

JUSTICE AS FAIRNESS

A R E S T A T E M E N T



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EDITED BY ERIN KELLY

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PART V

The Question of Stability

§54. The Domain of the Political

54.1. In this last part we take up the question of the stability of justice as fairness and how its stability connects with the good of a political society well ordered by it. Our aim is to complete the argument for the two principles of justice. Recall that earlier (§25.5) we split the argument from the original position into two parts. In the first part, in which the principles of justice are provisionally chosen, the parties assume that the persons they represent are not moved by the special psychologies (or attitudes), as we called them. That is, the parties ignore persons' inclinations to be envious or spiteful, or to have a will to dominate or a tendency to be submissive, or to be peculiarly averse to uncertainty and risk. This assumption greatly simplifies the parties' reasoning in selecting principles, as is clear in the case of social and economic inequalities where the role of envy and spite cannot be ignored. Special attitudes aside, the parties can reason in terms of the fundamental interests of those they represent.

Yet these attitudes are important in human life and must be considered at some point. Here a difficulty arises: there seems to be no way of knowing in general, apart from considering at least the broad features of the main institutions of the existing basic structure, how liable people are to those propensities. So in carrying out the idea of the original position, how are we to direct the parties to proceed?

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54.2. The second part of the argument concerns the question of the stability of justice as fairness. This is the question whether justice as fairness is able to generate sufficient support for itself (§25.5).¹ The parties are to ask whether people who grow up in a society well ordered by the two principles of justice—the principles adopted in the first part of the argument—acquire a sufficiently strong and effective sense of justice so that they normally comply with just arrangements and are not moved to act otherwise, say, by social envy and spite, or by a will to dominate or a tendency to submit. If they do acquire a sufficiently strong sense of justice and are not swayed to the contrary by those special attitudes, then the outcome of the first part of the argument is confirmed and the argument for the two principles is complete.

By splitting the argument into two parts, we postpone the discussion of the special psychologies until the principles of justice are selected on the basis of the fundamental interests of persons as free and equal citizens. Once that is done those principles, when realized in the basic structure, provide the institutional background the parties need to estimate how likely it is that citizens who grow up within that background will be swayed by destabilizing special attitudes. This two-part argument removes the difficulty.

Together with the discussion of the special psychologies, the second part must take up the question whether in view of the general facts that characterize a democracy's political culture, and in particular the fact of reasonable pluralism, the political conception can be the focus of an overlapping consensus.² We will consider how the question of stability leads to the idea of an overlapping consensus on a political conception of justice. The social unity of a constitutional regime is seen to rest on such a consensus and this enables us to complete the discussion of stability—so far as we can go into it here—by giving a brief account of a reasonable moral psychology and of the good of political society.

54.3. We begin by recalling the idea of the domain of the political and of justice as fairness as a free-standing view. It is clear from the three features of a political conception (§9.1) that justice as fairness is such a conception

1. Note that stability as defined here is a property of a conception of justice, and not a property of a scheme of institutions. The latter is a different though not unrelated topic.

2. [See *Political Liberalism*, p. 141.]

and is not applied moral philosophy. Its principles, standards, and values are not the result of applying an already elaborated and independent religious, philosophical, or moral doctrine, comprehensive in scope and general in range. Rather, it formulates a family of highly significant (moral) values that properly apply to the basic structure of society. These are the political values: they arise in virtue of certain special features of the political relationship, as distinct from other relationships.

The political relationship we characterize as having at least two significant distinctive features.

First, it is a relationship of persons within the basic structure of society, a structure of basic institutions we enter only by birth and exit only by death (or so we may appropriately assume).³ Political society is closed, as it were; and we do not, and indeed cannot, enter or leave it voluntarily.

Second, political power is, of course, always coercive power backed by the state's machinery for enforcing its laws. But in a constitutional regime political power is also the power of equal citizens as a collective body: it is regularly imposed on citizens as individuals, some of whom may not accept the reasons widely believed to justify the general structure of political authority (the constitution); or when they do accept that structure, they may not regard as well grounded many of the laws enacted by the legislature to which they are subject.

Political liberalism holds, then, that there is a distinctive domain of the political identified by these features (among others) to which certain values, specified in an appropriate way, characteristically apply. So understood, the political is distinct from the associational, say, which is voluntary in ways that the political is not; it is also distinct from the familial and the personal, which are affectional, again in ways the political is not. (The associational, the familial, and the personal are simply three examples of the nonpolitical; there are others.)

54.4. Taking the political as a distinctive domain, let us say that a political conception formulating its basic characteristic values is a free-standing view. This means two things: first, that it is framed to apply in the first in-

3. The appropriateness of this assumption rests in part on a point made in §26.5: namely, that the right of emigration does not make the acceptance of political authority voluntary in the way that freedom of thought and liberty of conscience make the acceptance of ecclesiastical authority voluntary. This brings out a further feature of the domain of the political, one that distinguishes it from the associational.

stance to the basic structure of society alone;⁴ and second, that it formulates the characteristic political values without drawing on, or mentioning, independent nonpolitical values. A political conception does not deny that there are other values applying to the associational, the familial, and the personal; nor does it say that political values are entirely separate from, or unrelated to, those values. In §11 we introduced the idea that the problem of stability in a democratic society leads us to specify a political conception of justice and the domain of the political so as to make it possible for a political conception to be the focus of an overlapping consensus: that is, to gain the support of at least the reasonable comprehensive doctrines that endure and gain adherents over time. Otherwise, the institutions of a constitutional regime will not be secure.

