

*Arthur Ripstein*

## **Liberal Justification and the Limits of Neutrality\***

*Abstract:* This paper examines a style of political justification prominent in contemporary liberalism, according to which policies are legitimate only if they can be shown to be acceptable to all. Although this approach is often associated with neutrality about the good life, it is argued that liberalism cannot be neutral about questions of the role of various goods, such as work, play and community. The paper closes by exploring the implications and applicability of this account of justification to contemporary political practice.

Disagreement is sometimes hard to avoid. From trivial questions of taste to the most important questions about the good life, otherwise reasonable people have irresolvable differences. My concern is with a version of liberalism that concedes that agreement on such questions is not possible, but hastens to add that it is neither necessary nor desirable.

Decisions concerning whether or not to have children, or marry, need not carry with them any sort of universal prescription. Thus someone might consider it unacceptable to bring children into a world hovering on the brink of economic and ecological collapse (or nuclear war) while others might hold that bringing children into the world was the only possible manifestation of hope in a world they too viewed as precarious. Alternatively, people might disagree on the more mundane questions of the relative weights to be given to family and career. Such decisions are not merely matters of taste; for the individuals concerned they are among the most fundamental choices, made for what they regard to be good reasons. Yet such decisions can be made without any presumption that others, similarly situated, must decide on similar grounds. They are parts of a private morality separate from, and protected by, the public morality of the state.

Like other liberal views, the family of views I shall consider holds that a legitimate state has no business enforcing any particular standard of taste or conception of the good life. But unlike earlier versions of liberalism, it claims not to

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rest on skepticism about the truth of disputed claims, nor on any substantive (and thus disputed) claims about the conditions best suited to human flourishing or autonomy. Instead, it rests on a conception of political justification according to which policies are legitimate only if they can be justified to all. Hence some of the traditional liberal freedoms: matters of taste cannot be enforced because it is insulting to be at the mercy of others' views about what all agree are matters of opinion; moral and religious issues are left to the individual because none would agree to compromise his or her own conception of the good, which is anything but a matter of opinion. Thus comprehensive accounts of the good, and of the nature of various human activities and their importance to human flourishing, are excluded from the grounds of serious political debate. They are private questions, which, however important they may be, do not require the individual to give a public accounting of him or herself.

Or so the official story goes. My aim is to show that, however insulated from questions about *the good life* this version of liberalism may be, it nonetheless does presuppose substantive views about life's goods. It must either depend on shared understandings of those goods, or else include them in the scope of the political questions that can be asked.

## I.

I shall call this family of views 'contractualism'<sup>1</sup> and draw primarily on the work of contractualism's most prominent contemporary exponent, John Rawls. Rawls's views have undergone considerable modification and articulation in the years since his *A Theory of Justice*. But the core of his position has remained the same, and the later writings help us to better understand its earlier formulation. In *A Theory of Justice*, Rawls employs the device of a hypothetical social contract among parties in an initial condition of equality (see Rawls 1971). The parties making the contract do not know their own conceptions of the good because the principles agreed to in the contract are supposed to invite the assent of all, regardless of their particular conception of the good. However unrealistic such parties may be, Rawls constructs them to characterize the problem of justice in terms that are weak and widely accepted. The result of their agreement is a pair of principles that can be used to justify particular decisions to those affected by them, whatever particular features the individuals involved might have. Although the agreement Rawls asks us to imagine is purely hypothetical, its interest is more than hypothetical. The device of a contract serves to draw out the implications of the view that political institutions are only be legitimate if they are in some sense voluntary.

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<sup>1</sup> The term comes from T.M. Scanlon (1983). Although Scanlon does not say so explicitly, his term makes a useful contrast with the 'contractarianism' of Hobbes or Gauthier, for whom advantage is central.

More recently, Rawls has appealed to the idea of an "overlapping consensus" among those with conflicting moral and religious outlooks. Though they may even disagree about the philosophical basis of their shared principles of association, their views overlap sufficiently to make social co-operation possible (Rawls 1987). The details have changed, but the basic idea has not: legitimate institutions must limit their demands to those acceptable to all, without resolving their deepest disagreements. Put differently, agreement about justice does not require agreement about other things.

