AGNOSTICISM AND PLURALISM ABOUT JUSTICE

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REASONABLE CITIZENS and their representatives face a problem of criterial indeterminacy. They have many criteria for deciding how to vote: they can decide on the basis of a coin flip, consult a haruspex, or thoughtfully apply what they justifiably take to be the correct principles of liberal justice. Sometimes it is permissible to use any of these criteria. Yet, it should be fairly obvious that democratic citizens should not treat these criteria as always and entirely on a par. As I will show, many political liberals harbor commitments that prevent them from making this fairly obvious point. Political liberalism treats reasonableness as the core concept for evaluating coercive public policy. Analyses of reasonableness specify a filter through which many implementable public policies pass, generating the problem of criterial indeterminacy for how to rank order the resulting set of feasible, reasonable policies. According to what I call *agnosticism about justice*, any criteria for rank ordering reasonable policies is as good as another. This implies that a haruspex who only reads the entrails of roadkill (hence violating no animal's rights by killing them) is no better and no worse a guide for rank ordering reasonable policies than is John Rawls. Should you find this an absurd result, you should also reject agnosticism. Yet, as I will show, agnosticism is a well-motivated response to reasonable disagreement about justice, and political liberals so far have offered no good alternative to it.

This paper presents that alternative. According to *pluralism about justice*, multiple conceptions of justice are correct, and reasonable citizens should appeal to the criteria of a correct conception of justice when rank ordering reasonable policy.[1] Both agnosticism and pluralism share several features. They abandon an idealized vision of the just society on which all citizens agree and deliberate from the very same conception of justice. Where they differ is that

1 Pluralism, as I conceive of it here, is not to be confused with the descriptive, sociological claim that liberal societies feature a variety of cultures, associations, jurisdictions, etc. That alternative usage informs Jacob Levy's analysis of liberal orders. See Levy, *Rationalism, Pluralism, and Freedom*, 27. Nor is justice pluralism to be confused with Isaiah Berlin's metaphysical thesis of moral pluralism. See Berlin, "Two Concepts of Liberty," 241–42.

pluralism, but not agnosticism, can answer the question of criterial indeterminacy. On the pluralist analysis, citizens should rank order reasonable policies by appeal to the freestanding, liberal conception of justice they justifiably regard as correct because it is in reflective equilibrium for them. A correct conception of justice, *a*, that is in reflective equilibrium for one reasonable citizen, Alf, need not be in reflective equilibrium for another citizen, Betty. Nevertheless, Alf does his best to treat Betty as a free and equal citizen when he deliberates within *a*'s framework to determine which coercive public policy to support, out of a set of reasonable, feasibly implementable policies.

1. REASONABLENESS AS FILTER

Anyone familiar with political liberalism knows that the theory does not traffic in notions of correctness. Justifying a law by appeal to some controversial notion of correctness is tantamount to imposing a view onto citizens they lack sufficient reasons to endorse. Political liberals—unlike perfectionists and comprehensive liberals—see such impositions as illegitimate uses of political power.[2] My aim is to convince you that political liberals should traffic in a notion of correctness—which, as I will show, is related to but distinct from a notion of truth—and that they can do so without collapsing into either perfectionism or comprehensive liberalism. First, we need to get in view political liberalism's core concept of reasonableness. This section follows Jonathan Quong's analysis, seeing reasonableness as a filter on arguments justifying coercive public policy. Many policies can be reasonable, leading to the problem of selecting a single reasonable policy to support, which we turn to in the next section.

Political liberalism treats reasonable disagreement about justice as one of the enduring features of life under free institutions.[3] This is why it treats reasonableness, not justice, as the standard for evaluating coercive law. A law is reasonable when it is publicly justified: when all citizens subject to that law have sufficient reason to endorse it. Public justification can be either a low or a very high bar. The high-bar form sees very few laws as publicly justified.[4] The low-bar form, on which we focus here, sees many laws as reasonable. Jonathan Quong's

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2   Quong, *Liberalism without Perfection*, 3.

3   Rawls often emphasizes reasonable disagreement about the good; see *Political Liberalism,* xlvii. Authors who place central emphasis on disagreement about justice include D'Agostino, *Free Public Reason*, 23–24; Gaus, *The Order of Public Reason*, 43; Quong, *Liberalism without Perfection*, 6–7; Sen, *The Idea of Justice*, 56–58; Vallier, *Must Politics Be War?* 56–58; Waldron, *Law and Disagreement*, 151.

4   Gaus's model of public reason exemplifies the high-bar form with its "tilt" toward justifying classical liberal positions (*The Order of Public Reason*, 526).

analysis exemplifies core features of the low-bar form. For Quong, all citizens have sufficient reason to endorse publicly justified law because the reasons supporting that law are "mutually acceptable." Mutual acceptability acts as a filter. Laws justified by appeal to a controversial theory of the good life, or by appeal to religious belief, are filtered out. Laws supported by mutually acceptable justificatory arguments based in freestanding political values are filtered in. The justificatory filter allows many arguments through, without ranking the resulting range of reasonable policies as better or worse.

Political liberals need this filter to distinguish disagreements about justice from disagreements about religion or the nature of the good. Quong sees citizens as sharing a substantial set of political values and principles but disagreeing about how these values and principles should be interpreted, weighed, and balanced to yield substantive policy conclusions. Quong gives us the following example of such a disagreement. Sara and Tony are debating the "(in)justice of allowing the Catholic Church to discriminate on the basis of gender when employing priests."[5] At issue between the two is whether religious liberty should exempt private associations like the church from state interference on employment practices. Although Sara and Tony disagree about the proper interpretation and weight to assign to religious liberty, each recognizes the other as deliberating within a shared framework. Both are appealing to freestanding political values—values that do not presume the truth of any specific controversial moral or religious worldview. As reasonable liberal citizens, both accept these values, and each can recognize the other as employing these values in a mutually acceptable way.

