it to be reasonable to us."⁵⁰ But, that notwithstanding, they are for us very deeply embedded considered judgements. They are not judgements we are likely to abandon.

Plainly some of these deeply embedded considered judgements or convictions are distinctive of our culture and are not shared by all cultures of all somewhat industrialized societies. Contemporary Iran or Saudi Arabia or South Africa are cases in point. This 'relativism' notwithstanding, for Rawls an appeal to considered convictions or judgements is a central and essential element in his conception of how we are to justify moral claims and claims in political philosophy. Rawls would only be troubled by this 'relativistic' worry if his aim were to erect an ahistorical Archimedean point from which to assess social institutions generally and across cultures. Since that is not his aim and since in any event we are stuck with such an appeal to considered judgements, there is no reason to be unduly disturbed if in using them we can reveal a coherent rationale for political judgements within a constitutional democracy.⁵¹

Let us note the central claims in that important passage from Rawls quoted above at length. Rawls says there that in developing a political philosophy we are first

to collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent conception of justice.⁵²

The idea is first to determine a consistent and coherent package of such beliefs. From that bundle of beliefs, we then tease out some more general beliefs or principles which would explain and justify those considered judgements by showing an underlying rationale which would demonstrate why they were members of the set of considered judgements, indicate how additional beliefs could become members of that set, and show why having such a network of beliefs and principles is something which is morally attractive and will remain so with a good knowledge of the facts.

Unlike in his earlier works, Rawls makes plain here that these settled convictions are an integral part of our "public political culture"⁵³. In justifying a conception of justice, we must look to our "main institutions and the historical

⁵⁰*Supra*, note 13 at 228.

⁵¹This is a bit too complacent. Some of the reasons for this can be gleaned from the exchange between Richard Bernstein and Richard Rorty over Rorty's "The Priority of Democracy to Philosophy", *supra*, note 50. R. Bernstein, "One Step Forward, Two Steps Backward: Richard Rorty on Liberal Democracy and Philosophy" (1987) 15 *Political Theory* 538 and R. Rorty, "Thugs and Theorists: A Reply to Bernstein" (1987) 15 *Political Theory* 564. See as well R. Geuss, *The Idea of a Critical Theory* (Cambridge: Cambridge University Press, 1981).

⁵²*Supra*, note 13 at 228.

⁵³*Ibid.*

traditions of their interpretation.”⁵⁴ We cannot bypass them, taking some high philosophical road. We must appeal to them “as the shared fund of implicitly recognized basic ideas and principles.”⁵⁵ Working with them we will try, as Rawls does with his principles of justice as fairness and as Brian Barry does with his conception of justice as reciprocity,⁵⁶ to state principles of justice which square with the basic conceptions of our political culture, which further rationalize them and which are principles and conceptions that are “formulated clearly enough to be combined into a conception of political justice congenial to our most firmly held convictions.”⁵⁷ The aim is, in a firmly coherentist way, to get “a political conception of justice”⁵⁸ consistent “with our considered convictions, at all levels of generality, on due reflection.”⁵⁹ And this, of course, is what Rawls means by getting our moral and political beliefs into reflective equilibrium.⁶⁰

With this method carefully and sensitively applied, we may be able to make some progress with issues which are deeply contested in our culture, like the relation of equality to liberty. We seek a reflective and informed consensus which rests on a coherent set of beliefs. Where there are such deeply divided views as there are in our societies about the respective value of liberty and equality, we must, “if we are to succeed in finding a basis of public agreement”⁶¹, find “a new way of organizing familiar ideas and principles into a conception of political justice so that the claims in conflict, as previously understood, are seen in another light.”⁶² In doing this we may succeed in formulating an organizing conception, “a more fundamental intuitive idea”⁶³ than any of the already “familiar ideas and principles”⁶⁴ extant in our political culture. Where successful this new paradigm will organize and rationalize these already “familiar ideas and principles”. In doing this we will come to see how this more fundamental organizing principle, which is also a “fundamental intuitive idea”, is rooted in the complex structure of familiar ideas and practices and how it is “a

⁵⁴*Ibid.*

⁵⁵*Ibid.* at 228.

⁵⁶B. Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1972).

⁵⁷*Supra*, note 13 at 228. Jean Hampton in her critique of Rawls misses this critical side of Rawls. Rawls doesn't just report on the reasons given, good or bad, in the overlapping consensus but shows, as well, why some of these reasons are genuinely good reasons by showing how they form a coherent pattern in reflective equilibrium and how, as well, they would be held in the original position when the contractors are forced to reason impartially.

⁵⁸*Supra*, note 13 at 228.

⁵⁹*Ibid.*

⁶⁰*Ibid.*

⁶¹*Ibid.*

⁶²*Ibid.* at 229.

⁶³*Ibid.*

⁶⁴*Ibid.*

principle to which these familiar ideas and practices are systematically connected and related."⁶⁵

Rawls takes his conception of justice as fairness to be a candidate for such a fundamental idea. In trying to achieve a clarificatory and enlightening purchase on the conflicts between equality and liberty, it gives us a conception of "society as a system of fair social cooperation between free and equal persons."⁶⁶ We attempt to use this conception of justice as fairness to help us to find a public basis of political agreement over areas of contested norms. But, to hark back to our talk of considered judgements in wide reflective equilibrium, Rawls is adamant in maintaining that a conception of justice will only be able to achieve its aim of finding a basis of political agreement

if it provides a reasonable way of shaping into one coherent view the deeper basis of agreement embedded in the political culture of a constitutional regime and acceptable to its most firmly held considered convictions.⁶⁷