Thus as a form of political liberalism, justice as fairness holds that, with regard to the constitutional essentials and questions of basic justice, and given the existence of a reasonably well ordered constitutional regime, the family of basic political values expressed by its principles and ideals have sufficient weight to override all other values that may normally come into conflict with them. It also holds, again with respect to constitutional essentials, that so far as possible, questions about those essentials are best settled by appeal to those political values alone. It is on those questions that agreement among those who affirm opposing comprehensive doctrines is most urgent.

54.5. These convictions clearly imply some relation between political and other values. Thus if it is said that outside the church there is no salvation,⁵ and hence a constitutional regime cannot be accepted, we must make some reply. From the point of view of political liberalism, the appropriate reply is that such a doctrine is unreasonable:⁶ it proposes to use the public's political power—a power in which all citizens have an equal share—forcibly to impose a view affecting constitutional essentials about which many citizens as reasonable persons, given what we have called the burdens of judgment (§11.4–5), are bound to differ uncompromisingly.

This reply does not say that the doctrine *extra ecclesia nulla salus* is not true. Rather, it says that it is unreasonable of any citizen, or citizens as

4. The extension of justice as fairness to the just relations between nation-states is discussed in *The Law of Peoples*.

5. So said Boniface VIII in his famous bull *Unam Sanctam* of 1302.

6. For clarity on this point I owe thanks to Wilfried Hinsch and Peter de Marneffe.

members of an association, to insist on using the public's (coercive) political power—the power of citizens as equals—to impose what they view as the implications of that doctrine upon other citizens. A reply from within a comprehensive view—the kind of reply we should like to avoid in discussing constitutional essentials—might say that the doctrine is untrue and rests on a misapprehension of the divine nature. If we do reject as unreasonable the state's enforcing a doctrine, we may of course also regard that doctrine as untrue. There may be no way to avoid implying its lack of truth, even when considering constitutional essentials.

Note, however, that in saying it is unreasonable to enforce a doctrine, it is not necessary that we also reject it as incorrect. Quite the contrary: it is vital to the idea of political liberalism that we may with perfect consistency hold that it would be unreasonable to use political power to enforce our own comprehensive religious, philosophical, or moral view, which we must, of course, affirm as true or reasonable (or as not unreasonable).

§55. The Question of Stability

55.1. We said that the argument for the two principles is presented in two parts. In the first part the parties' aim is to select the principles that best secure the good of the persons they represent, their fundamental interests, leaving aside the special psychologies. Only with the principles of justice provisionally on hand do the parties take up, in the second part, the question of stability. They now consider the special psychologies by checking whether those who grow up under just institutions (as the principles adopted specify them) will develop a sufficiently firm sense of justice with respect to those attitudes and inclinations. This aspect of the question is addressed in *Theory*, where §§80–81 illustrate the kind of discussion needed. I would not change them substantially for our purposes. What is said below in §§59–60 supplements that account.

More important for us, now that justice as fairness is seen as a political conception, is that the parties must also consider whether the principles adopted, and the conception to which they belong, can gain the support of the diversity of reasonable comprehensive doctrines bound to exist in a well-ordered democratic society. It is at this point that we introduce the idea of an overlapping consensus: a consensus in which the same political conception is endorsed by the opposing reasonable comprehensive doctrines that gain a significant body of adherents and endure from one generation to the next.

In describing the second part of the argument, let us agree that a political conception must be practicable, fall under the art of the possible. This contrasts with a moral conception that is not political: a moral conception may condemn the world and human nature as too corrupt to be moved by its precepts and ideals.

55.2. There are, however, two ways in which a political conception may be concerned with stability.⁷ In one we suppose that stability is a purely practical matter: if a conception fails to be stable, it is futile to try to realize it. Perhaps we think there are two separate tasks: one is to work out a political conception that seems sound, or reasonable, at least to us; the other is to find ways to bring others who may now reject it to share it, or failing that, to act in accordance with it, if need be prompted by penalties enforced by state power. As long as the means of persuasion or enforcement can be found, the conception is viewed as stable; it is not utopian in the pejorative sense.

But as a liberal conception, justice as fairness is concerned with stability in a different way. Finding a stable conception is not simply a matter of avoiding futility. Rather, what counts is the kind of stability, the nature of the forces that secure it. The idea is that, given certain assumptions specifying a reasonable human psychology and the normal conditions of human life, those who grow up under just basic institutions—institutions that justice as fairness itself enjoins—acquire a reasoned and informed allegiance to those institutions sufficient to render them stable. Put another way: citizens' sense of justice, given their character and interests as formed by living under a just basic structure, is strong enough to resist the normal tendencies to injustice. Citizens act willingly to give one another justice over time. Stability is secured by sufficient motivation of the appropriate kind acquired under just institutions.

The kind of stability required of justice as fairness is based, then, on its being a liberal political view, one that aims to be acceptable to citizens as reasonable and rational, as well as free and equal, and so as addressed to their public reason. We have seen how this feature of liberalism connects with the feature of political power in a constitutional regime: namely, that it is the power of equal citizens as a collective body. It follows that if justice as fairness were not expressly designed to gain the reasoned support of citi-

7. In this and the next several paragraphs I am indebted to helpful discussions with T. M. Scanlon.

zens who affirm reasonable though conflicting comprehensive doctrines—the existence of such conflicting doctrines being a feature of the kind of public culture that conception itself sustains—it would not be liberal.