Premises in a justificatory argument are mutually acceptable when they satisfy the following three conditions: "(a) all the parties must be sincere, (b) the conflicting positions must be grounded in free standing political values, and (c) the conflicting arguments must represent a plausible balance of political values."[6] Citizens are sincere when they believe a justificatory argument supports a specific law.[7] Positions are grounded in freestanding values when they are "not presented as derived from, or as part of, any comprehensive doctrine."[8] Quong leaves the standard of plausibility largely unanalyzed. But that standard must allow Sara to regard Tony's justificatory argument as both plausible and mistaken. Both Sara and Tony regard their own balancing of political values as best, or as the "most reasonable interpretation," of these values.[9] Each has reasons for

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5   Quong, *Liberalism without Perfection*, 205–6.

6   Quong, *Liberalism without Perfection*, 207.

7   For a more detailed analysis, see Schwartzman, "The Sincerity of Public Reason," 384–87.

8   Rawls, *Political Liberalism*, xlii.

9   Quong, *Liberalism without Perfection*, 206.

believing that their favored interpretation and weighting of the value of religious liberty is best. These reasons need not strike the other as convincing. They need only provide "a plausible explanation as to why one public value ought to be prioritized over the other in cases of this kind."[10] On the one hand, this plausibility standard is a virtue of the analysis in that it does not place burdensome justificatory demands on citizens to explain and defend their positions. On the other hand, the plausibility standard leads to counterintuitive implications. It opens Quong's analysis to the problem of criterial indeterminacy, as I argue below.

The mutual acceptability criterion allows many policies to be publicly justified. Let us say that Sara is in support of a law, L_1, that would require the Catholic Church to employ women priests. Tony is in favor of a law, L_2, that exempts the church from discriminatory hiring laws. Assuming a democratic mechanism to be in place for deciding between L_1 and L_2, either of these laws, were they selected by that mechanism, would be publicly justified. This is because the reasons Sara and Tony offer in private discussion supporting L_1 and L_2 show those laws to be mutually acceptable, and therefore reasonable for all citizens. The reasons supporting both laws pass through the "filter" of mutual acceptability, making either law publicly justified—as long as it is selected democratically. Thus, Quong's analysis exemplifies the low-bar form of political liberalism, which sees many laws as publicly justifiable.

On Quong's analysis, political liberals should not expect there to be an agreed-upon public conception of justice. For Rawls, a public conception of justice provides "a shared basis for the justification of political and social institutions" and that articulates and orders society in a "principled way."[11] Instead of sharing a conception of justice, Tony and Sara share reasonableness as a filter on the reasons they use to justify coercive public policy.[12] The shared filter allows society to select either L_1 or L_2, regardless of whether one of these two laws is overall more coherent with the existing body of relevant legislation. Such a society has no "regulative political conception of justice" that either guides citizens' deliberations about justice or provides coherence to the existing body of law.[13] Some political liberals view this as a costly result.[14] Whatever that cost may be, I assume it is worth bearing. In what follows, I assume with Quong that political liberals should permit citizens to act on their private judgments regarding what

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10   Quong, *Liberalism without Perfection*, 209.

11   Rawls, "The Idea of Overlapping Consensus," 421.

12   Quong, *Liberalism without Perfection*, 187.

13   Rawls, "The Idea of Overlapping Consensus," 421.

14   Gaus and van Schoelandt argue that without public justice the politically liberal society is subject to voting cycles and other forms of incoherence ("Consensus on What?," 170–71).

freestanding liberal justice requires. Such a view must do without public justice and bear the attendant costs of social incoherence. The extent of this social incoherence will depend on two factors: first, how many laws can pass through the mutual acceptability filter, and second, how many of those laws citizens will actually endorse and vote for. This second factor leads us to the problem of selecting criteria for rank ordering mutually acceptable law.

2. AGNOSTICISM AND CRITERIAL INDETERMINACY

How do reasonable citizens decide which of the set of reasonable policies to favor? Quong says that Sara and Tony will favor those policies they regard as "most reasonable."[15] He never offers a substantive analysis of this notion. For the moment, let us say that the most reasonable policy is the one justified by appeal to the best overall interpretation and balancing of freestanding values. Set aside for now what it means to say one policy "best" satisfies those criteria; we turn to that topic in the next section. We have seen that many policies are reasonable or mutually acceptable. But Sara may only regard one policy as most reasonable. This section considers on what basis political liberals like Quong can say that Sara ought to favor the most reasonable policy, rather than selecting among reasonable policies using some other criteria. Call this the *problem of criterial indeterminacy*.

> *Criterial Indeterminacy*: Having narrowed down the space of feasible policy alternatives to a reasonable set, there remains the problem of selecting criteria for rank ordering reasonable policies to determine which to support.

Let me make two clarificatory points. First, the problem is one of rank ordering *feasible* policy, not of finding the best or most just policy, under idealized conditions. So, a solution to the problem need not involve offering a theory of ideal justice. Second, the problem concerns which policy citizens will *support*, either by voting for it or by defending it in conversation with their fellows.[16] Any reasonable policy enacted via democratic means is publicly justified, hence citizens have reason to endorse it *ex post*. As I use it here, endorsement is an attitude toward enacted policy. Support is an attitude toward policy that could be enacted in the future.

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15   Quong, *Liberalism without Perfection*, 206.

16   Lister makes a similar distinction between *ex ante* and *ex post* reasons when he distinguishes public reason accounts that highlight reasons for decisions *ex ante* from those that justify coercion *ex post* (*Public Reason and Political Community*, 15–23).

A common conflation of two distinct civic duties obscures the problem of
criterial indeterminacy for political liberals. Political liberals follow Rawls in
saying that citizens have a "duty of civility." Only one of two common inter-
pretations of that duty generates the problem of criterial indeterminacy. Some
passages in Rawls emphasize that the duty of civility requires citizens to sup-
port the political positions they regard as "most reasonable."[17] Other passages
say that the duty of civility only requires that citizens or their representatives
support coercive policy that can be justified as reasonable.[18] There are two
distinct duties at issue. To add clarity to the discussion, we will say that the
duty of civility requires supporting the most reasonable policy, and the *duty of
restraint* requires supporting some policy that passes through the filter of rea-
sonableness. Political liberals follow Rawls in conflating these two duties, even
though they are logically distinct.[19] Citizens can respect the duty of restraint
while violating the duty of civility when they support a reasonable policy that
they do not see as most reasonable. Civility requires criterial determinacy of
citizens: they ought to always rank order policy according to what is most rea-
sonable. Restraint does not require criterial determinacy: citizens can use any
number of criteria to determine which reasonable policy to support.