Rawls claims that if we can arrive at some such political conception of justice, we will have provided ourselves with a "publicly recognized point of view from which all citizens can examine before one another whether or not their political and social institutions are just."⁶⁸ Such a conception would single out "valid and sufficient reasons"⁶⁹ for making certain critical assessments about the justice or lack thereof or at least the imperfect social justice or lack thereof of the social institutions of various democratic societies. It would provide a publicly acknowledged basis for recognizing these reasons to be good reasons sufficient for their critical task.⁷⁰ An important virtue of such a conception is that, if it is well-conceived, we will have shown how "society's main institutions"⁷¹ fit together into one scheme of social cooperation and how they can "be examined on the same basis by each citizen, whatever that citizen's social position or more particular interests."⁷²

Rawls then states a distinctive conception of *justification* that both squares with what he maintained in *A Theory of Justice* and with his 'non-philosophical' political conception of the organizing conceptions of justice as fairness.

It should be observed that, on this view, justification is not regarded simply as valid argument from listed premises, even should these premises be true.

⁶⁵*Ibid.* at 229.

⁶⁶*Ibid.*

⁶⁷*Ibid.*

⁶⁸*Ibid.*

⁶⁹*Ibid.*

⁷⁰J. Rawls, "The Independence of Moral Theory", (1974-75) 47 *Proceedings and Addresses of the American Philosophical Association* 5.

⁷¹*Ibid.*

⁷²*Supra*, note 13 at 229.

Rather, justification is addressed to others who disagree with us. Therefore it must always proceed from some consensus, from premises that we and others publicly recognize as true; or better, publicly recognize as acceptable to us for the purpose of establishing a working agreement on the fundamental questions of political justice. It goes without saying that this agreement must be informed, uncoerced, and reached by citizens in ways consistent with their being viewed as free and equal persons.⁷³

Rawls thinks that by so proceeding, by so conceiving of justification and by so appealing to considered judgements in wide reflective equilibrium, he can vindicate his conception of justice as fairness over its rivals. An important reason for his confidence is his belief "that the basic ideas of justice as fairness ... [are] implicit or latent in the public culture of a democratic society."⁷⁴ Justice as fairness, he believes, generalizes and makes explicit and more precise what we already implicitly believe in such societies. If that were not so, it would lack its power to justify. It would just be another philosopher's construction.

It is vital to recognize how distinctive Rawls' approach is here and how distant it is from traditional moral and political philosophy or indeed from post-modern iconoclastic political philosophies. As Rawls puts it himself, "the aim of justice as fairness as a political conception is practical not metaphysical or epistemological."⁷⁵ That is to say, again in Rawls' own words,

it presents itself not as a conception of justice that is true, but as one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal citizens.⁷⁶

The agreement sought is actually "founded in public political and social attitudes, which sustain the goods of all persons and associations within a just democratic regime."⁷⁷

It is precisely here, Rawls maintains, where a principle of tolerance toward philosophy and a studied philosophical neutrality is essential. To achieve the kind of agreement that is necessary to justify such political moral beliefs, we must avoid, as far as possible, all "disputed philosophical, as well as disputed moral and religious questions."⁷⁸ Rawls puts these contested philosophical, moral and religious questions aside for reasons similar to Locke's setting aside religious questions in his defense of religious tolerance. He believes that, far from being unimportant, these contested moral, religious and philosophical views are far too important for us to allow them to be settled by fiat by some

⁷³*Ibid.* at 229-30.

⁷⁴*Ibid.* at 231.

⁷⁵*Ibid.* at 230.

⁷⁶*Ibid.*

⁷⁷*Ibid.*

⁷⁸*Ibid.*

state or religious authority. We do not want them to be made a matter of authoritative state declaration and policy. But he also realizes that there is no way to resolve them in the public domain other than by such an authoritative, and indeed in these domains, authoritarian fiat, as is done in Iran or Saudi Arabia. In a complex modern culture there is no way to arrive at an unenforced and unmanipulated resolution of such disputes. The range of our beliefs, the conceptions of how to live, are just too diverse for anything like that to be practical unless it is imposed on us by a dictatorship. Understandably enough, Rawls stands pat on his refusal to accept such an autocratic resolution as legitimate. If that were the price we had to pay for *such* a resolution of these problems, we should, for practical political purposes in the public domain, bracket them and live without a resolution. There should be no authoritative public claims about how best to live our lives. If we still want to attain agreement and to avoid the autocratic use of state power, it will be necessary to apply the principle of toleration, generated by Locke for religious views, to moral and philosophical views, and to maintain, as far as *public* justification is concerned, a neutrality vis-a-vis such philosophical and moral issues. Justice as fairness⁷⁹ must deliberately stay "on the surface philosophically speaking."⁸⁰

Again sounding a fundamental liberal conviction, Rawls goes on to remark:

Given the profound differences in belief and conceptions of the good at least since the Reformation, we must recognize that, just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state's infringement of basic liberties. Philosophy as the search for truth about an independent metaphysical and moral order cannot, I believe, provide a workable and shared basis for a political conception of justice in a democratic society.⁸¹

This means that using what he calls his Kantian constructivism, he will try to devise ways "to avoid philosophy's long-standing problems."⁸² Unlike J.L. Mackie⁸³ or Simon Blackburn,⁸⁴ on the one hand, or Bernard Gert⁸⁵ or Alan Gewirth⁸⁶ on the other, Rawls will seek, in constructing his political account of justice, to "avoid the problem of truth and the controversy between realism and subjectivism about the status of moral and political values."⁸⁷ They are not said,

⁷⁹The same would be true, on his view, of any comparable political conception of justice.