Others liberals have defended views similar both in structure and content. Ronald Dworkin describes a position he calls "liberalism as equality" which emphasizes the requirement that the state treat persons as equals by imposing "no sacrifice or constraint on any citizen on the basis of an argument that the citizen could not accept without abandoning his sense of his equal worth" (Dworkin 1985, 205). T.M. Scanlon suggests that justification must appeal to grounds that the parties concerned "cannot reasonably reject", given the need to reach an agreement equally acceptable to all.<sup>2</sup> Thomas Nagel requires that agreement be the outcome of argument appealing only to considerations that are suitably objective, again, because only such arguments will invite agreement by all (Nagel 1987). In each case, the fundamental assumption is the same: in order for non-voluntary institutions and practices to be legitimate, they must be acceptable to those whose activities they regulate on grounds that all can accept. Since they cannot be expected to accept an appeal to a conception of the good they do not share, the only acceptable institutions will not enforce any particular conception.

On each construal, contractualist liberalism is an account of the grounds of both protective functions and positive policies on the part of the state. It seeks to make non-voluntary institutions non-coercive. As such, it may look as though it is done with mirrors. But contractualism offers a distinctive and exciting conception of what political morality is all about. Its account of justification is an account of justification to particular persons.

Of course policies cannot be justified to literally everyone, regardless of their motives and interests. Those who are unwilling to temper their claims in the interest of finding policies acceptable to others may be impossible to answer on their own terms. A religious bigot unwilling to compromise with those he regards as damned will not be satisfied by any argument in favor of toleration. Nor will a miser be impressed with redistributive arguments. But if policies cannot be justified to literally everyone, they must nonetheless make contact with the practical reason of the *actual* persons to whom they are addressed. To require that justifications only be acceptable to idealized persons trivializes the notion of justification: an imaginary community tailored to accept particular justifications lends no

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<sup>2</sup> Scanlon 1983; see also 1975. Scanlon presents his view as an account of the nature of moral reasoning and justification, rather than as a defense of liberal politics. However, Scanlon does point to affinities between Rawls's view and his own, while Dworkin and Nagel point to affinities between their views and Scanlon's.

support to the policies in question. The contractualist ideal is to provide a basis for justification that *all who acknowledge the need for such a basis* can accept. This is not a trivial requirement.

## II.

Rawls's recent writings are explicit about the *political* nature of his doctrine of justice as fairness. He contrasts his view with the comprehensive liberalism of Kant or Mill. Kant supposed that liberal political institutions are essential to giving people the respect they are due, because only such institutions give individual autonomy its proper place. Mill argued that liberal freedoms will best promote happiness overall, both because of their indirect consequences and because individuality is an essential part of well-being. Although Rawls makes no attempt to hide his sympathy with both Kantian ideals of autonomy and Mill's view of the good life, he argues that neither provides an appropriate basis for a political liberalism appropriate to a pluralist society. The comprehensive liberalism of both Kant and Mill presuppose specific accounts of the good life, which people might well reject while still being able to accept the principles of a political liberalism. Political liberalism requires agreement on conditions of interaction and terms of co-operation, but need not require agreement on the ultimate basis of those conditions.

The political nature of Rawls's view provides the basis for the state's need to provide justification of its policies. A state typically has considerable power over its citizens. Yet the citizens have not real choice about whether to live under the state. Most have no real opportunity of exit, and within the state, nobody has the choice of unilaterally opting out of the states methods of resolving disputes. If the exercise of power is to be non-coercive, the state must somehow serve the interests of its citizens.<sup>3</sup>

The political aspiration of public agreement also explains the appeal of such expository devices as imaginary social contracts. They shed light on the sense in which the state is supposed to serve the prior interests of individuals. The basic picture is clear: suppose that a group of us had to decide on the principles governing our interaction. What would we agree to? The precise answer depends in part on why we are seeking such principles in the first place: if we are each primarily concerned with our own security, we will agree to different policies than if we are concerned with reaching a fair agreement. Depending on the initial

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<sup>3</sup> Construing the social contract politically also allows Rawls to sidestep the question of why the state's obligations (particularly redistributive, but also protective) apply to its citizens only. This problem runs deep for utilitarianism - see, for example Singer 1972. Although Rawls is able to sidestep the problem, it is not clear than he can evade it altogether, for there must be some account of why the state ought to benefit those over whom it has power.

situation from which we try to achieve an agreement, different social contracts are possible.