It is easiest for political liberals to reject the duty of civility and embrace
a lax interpretation of the duty of restraint. I call this position *agnosticism*, as
it involves taking no stand on how citizens ought to rank order reasonable
policy. The agnostic permits citizens to support any reasonable policy in the
feasible set for any (morally permissible) reason, even when they regard some
alternative as the most reasonable. Return to the case of Sara and Tony, and the
two proposed policies that either require the church to employ women priests
(L_1) or exempt the church from discriminatory hiring law (L_2). The duty of
civility requires Sara to support L_1 because she regards it as most reasonable. In
contrast, the lax interpretation of the duty of restraint permits Sara to endorse

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17   Rawls, *Political Liberalism*, 444.

18   In one such passage, he says that the duty of civility requires that citizens show how the
     exercises of political power they "advocate and vote for can be supported by the political
     values of public reason" (Rawls, *Political Liberalism*, 217).

19   Christopher Eberle's analysis of restraint is a clear exception to this generalization (*Reli-
     gious Conviction in Liberal Politics*). Quong acknowledges the distinction between civil-
     ity and restraint, without making much of it, in passages like the following: "the task
     of the political philosopher is to demonstrate that their theory is at least reasonable, or
     the most reasonable political conception possible" (*Liberalism without Perfection*, 226).
     Christie Hartley and Lori Watson are generally explicit that the duty of civility, on their
     view, requires appealing to the most reasonable political conception of justice (*Equal
     Citizenship and Public Reason*, 64, 82n49). Sometimes, though, they claim that civility only
     requires restraint (*Equal Citizenship and Public Reason*, 88, 136).

L_1 or to endorse L_2 because she recently converted to Catholicism and finds the tradition of a male-only clergy beautiful, even if not very liberal.[20] Additionally, the lax interpretation permits Sara to use a coin toss to decide between supporting L_1 and L_2, while entirely setting aside her considered judgment that L_1 is most reasonable. I take it that agnosticism is intuitively an odd view: surely, political liberals hold, Sara should support L_1 because she believes it is most reasonable. Yet political liberalism's methodological commitments seem to preclude saying that Sara ought to act on her judgment that L_1 is most reasonable.

Agnosticism is well motivated for political liberals who endorse what Quong calls the "buck-passing account" of justification. Theorists of political liberalism "pass the buck" on important justificatory questions onto citizens, who answer those questions for themselves by appeal to their full sectarian set of values and their controversial notions of truth.[21] It is much easier to pass the buck when justifying the lax duty of restraint, as opposed to justifying the duty of civility. For the former duty requires citizens find in their full set of values an answer to the question, "Why ought I to support some reasonable policy?" Comprehensive liberals may find their answer in an argument from the moral value of respect for persons.[22] Catholics may find their answer in the value of non-coercion promulgated in the Vatican II document, *Dignitatis Humanae*. Plausibly, very many diverse citizens can find unshared reasons to support some reasonable policy over unreasonable alternatives. It is less plausible that both comprehensive liberals and Catholics can find their own unshared reasons to support one specific reasonable policy over others in the reasonable set. So, "passing the buck" is much easier to do in a theory requiring that citizens embrace a lax duty of restraint, as opposed to the duty of civility.

Agnosticism is also well motivated by the view that shared values, and not specific conceptions of justice, are what justify public policy. Andrew Lister defends a "unanimous acceptability criterion" on which the only reasons that can justify public policy are those all reasonable citizens can accept.[23] Controversial interpretations, weightings, or applications of shared values fail the

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20 Quong is committed to the lax interpretation of the duty of restraint. He is explicit that reasonable citizens can be motivated by their comprehensive doctrine to support one reasonable policy over another (*Liberalism without Perfection*, 42). Because both policies fall within the reasonable set, citizens' justifying reasons are mutually acceptable, and that is all that reasonableness requires, in his view.

21 For Quong, "the originality of Rawlsian political liberalism is that it delegates this task [of defending the truth of its theory] to reasonable citizens in a well-ordered society" (*Liberalism without Perfection*, 226).

22 Larmore makes such arguments in "The Moral Basis of Political Liberalism."

23 Lister, *Public Reason and Political Community*, 26.

test of unanimous acceptability. Consistent with unanimous acceptability, controversial interpretations and weightings can figure in a citizen's deliberations over which policy to support. But they would not be premises in the argument justifying that policy to other citizens. Such justificatory arguments would only include unanimously acceptable values and principles that admit of multiple interpretations and weightings.[24] This means many laws pass through the filter of unanimous acceptability, and they are all justified to reasonable citizens, despite those citizens substantively disagreeing over which laws that pass through that filter are best.

But these advantages all come with costs. Consistent with the lax interpretation of the duty of restraint, a citizen may find she has an all-things-considered reason not to support what she regards as the most reasonable policy. "Most reasonable" is a term of art. As I show in the next section, we can better understand the most reasonable policy as the one that, given a set of feasible alternatives, is required by what the citizen regards as the correct liberal conception of justice. Agnosticism bears the cost of permitting citizens to sometimes disregard their judgment of which policy, within a feasibly implementable space, is required by the correct liberal conception of justice. Not only will some citizens lack in their full sectarian set of values motivating reason to support what they take correct liberal justice to require, but it will also be the case that their judgments concerning correct liberal justice cannot appear as premises in the argument justifying a specific policy, as those judgments are not unanimously accepted among reasonable persons. So, agnosticism offers citizens nothing by way of shared reasons for determining what the most reasonable policy would be. Nor does it provide political liberals with much reason to carry on Rawls's project of theorizing about justice. Theories of justice, which offer correct interpretations and weightings of some of the shared basic values and principles about which reasonable citizens disagree, play no role in justifying public policy. Nor do they play any necessary role in guiding citizens' deliberations over how to answer the problem of criterial indeterminacy.