⁸⁰*Ibid.*

⁸¹*Ibid.*

⁸²*Ibid.*

⁸³J.L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth, U.K.: Penguin, 1977).

⁸⁴S. Blackburn, "Moral Realism", in J. Casey, ed., *Morality and Moral Reasoning* (London: Methuen, 1971) 101.

⁸⁵B. Gert, *The Moral Rules* (New York: Harper & Rowe, 1966).

⁸⁶A. Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1982).

⁸⁷*Supra*, note 13 at 230.

let me repeat, to be conceptual confusions to be dissolved. No such Wittgensteinian turn is implied. Rather they are, on Rawls' conception, questions to be set aside in order to get a workable public conception of justice, concerning which we could obtain in such a world, a rational consensus. Recasting certain ideas embedded in the tradition of the social contract, his Kantian constructivism seeks "to achieve a practicable conception of objectivity and justification founded on public agreement in judgement on due reflection."⁸⁸ The aim is, as he puts it, "free agreement" and "reconciliation through public reason."⁸⁹

VI. Some Elaborations: The Dewey Lectures

I have now set out Rawls' methodological credo, his political conception of a theory of justice, his rationale for the avoidance of philosophical issues and his philosophical defense (to put the matter with deliberate paradox) for avoiding philosophical issues in constructing a practically workable political account of justice and related conceptions. Since there are various ways in which Rawls' account will be resisted, I wish to briefly elaborate this account with some related but important supplementary remarks from his Dewey Lectures. His responses to various standard philosophical moves reveal more fully the power of his theory.

We look back, starting from his Kantian constructivist premises, at the impasse which has spanned the last two centuries in our democratic culture. It is an impasse over how our "basic social institutions should be arranged if they are to conform to the freedom and equality of citizens as moral persons."⁹⁰ Rawls tries to dispel the conflict "between the different understandings of freedom and equality"⁹¹ by using his form of contractarian method, which is an integral element of Kantian Constructivism. Concerning these different understandings of freedom and equality "or natural variations thereof"⁹², he starts by asking: which, if any of them,

would free and equal moral persons themselves agree upon, if they were fairly represented solely as such persons and thought of themselves as citizens living a complete life in an ongoing society?⁹³

⁸⁸*Ibid.*

⁸⁹*Ibid.*

⁹⁰*Supra*, note 12 at 517.

⁹¹*Ibid.*

⁹²*Ibid.*

⁹³*Ibid.* at 517.

The principles they would agree upon, Rawls claims, would be the most appropriate principles of freedom and equality and, therefore, Rawls goes on to say, to specify them is "to specify the principles of justice."⁹⁴

Here again he stresses the practical and political nature of his endeavour:

We are not trying to find a conception of justice suitable for all societies regardless of their particular social or historical circumstances. We want to settle a fundamental disagreement over the just form of basic institutions within a democratic society under modern conditions.⁹⁵

We seek here, Rawls tells us, "a practicable and working understanding on first principles of justice" for limited rather than global or ahistorical purposes. He remarks in a revealing passage:

The aim of political philosophy, when it presents itself in the public culture of a democratic society, is to articulate and to make explicit those shared notions and principles thought to be already latent in common sense; or, as is often the case, if common sense is hesitant and uncertain, and doesn't know what to think, to propose to it certain conceptions and principles congenial to its most essential convictions and historical traditions. To justify a Kantian conception within a democratic society is not merely to reason correctly from given premises, or even from publicly shared and mutually recognized premises. The real task is to discover and formulate the deeper bases of agreement which one hopes are embedded in common sense, or even to originate and fashion starting points for common understanding by expressing in a new form the convictions found in the historical tradition by connecting them with a wide range of people's considered convictions; those which stand up to critical reflection.⁹⁶

Further on, he stresses the constructivist side of his thought and makes plain its distance from what could be called the tradition in moral philosophy.

The search for reasonable grounds for reaching agreement rooted in our conception of ourselves and in our relation to society replaces the search for moral truth interpreted as fixed by a prior and independent order of objects and relations, whether natural or divine, an order apart and distinct from how we conceive of ourselves.⁹⁷

What justifies a conception of justice for us is

its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.⁹⁸

⁹⁴*Ibid.* at 518.

⁹⁵*Ibid.*

⁹⁶*Ibid.*

⁹⁷*Ibid.* at 519.

⁹⁸*Ibid.*

Rawls will not utilize a moral realist conception of moral objectivity, a conception subjectivists such as Edward Westermarck,⁹⁹ J.L. Mackie,¹⁰⁰ Gilbert Harman¹⁰¹ and David Gauthier¹⁰² accept as what it is for moral beliefs to be objective, if indeed they really are or even can be objective. Subjectivists, of course, do not believe that moral judgements are objective. But they agree with the moral realists about what they must be to be objective. Rawls, by contrast, sets aside any consideration of the objectivist's claim that any moral beliefs actually meet or even could meet *that* standard of objectivity. Subjectivists believe that such a conception of objectivity neither is nor can be exemplified. Rawls, by contrast, believes that Kantian constructivism has, at least for political and practical purposes, a more adequate conception of morality *and* of objectivity in which there is no talk of moral truth or of any conceptualization of moral facts "apart from the procedure of constructing principles of justice" for a constitutional democracy. Instead, "moral objectivity is to be understood in terms of a suitably constructed social point of view that all can accept."¹⁰³ The "all" presumably refers to people living in constitutional democracies or perhaps to people not so placed physically but still with similar basic moral convictions rooted in a reasonable understanding of the cultural intent in such democracies. But whatever its exact extension, the "all" is definitely limited to a determinate and circumscribed group of people subject to the enculturation of a distinct culture or cluster of cultures (*i.e.*, the cultures of constitutional democracies) at a given time and place. There is no grander, more ahistorical Archimedean point to be had.