55.3. The point, then, is that, as a liberal conception, justice as fairness must not only avoid futility, but also the explanation of why it is practicable must be of the right kind. The problem of stability is not that of bringing others who reject a conception to share it, or to act in accordance with it, by workable sanctions, if necessary, as if the task were to find ways to impose that conception once we are convinced it is sound. Rather, as a liberal political conception, justice as fairness is not reasonable in the first place unless it generates its own support in a suitable way by addressing each citizen's reason, as explained within its own framework.⁸ Only so is it an account of political legitimacy as opposed to an account of how those who hold political power can satisfy themselves in the light of their own convictions that they are acting properly. A liberal conception of political legitimacy aims for a public basis of justification and appeals to free public reason, and hence to citizens viewed as reasonable and rational.

55.4. The idea of an overlapping consensus was not used in *Theory*.⁹ That work never discusses whether justice as fairness is meant as a comprehensive moral doctrine or as a political conception of justice. In one place (*Theory*, §3: 15) it says that if justice as fairness succeeds reasonably well, a next step would be to study the more general view suggested by the name "rightness as fairness." There is, though, no mention of the distinction between a political conception and a comprehensive doctrine. The reader might reasonably conclude that justice as fairness is set out as part of a comprehensive view that might be developed later were success to invite.

This conclusion is supported by the account of a well-ordered society in Part III of *Theory*. There the members of any well-ordered society, whether it be that of justice as fairness or of some other view, accept not only the same conception of justice but also the same comprehensive doctrine of which that conception is a part, or from which it can be derived. See, for

8. The force of the phrase "within its own framework" as used in the text is expressed by the two parts of the argument from the original position. Both parts are carried out within the same framework and subject to the same conditions included in the original position as a device of representation.

9. The term is used once, *Theory*, §59: 340, but for a different purpose than my present one.

example, the discussion of the relative stability of justice as fairness and utilitarianism (*Theory*, §76). In the latter case, the members of the associated well-ordered society are said to affirm the utilitarian view, which is by its nature (unless expressly restricted) a comprehensive doctrine (*Theory*, §76: 436-440).

55.5. As we said in §11.1, the idea of an overlapping consensus¹⁰ is used to enable us to think of the well-ordered society of justice as fairness in a more realistic way. Given the free institutions that conception enjoins, we can no longer assume that citizens generally, even if they accept justice as fairness as a political conception, also accept the particular comprehensive view to which it might seem in *Theory* to belong.

We now assume that citizens hold two distinct views; or perhaps better, their overall view has two parts: one part can be seen to be, or to coincide with, a political conception of justice; the other part is a (fully or partially) comprehensive doctrine to which the political conception is in some manner related. The political conception may be simply a part of, or an adjunct to, a partially comprehensive view; or it may be endorsed because it can be derived within a fully articulated comprehensive doctrine. It is left to citizens individually to decide for themselves in what way their shared political conception is related to their more comprehensive views.

Thus we now say: a society is well ordered by justice as fairness so long as, first, citizens who affirm reasonable comprehensive doctrines generally endorse justice as fairness as giving the content of their political judgments; and second, unreasonable comprehensive doctrines do not gain enough currency to compromise the essential justice of basic institutions. This is a better and no longer utopian way of thinking of the well-ordered society of justice as fairness. It corrects the view in *Theory*, which fails to allow for the condition of pluralism to which its own principles lead.

Moreover, because justice as fairness is a free-standing political conception (§54.3) that articulates fundamental political and constitutional values, endorsing it involves far less than is contained in a comprehensive doctrine. Taking such a well-ordered society as the aim of reform and change seems not altogether impracticable: under the reasonably favorable conditions that make a constitutional regime possible, that aim is a reasonable guide and may be in good part realized. By contrast, a free democratic society well ordered by any comprehensive doctrine, religious or secular, is surely

10. The idea is first introduced in "Justice as Fairness: Political Not Metaphysical," §VI.

utopian in the pejorative sense. Achieving it would in any case require the oppressive use of state power. This is as true of the liberalism of rightness as fairness, as it is of the Christianity of Aquinas or Luther.

§56. Is Justice as Fairness Political in the Wrong Way?

56.1. We now check that the idea of an overlapping consensus does not make justice as fairness political in the wrong way. Everyday ideas about consensus politics and how to achieve consensus have misleading connotations. We need to be clear that these connotations are not involved in our very different idea of an overlapping consensus.

For a political conception to avoid being political in the wrong way, it must formulate a free-standing view of the very great (moral) values applying to the political relationship. It must also set out a public basis of justification for free institutions in a manner accessible to public reason. By contrast, a political conception is political in the wrong way when it is framed as a workable compromise between known and existing political interests, or when it looks to particular comprehensive doctrines presently existing in society and then tailors itself to win their allegiance.

56.2. Our use of the idea of an overlapping consensus arises thus: we suppose a constitutional democratic regime to be reasonably just and workable, and worth defending. Yet given the fact of reasonable pluralism, how can we frame our defense of it so that it might win wide support and thus achieve sufficient stability?

To this end, we do not look to the comprehensive doctrines that in fact exist and then draw up a political conception that strikes some kind of balance of forces between them. To illustrate: in specifying a list of primary goods,¹¹ say, we could proceed in two ways. We could look at the various comprehensive doctrines actually found in society and develop an index of such goods that is near to those doctrines' center of gravity, so to speak. That is, we would seek a kind of average of what those who affirmed those views would demand by way of institutional rights and claims and all-purpose means. Doing this might seem the best way to ensure that the index provides the basic elements necessary to advance the conceptions of the

11. The idea of primary goods is introduced in *Political Liberalism*, lect. II, §5.3, and discussed in some detail in lect. V, §§3-4.

good associated with existing doctrines and thus to improve the likelihood of actually securing an overlapping consensus.