I do not consider here whether these costs are, all things considered, worth bearing. Instead, I describe what I take to be the main competitor to agnosticism: pluralism about justice. Pluralism holds that there are multiple conceptions of liberal justice that are correct, or "most reasonable." It is agnosticism's main competitor as a theory that assumes reasonable citizens can reasonably disagree even about very basic principles of justice. Pluralism's starting point is that some reasonable citizens can reject Rawls's claim, which we consider in detail below, that justice as fairness is the "most reasonable" conception.

24   Lister, *Public Reason and Political Community*, 17.

Pluralism endorses criterial determinacy by holding that citizens should support the policy they see as justified by the correct conception of liberal justice. "Correctness"—which I use as a synonym for "most reasonable"—is always indexed to specific reasonable citizens, rather than to reasonable citizens as a whole. But "correctness" is not a subjective notion. Citizens determine which conception of justice is correct through intersubjective inquiry, including the method of reflective equilibrium. They intersubjectively determine which conception of freestanding liberal justice is correct by drawing on their full evaluative resources to order, interpret, and weigh materials in the shared evaluative framework. A liberal conception of justice, *a*, is correct as indexed to a specific constructivist device for comparing conceptions. And citizens determine which constructivist device is correct by drawing on their full evaluative resources. Political liberals should expect there to be multiple conceptions of justice that satisfy these correctness conditions, albeit for different citizens. Individual citizens see one unique conception of justice as correct. In contrast, theorists of political liberalism, with their commitment to epistemic abstinence, see there being a family of correct conceptions. This "family" is a proper subset of the broader family of reasonable liberal conceptions of justice, which Rawls discusses.[25] This proper subset is normatively distinctive in that it offers reasonable citizens *qua* citizens their answer to the problem of criterial indeterminacy.

3. CONSTRUCTIVIST CORRECTNESS

Political liberals often attribute to citizens a duty that they will support the policy they regard as most reasonable. Yet no political liberal has offered an analysis of this concept. This omission makes sense if we assume all political liberals are agnostics who take no stand on which criteria citizens ought to use in rank ordering reasonable policy. Some of Rawls's remarks concerning the role of justice as fairness in political liberalism support reading him as an agnostic. In a letter to his editor, Rawls says justice as fairness has a "minor role" in political liberalism.[26] But he regards justice as fairness as the "most reasonable" member of the family of reasonable liberal conceptions of justice.[27] Rawls's arguments from *A Theory of Justice*, many of which he incorporates into *Political Liberalism*, justify him in assigning justice as fairness a privileged place among reasonable conceptions. Yet he says that his belief that justice as fairness has "a certain special place in the family of political conceptions" is "just an opinion of

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25 Rawls, *Political Liberalism*, xlvi–xlvii.

26 Rawls, *Political Liberalism*, 439.

27 Rawls, *Political Liberalism*, xlvi.

mine," which is "not basic to the ideas of political liberalism and public reason."[28] Presumably, what is basic is the notion of reasonableness. On the present analysis, one way of treating reasonableness as "basic" to political liberalism is to adopt agnosticism. Regardless of whether Rawls embraces agnosticism, there is a compelling way of reading him on which it is a mistake to say that his belief that justice as fairness is most reasonable is not basic to political liberalism. This is not because justice as fairness *per se* has a privileged place in the theory. Justice as fairness does not occupy a privileged place for all reasonable citizens, but only for a subset of citizens. The present analysis sees justice as fairness as privileged for citizens who view it as the correct conception of liberal justice, and therefore ought to use the criteria of justice as fairness for rank ordering reasonable policy. This section provides what Rawls did not: an analysis of the concept of "most reasonable." With this analysis, we can describe political liberalism's alternative to agnosticism.

Conceptions of justice, like justice as fairness, serve two functions: they specify how freestanding values are to be interpreted and ordered against each other in constructing arguments that defend policies as publicly justified. Those conceptions specify internal criteria for showing their interpretations and orderings of freestanding values to be better than alternatives. What Rawls, in "A Reply to Habermas," calls "pro tanto justification" achieves the first of these functions. There, political values are shown to be "suitably ordered, or balanced, so that those values alone give a reasonable answer by public reason to all or nearly all questions concerning constitutional essentials and matters of basic justice."[29] *Pro tanto* justification can only show that some conception of justice is reasonable, which, following Quong, I treat as passing through the filter of mutual acceptability. It cannot serve the function of rank ordering reasonable conceptions of justice to determine which is most reasonable. Elsewhere, though, Rawls offers remarks suggesting how to achieve this rank ordering. In "Lecture IV: The Idea of an Overlapping Consensus," Rawls, as I read him, refers to the family of reasonable liberal political conceptions as a "focal class" of liberal conceptions, and justice as fairness as "the center of the focal class" of liberal conceptions.[30] What makes justice as fairness "the center" for Rawls is that, among other conditions, "it is correctly based on more central fundamental ideas."[31] Justice as fairness is based on fundamental political ideas like society as

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28 Rawls, *Political Liberalism*, 451n27.

29 Rawls, *Political Liberalism*, 386.

30 Rawls, *Political Liberalism*, 167–68.

31 Rawls, *Political Liberalism*, 168. Rawls adds a second condition: "it is stable in view of the interests that support it and are encouraged by it." Stability analyses require assuming a well-ordered society where everyone "accepts and knows that the others accept the same

a fair system of cooperation and the moral conception of persons. Its relation to these fundamental ideas is not deductive; rather, justice as fairness is connected to these fundamental ideas via the device of the original position.[32] In *Political Liberalism*, Rawls's original position argument is a device for "connecting" certain freestanding fundamental ideas in the public political culture with "definite principles of justice found in the tradition of moral philosophy."[33] In doing so, it serves the crucial function of rank ordering reasonable conceptions of justice, where the most preferred conception is most reasonable.