Traditionally,<sup>4</sup> social contracts have been subject to two distinct interpretations. On both interpretations, a hypothetical agreement serves as a way selecting those policies that a sovereign can expect citizens to agree to. The two construals diverge on the interpretation of that expectation. One branch - philosophically represented by Hobbes, and in practice by Bismark's introduction of the welfare state - reads "expectation" as "prediction" - the sovereign must select policies that the subjects would accept because to put forward unacceptable policies is to invite instability and rebellion. As such, the hypothetical agreement acts as a purely negative filter, ruling out those policies that would lead to open rebellion. This interpretation of the social contract runs deep in Hobbes's thought.

On the second construal, "expect" means something more like "reasonably request" - the sovereign cannot make unreasonable demands of the citizens. Here, hypothetical agreement acts as a positive filter, ruling out all but the optimal set of policies. (Typically, such arguments are egalitarian, seeking to show that nobody is treated as a second-class citizen. But they need not be, if some way could be found to draw distinctions of rank among citizens are compatible with treating all with respect.) Where the first sort of contract aimed at pacification, this construal aims instead at respect: the state may make no demands that it could not justify to those whose lives they regulate.

The difference between the two interpretations translates itself into a difference in the kinds of policies they recommend. Not all unreasonable demands lead to rebellion. People may acquiesce in a variety of indignities, from religious discrimination to lack of political representation, without even considering taking up arms. This point is most apparent in the case of treatment of minorities: those too weak or too few in number to rebel have no claims on the first construal; on the second their demands are, if anything, considered *more* pressing.<sup>5</sup>

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<sup>4</sup> In the anglophone tradition, that is. Rousseau's social contract, and continental interpretations of Kant's contractualism provide further versions.

<sup>5</sup> Judith Shklar has made the same point by emphasizing that for liberalism, the most serious political vice is cruelty: the liberal state may make considerable demands of its citizens, but it may never be cruel to them, asking them to bear more than they can be reasonably expected to. This gives us a helpful angle from which to see the unitary principle underlying such standard liberal policies as freedoms of speech and religion, as well as the more recent liberal innovations of the welfare state. Sociologically, it is doubtful that any such policies would have emerged without widespread concerns about the goods they protect. But the justification for each policy is independent of the popularity or strength of feeling that each arouses. Rather, the justification comes from the fact that to prevent people from practicing the religion of their choice, or even to abandon them to living in abject poverty when a more equal distribution of wealth could prevent it, is too cruel. Put differently, the sovereign must be able to explain the basis of policies to each subject while looking the person in the eye.

Rawlsian contractualism rests on the second interpretation. Unlike its Hobbesian cousin, it supposes neither that costs are to be reckoned equally, on the basis of individual preferences, nor that peace and security are the only goods that all can agree on. Instead it requires that certain aspects of individual points of view be denied political influence. An individual's point of view may include moral ideals both aspired to and to which she believes others should aspire. Ideals of work, play, and family may fall into this category, as may religious ideals: one attaches great importance to living in a certain sort of society in which people interact according to some ideal. Contractualism cannot dismiss such ideals out of hand; to do so would be to fail to take seriously people's commitments to their own projects. But if the questions they concern are to be removed from the political agenda and relegated to the private realm, they must carry no weight in political debate. Those who hold such views about how others should live cannot simply be told they should mind their own business. They must be told instead that however intensely they might hold such views, their lives do not become unbearable solely in virtue of having them denied. In contrast, if such concerns were given political weight, those who would have to accept them would find accepting them too great a burden to bear, precisely because they would be forced to sacrifice their own conception of their own good. To be offended or disappointed by the behavior of others cuts against a less fundamental interest than the demanded limitation on freedom would. The demands being made on those who care about how others live are genuine demands, but they are more reasonable than the demands that would have to be made on others were their desires granted political weight.

