

# Consensus on What? Convergence for What?

## Four Models of Political Liberalism\*

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### 1 A PROJECT, NOT AN EDIFICE

In an early symposium on *A Theory of Justice*, John Chapman remarked that “Rawls’s theory has both the simplicity and the complexity of a Gothic cathedral.”<sup>1</sup> In his recent important book on Rawls’s political turn, Paul Weithman notes and endorses this characterization. Weithman seeks a unified interpretation of *Theory*, Rawls’s political turn and its search for stability, overcoming the many partial interpretations that take only “one view of the cathedral.”<sup>2</sup> When readers turn to *Political Liberalism*, the style that comes to mind is not gothic, but baroque.<sup>3</sup> If one takes even the 1993 hardback edition of *Political Liberalism* as a single, unified construction — much less the paperback edition, which includes the important “Reply to Habermas” — it has the tension, movement, complexity and irregularity of the baroque. Nevertheless, at least as far as we can see, the baroque interpretation too fails — after numerous readings, we are unable to construct a reasonably coherent and viable interpretation that accounts for all the

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<sup>1</sup> John W. Chapman, “Rawls’s Theory of Justice,” *American Political Science Review*, vol. 69 (1975): 588-93, at p. 588.

<sup>2</sup> Paul Weithman, *Why Political Liberalism? On John Rawls’s Political Turn* (New York: Oxford University Press, 2010), p. 5.

<sup>3</sup> “The more baroque the theory has become, the more assistance an ordinary citizen has needed from professional exegetes to understand its practical implications.” Jeffrey Stout, “Public Reason and Dialectical Pragmatism” (unpublished manuscript).

important remarks in *Political Liberalism*. Here we concur with readers as diverse in their sympathies as Brian Barry and Burton Dreben that Rawls is exploring and developing different constructions, or as we shall say, “models of political liberalism,” between the hardcover and paperback editions of *Political Liberalism*, within each edition, and sometimes within a single essay.<sup>4</sup>

We do not take this conclusion to be dismissive. As we read his work, Rawls was developing a stunningly innovative approach to political philosophy that challenged many of the deepest assumptions of his colleagues, which consistently led them to misunderstand much of what Rawls was trying to say. He was struggling with different ways to model these new insights and, as is the case with almost all radical innovators, he was simultaneously developing new vocabulary and concepts that would allow him to express these radically new ideas.<sup>5</sup> Given the revolutionary nature of his project we should not look for finished constructions. Rather, we should seek to identify models he explored to solve some problems, and distinguish them from articulations that sought to grapple with different issues. Sometimes one model supplanted another, but more often the models coexisted, each offering insights but yet unintegrated into a coherent construction. The genius of the political liberalism project was its relentless search for new and better ways to think about political philosophy in a diverse world, constantly posing new problems and new solutions. It was — and for some of us remains — an innovative and incomplete research program, not a complex construction to be admired.

In this essay our focus is the core of all models of political liberalism: the nature of overlapping consensus and its relation to public reason. We present four models of political liberalism, which identify different problems and claims. These are presented

<sup>4</sup> Brian Barry, “John Rawls and the Search for Stability,” *Ethics*, vol. 105 (July 1995): 874-915; Burton Dreben, “On Rawls on Political Liberalism” in *The Cambridge Companion to Rawls*, edited by Samuel Freeman (Cambridge: Cambridge University Press, 2003): 316-346.

<sup>5</sup> None of this is to deny that Rawls correctly saw many of these themes in the history of political philosophy. Radical innovation in philosophy often looks at its history in a new light, using the new concepts it can say things about the history of philosophy that have hitherto been almost invisible.

as analytical constructions highlighting the different problems Rawls was seeking to solve. In presenting the models, however, we do not merely discuss the aspects of Rawls's view that they capture. Throughout the paper, we highlight limitations and tensions for each model. Though some of the models correct deficiencies of others, we argue that none of the models is fully satisfactory. Though each model illuminates part of Rawls's project, we are left with neither a cathedral nor a completed project.

We do not claim that these are *the* four "correct" models: each has a number of elements that can be combined in different ways, to produce different models. We imagine that most readers will think of fifth, six or even seventh models that they think superior. So far from a difficulty, this is precisely our aim: to spur readers to reassemble the rich elements of *Political Liberalism* to produce tractable and enlightening models of political life among free and equal citizens under conditions of deep diversity to advance the public reason project.<sup>6</sup> Surely that, not the contemplation of a supposedly finished work, is our aim.