Rawls's original position models the choice situation of a hypothetical agent, where this choice situation "embodies" the various freestanding ideas found in the public political culture and requirements of practical reason.[34] These freestanding ideas include the "underlying conceptions of the person and of social cooperation" and "a particular understanding of freedom and equality."[35] This choice situation has four elements. An agent, who has (1) a well-defined utility function, confronts (2) a set of options from which she must chose. She is placed under certain (3) information constraints—she knows various things about herself, others, and the options she has to choose from—and her choice is guided by (4) principles of rational choice. Any problem of decision-making under uncertainty includes these four elements, so the original position models a problem of rational choice.[36] But this problem does not admit of a unique solution until we know more about the four elements. For Rawls, the content of elements 1 and 3 come from his interpretation of fundamental political values; the menu of options in 2 is given by the history of moral philosophy; and the arguments for 4 are primarily moral in nature, as I explain below. The original position argument, then, is thoroughly moralized, where the domain

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principles of justice" (Rawls, *A Theory of Justice*, 4). It is not clear to me that political liberals should analyze the stability of a conception of justice in this sense. We are assuming that conceptions of justice guide an individual's *ex ante* deliberation, where this individual expects other citizens to be guided by rival conceptions. Surely, considerations of stability should figure in citizens' *ex ante* deliberation. But not all political liberals will agree that Rawls's idea of a well-ordered society should be central to stability analyses.

32 Rawls claims that the original position "aims eventually to be strictly deductive," but this is not seen as an aim of the argument in his later work (*A Theory of Justice*, 104).

33 Rawls, *Political Liberalism*, 339.

34 Rawls, *Political Liberalism*, 90.

35 Rawls, *Political Liberalism*, 339, 369.

36 In *A Theory of Justice,* Rawls describes the original position argument as a part of rational choice. He later rejects this description, despite his original position having the formal features of decision-making under uncertainty. For the initial claim, see *A Theory of Justice*, 15. For Rawls's rejection, see *Political Liberalism*, 53n7.

of morality includes freestanding political values.[37] The argument purports to show that justice as fairness is most reasonable because a suitably constructed agent (with features 1 and 3), faced with a menu of principles of justice (2) to regulate her society, would select (informed by 4) justice as fairness over the alternatives after making pairwise comparisons among each.[38]

From the standpoint of political liberalism, Rawls's original argument is controversial. Not all reasonable citizens will accept it as the appropriate device for rank ordering reasonable conceptions of justice. This is because the argument, while presupposing only freestanding political values, nevertheless presumes various substantive interpretations of those values as correct. As an example, consider Rawls's claim that parties in the original position should employ maximin reasoning. Rawls famously gives a rational choice argument for this claim: according to his *argument from uncertainty*, maximin reasoning is uniquely rational in the original position's choice situation, given the informational constraints the chooser is under.[39] Some have objected that slightly different informational assumptions make it rational to employ different principles of choice.[40] The standard Rawlsian response to these objections is to turn to a new argument, the *argument from reciprocity*. According to this argument, cooperative schemes must be mutually beneficial and viewed by all participants—especially the worst off—as fair.[41] Maximin reasoning ensures that the principles selected guarantee everyone has a share of goods that they can live with, and that this share for the worst off is greater than what they would receive under the alternatives.[42] The argument from reciprocity is a moral argument,

37 For Rawls's claim that freestanding political values are nevertheless moral, see *Political Liberalism*, 11n11.

38 "We may suppose that this decision is arrived at by making a series of comparisons in pairs" (Rawls, *A Theory of Justice*, 106).

39 Because the agent is behind the veil of ignorance, she is in a state of radical uncertainty: she does not know the probability of falling into the worst-off social class. She does know that the maximin strategy singles out an option she can live with if she finds herself, when the veil is removed, among the worst off. Additionally, the other options she could consider have worse outcomes that she could not accept. Interpreting the agent's utility function in this way, her choice of principles is a straightforward maximization problem.

40 For an early statement of this objection, see Harsanyi, "Can the Maximin Principle Serve as a Basis of Morality?" For a more recent version of the critique, see Chung, "Rawls's Self-Defeat."

41 Parties' utility function, Rawls says, "encodes certain basic features of our normative assumptions," including those about fairness (*Justice as Fairness*, 107). Although parties in the original position select a conception of fairness to regulate their society, the design of the original position also presupposes, and encodes, basic features of our notion of fairness.

42 Also, reciprocity leads parties to derive minimal utility gains above a certain index out of concern that those gains may come at the expense of others who have less.

and it has justificatory priority over the argument from uncertainty in that it is what Rawls and his supporters appeal to when defending the rationality of maximin reasoning against utilitarian challenges.[43] That argument presumes a specific moralized notion of reciprocity, one that favors the difference principle over utilitarian alternatives.

What is Rawls's argument for accepting his specific moralized notion of reciprocity? Largely, his argument is the original position itself. This may make the original-position argument sound viciously circular. Given its function, it is not. Rawls acknowledges and intends that reasons for accepting his original-position argument eventually run out. The original position does not offer a deductive argument from truths known *a priori*. It takes certain things for granted. As Rawls puts it, "not everything, then, is constructed; we must have some material, as it were, from which to begin."[44] Starting materials include the interpretation of those fundamental ideas informing the construction of the original-position argument. Not all reasonable citizens will accept the same interpretation of these fundamental ideas. Rawls allows that "the public political culture is bound to contain different fundamental ideas that can be developed in different ways."[45] Certain ideas, when not presupposed in the process of construction, are clarified by that process. For example, speaking of the fundamental idea of respect for persons, Samuel Freeman notes that "so far as we aim to uncover the meaning of respect for persons for Rawls, it is explicated by justice as fairness."[46] For Rawls, the argument aims to proceed from "conditions . . . we do in fact accept," where "it helps us work out what we now think."[47]