### III.

As well as underwriting liberties, contractualism can be used to justify positive policies. Rawls's defense of what he calls the 'difference principle' for distribution provides a clear example. The contractualist basis of the difference principle is clearest when it is contrasted with utilitarian distributions, which claim that the overall benefits of some distribution justify reduced prospects for some. Such a justification will not be acceptable to those who are asked to endure a minimal standard of living in order that others may have more, for they are being asked to accept an intolerably low standard of living for the sake of others. The difference principle, in contrast, requires that any departures from an equal distribution of material wealth both be open to all through equality of opportunity, and improve the well-being of those who are worst off, making them better off in absolute terms than they would have been with an equal distribution.

In *A Theory of Justice*, Rawls offers two explicit arguments for the difference principle. First, he suggests that the assets to be distributed, including the abilities and talents that enable people to produce various goods, should be thought of

as held in common, because goods and abilities are of little use to anyone without a scheme of social co-operation. Second, he argues that the difference principle would be the object of agreement by idealized parties concerned to advance their ends but do not know their abilities or what those ends are. Not knowing their abilities or ends, and knowing that they will be held to whatever agreement they reach, they would be concerned to avoid choosing outcomes that they would find intolerable. As a result they reason according to a 'maximin' decision rule, choosing the principle that will yield them the best outcome if everything goes as badly as it possibly can.

On their own, both arguments are puzzling. The value of one's abilities and assets may depend on having *some* scheme of social co-operation, but abilities and assets are plainly valuable under a variety of distribute schemes. By the same token, though one might choose conservatively in the absence of knowledge about one's abilities and assets, it is not clear why that should count as a reason for accepting some distributive scheme.

The real justifying force of the difference principle lies beneath the surface of the idealized agreement. Once the veil of ignorance is lifted, and the parties know their assets and abilities, the root idea is that legitimate political arrangements must be ones that *all* can live with. As a result, any distribution must be acceptable to those whose situation is the closest to being intolerable - the worst off. The difference principle makes it possible to address a justification directly to those who receive less in an unequal distribution. Inequality can be justified to them if each can be shown that he or she receives more in an unequal distribution than in an equal one.

This formulation reveals the flaw in the obvious criticism that the difference principle seems to justify apartheid because blacks in South Africa have a higher real income than blacks in more egalitarian neighboring countries. The criticism, made by Brian Barry in *The Liberal Theory of Justice* (1973)<sup>6</sup> fails to take seriously the way in which justification is supposed to be addressed to particular persons. Although blacks in South Africa may receive higher incomes than blacks elsewhere, a contractualist justification must show each individual that he or she is better off than would be possible in a more egalitarian scheme. Leaving aside the discrepancies generated by South Africa's disproportionate share of the world's gems and precious metals, such a justification cannot be addressed to individuals. For the apartheid system closes careers to talents; as a result no *particular* person can be shown that he or she would be worse off in a more egalitarian setting.

To be sure, the difference principle has a less immediately compelling argument to offer those who are well off, and suppose they might do even better under a distributive principle that is less egalitarian. They cannot be told that the existing distribution makes them better off. The situation is asymmetrical, inas-

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<sup>6</sup> The same point has been made independently by successive generations of undergraduates.

much as they do not receive a justification addressed directly to their interests. But they cannot complain that the difference principle makes their situation unbearable, however much they might prefer receiving more. To give them more at the expense of those who are worst off<sup>7</sup> would make the condition of the worst off unbearable, and thus give them reasonable grounds for rejection. Thus the grounds for limiting the wealth of the best-off are ones that they cannot reasonably reject, given the need to not impose intolerable costs on others.<sup>8</sup>

In sum, any justification has two sides to it. On the one hand, it must show the individual in question that the policy or practice in question does not make intolerable demands on her. Second, it must show that whatever limitations are imposed on her are required by the need to avoid imposing intolerable costs on others, thus showing that the policy is at least indirectly to her advantage, because it is the best she can hope for given the need to find policies and practices acceptable to all.