56.3. This is not how justice as fairness proceeds; and to do so would make it political in the wrong way. Instead, it elaborates a political conception as a free-standing view working from the fundamental idea of society as a fair system of cooperation and its companion ideas. Our hope is that this idea, with its index of primary goods arrived at from within it, can be the focus of a reasonable overlapping consensus. We leave aside comprehensive doctrines that now exist, have existed, or might exist. The thought is not that primary goods are fair to comprehensive conceptions of the good associated with such doctrines by striking a fair balance among them, but rather that it is fair to free and equal citizens as those persons whose conceptions of the good they are.

The problem is how to frame a conception of justice for a constitutional regime such that those who support, or who might be brought to support, that kind of regime might also endorse the political conception, despite differences in their comprehensive views. This leads to the idea of a political conception of justice, starting from the fundamental ideas of a democratic society and presupposing no particular wider doctrine. We put no doctrinal obstacles to its winning the support of a reasonable and enduring overlapping consensus.

§57. How Is Political Liberalism Possible?

57.1. The question now arises as to how, as we have specified it, political liberalism is possible. That is, how can the values of a distinctive domain of the political—a subdomain of the realm of all values—normally outweigh whatever values may conflict with them? Or, put another way: how can we affirm a comprehensive doctrine as true or reasonable and yet hold that it would not be reasonable to use the state's power to require others' acceptance of it or compliance with the special laws it might sanction?

The answer to this question has two complementary parts. The first part says that the characteristic values of the political are very great values and hence not easily overridden: these values govern the basic framework of social life—the very groundwork of our existence¹²—and specify the fundamental terms of political and social cooperation. In justice as fairness some

12. The phrase is from J. S. Mill, *Utilitarianism*, chap. 5, par. 25.

of these great values are the values of justice expressed by the principles of justice for the basic structure: the values of equal political and civil liberty, fair equality of opportunity, and economic reciprocity as well as the social bases of citizens' self-respect.

Other great values fall under the values of public reason (§26), and are expressed in the guidelines for public inquiry and in the steps taken to secure that such inquiry is free and public, informed and reasonable. These values include not only the appropriate use of the fundamental concepts of judgment, inference, and evidence, but also the virtues of reasonableness and fair-mindedness as shown in adhering to the criteria and procedures of commonsense knowledge and the methods and conclusions of science when not controversial, and in respecting the precepts governing reasonable political discussion.

57.2. Together, the values of justice and of public reason express the liberal ideal that since political power is the coercive power of citizens as a corporate body—a power in which each has an equal share—this power is to be exercised, at least when constitutional essentials and questions of basic justice are at stake, only in ways that all citizens may reasonably be expected to endorse.

As we have seen, political liberalism tries, so far as possible, to present the account of these values as those of a distinctive domain—the political—as a free-standing view; and as values that can be understood and affirmed without presupposing any particular comprehensive doctrine. It is left to citizens individually as part of their liberty of conscience to settle how they think the great values of the political domain are related to the other values they accept. We hope that in political practice we can thereby firmly ground the constitutional essentials in political values alone and that these values will provide a workable shared basis of public justification.

57.3. The second part of the answer as to how political liberalism is possible complements the first. This second part says that the history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political as specified by a political conception of justice. History tells of a plurality of not unreasonable comprehensive doctrines and this makes an overlapping consensus possible. How this can happen is shown by a model case of an overlapping consensus.

This model case contains three views: one view affirms the political conception because its religious doctrine and account of free faith lead to a principle of toleration and support the basic liberties of a constitutional regime; the second view affirms the political conception on the basis of a comprehensive liberal moral doctrine such as that of Kant or J. S. Mill. The third is but a loosely articulated doctrine covering a large family of nonpolitical values in addition to the political values of a constitutional regime; and it holds that under the reasonably favorable conditions that make democracy possible, those political values normally outweigh whatever nonpolitical values may conflict with them. Only the first two views—the religious doctrine and the liberalisms of Kant and Mill—are quite general and comprehensive; the third is loose and not systematic, although under reasonably favorable conditions it is normally adequate for questions of political justice. The first two more fully articulated and systematic views agree with the judgments of the third in these matters.

57.4. When is a comprehensive doctrine reasonable? Without giving a full definition, a reasonable doctrine must recognize the burdens of judgment (§11.4–5) and so, among other political values, that of liberty of conscience. To explain: we have distinguished between the reasonable and the rational (§2.2; §23.2–3). These two ideas, we said, are essential elements in the idea of society viewed as a fair system of cooperation among citizens regarded as free and equal. In general, reasonable persons are ready to propose certain principles (as specifying fair terms of cooperation), as well as to comply with those principles even at the expense of their own interests as circumstances require, when others are moved to do likewise. Further, where the claims of those cooperating are similarly based in relevant respects, as when all have the status of free and equal citizens, there is no reason for any of them to accept principles that assign them lesser basic rights than the rest. Those who insist on imposing such principles on others, moved say by their greater power or stronger bargaining position, are being unreasonable, yet given their interests, they may be perfectly rational. Everyday speech reflects this contrast between the reasonable and the rational.