While Rawls takes his conceptions of justice and equality to be historically and culturally circumscribed, and distant from moral realism (including the realists' conception of moral objectivity), he still takes his principles of justice to be authoritative. As he puts it at the beginning of his final Dewey Lecture:

A Kantian doctrine interprets the notion of objectivity in terms of a suitably constructed social point of view that is authoritative with respect to all individual and associational points of view.¹⁰⁴

As he goes on to remark,

This rendering of objectivity implies that rather than to think of the principles of justice as true, it is better to say that they are the principles most reasonable for us, given our conception of persons as free and equal, and fully cooperating members of a democratic society.¹⁰⁵

⁹⁹E. Westermarck, *Ethical Relativity* (New York: Random House, 1932).

¹⁰⁰Mackie, *supra*, note 83.

¹⁰¹G. Harman, "Is There A Single True Morality?" in D. Copp & D. Zimmerman, eds, *Morality, Reason and Truth* (Totowa, N.J.: Rowman & Allanheld, 1985) 27.

¹⁰²D. Gauthier, *Morals By Agreement* (Oxford: Clarendon Press, 1986).

¹⁰³*Supra*, note 12 at 519.

¹⁰⁴*Ibid.* at 554.

¹⁰⁵*Ibid.*

Rawls' approach — and indeed any kind of Kantian Constructivism — is very different from that of traditional moral philosophers. Henry Sidgwick¹⁰⁶ and G.E. Moore¹⁰⁷, as classical exemplars in moral theory, have an epistemological foundationalism where the problem of justification in ethics is viewed as an epistemological problem and the “methods of ethics” are defined “as methods that seek truth.” Where we so proceed, we try to discover the true first principles of morality — principles which would entail true moral judgements “that hold for all rational minds”.¹⁰⁸ In proceeding in this way, we should centre our attention on the “first principles of moral conceptions and how they can be known.”¹⁰⁹ Pluralistic deontologists like Ross¹¹⁰, Broad¹¹¹ and Pritchard¹¹² differ from Sidgwick and Moore in many ways but they are one with them in having this same traditionalist conception of the role of moral theory. By contrast Rawls, like John Dewey,¹¹³ thinks that this traditionalist stress has an unfortunate effect. It, with its epistemological stress, tends to lead us away from attention to “the social role of morality” and from attention to human, practicable conceptions of the person relevant to political and moral philosophy. As considerable as Rawls' admiration for Sidgwick is, it is, in his view,

characteristic of Sidgwick's *Methods* that the social role of morality and the conception of the person receive little notice. And so the possibility of constructivism was closed to him.¹¹⁴

Rawls contrasts his Kantian constructivism with what he takes to be the dominant tradition in moral philosophy coming down to us from Plato and Aristotle, challenged by Hobbes¹¹⁵ and Hume¹¹⁶, reformulated by Clarke¹¹⁷ and Reid,¹¹⁸ and defended most classically in near contemporary times in the utilitarianism of Sidgwick and Moore and the pluralistic deontology of Ross and Broad. Rawls calls this view rational intuitionism and, in spite of the evident differences of the views listed above, there is an important element they all have in common and which distinguishes them all from both ethical naturalism (including subjectivism) and Kantian constructivism. This element Rawls captures with his conception of rational intuitionism.

¹⁰⁶Sidgwick, *supra*, note 7.

¹⁰⁷G.E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1963).

¹⁰⁸*Supra*, note 12 at 555.

¹⁰⁹*Ibid.*

¹¹⁰W.D. Ross, *The Foundations of Ethics* (Oxford: Clarendon Press, 1939).

¹¹¹C.D. Broad, *Five Types of Ethical Theory* (London: Routledge & Keagan Paul, 1930).

¹¹²H.A. Pritchard, *Moral Obligation* (Oxford: Clarendon Press, 1950).

¹¹³J. Dewey, *Human Nature and Conduct* (New York: The Modern Library, 1930).

¹¹⁴*Supra*, note 12 at 555-56.

¹¹⁵*Leviathan* (Harmondsworth, U.K.: Penguin, 1968).

¹¹⁶D. Hume, *Treatise on Human Nature* (Oxford: Clarendon Press, 1968).

¹¹⁷S. Clarke, *On Natural Religion* (Oxford: Oxford University Press, 1968).

¹¹⁸T. Reid, *Essays on the Intellectual Powers of Man* (London: Routledge & Keagan Paul, 1941).

Rational intuitionism, in Rawls' judgement, provides the most powerful objectivistic rival explanatory and justificatory account of morality to his constructivism with its contextualistic conception of moral objectivity, *i.e.*, its *moral objectivity without a commitment to moral truth*. Rawls characterizes the core of rational intuitionism as follows:

[R]ational intuitionism may be summed up by two theses: first, the basic moral concepts of the right and the good, and the moral worth of persons, are not analyzable in terms of nonmoral concepts (although possibly analyzable in terms of one another); and, second, first principles of morals (whether one or many), when correctly stated, are self-evident propositions about what kinds of considerations are good grounds for applying one of the three basic moral concepts, that is, for asserting that something is (intrinsically) good, or that a certain action is the right thing to do, or that a certain trait of character has moral worth. *These two theses imply that the agreement in judgement which is so essential for an effective public conception of justice is founded on the recognition of self-evident truths about good reasons. And what these reasons are is fixed by a moral order that is prior to and independent of our conception of the person and the social role of morality.* This order is given by the nature of things and is known, not by sense, but by rational intuition. It is with this idea of moral truth that the idea of first principles as reasonable will be contrasted.¹¹⁹