If every justification has two sides to it in this way, the question arises of how much must be shared by the various people to whom the policy or principle is being justified. Since any good granted to some person may turn out to thereby impose a cost on others (as our examples of the religious majority and the miser illustrated), if those who would do well in the absence of a particular policy are to be treated with respect, the interests of others that are served by that policy must have some sort of claim on them.

#### IV.

The core of the contractualist position is the notion of 'reasonable grounds' of agreement. All must recognize a common standard of what is or is not a reasonable demand. In this, the notion of reasonableness is like that used in formulating standards of reasonable care in liability law in common law systems. What is reasonable depends in part on what is foreseeable, not by the agent in question, but by a 'reasonable person'. If I am too stupid to recognize that my bonfire will burn your house, I am no less responsible. And not all harms count - I am responsible if I break your window, but not if I break your heart.<sup>9</sup> A reasonable standard, rather than the plaintiff's experience of harm, determines whether, and

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<sup>7</sup> Or even compensation in the case of breaking up of large estates or freeing of slaves.

<sup>8</sup> Ronald Dworkin uses similar sort of arguments to justify such policies as preservation of wilderness areas and state support for the arts, on the grounds that each makes possible a diversity of opportunities that would otherwise be lost. Dworkin does not discuss how the costs imposed in the process are to be borne, but presumably they do not make unreasonable demands on anyone. See Dworkin's "Liberalism" and "Can a Liberal State Support Art?", both in Dworkin 1985.

<sup>9</sup> To be precise, I may be responsible for damages if I break your heart indirectly, by, for example, negligently causing the death of a loved one.



what sort of, wrongdoing has taken place. Everyone is provided with the same degree of protection from others, and the same degree of liberty, as everyone else. The system thus treats the parties as equals, but requires a determinate concept of reasonableness to do so.<sup>10</sup>

The contractualist employs a parallel strategy. In justifying any particular principle or policy, 'reasonableness' gets cashed out in terms of a distinction between bearable and unbearable costs. In *A Theory of Justice*, Rawls uses the device of a list of 'primary goods' - freedom, material welfare, and the social bases of self-respect - to provide such an account. Rawls argues that such goods are required as means in pursuit of any conception of the good. Individuals cannot be expected to acquiesce in receiving less of any of these goods simply so that others may have more. Each must agree to a distribution that all can accept. Nor can they be denied to some for the sake of providing others with less important goods (Rawls 1971, 62). But what could justify such an account, compatible with justifying policies to individuals as they are?

The conception of reasonableness involved must be neither purely objective nor simply a matter for individual preference. It cannot be entirely objective because if it were then agreement would drop out of the picture entirely. But the notion of agreement cannot be purely a matter of acceptability to actual agents on pain of giving any particular individual veto power over social policies not to his or her liking. I consider these points in turn.

To claim that reasonable persons should be willing to accept reduced prospects for the sake of some greater good such as increasing the Gross National Product, or promotion of artistic or athletic excellence, is to render the notion of agreement otiose. If the standard of reasonableness is entirely external to the actual acceptability to parties concerned to reach an agreement, the latter plays no essential role in producing the agreement. An appeal to an objective specification of the good life won't do the political job at hand. Asking someone to do something for the sake of what is objectively good seems like less of an intrusion than asking her to do the same thing because others would be happier if she did. But unless she accepts that conception of others' good, it comes down to the same thing - asking someone to do something without offering a reason that matters *to her*. Unless it is agreed to by all, an objective list fails to respect the contractualist constraint; it also fails to be appropriately neutral.

Even autonomy, the objective good that shows up in most liberal conceptions cannot be taken for granted by the contractualist.<sup>11</sup> The reason should be clear from our opening discussion of Rawls's rejection of what he called 'comprehensive' liberalism. There are too many accounts of the good life that think of autonomy as a bad thing. Those who hold such views are sure not to be impressed by being told that they must limit their activities in order to protect or foster the

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<sup>10</sup> For a superb explication of these points (which unfortunately goes on to place a Kantian construction on it) see Ernest Weinrib 1987.

<sup>11</sup> For the best defence of autonomy based liberalism, see Kymlicka 1989.

autonomy of others. What is needed instead is a commonly recognized currency in which each can identify costs imposed on others as too great.