Turning to the present case, we view democratic citizens not only as free and equal but as reasonable and rational, all having an equal share in the corporate political power of society, and all equally subject to the burdens of judgment. There is, therefore, no reason why any citizen, or association of citizens, should have the right to use the state's power to favor a comprehensive doctrine, or to impose its implications on the rest. Given the

grounds for the priority of liberty (§30), no citizen when fairly represented could grant to others the political authority to do that, and the parties as representatives reason accordingly. Any such authority is therefore without reason, contrary to persons' fundamental interests in developing and exercising their moral powers and in pursuing their particular (permissible) conceptions of the good. Reasonable comprehensive doctrines recognize this fact and with it that all have an equal liberty of conscience.

§58. An Overlapping Consensus Not Utopian

58.1. It may be objected that the idea of an overlapping consensus is utopian: that is, that there are not sufficient political, social, or psychological forces either to bring about an overlapping consensus (when one does not exist), or to render one stable (should one exist). Here we can only touch on this intricate question, and I merely outline one way in which such a consensus on a liberal political conception much like justice as fairness might come about and its stability be made secure.

Let us suppose that at a certain time, as a result of various historical contingencies, the principles of a liberal conception—say those of justice as fairness—have come to be accepted as a mere *modus vivendi*, and that existing political institutions meet their requirements. This acceptance has come about, we may assume, in much the same way that the acceptance of the principle of toleration as a *modus vivendi* came about following the Reformation: at first reluctantly, but nevertheless as providing the only alternative to endless and destructive civil strife. Here I use the phrase “*modus vivendi*” in the usual way, as may be illustrated by a treaty between two states whose national interests put them at odds. In negotiating a treaty, each state would be wise and prudent to make sure that the treaty is drawn up in such a way that it is public knowledge that it is not advantageous for either state to violate it. Both states, however, are ready to pursue their goals at the expense of the other, and should conditions change they may do so.

That the same may be true of toleration is clear from the example of Catholics and Protestants in the sixteenth century. At that time, both held that it was the duty of the ruler to uphold the true religion and to repress the spread of heresy and false doctrine. In this case, the acceptance of the principle of toleration would indeed be a mere *modus vivendi*: should either faith become dominant, the principle of toleration would no longer be followed. What is essential for an overlapping consensus is stability with re-

spect to the distribution of power: this requires that the political conception be affirmed by citizens irrespective of the political strength of their comprehensive view.

58.2. Our question, then, is this: how might it happen that over generations the initial acquiescence in justice as fairness as a *modus vivendi* could develop into a stable and enduring overlapping consensus? At this point a certain looseness in our comprehensive views, as well as their being not fully, but only partially comprehensive, may be particularly significant.¹³ Let us ask: how far in practice does the allegiance to a political conception actually depend on its derivation from a comprehensive view? Consider three possibilities: (a) the political conception is derived from the comprehensive doctrine; (b) it is not derived from but is compatible with that doctrine; and last, (c) the political conception is incompatible with it.

In everyday life we have not usually decided, or even thought much about, which of these cases hold. To decide among them would raise highly complicated questions; and in practice we may not need to decide among them. Most people's religious, philosophical, and moral doctrines are not seen by them as fully general and comprehensive; generality and comprehensiveness admit of degree, and so does the extent to which a view is articulated and systematic. There is lots of slippage, so to speak, many ways for the political conception to cohere loosely with a (partially) comprehensive view, and many ways within the limits of a political conception to allow for the pursuit of different (partially) comprehensive doctrines.

This suggests that many if not most citizens come to affirm the public political conception without seeing any particular connection, one way or the other, between it and their other views. Hence it is possible for them first to affirm that conception on its own and to appreciate the public good it accomplishes in a democratic society. Should an incompatibility later be recognized between the political conception and their comprehensive doctrines, then they might very well adjust or revise the latter rather than reject the political conception. Note that here we distinguish between the initial allegiance to, or appreciation of, the political conception and the later adjustment or revision of comprehensive doctrines to which that allegiance or appreciation leads when inconsistencies arise. These adjustments or revisions we may suppose to take place slowly over time as the political conception shapes comprehensive views to cohere with it.

13. Here I elaborate an idea of Samuel Scheffler's stated in conversation.

58.3. We now ask: in virtue of what political values might justice as fairness gain allegiance to itself? An allegiance to institutions and to the conception that regulates them may, of course, be based in part on long-term self- and group-interests, custom and traditional attitudes, or simply on the desire to conform to what is expected and normally done. Widespread allegiance may also be encouraged by institutions securing for all citizens the political values included under what Hart calls the minimum content of natural law.¹⁴ But here we are concerned with the further bases of allegiance generated by a liberal conception of justice.

At this point we simply recall §33, where we said that a liberal conception, in effectively regulating basic political institutions, meets the three essential requirements of a stable constitutional regime. First, it fixes, once and for all, the content of basic rights and liberties, takes those guarantees off the political agenda, and puts them beyond the calculus of social interests. Second, its form of reasoning is relatively clear and perspicuous, and reasonably reliable in its own terms;¹⁵ and third, its conception of free public reason encourages the cooperative political virtues.

We conjecture, then, that as citizens come to appreciate what a liberal conception achieves, they acquire an allegiance to it, an allegiance that becomes stronger over time. They come to think it both reasonable and wise to affirm its principles of justice as expressing political values that, under the reasonably favorable conditions that make democracy possible, normally outweigh whatever values may oppose them. With this we have an overlapping consensus.