Rational intuitionism, in contrast with a view like that of Hobbes or Hume, "tries to secure a kind of independence of the moral order from the order of nature."¹²⁰ Both Kant and Kantian constructivism reject ethical naturalism as firmly as does rational intuitionism and it is because of this rejection of ethical naturalism that Kant's view, mistakenly according to Rawls, is simply taken to be a form of rational intuitionism. What else could it be, it is natural to ask, given its rejection of ethical naturalism? It is true that Kant and Moore are agreed, contrary to ethical naturalists, that basic moral concepts can neither be defined in terms of, nor are they conceptually identifiable with, non-moral concepts such as pleasure, needs, interests or preferences. They further agree that we do not identify what constitutes good reasons in ethics simply by identifying what satisfies desire, meets needs, answers to interests or is a considered preference. Moreover, Kantians — and presumably Rawls as well — reject the notion, seemingly implicit in all forms of ethical naturalism and actually explicit in some forms of it, that moral judgements are to be treated as "statements about the world on all fours with those of science and common sense."¹²¹ In a way that neither Kant nor Rawls can accept, these naturalistic "definitions combined with the natural order itself, now come to constitute the moral order, which is prior to and independent from our conception of ourselves as free and equal per-

¹¹⁹*Supra*, note 12 at 557, emphasis added.

¹²⁰*Ibid.* at 559.

¹²¹*Ibid.*

sons."¹²² This naturalistic format is rejected by both rationalistic intuitionists and Kantian constructivists.¹²³

However, while both rational intuitionists and Kantian constructivists reject ethical naturalism, the two views are equally opposed to each other.¹²⁴ Constructivism and rational intuitionism are opposed *no matter what the content of the rational intuition*. It can be utilitarian, perfectionist or pluralist.¹²⁵ It is the *form* of rational intuitionism that constructivists most fundamentally oppose with its claim that moral principles are self-evident, synthetic, *a priori* truths whose truth obtains by virtue of relations among the objects, the nature of which is not affected or determined by any conception of the person or any conception of the social role of morality. It is that metaphysical and epistemological position that sets it into conflict with Kantian constructivism. It is indeed true that for rational intuitionism, as well as for Kant, though not for Rawlsian Kantian constructivism, moral principles are synthetic *a priori* truths. Moreover, for all forms of Kantian constructivism, as well as for rational intuitionism, basic moral concepts are conceptually independent of natural concepts. Nevertheless, rational intuitionism is as heteronomous as ethical naturalism. It is only a little less obviously so. Rawls notes that Kant's idea of autonomy requires that there exist no such order of given objects determining the first principles of rights and justice among free and equal moral persons. Heteronomy obtains not only when first principles are fixed by the special psychological constitution of human nature, as in Hume, but also when they are fixed by an order of universals or concepts grasped by rational intuition as in Plato's realm of forms or in Leibniz's hierarchy of perfections."¹²⁶

Rational intuitionism requires only a very sparse conception of the person as a self, simply viewed as a knower who just grasps self-evident moral truths through intuition — through some rather mysterious direct awareness. This is so because, unlike in Kantian constructivism, the content of the first principles is already fixed and the only requirements of the self are for it "to be able to know what these principles are and to be moved by this knowledge."¹²⁷ Kantian constructivism, by contrast, posits a richer notion of the person as more than a mere knower. Instead persons are taken to be beings who view all normal persons as members of a Kantian kingdom of ends, and thus as autonomous beings. To draw out what is implicit in the very idea of being autonomous they must also be viewed as both reasonable and rational. Keep in mind that by 'reasonable' Rawls means in part persons who will accept fair terms of social cooper-

¹²²*Ibid.*

¹²³*Ibid.* at 559.

¹²⁴*Ibid.* at 558.

¹²⁵*Ibid.* at 559.

¹²⁶*Ibid.*

¹²⁷*Ibid.* at 560.

ation provided everyone else accepts them. They operate in their lives, where others do likewise, with ideas of reciprocity and mutuality. The belief and expectation is that all who cooperate must benefit from the cooperation and must, as well, share in its common burdens.¹²⁸ This conception of what it is to be reasonable is clearly a normative notion rooted in common sense. In contrast, to speak of the rational is to speak of "a conception of each person's rational advantage."¹²⁹ Persons are rational "to the extent that sensible principles of rational choice guide their decisions". That is, they adopt the most effective means of achieving their ends, they balance their various final ends "by the relative importance their ends have for their plans of life as a whole, and they seek a cluster of ends which cohere with and support each other..."¹³⁰

In this way the concept of a person operative in Kantian constructivism is a richer conception of the person than that of the person operative as a moral agent. As such, persons in that construction are represented as having a free and equal moral personality.¹³¹ In this Kantian conception these persons do not intuit moral truths, including the first principles of justice. Instead the founding principles of justice are the principles they would agree on when constrained to reason impartially.¹³²

Rawls demonstrates a second and very fundamental contrast between an epistemologically based foundationalist conception such as we find in Sidgwick or Moore, or in our time in Bernard Gert¹³³ and Alan Gewirth¹³⁴, and a constructivist position such as his own. Rational intuitionism seeks to discover timelessly true fundamental moral principles, including principles of justice. For rational intuitionists there are moral principles whose truth is discovered in rational intuition. As we have seen, the "first principles of justice" are thought "to represent or be true of an already given moral order."¹³⁵ For constructivism, by contrast, as we also have seen, first moral principles generally, and first principles of justice specifically, are not discovered but constructed through impartial reasoning as the result of rational deliberation and agreement under conditions of equality and freedom. The new contrast Rawls highlights at this point is in his claim that although the constructivist's conceptions of justice will never have the precision claimed by rational intuitionism, constructivism has no need for such precision, even given the thoroughly questionable assumption that it is attainable.