This may seem to push us to the other extreme, to the idea that what people actually accept must carry the day. But the grounds for agreement be purely matters of individual preference. The claims that people make against one another cannot carry weight simply because of their felt urgency for the people whose claims they are. This, for two reasons. First, to do so is to call into question the very status that seemed to make the moral realm worthy of protection. If claims count simply because they are strongly felt, the role of the classic liberal freedoms - religion, speech and association - becomes problematic. Such freedoms impose costs on those who do not value them, and many people do not value them highly. Redistributive programs also impose costs on people who do not value them for their own sake; these too would be likely victims of a compromise based only on the intensity of preferences. There is no reason to suppose that the dislike of not getting their way on the part of those who are badly off should be more intense than the corresponding dislike of those who are well off. If anything, casual empirical observation suggests just the reverse: those whose lives are going fairly well tend to give voice to their resentment of small limitations far more than those whose lives are going badly. Middle class tax revolts are more common than demands by the poor for more services.<sup>12</sup> Measured in terms of intensity of preference alone, liberal freedoms are not all that important to people. Second, focussing on preference alone allows scope for what Ronald Dworkin has dubbed "external preferences" - preferences about how others should live. If intensity of preference is the only measure, those who wish to impose their views on others might rightfully complain that the desires of others were being given weight in a way that their own were not.

The alternatives are not yet exhausted. Though contractualism cannot justify an account of life's goods either by treating it as subjective or objective, there is a third possibility: it might be justified merely by the fact that it is shared. If the members of a community share an understanding of what is important in life - which things cannot be reasonably denied to a person - then a distribution of benefits and burdens can be justified by showing that it is necessary to avoid imposing unreasonable demands on people.

Appeal to a shared conception of life's goods makes sense of liberalism's characteristic attitude towards religion. Religion is treated as something that is too important to the individual to be left up to anyone else. The ultimate justification for so treating it comes from the fact that anyone can be expected to accept that each person's religion is more important to him or her than it is to anyone else.<sup>13</sup>

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<sup>12</sup> This may simply be a reflection of the relative power of each.

<sup>13</sup> Sharing ideas about life's goods does not require a commitment to the sort of view that Rawls rejects under the name "perfectionism". Perfectionism is the doctrine that the state has a responsibility to promote particular kinds of goods - for example, excellence in art. Rawls rightly questions whether such a perfectionism doctrine could be acceptable to

## V.

Several examples may be helpful. The example of religion, however important it has been in the development of liberalism, is perhaps misleading, because a single conception of the place of religion in life is so widely shared in the modern world. Other examples reveal that the significance of goods is controversial, and that deep disagreements about them might separate otherwise liberal societies.

More than one quarter of the urban population of the United States moved from one city to another between 1970 and 1978 (cited in Frank 1985, 43). This move, unprecedented even in American history, represented the emptying out of such 'rust bowl' centers as Pittsburgh and Cleveland, and the migration to the so called 'sun belt' of the south. It is worth contrasting this with a very different migration that did not take place in Canada at the same time. Outports in Newfoundland, which had great difficulty in surviving at the margins of the economy, received various government funds to make their economies viable, at least at a subsistence level. What justifications might be addressed to the various parties to the various policies? The American experience is not exactly one of a policy deliberately formulated, but we still might ask how the absence of a policy like the Canadian one might be justified to those who moved. Such a justification is possible, give or take some debatable economic theory: in the interests of long term economic efficiency, even those who moved are likely to be better off in the relatively long term in an economy that builds on its strengths and jettisons its weak portions. The Canadian policy of deliberately aiding inefficiency requires a rather different justification: those who benefit from it can be told that they are better off than they would have been without such a policy; others, elsewhere in Canada, who need to bear the costs both in directly paying for the development programs and indirectly absorbing the costs of a less efficient economy must be told that it is unreasonable to require people to give up their homes and communities simply to get better paying jobs. Promoting efficiency may seem like a paradigm of reasonableness - but it is important to recognize that for the contractualist, the reasonableness of the policy depends on the reasonableness of the demands it makes on those who end up bearing the greatest costs.