As a political liberal, Rawls cannot help himself to the assumption that all reasonable citizens accept the conditions his original position argument presupposes. In this sense, he is correct to say that his belief that justice as fairness is most reasonable is not basic to political liberalism. But those citizens who justifiably reject some of the presuppositions of Rawls's original-position argument must accept something else in turn.[48] When they justifiably reject Rawls's notion of reciprocity, there must be some alternative notion of reciprocity they

43 See, e.g., Freeman, *Rawls*, 194–97; c.f. Moehler, *Minimal Morality*, 82.

44 Rawls, *Political Liberalism*, 104.

45 Rawls, *Political Liberalism*, 227.

46 Freeman, *Rawls*, 21.

47 Rawls, *A Theory of Justice*, 514, and *Political Liberalism*, 26. See also Rawls, *Justice as Fairness*, 17.

48 Neufeld and Watson make a similar point that anyone who rejects Rawls's original position argument must provide some compelling alternative showing why they regard their favored conception of justice as most reasonable ("The Tyranny—or the Democracy—of the Ideal?," 53).

accept. This alternative could even be that there is no uniquely correct notion of reciprocity in the public political culture. Whatever that alternative is, it provides materials from which a different device can be constructed to replace Rawls's original position. Like the original position, this new device would serve the function of rank ordering conceptions of justice. But the new device reaches its conclusions about how to rank order conceptions of justice on the basis of different presuppositions than Rawls's original position, raising the possibility that some alternative to justice as fairness would be the most preferred option. Justice as fairness is most preferred in Rawls's original position, making it most reasonable for Rawls, as the original position clarifies what he already thinks about justice. Another reasonable citizen, Alf, who justifiably accepts an alternative to the original position, may end up accepting some alternative conception of justice, a, as most reasonable. Of course, we cannot guarantee this would be the result: different devices for rank ordering conceptions of justice may yield the same verdict that justice as fairness (say) is most reasonable. Going forward, though, I will assume it is very likely that different devices would yield different conclusions about which conception of justice is most reasonable.[49]

So, Rawls and another reasonable citizen, Alf, regard different political conceptions of justice as most reasonable. I now argue they are correct in doing so. The ultimate standard of appeal for each citizen is reflective equilibrium. Reflective equilibrium is the standard by which Rawls assesses his interpretation of political values and the construction of his original position as a whole.[50] Rawls sometimes speaks of reflective equilibrium as achieved dialogically, from "the point of view of you and me."[51] This dialogue occurs between the theorist of political liberalism, who is constructing an original-position-style argument, and an individual citizen. Reflective equilibrium is achieved when the theorist's basic presuppositions—the things she takes for granted in constructing her choice model—match those of the citizen. It is not enough that the citizen recognizes the theorist's presuppositions as reasonable. The citizen must see those presuppositions as *correct* for the overall construction to be in reflective equilibrium for her. She does this by embedding those presuppositions in her

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49   This strikes me as the likely result because the conception of justice a device selects has a complex relationship to the device's starting assumptions. Those assumptions justify selecting that conception of justice. But the conception of justice also clarifies (or explicates) the starting assumptions. It seems to me unlikely that justice as fairness would do the best job clarifying a set of starting assumptions that includes the explicit rejection of Rawls's notion of reciprocity.

50   Rawls, *Political Liberalism*, 70.

51   Rawls, *Political Liberalism*, 28.

total set of values, showing, in what Rawls calls "full justification," that it is true she ought to endorse those presuppositions for the sake of determining what liberal justice requires.[52] Political liberals should expect that reasonable citizens will reach conflicting verdicts about which interpretations of shared political values are correct. So, political liberals should expect that there will be different devices, constructed out of freestanding political materials, for ranking conceptions of justice that are in reflective equilibrium for different reasonable citizens. If reflective equilibrium is the ultimate standard by which political liberals adjudicate the dispute between Rawls and Alf, they must accept the following conclusion: that both Rawls and Alf are correct in regarding distinct conceptions of justice as most reasonable.

Our rational reconstruction of why Rawls says justice as fairness is most reasonable has led us to acknowledging there can be a class of conceptions of justice that are most reasonable. Members of that class serve an important function for citizens by providing criteria for rank ordering reasonable policy. They do this by specifying an interpretation and weighing of freestanding political values—an *interpretation*, in short—that a specific citizen regards as most reasonable. Citizens appeal to this interpretation when determining which public policy proposal is most reasonable, out of a set of feasible, reasonable alternatives. Members of that class must also show why one specific interpretation is more reasonable than others. They do this via a ranking procedure, wherein a suitably constructed agent, who models relevant freestanding values, compares and rank orders different interpretations. The construction of this procedure presupposes as correct substantive interpretations of some (but not all) freestanding political values. It clarifies what a citizen now thinks on the presumption that she already accepts the device's presuppositions as correct.

A political conception of justice specifies an interpretation as most reasonable and includes some ranking procedure for comparing interpretations. A liberal conception of justice *a* is most reasonable (or correct) for a reasonable citizen Alf if and only if:

a. *a* specifies the correct interpretation, where this balancing is preferred to alternatives in a suitably constructed choice situation modeling ideas in the public political culture;
b. that choice situation correctly models the correct interpretation of ideas in the public political culture;
c. where both the model and the interpretation of ideas are in reflective equilibrium for Alf (or a suitable idealization thereof).

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52 Rawls, *Political Liberalism*, 386.

Although I have arrived at these conditions via a rational reconstruction of
Rawls, the conditions should be acceptable to political liberals who reject many
of the specific features of Rawls's original-position argument. Condition a leaves
open the ultimate form the correct interpretation should take—whether this
be as principles, à la justice as fairness, or as a series of trade-off functions, or
as something else. Condition b does not require the choice situation take the
same form as the original position, with a single agent, suitably constructed,
representing all parties. Instead, condition b could be satisfied by a bargaining
model with diverse agents representing parties.[53] Finally, condition c clarifies
that the notion of correctness is indexed to a specific citizen. What is correct
for Rawls need not be correct for Alf.