58.4. That an overlapping consensus is quite different from a *modus vivendi* is clear from the model case in §57.3: the case where the political conception is the focus of a consensus containing a religious doctrine of free faith, a liberalism of the kind of Kant or Mill, and a rather unsystematic view that includes a wide range of nonpolitical values along with the political values of justice as fairness. In this example, note two features: first, the

14. See Hart's *The Concept of Law*, pp. 189–195, for what he calls the minimum content of natural law. I assume that a liberal conception includes (as do many other familiar conceptions) this minimum content; and so in the text I focus on the bases of the allegiance such a conception generates in virtue of the distinctive content of its principles.

15. Here the phrase “in its own terms” means that we are not at present concerned with whether the conception in question is true, or reasonable (as the case may be), but with how easily its principles and standards can be correctly understood and reliably applied in public discussion.

focus of consensus, the political conception of justice, is itself a moral conception. And second, it is affirmed on moral grounds, that is, it includes conceptions of society and of citizens as persons, as well as principles of justice, and an account of the cooperative virtues through which those principles are embodied in human character and expressed in public life.

An overlapping consensus, therefore, is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, based on a contingent, or historical, convergence of self- or group-interests. All three views in the model case support from within themselves the political conception: each recognizes its concepts, principles, and virtues as the shared content through which their several views coincide. The fact that those who affirm the political conception start from within their own comprehensive view, and hence organize their doctrine using different premises and grounds, does not make their affirming it any less religious, philosophical, or moral, as the case may be.

The preceding two features of an overlapping consensus (moral focus and moral grounds) connect with a third and essential feature, that of stability: that is, those who affirm the various views supporting the political conception will not withdraw their support of it should the relative strength of their view in society increase and eventually become dominant. So long as the three views are affirmed and not revised, the political conception will still be supported regardless of shifts in the distribution of political power; this in contrast with the case of Catholic and Protestant in the sixteenth century. Each view supports the political conception on its merits. The test for this is whether the consensus is stable with respect to changes in the distribution of power among views. This feature of stability highlights a basic contrast between an overlapping consensus and a *modus vivendi*, the stability of which does depend on that distribution.

§59. A Reasonable Moral Psychology

59.1. We have just seen how an initial acquiescence in a liberal conception of justice as a *modus vivendi* may change over time into a stable overlapping consensus. This real possibility is all we need show in reply to the objection that the idea of such a consensus is utopian. However, to confirm this possibility, I sketch, necessarily only briefly, the main psychological assumptions underlying the preceding account of how political allegiance is generated. This leads to what we may think of as a reasonable moral psychology; indeed, a psychology of the reasonable itself. This name is appro-

appropriate since the idea of reciprocity appears both as a principle giving its content and as a disposition to answer in kind. And recall that the basis of equality at the highest level (§39.2) is simply the capacity to be both reasonable and rational. In short: the reasonable generates itself and answers itself in kind. It is not alone among dispositions in this respect. What makes it unique is its tie with reason.

The assumptions of this psychology essentially state that persons are capable of being reasonable and rational, and of engaging in fair social cooperation. Thus:

(1) In line with the (political) conception of the person with the two moral powers, citizens have a capacity for a conception of the good and a capacity to acquire conceptions of justice and to act as these conceptions require. In short, they have a capacity to be both reasonable and rational.

(2) When they believe that institutions or social practices are just, or fair (as specified, say, by principles they would themselves, when fairly represented, be prepared to propose or to acknowledge), citizens are ready and willing to do their part in those arrangements provided they have sufficient assurance that others will also do theirs. This belongs to the reasonable as we have specified it beginning in §2.2.

(3) When others with evident intention¹⁶ do their part in just or fair institutions, citizens tend to develop trust and confidence in them. This tendency to answer in kind, to answer others' being fair to us with our being fair to them, and the like, is an element of the psychology of the reasonable. In the account in *Theory* of the three-stage development of the morality of principles (as it is called there), the psychological laws for each stage exhibit this reciprocity of disposition.¹⁷

(4) The trust and confidence (noted in (3)) grow stronger and more complete as the success of shared cooperative arrangements is sustained over a longer time; and they also grow stronger and more complete when the basic institutions framed to secure fundamental interests (for example, the basic rights and liberties) are more willingly and steadfastly recognized in public political life.

16. The idea of evident intention as used here is from Rousseau's *Emile*, see *Theory*, §70, n. 9.

17. See *Theory*, §70: 405f.; §71: 411f.; §72: 414f.; §75: 433. The moral psychology behind the assumptions as described in the text is given in considerably more detail in *Theory*, chap. VIII, §§70-72, 75-76. I simply refer to those sections as I would not change them substantially. What is essential is to see their role in (the second part of) the argument for the principles of justice as a whole.

(5) We may also suppose that everyone recognizes what I have called the historical and social conditions of modern democratic societies: (i) the fact of reasonable pluralism and (ii) the fact of its permanence, as well as (iii) the fact that this pluralism can be overcome only by the oppressive use of state power. These conditions are a shared historical situation. In this situation it is unreasonable not to recognize (iv) the fact of the burdens of judgment and to acknowledge that all are equally subject to them together with the full consequences of this (§57.4).

(6) Also part of the historical and social conditions of democracy are (v) the fact of moderate scarcity and (vi) the fact of there being numerous possibilities of gains from well-organized social cooperation, provided it can be established on fair terms. These last two facts and the four general facts specify the circumstances of political justice (§24).