¹²⁸*Ibid.* at 528.

¹²⁹*Ibid.*

¹³⁰*Ibid.* at 528-29.

¹³¹*Ibid.* at 560.

¹³²*Ibid.* at 560.

¹³³*Supra*, note 85.

¹³⁴*Supra*, note 86.

¹³⁵*Supra*, note 12 at 560-61.

The constructivist view accepts from the start that a moral conception can establish but a loose framework for deliberation which must rely very considerably on our powers of reflection and judgement.¹³⁶

The principles of justice are not something fixed once and for all "but are developed by a shared public culture and hence shaped by that culture."¹³⁷ The precision required in justice as fairness or any other properly constructivist account, by contrast with the precision required by rational intuitionism, is simply that which will "achieve a public and workable agreement on matters of social justice which suffices for effective and fair social cooperation."¹³⁸ As Rawls puts it, the

essential point is that a conception of justice fulfils its social role provided that citizens, equally conscientious and sharing roughly the same beliefs, find that by affirming the framework of deliberation set up by it they are normally led to a sufficient convergence of opinion.¹³⁹

In making such claims Rawls is both setting himself against the tradition and reaffirming his conception of justice as having a limited and practical role in our political and moral lives. Justice as fairness is not viewed as providing the Archimedean point it was once seen as providing. It is rather "framed to meet the practical requirements of social life and to yield a public basis in the light of which citizens can justify to one another their common institutions."¹⁴⁰

VII. A Contrast Between Constructivism, Ethical Naturalism and Rational Intuitionism

There is another contrast that is important to make between, on the one hand, *both* rational intuitionism, when it takes either an ideal utilitarian or perfectionist form, and naturalistic forms of utilitarianism (*e.g.* Bentham) and, on the other hand, Kantian constructivism. The former views, both intuitionist and naturalist, *in principle* yield a determinate answer for all ethical and normative political questions. In practice, as both Bentham and Mill saw, secondary rules or maxims are needed as rules of thumb, but in theory where we have full knowledge of the facts perspicuously represented and we are clear about the correct deductions from our first principles, we can provide an answer to every moral question. Kantian constructivism, like Aristotelianism, is more modest. Rather

justice as fairness, as a constructivist view, holds that not all the moral questions we are prompted to ask in everyday life have answers. Indeed, perhaps only a few

¹³⁶*Ibid.*

¹³⁷*Ibid.*

¹³⁸*Ibid.*

¹³⁹*Ibid.* at 561.

¹⁴⁰*Ibid.*

of them can be settled by any moral conception that we can understand and apply.¹⁴¹

There is nothing like the principle of sufficient reason in morality.

Rawls' principles of justice, as we have seen, apply to the basic structure of society. We cannot generate from them answers to many specific questions where issues of justice are raised. This is particularly evident when they are questions of individual justice. Compared to utilitarianism and perfectionism, the aims of justice as fairness are thus modest. Through Justice as fairness, Rawls hopes

to identify the most fundamental questions of justice that can be dealt with, in the hope that, once this is done and just basic institutions established, the remaining conflicts of opinion will not be so deep or so widespread that they cannot be *compromised*.¹⁴²

Unlike utilitarianism whose working norms — its secondary precepts — are viewed as “approximations to something given”¹⁴³ and whose first principles are designed to represent moral truth, in constructivism the

idea of approximating to moral truth has no place ... [the] parties in the original position do not recognize any principles of justice as true or correct and so as antecedently given; their aim is simply to select the conception most rational for them, given their circumstances. This conception is not regarded as a workable approximation to the moral facts: there are no such moral facts to which the principles adopted could approximate.¹⁴⁴

While it would be misleading to say that Kantian constructivists invented the principles of right or wrong or invent morality or justice, it is true that on such an account the principles of justice are an outcome of a construction. The “(most reasonable) principles of justice”, on Rawls' view,

are those which would be adopted if the parties possessed all relevant information and if they were properly to take account of all the practical *desiderata* required for a workable public conception of justice.¹⁴⁵

These constructed principles, as illustrated by justice as fairness, single out those facts which citizens in a constitutional democracy would count as reasons of justice. However, to do that adequately the constitutional democracy in ques-

¹⁴¹*Ibid.* at 563.

¹⁴²*Ibid.* at 564, emphasis added.

¹⁴³*Ibid.*

¹⁴⁴*Ibid.* at 564. Even the pluralistic deontology of a W.D. Ross, while rejecting anything so determinate as the decision procedure of the utilitarians, still believes that there is “a balance of reasons each of which is given by an independent moral order known by intuition”, *ibid.* at 560. So even here with this rationalistic pluralistic deontology there is a significant contrast with constructivism. The intuitionist still allows an independent order of moral truth and ‘fact’ accessible to rational intuition (a form of direct cognizing of moral truth).

¹⁴⁵*Ibid.* at 565.

tion must be a well-ordered society. That, to put it conservatively, is an idealization of existing democracies. It would be unrealistic to claim that our actual democracies are well-ordered societies. What reasons do we have then, to believe that moral deliberation in our societies will yield the principles of justice Rawls believes to be justified? Perhaps a fair reply on Rawls' part would be that he has still given us a correct picture of what a just constitutional democracy would look like.