4. JUSTICE PLURALISM

Justice pluralism is the view that multiple conceptions of justice are most rea-
sonable or correct. It gives the following answer to the problem of criterial
indeterminacy. Citizens should support the policy they believe is most reason-
able—that is, the policy justified by the interpretation of shared political values
that, they justifiably believe, satisfies conditions a–c above. This is because, as
citizens, they ought to support the policy they see as demanded by correct
liberal justice. Determining which conception of liberal justice is correct is a
complicated matter. Theorists of political liberalism must offer constructivist
devices for rank ordering reasonable conceptions. Citizens must then deter-
mine which of these ranking devices is correct for them—using their full eval-
uative resources, including their controversial notions of truth—for ranking
competing interpretations of some basic ideas in the public political culture
that form the foundations out of which theorists build a device of construc-
tion. Even though the public political culture is shared, inquiry into that cul-
ture is marked by what Rawls calls the "burdens of judgment"—those same
features of inquiry that, he believes, generate reasonable disagreement about
metaphysical and religious matters under free institutions.[54] Citizens develop
competing constructivist standards of correctness for interpreting and weigh-
ing the material of this common resource. Reasonableness can serve as a shared
justificatory standard for evaluating enacted policy *ex post*.[55] But that standard

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53 For a recent bargaining model of the social contract, see Muldoon, *Social Contract Theory
    for a Diverse World*, 77–84.

54 Cf. Rawls, *Political Liberalism*, 56–57.

55 Quong distinguishes justificatory from foundational disagreement (*Liberalism without
    Perfection*, 193). On his analysis, disagreements about justice are *justificatory* because
    they presuppose shared standards of justification. Disagreements about religion and

fails to select determinate policies when citizens are deciding *ex ante* which to support. Instead, reasonable citizens deliberate in the framework of one family of most reasonable conceptions, where each member of this family represents a competing attempt to best make sense of the demands of liberal justice. This section considers a potential cost to pluralism: that it sees political conflict as an ineliminable feature in societies where all citizens honor the duty of civility.

Publicly justified policy can always be a source of conflict and opposition. For any given policy issue, there is a range of feasible, reasonable policies that could be implemented. Reasonable citizens have reason to endorse whichever member of that set is implemented. But publicly justified implemented law can fall far short of satisfying the standard of correct justice. Consistent with endorsing that law, citizens or their representatives can seek its repeal and replacement through legitimate means. These reasons for legitimate opposition do not necessarily go away when the law is most reasonable according to some conception. On the pluralist analysis, a law, *L*, is most reasonable if and only if:

1. *L* is selected as best out of a feasible set of alternatives according to the criteria of political conception of justice *a*, where
2. *a* is most reasonable for some reasonable citizen, Alf.

Alf's belief that *a* is most reasonable requires that *a* be in reflective equilibrium for Alf. But what is in reflective equilibrium for Alf need not be in reflective equilibrium for another reasonable citizen, Betty. Betty, who justifiably regards conception of justice *β* as most reasonable, can justifiably regard *L*'s implementation as a movement away from correct liberal justice. Moreover, Betty may justifiably harbor doubts that *L* is most reasonable for Alf. She cannot peer into his soul and perspicuously see *a* in reflective equilibrium. Reflective equilibrium is a function of a citizen's total belief set. Other things being equal, introspection grants a citizen better epistemic access to their own belief set than a peer could have. Yet that access is subject to distortions—say, from self-serving biases—making citizens blind to their own reflective disequilibria. Betty may rightly or wrongly be skeptical of Alf's claim that *a* is in reflective equilibrium for him. Either situation has a silver lining: her skepticism forces Alf to defend

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comprehensive morality, in contrast, are *foundational* because participants do not share standards of justification for adjudicating their dispute. This distinction may make sense in the deliberative context of evaluating already enacted policy as publicly justified. But I doubt it always makes sense in the different context of determining which of a reasonable set of policies to support prior to enactment. For other criticisms of Quong's distinction, see Laborde, *Liberalism's Religion*, 99–110; and Vallier, "On Jonathan Quong's Sectarian Political Liberalism."

his beliefs about justice against old and new challenges, showing to himself and others that those beliefs are, indeed, in reflective equilibrium for him.

This generates what Rawls calls an "orderly contest" among rival conceptions of justice over time.[56] Presumably, Rawls calls these contests "orderly" because they proceed via democratically legitimate means. The "winners" are democratically enacted, but their victories may only be temporary, as any proposed or enacted law is subject to legitimate contestation. Citizens discuss with each other the merits or shortcomings of laws, voice opposition through protests to enacted law, and can seek out repeal through their choice of representatives. Contestatory politics can be heated and divisory, but there is an important sense in which the contest we are envisaging is different from sectarian disputes. We are imagining disputes among reasonable citizens who wish to honor the duty of civility. However heated these disputes may become, they are distinctively non-sectarian in that all participants share a commitment to correctly interpreting the public political culture. Their commitment has a practical foundation in the desire to treat one's fellow citizens as politically free and equal.[57] Regarding some specific policy issue, different citizens—Alf, Betty, and John Rawls—may all justifiably arrive at different conclusions regarding what such treatment entails.[58] But their shared desire to treat one another as politically free and equal leads them to seek out potential objects of overlapping consensus in the shared public political culture, elaborating that shared material (using unshared, controversial criteria) into concrete policy demands. Societies where all honor the duty of civility may be riven by conflict over which vision of justice to implement. Yet this is a conflict over how to best treat each other as politically free and equal.

Both agnosticism and pluralism see societies as divided by conflicts over which reasonable policy to implement. The key difference between the two is

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56   Rawls, *Political Liberalism*, 227. Rawls proceeds to say that this contest "is a reliable way to determine which one, if any, is most reasonable." In contrast, the present analysis sees this contest as a reliable way to determine which *are* most reasonable, and a legitimate way to determine which one is to be implemented.