59.2. We can now enlarge upon our answer to the question: how might an overlapping consensus on a liberal conception of justice develop from its acceptance as a mere *modus vivendi*? Recall our assumption that the comprehensive doctrines of most people are not fully comprehensive, and that this allows scope for the development of an independent allegiance to a liberal conception once the way it works is appreciated. This independent allegiance in turn leads people to act with evident intention in accordance with liberal arrangements, since they have reasonable assurance (founded in part on past experience) that others will also comply with them. Gradually over time, as the success of political cooperation continues, citizens come to have increasing trust and confidence in one another.

The discovery of a new social possibility: the possibility of a reasonably harmonious and stable pluralist and democratic society, may follow from this success of liberal institutions. Before the successful practice of toleration in societies with liberal institutions there was no way of knowing of that possibility. It may seem more natural to believe, as centuries-long acceptance of intolerance appeared to confirm, that social unity and concord require agreement on a general and comprehensive religious, philosophical, or moral doctrine. Intolerance was seen as a condition of social order and stability.¹⁸ The weakening of that belief helps to clear the way for free institutions.

To conclude: precisely because it is not general and comprehensive, a

18. Hume remarks on this in par. 6 of "Liberty of the Press" (1741). See also A. G. Dickens, *The English Reformation* (Glasgow: Fontana Press, 1967), pp. 440f.

political conception of justice (taking justice as fairness as an example) may encourage the eventual development of a mere *modus vivendi* into an overlapping consensus. The conception's limited scope together with the looseness of our comprehensive doctrines allows leeway for it to gain an initial allegiance to itself and thereby to shape those doctrines accordingly as conflicts arise, a process that takes place gradually over generations (assuming a reasonable moral psychology). Religions that once rejected toleration may come to accept it and to affirm a doctrine of free faith; the comprehensive liberalism of Kant and Mill, while viewed as suitable for nonpublic life and as possible bases for affirming a constitutional regime, are no longer proposed as political conceptions of justice. On this account an overlapping consensus is not a happy coincidence, even if aided, as it no doubt must be, by great historical good fortune. Rather, it is in part the work of society's public tradition of political thought in developing a practicable political conception of justice.

§60. The Good of Political Society

60.1. Having understood how the question of stability calls for the idea of an overlapping consensus, we now take up an aspect of stability connected with the good of a political society well ordered by the two principles of justice. This good is realized by citizens, both as persons and as a corporate body, when they act to uphold a just constitutional regime.¹⁹

Let us begin by examining the objection that because it is not based on a comprehensive religious, philosophical, or moral doctrine, justice as fairness abandons the ideal of a political community and views society as so many distinct individuals, or distinct associations, cooperating solely to pursue their own personal, or associational, advantage without having any final ends in common. (Here a final end is understood as an end valued or wanted for its own sake and not solely as a means to something else.) It is sometimes objected that, as a contract doctrine, justice as fairness is an individualistic view and sees political institutions as purely instrumental to individual or associational ends, as the institutions of, let's say, a private society. In this case, political society itself is not a good, but at best a means to individual or associational good.

In reply, justice as fairness does indeed abandon the ideal of political

19. This good is the fifth conception of the good so far discussed. For the preceding four, see §43.2. On the sixth conception of the good see note 22.

community if by that ideal is meant a political society united on one (partially or fully) comprehensive religious, philosophical, or moral doctrine. That conception of social unity is excluded by the fact of reasonable pluralism. It is no longer a political possibility for those who accept the basic liberties and the principle of toleration that is basic to democratic institutions. We must view social unity in a different way: as deriving from an overlapping consensus on a political conception of justice. As we have seen, in such a consensus this political conception is affirmed by citizens who hold different and conflicting comprehensive doctrines, and they affirm it from within their own distinct views.

60.2. Recall (from §3) that to say a society is well ordered by a conception of justice means three things: (1) that it is a society in which all citizens accept, and acknowledge before one another that they accept, the same principles of justice; (2) that its basic structure, its main political and social institutions and the way they hang together as one system of cooperation, is publicly known, or with good reason believed, to satisfy those principles; and (3) that citizens have a normally effective sense of justice, that is, one that enables them to understand and to apply the principles of justice, and for the most part to act from them as their circumstances require. Social unity so understood is the most desirable conception of unity available to us: it is the limit of the practical best.

A well-ordered society, as thus specified, is not, then, a private society; for citizens do have final ends in common. While it is true that they do not affirm the same comprehensive doctrine, they do affirm the same political conception; and this means that they share one basic political end, and one with high priority: namely, the end of supporting just institutions and giving one another justice accordingly, not to mention the other ends they must also share and realize through their political cooperation. Moreover, in a well-ordered society the end of political justice is among citizens' most basic aims by reference to which they express the kind of person they want to be.²⁰

From this last remark it follows that a political society is a community if

20. If we use the term "identity" in a manner now common, we can say that the shared final end of giving one another justice may be part of citizens' identity. See Amy Gutmann, "Communitarian Critics of Liberalism," *Philosophy and Public Affairs* 14 (Summer 1985): 308-322. At p. 311n, Gutmann is surely right in saying that our commitment to treat other citizens as equals, and therefore to respect their freedom of religion, say, may be just as elemental a part of our identity as our affirming a particular religion and fulfilling its practices.

we now mean by a community a society, including a political society, the members of which—in this case citizens—share certain final ends to which they give very high priority, so much so that in stating before themselves the kind of person they want to be they count their having these ends as essential. Of course, nothing turns on these definitions of community alone; they are simply verbal stipulations. What is vital is that the well-ordered society specified by the political conception of justice characterizes citizens as having shared final ends of the requisite kind.