Again in contrast with rational intuitionism and ethical naturalism there is for constructivism no reasons of justice "apart from the procedure of constructing these principles...."¹⁴⁶ There is nothing there to be antecedently recognized through intuition, observation or inference (as in hypotheses which are indirectly confirmed) as the moral facts. Whether "certain facts are to count as reasons of justice and what their relative force is to be can be ascertained only on the basis of the principles that result from the construction."¹⁴⁷ We can see from this how pure procedural justice comes into play even at the highest level of moral deliberation.

Rawls, unlike Habermas¹⁴⁸, is not invoking some strange theory of truth to account for moral reality. In fact, as if he had taken a leaf from Richard Rorty¹⁴⁹ and Donald Davidson¹⁵⁰, he appears to neither have nor need any theory of truth at all.

... no assumptions have been made about a theory of truth. A constructivist view does not require an idealist or verificationist, as opposed to a realist, account of truth. Whatever the nature of truth in the case of general beliefs about human nature and how society works, a constructivist moral doctrine requires a distinct procedure of construction to identify the first principles of justice.¹⁵¹

Again, Rawls' account deliberately travels philosophically light, though it also stresses the necessity of working with its own distinctive procedures where issues of justice arise and how these procedures are distinct from scientific experimental procedures.¹⁵²

Rawls believes that in selecting the first principles of justice for the design of a just and well-ordered society there is no escaping a constructivist view. The kind of objectivity that rational intuitionists and ethical naturalists desire does

¹⁴⁶*Ibid.*

¹⁴⁷*Ibid.*

¹⁴⁸J. Habermas, *Theorie des kommunikativen Handelns* (Frankfurt am Main: Suhrkamp Verlag, 1981).

¹⁴⁹R. Rorty, *Philosophy and the Mirror of Nature* (Princeton N.J.: Princeton University Press, 1979).

¹⁵⁰D. Davidson, *Truth and Interpretation* (Oxford: Clarendon Press, 1985).

¹⁵¹*Supra*, note 12 at 565.

¹⁵²Here, at least on the surface, there is a considerable difference between John Rawls and John Dewey.

not exist, or at least we cannot assume it for developing a public philosophy with a workable account of justice. Rational intuitionists and ethical naturalists who are not subjectivists require an objectivity that would reveal an antecedent moral order so that fundamental moral principles could be discovered, not constructed. However, the lack of *this kind* of objectivity does not mean that we do not have in the domain of the moral and the political a perfectly ordinary conception of objectivity, albeit of a somewhat different sort. Where a Kantian constructivism like justice as fairness yields

the first principles of a conception of justice that matches more accurately than other views our considered convictions in general and in wide reflective equilibrium, then constructivism would seem to provide a suitable base for objectivity.¹⁵³

We can neither get, it would seem, nor do we need any other kind of objectivity. Coherentism here, as in many other places as well, does the justificatory job.

Rawls seeks to defuse the worry that on his constructivist account moral principles — including first principles of justice — are simply chosen by a kind of arbitrary choice:

[a] choice not based on reasons, a choice that simply fixes, by sheer fiat, as it were, the scheme of reasons that we as citizens, are to recognize, at least until another such choice is made.¹⁵⁴

Rawls argues that there are no such existential dilemmas in Kantian constructivism.

The notion of radical choice, commonly associated with Nietzsche and the existentialists, finds no place in justice as fairness. The parties in the original position are moved by their preference for primary goods, which preferences in turn are rooted in their highest-order interests in developing and exercising their moral powers. Moreover, the agreement of the parties takes place subject to constraints that express reasonable conditions.¹⁵⁵

Moreover, this is not the only way that choice is rationally constrained so that it would not be correct to say it is a radical arbitrary Sartrean/Camusian choice. It is indeed true that in

the model-conception of a well-ordered society, citizens affirm their public conception of justice because it matches their considered convictions and coheres with the kind of person they, on due reflection, want to be.¹⁵⁶

But the ideals of the person and of social cooperation here are “not ideals that, at some moment in life, citizens are said simply to choose.”¹⁵⁷ They are, or at

¹⁵³Supra, note 12 at 568.

¹⁵⁴*Ibid.*

¹⁵⁵*Ibid.*

¹⁵⁶*Ibid.*

¹⁵⁷*Ibid.*

least they are for most people, ideals "that they have taken ... in part from the culture of their society."¹⁵⁸

The key general question of justice for you and me, people living in flawed constitutional democracies, which are not well-ordered societies, where our public conception of justice is in dispute, are over whether the ideals embedded in our model conceptions of justice, such as justice as fairness, "are sufficiently congenial to our considered convictions to be affirmed as a practicable basis of public justification."¹⁵⁹ (To whom does 'our' refer in this particular context?) We must look at the various model-conceptions of justice and compare them with the model justice as fairness and see how they stand here. However, when we do so we are not making radical existential choices. Indeed we may not be making any choices at all. If we opt for justice as fairness, it will be because we have come to recognize that "this Kantian doctrine as a whole more fully than other views available to us organized our considered convictions."¹⁶⁰ When it does so, if indeed it does so, in full wide reflective equilibrium it will correctly be said to be the most reasonable construction available to us now. It is for us standing where we stand, the most reasonable conception of justice.

To see in a further way how far Rawls' view is from any form of decisionism or morality by fiat, it is also important to note, and take to heart, Rawls' point about justice as fairness not excluding "the possibility of there being a fact of the matter as to whether there is a single most reasonable conception."¹⁶¹ This needs some explanation for on the surface it has the appearance of a flip-flop on Rawls' part. I shall come at this indirectly.