How far such an argument might go, and how much aid it might justify, will depend in part on the costs that others are asked to bear. To ask a majority to bear proportionately small costs for the sake of a small minority is easier than to ask much larger costs to be borne. Both the Canadian and American approaches

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people with differing views about the good. But requiring everyone to live a certain way, or to promote some shared social goal is not the only way in which a conception of the good can enter into political philosophy. It can also give content to constraints - by setting limits on what can be asked of a person. Life's goods can be treated as goods that cannot be denied a person without claiming that they are goods that people are somehow required to take an interest in.

can in some circumstances be justified to all concerned; the choice between them is to be made on the bias of the more reasonable and defensible account of the place of work in relation to the rest of life.

Again, consider Rawls's suggestion was that certain assets and abilities need to be thought of as held 'in common' because they are of use to their bearers only within a stable scheme of social co-operation. Abilities that command a premium in society are of little value without it. Thus, Rawls suggests, they should be distributed on grounds acceptable to all; each should be regarded as having an equal claim on them. Which things are 'in common', and which not? Rawls plainly means to include wealth as something that is held in common. But despite the ease with which formally parallel arguments can be made, Rawls clearly does not mean to extend his claim to other goods. However little use emotional capacities may have outside of a social setting, it plainly will not do to suppose that friendship and love ought to be allocated so as to serve the needs of the worst off. (Even if their lives would be intolerable without it.) The reason is not simply that one cannot befriend or like others on demand; cultures with arranged marriages meet with moderate success in directing affection by using a combination of social sanctions and a sense of duty. And parents sometimes succeed in getting their children to befriend cousins or the children of business associates. The problem is rather that asking someone to think of their affect as a common asset is asking too much. My emotions are part of who I am, in a way that my assets and abilities are not. But the distinction between who I am and what I have does not provide an empirical (or metaphysical) basis for distinguishing reasonable from unreasonable costs. Instead, the two are inseparable, and agreement requires a shared conception of both.

## VI.

What is it for such understandings to be shared? Thomas Nagel and Charles Larmore have both recently offered contractualist justifications of liberal neutrality that employ an *epistemic* basis for agreement. Non-controversial factual claims can be appealed to; controversial moral claims cannot.<sup>14</sup> On this view, political reasonableness is reducible to a less controversial notion of epistemic reasonableness: political consensus follows from shared standards of evidence. Where disagreement remains, parties must either seek to resolve their disagreement by appeal to evidence both agree would be decisive, or else leave the issue off of the political agenda. This approach is at its most plausible for issues like freedom of religion. We might suppose that religion is a private question, re-

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<sup>14</sup> See Nagel 1987 and Larmore 1987. Rawls develops a similar view in two unpublished manuscripts: "The Idea of Free Public Reason" and "The Domain of the Political and Overlapping Consensus". Rawls and Larmore both draw parallels between their positions and Jürgen Habermas's account of an 'ideal speech situation'.

moved from politics, because people with competing religious views cannot expect to convince those they disagree with. The same goes for other private matters, such as choice of sexual partners or diet.

But liberalism cannot avoid such controversy. There is no neutral and non-controversial public fact about relative claims on wealth. Those unwilling to give up material resources are not making a factual mistake. Again, controversy cannot be avoided on such issues as nuclear weapons and capital punishment. If morally controversial appeals are precluded in debates on these questions, the only admissible arguments will involve factual questions about deterrence.<sup>15</sup> Yet such debates get much of their impetus from the recognition by both sides of the relevance of other factors as well.

Further, if the public is identified with the uncontroversial, new questions - about gender, class, and sexual orientation, and about what our public vocabulary of justification should be<sup>16</sup> - cannot be raised, because they are sure to strike many as partial or sectarian concerns. Of course culture changes in many ways other than through public political debate, and the result may be that ideas eventually become sufficiently shared and public, as, for example, voting rights for women did in the first half of this century, or the offensiveness of 'separate but equal' facilities for different races in the second. But if political justification must always fly only at dusk, consolidating changes from other areas of culture, it turns out to be less definitive of liberalism than it had once seemed.