60.3. Together with other assumptions made, these shared final ends provide the basis for the good of a well-ordered society. We regard citizens as having the two moral powers, and the basic rights and liberties of a constitutional regime are to assure that everyone can adequately develop these powers and exercise them fully over the course of a complete life as they so decide. Under normal circumstances, then, we suppose those moral powers to be developed and exercised within institutions of political freedom and liberty of conscience, and their exercise to be supported and sustained by the social bases of self-respect.

These matters granted, the well-ordered society of justice as fairness is a good in two ways. In the first way it is a good for persons individually, and this for two reasons. One reason is that the exercise of the two moral powers is experienced as good. This is a consequence of the moral psychology used in justice as fairness.²¹ That their exercise may be an important good, and will be one for many people, is clear from the central role of these powers in the political conception of persons as citizens. We view citizens, for the purposes of political justice, as normal and fully cooperating members of society over a complete life, and thus as having the moral powers that enable them to assume this role. In this context we might say: part of the essential nature of citizens (within the political conception) is their having the two moral powers that are the root of their capacity to engage in fair social cooperation. A second reason political society is a good for citizens is that it secures for them the good of justice and the social bases of mutual- and self-respect. Thus, in securing the equal basic rights, liberties and fair opportunities, political society guarantees persons public recognition of their status as free and equal. In securing these things political society answers to their fundamental needs.

21. In *Theory* this psychology uses the so-called Aristotelian principle (see §65); other views might adopt different principles to reach much the same conclusion.

The good involved in the exercise of the moral powers and in the public recognition of persons' status as citizens belongs to the political good of a well-ordered society and not to that of a comprehensive doctrine. Repeatedly we must insist on this distinction, even though a comprehensive doctrine may endorse this good from within its own point of view. Otherwise we lose sight of the path justice as fairness must follow if it is to gain the support of an overlapping consensus. As we have stressed, the priority of right does not mean that ideas of the good must be avoided; that is impossible (§43.1). Rather, it means that the ideas used must be political ideas: they must be tailored to meet the restrictions imposed by the political conception of justice and fit into the space it allows.

60.4. A well-ordered political society is also good in a second way. For whenever there is a shared final end, the achievement of which calls on the cooperation of many, the good realized is social: it is realized through citizens' joint activity in mutual dependence on the appropriate actions being taken by others. Establishing and successfully maintaining reasonably just (though of course always imperfect) democratic institutions over a long period of time, perhaps gradually reforming them over generations, though not, to be sure, without lapses, is a great social good and appreciated as such. This is shown by the fact that a democratic people esteem it as one of the significant achievements of their history.

That there should be such political and social goods is no more mysterious than that members of an orchestra, or players on a team, or even both teams in a game, should take pleasure and a certain (proper) pride in a good performance, or in a good play of the game, one they will want to remember.²² No doubt the requisite conditions become more difficult to satisfy as societies become larger and the social distance between citizens becomes greater, but these differences, as great and inhibiting as they may be, do not affect the psychological principle involved in realizing the good of justice in a well-ordered political society. Moreover, this good can be highly significant even when the conditions for realizing it are quite imperfect; and the sense of its loss can also be highly significant. A democratic people's pride in distinguishing themselves from nondemocratic peoples makes this clear, as does their concern to distance themselves from periods of their history in which injustice may have prevailed. But these reflections I shall not

22. Here I hint at the idea of the good of political society as a social union of social unions. See §43.2 and *Theory*, §79.

pursue. We need not establish how great a good is political good, only that it is a significant good, and one that fits within the political conception.

To see this, recall the public character of this good. For at the stage of the morality of principles ((3) of §59.1 above), each citizen of a well-ordered society recognizes the others as also affirming the principles of justice. Hence each also recognizes that all citizens give high priority to the end of cooperating politically with one another on terms that the representative of each would endorse in a situation in which they are all fairly represented as free and equal, and reasonable and rational (*Theory*, §72: 418f.). Put another way, citizens want to cooperate politically with one another in ways that satisfy the liberal principle of legitimacy: that is, on terms that can be publicly justified to all in the light of shared political values.

It remains only to point out the relation between citizens' seeing their political society as good and its stability. The more they see their political society as good for themselves both as a corporate body and as individuals, and the greater their appreciation of the political conception in securing the three essentials of a stable regime, the less they will be prompted by the special attitudes of envy, spite, the will to dominate, and the temptation to deprive others of justice. As this was put in *Theory*: the question is whether the just and the good are congruent. *Theory*, §86, argues that those who grow up in a society well ordered by justice as fairness, who have a rational plan of life, and who also know, or reasonably believe, that everyone else has an effective sense of justice, have sufficient reason founded on their good (rather than on justice) to comply with just institutions. This is not to say that they do not also have reasons of justice so to act.

A well-ordered society is stable, then, because citizens are satisfied, all things considered, with the basic structure of their society. The considerations that move them are not perceived threats or dangers from outside forces but are given in terms of the political conception they all affirm. For in the well-ordered society of justice as fairness, the just and the good (as specified by that political conception) fit together in such a way that citizens who count as part of their good being reasonable and rational and being seen by others as such, are moved by reasons of their good to do what justice requires. Among these reasons is the good of political society itself in the ways we have discussed.