57   Weithman also argues that different conceptions of justice manifest concern with treating one's fellows as politically free and equal ("Autonomy and Disagreement about Justice").

58   Neufeld and Watson offer a similar analysis, where reasonable citizens in a well-ordered society do not all endorse justice as fairness, but instead endorse a "reasonable" conception of justice ("The Tyranny—or the Democracy—of the Ideal?," 52–53). Yet Neufeld and Watson do not explicitly endorse pluralism, as they do not attribute to reasonable citizens a duty of civility to deliberate in the framework of what they regard as the *most* reasonable conception of justice. They deny that reasonable citizens would insist that society conform to their preferred conception of justice. On the pluralist analysis, reasonable citizens can nevertheless be deeply and justifiably dissatisfied with their regime when it fails to conform to what they regard as correct liberal justice.

that agnosticism permits citizens to pursue sectarian agendas within the space of reasonable policy. Pluralism, at least in principle, does not. Recall that agnostics endorse a lax interpretation of the duty of restraint, according to which a Catholic, say, can appeal to Catholic doctrine when rank ordering reasonable policy to determine which to support. Consistent with honoring the duty of restraint, a Catholic coalition can oppose subjecting the church to anti-discriminatory hiring law, all because there is a reasonable interpretation of religious freedom that permits them to do so. The agnostic holds that they can permissibly do this even when the members of that coalition justifiably regard an alternative interpretation of religious freedom, one that does not grant the church exemption from discriminatory hiring law, as most reasonable. This strikes me as a roundabout way of using politics to achieve sectarian aims. In the example, the Catholic coalition supports a reasonable policy for sectarian reasons. Of course, this is much better than supporting an openly sectarian policy for sectarian reasons. But it still poses a threat to the goods that public justification aims to achieve—specifically, that of civic friendship. Non-Catholics would have sufficient reason to endorse a law exempting the church from hiring laws. But they would, it seems to me rightfully, resent the members of the coalition who are motivated to support that law for sectarian reasons.

Unlike agnosticism, pluralism requires the Catholic coalition's motivating reasons for supporting a policy to be overdetermined. Consistent with honoring the duty of civility, members of this coalition may support a law both because they regard it as required by correct liberal justice and because they believe that it is, within the reasonable space, most consistent with Catholic dogma. Assuming it is common knowledge that they would not have supported the law had they not believed it required by correct liberal justice, the coalition's support manifests to others a concern for treating non-Catholics as politically free and equal. This common knowledge is difficult to achieve. Even when members of this coalition have the right motivating reasons, skeptical observers may see their support for the law as the Catholic tail wagging the politically liberal dog. So, the motivationally overdetermined Catholic may still threaten ties of civic friendship because non-Catholics cannot reliably distinguish her from the Catholic motivated by sectarian concerns. Nevertheless, there is an important conceptual distinction here that the pluralist can make and the agnostic cannot. The overdetermined Catholic manifests a virtue of civility that the agnostic cannot even acknowledge as a virtue. If you think this virtue is important, then you have reason to reject agnosticism in favor of pluralism.

Let me conclude by showing how pluralism is compatible with the method of epistemic abstinence. Pluralist political liberals ultimately pass the buck onto citizens to show some specific conception of justice is correct or most

reasonable. Members of the resulting class of conceptions—the "family" of most reasonable conceptions of justice—are normatively distinctive in the following sense. Theorists hold that reasonable citizens who honor the duty of civility ought to deliberate in the framework of one of the members of this set. But a theorist cannot compare in the abstract, i.e., without referencing some specific citizen's full sectarian belief set, any two members of this family, α and β. The theorist cannot say of α and β that one is better or worse than the other.[59] In contrast, reasonable citizens can do this by referring to the criteria they determine to be correct in full justification. The epistemically abstinent theorist takes no stand on comparing the many correctness criteria that are in reflective equilibrium for different citizens. But it is important to note that only a proper subset of all reasonable conceptions of justice will be correct according to citizens. There will be some liberal conception of justice, γ, that no reasonable citizen regards as correct, leaving γ outside the family of most reasonable political conceptions. Consistent with practicing epistemic abstinence, pluralists can take a firm stand in saying that laws required by α or β are more just than laws required by γ. Laws required by γ might be publicly justified, and yet the theorist can consistently claim that society can do better, more closely approximating one of the visions of correct justice. In this sense, the pluralist theorist need not stand fully outside of what David Enoch calls the "political arena."[60] The pluralist theorist can occupy her impartial, epistemically abstinent high ground while condemning many reasonable laws as less than fully just. Only, this impartial high ground sees multiple conceptions of justice as correct. The theorist's impartial high ground is not the same one an individual citizen, Alf, occupies. Alf sees one specific conception of justice as uniquely correct given his endorsement of a specific controversial notion of correctness.

5. CONCLUSION

Whereas agnostics cannot avail themselves of any notion besides reasonableness in analyzing justified coercion, pluralists can appeal to reasonableness and the notion of a most reasonable conception of justice. A conception of justice narrows down the space of publicly justifiable policy to one unique option that is most reasonable, providing guidance for the citizen faced with the deliberative question of deciding which policy in that space to support. Pluralists see the family of conceptions of justice that are most reasonable, according to some

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59   It may also be that the theorist cannot claim that α and β are equally good. In that case, the theorist must treat members of the family as incommensurable with each other. For this definition of incommensurability, see Raz, *The Morality of Freedom,* 322.

60   Enoch, "Against Public Reason," 134–36.

citizen, as isolating a special class of policy manifesting citizens' best attempts at treating each other as politically free and equal. Unlike agnosticism, pluralism offers an analysis of why reasonable citizens should honor the duty of civility. It also helps clarify what we can reasonably expect from peaceful political life in an ideal society where all honor the duty of civility. Political life should not be seen as a movement toward consensus on a single political conception of justice or as complacency with merely reasonable policy. Instead, it is a sphere of perpetual peaceful conflict among diverse visions of liberal justice, several of which the theorist of political liberalism can view as most reasonable.[61]

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