It is better to look at shared conceptions as always open to debate and interpretation. That interpretation is the stuff of politics-debate over how we ought best to understand the role of money, or of work, or of health, in our culture, and how we ought to see the relations between them. Should doctors be allowed to practice wherever they like if a system of socialized medicine largely exempts them from market pressures to satisfy demand? There is no shared conception of health or work, already latent in the public culture that can answer this sort of question; achieving one is the task of political justification.<sup>17</sup> In the process, a space of 'neutrality' on which the state is silent, is carved out. Which demands are reasonable is the product of politics, not its background.

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<sup>15</sup> Ronald Dworkin made this point in unpublished notes circulated in the fall of 1987.

<sup>16</sup> These questions are currently the focus of considerable debate about the humanities curriculum in North American Universities. See Gless/Herrnstein Smith 1990 (eds.) for a representative sample. Any major North American newspaper or magazine can be consulted for an example of a slightly hysterical defence of "traditional humanist values against the pluralist forces of political correctness", as it is called. One such example is Searle 1990.

<sup>17</sup> Michael Walzer in his 1983 emphasizes the interpretive nature of political argument, and the ways in which different goods may require very different interpretive principles. Walzer's work is marred, however, by an unexplained insistence on supposing the spheres to be clearly demarcated.

## VII.

I close with two remarks about how Rawlsian liberalism might be applied to existing liberal states.

First, one might wonder to what extent there really is a sharing of conceptions of life's goods in contemporary societies. Rawls' later work is marked by a recognition that 'political' liberalism is the solution to a problem of justification in a pluralist society marked by disagreement about the good life. As such, it is not obvious that enough will be shared in order to allow policies to be justified to all. Even if we recognize that agreement on these questions is an achievement rather than something available in advance, we might doubt whether contemporary societies share enough for even that to be a reasonable hope.

This pessimistic result should come as no surprise. For contractualist liberalism is in many ways just a pragmatist variant on a very old liberal theme - the theme of describing a standpoint all are supposed to be capable of occupying, from which authoritative directives can issue. Recent developments in other areas of philosophy have lead many to doubt that such a standpoint can be described in metaphysical terms, as, for example, Kant hoped to. Just as contractualist liberalism marks the replacement of metaphysical liberalism with its political cousin, so all of the *political* difficulties that the former faced seem to reappear. Why should we expect people separated by all of the patterns of difference inscribed by gender, race, and class, to share (or achieve) a common perspective about which of life's goods are most important? We might worry about the fact that where agreement is lacking, it remains impossible for anyone to opt out of state mandated dispute resolution and distributive mechanisms.

Still, pessimism about our current situation need not entail despair about the future. Cultural differences need not stand in the way of agreement about which demands are reasonable and which not. The parallel situation in the law makes this clear: standards of reasonable care are widely shared among those who are comfortable and fully enfranchised, however much they differ culturally in a pluralist society.<sup>18</sup> What most stands in the way of shared standards of reasonableness, in politics as in law, are entrenched power relations and the indifference and hostility of those with privilege to those without. For Rawls's egalitarian ideal to be realized, those hurdles to substantive equality must be overcome.<sup>19</sup>

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<sup>18</sup> However much they might disagree about the particular cases with which they are involved.

<sup>19</sup> Consider the example of sexual harassment. So long as women are vulnerable to a sort of harm that men (on the whole) are not, the idea of providing all with equal liberty and equal protection from the activities of others is difficult to apply to the case. Or, rather, it is difficult to apply in a way that seems plausible on both sides of the asymmetry - many men are baffled by what they see as an illicit restriction on a familiar freedom. The more gender-based power imbalances are overcome, the easier it will become to describe a common standpoint from which men as well as can recognize the nature of the

For the contractualist, agreement is neither a feature of human reason, nor the inevitable result of everyone's desires for all-purpose means to diverse private ends. Instead, it must be seen as a cultural, but more than that, a political achievement. Rawlsian liberalism cannot count on any state to achieve it, but can insist that any state that falls short has failed.

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harm. By the same token, I want to suggest that in formulating a list of primary goods, the importance of particular liberties and resources, and the reasonableness of various demands in large measure reflects amounts of power and position within society. Even substantive equality provides no guarantee of agreement. It simply provides the only hope of it.