Constructivism is thoroughly fallibilistic.¹⁶² It does not presuppose that there *must* be some such fact of the matter or coherent set of facts such that there will be "only one most reasonable conception of justice."¹⁶³ We may get such objectivity — such consensus — but then again we may not. We may instead get several reasonable conceptions with no evident way of choosing between them or at least with no decisive set of reasons to go for one rather than another from amongst this reasonable range of choices. That probably is the more likely eventuality. However, it is not unreasonable to believe that for a given type of

¹⁵⁸*Ibid.* at 569.

¹⁵⁹*Ibid.*

¹⁶⁰*Ibid.*

¹⁶¹*Ibid.*

¹⁶²"Fallibilism" refers to a conception critical of both claims to Cartesian certainty and to relativism. It stresses that any belief is subject to *possible* undermining without it being the case that beliefs are simply culturally relative or subjective.

¹⁶³*Supra*, note 12 at 570.

society in a given epoch, there might be a single most reasonable conception.

[I]t seems quite likely that there are only a few viable conceptions of the person both sufficiently general to be part of a moral doctrine and congruent with the ways in which people are to regard themselves in a democratic society.¹⁶⁴

Given the relevant general beliefs in the society, it may turn out that only one of these conceptions gains a “representation in a procedure of construction that issues in acceptable and workable principles of justice.”¹⁶⁵ But then we would have a kind of fact-of-the-matter — though different from that appealed to by moral realism — determining in a particular context what was the most reasonable conception. It may not turn out this way; we can have no *a priori* assurances here for there may be several seemingly equally reasonable conceptions or “it may turn out that for us, there exists no reasonable and workable conception of justice at all.”¹⁶⁶ If that last possibility were so — and we can have no guarantees that it will not be — then, as Rawls puts it, “the practical task of political philosophy is doomed to failure.”¹⁶⁷ That depressing possibility remains a real one. Recognizing that there can be no guarantees here answering to a quest for certainty is just what it is to be a fallibilist.

VIII. The Extent of the Method of Avoidance

Finally, Rawls does not conceive of himself as showing here, or indeed as even trying to show, that rational intuitionism is false or somehow mistaken. Again Rawls travels philosophically light. But he has shown, if his procedural and programmatic arguments are near to the mark, that rational intuitionism is dispensable if our aim is to get a politically viable conception of justice. That is to say, we do not need it to construct a viable moral theory or political philosophy for a constitutional democracy. Indeed it would only stand in the way of developing such an account. We can get along well without it. Rawls says that Kantian constructivism, as he develops it, “aims to establish only that the rational intuitionist notion of objectivity is unnecessary for objectivity.”¹⁶⁸ He even concedes, in accordance with his method of avoidance, that it is “always possible to say, if we ever do reach general and wide reflective equilibrium, that now at last we intuit the moral truths fixed by a given moral order.”¹⁶⁹ It is possible to say that, but unnecessary and misleading. A political philosophy should set such matters aside. Moreover, it is unlikely that we shall ever achieve such a *stasis*: such an utterly firm and unchanging *wide* reflective equilibrium that will not in turn give rise to some disequilibrium requiring a new, and perhaps

¹⁶⁴*Ibid.* at 569-70.

¹⁶⁵*Ibid.* at 570.

¹⁶⁶*Ibid.*

¹⁶⁷*Ibid.*

¹⁶⁸*Ibid.*

¹⁶⁹*Ibid.*

better, equilibrium. This new equilibrium would be better because it would be a wider equilibrium, taking more fully into account what we reasonably believe to be true and genuine possibilities. Similarly it would gather more coherently our diverse firmly entrenched considered convictions. A final unchanging wide reflective equilibrium is too much like a Hegelian Absolute. We should instead be firm fallibilists here.

It should also be said, as a further and distinct consideration, reinforcing the claim that such talk of moral truth is unnecessary and misleading, that even if we did attain such a firm wide reflective equilibrium, it would be less misleading to simply say, with the constructivist, that "by all the criteria we can think of to apply" our conception of justice "is now the most reasonable for us."¹⁷⁰ Talk of moral truths fixed by a given moral order adds nothing but rhetorical slush to those constructivist remarks.

If we achieve wide reflective equilibrium or some reasonable approximation of it, we have not arrived at an idea of objectivity given from the point of view of the universe or from the point of view of nowhere. Rather the objectivity that we have is "to be understood by reference to [a] suitably constructed social point of view."¹⁷¹ In Rawls' construction, it would be "the publicly shared point of view of citizens in a well-ordered society."¹⁷² The principles that "issue from it are accepted by them as authoritative with regard to the claims of individuals and associations."¹⁷³ And it is a point of view which yields principles that further everyone's highest-order interests and define fair terms of social cooperation among free and equal persons. "When citizens invoke these principles they speak as members of a political community and appeal to its shared point of view either on their own behalf or on that of others."¹⁷⁴ Thus, the essential agreement in judgements of justice arises not from the recognition of an *a priori* and independent moral order, "but from everyone's affirmation of the same authoritative social perspective."¹⁷⁵ If we can achieve such an agreement we will have worked our way out of the current impasse in the "understanding of freedom and equality which troubles our democratic tradition"¹⁷⁶ and, if we do that, we will have completed an essential task for political philosophy in our time.¹⁷⁷

¹⁷⁰*Ibid.*

¹⁷¹*Ibid.*

¹⁷²*Ibid.*

¹⁷³*Ibid.*

¹⁷⁴*Ibid.*

¹⁷⁵*Ibid.* at 571.

¹⁷⁶*Ibid.*

¹⁷⁷*Ibid.* at 572.