## 2 MODEL I: RECASTING JUSTICE AS FAIRNESS

### 2.1 Rehearsing the "Serious Problem" Within Justice as Fairness

Let us begin with Rawls's familiar, yet important, remarks in the 1993 introduction to *Political Liberalism* explaining the relation between it and *Theory of Justice*.

the serious problem I have in mind concerns the unrealistic idea of a well-ordered society as it appears in *Theory*. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive philosophical doctrine. They accept, as rooted in this doctrine, its two principles of justice. ...

Now the serious problem is this. A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by

<sup>6</sup> This overarching aim encompasses what can be seen as two lines of argument in the paper. On the one hand, we try to show that there are interesting and insightful proposals or tools presented in *Political Liberalism* that are worthy of development. On the other hand, we argue that none of these proposals, as found in *Political Liberalism*, is fully satisfactory for the problem raised in that work, so further development is necessary.

citizens generally. ... Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. ...

The fact of a plurality of reasonable but incompatible comprehensive doctrines—the fact of reasonable pluralism—shows that .... [t]he account of the stability of a well-ordered society in part III is therefore ... unrealistic and must be recast. This problem sets the stage for the later essays beginning in 1980. The ambiguity of *Theory* is now removed and justice as fairness is presented from the outset as a political conception of justice (*PL*: xvii).<sup>7</sup>

The initial problem, therefore, is a problem *internal to justice as fairness*. Two aspects of the problem should be stressed.

(i) In *Theory* the argument from the original position was embedded in a “thin theory of the good,” which allows identification of “primary goods.” As is well known, the parties in the original position choose the two principles of justice under a “veil of ignorance” — a range of information that is specific to their own and their society’s identity is excluded from the choice situation.<sup>8</sup> Requiring the parties to choose under such conditions helps ensure that their choice will be reasonable and not moved by bias (*TJ*: 392). The problem is that without information about what they consider good and their particular plans of life, they do not have a clear basis of choice. Rawls thus requires that the parties have knowledge of some universal features of good lives, so they know

<sup>7</sup> *PL* references are to the 2005 expanded edition of *Political Liberalism* (New York: Columbia University Press). Note that while pagination of the main text is the same in all editions of *Political Liberalism*, this unfortunately is not the case with the important front matter of the introductions. Further in-text references are to *TJ – A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, 1999); *JFR – Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Harvard University Press, 2001); *JF: “Justice as Fairness”* in *John Rawls: Collected Papers*, edited by Samuel Freeman (Cambridge, MA: Belknap Press of Harvard University Press, 1999): 47-72; *JFP – “Justice as Fairness, Political Not Metaphysical”* in *Collected Papers*: 399-414; *OC – “The Idea of an Overlapping Consensus”* in *Collected Papers*: 421-448; *DP – “The Domain of the Political and Overlapping Consensus”* in *Collected Papers*: 473-96.

<sup>8</sup> On Rawls’s differing models of the original position, see Gerald Gaus and John Thrasher, “Rational Choice in the Original Position: The (Many) Models of Rawls and Harsanyi” in *The Original Position*, edited by Timothy Hinton (Cambridge: Cambridge University Press, 2016): 39-58.

what to aim at (*TJ*: 348-50). The point of part III of *Theory* is to explicate both structural and substantive features of all rational and good plans of life. At the stage of the argument from the original position all that is required is, as it were, a part of the thin theory: that which specifies certain primary goods — things that rational individuals, “whatever else they want, desire as prerequisites for carrying out their plans of life” (*TJ*: 348). These are liberties, opportunity, wealth, income and the social bases of self-respect (*TJ*: 54). This part of the case for justice as fairness aims to show that the parties to the original position, exercising their rationality to maximize an index of primary goods, will select the two principles of justice. Because the theory of primary goods is embedded in a wider theory of the good, so is the basic argument for the two principles.

(ii) It is often erroneously supposed that this *is* the entire argument from the original position. Rawls, however, was explicit that he divided “the argument for the principles of justice into two parts” (*TJ*: 124, 465). “Persons in the original position,” Rawls tells us, must consider whether a well-ordered society founded on justice as fairness will be more stable than alternative conceptions considered in the original position (*TJ*: 398). “Other things equal, persons in the original position will adopt the most stable scheme of principles” (*TJ*: 398). Although the “criterion of stability is not decisive” (*TJ*: 399), if the parties find that a conception is unworkable, this would force a reconsideration of their initial choice (*TJ*: 472, 505). As Paul Weithman’s *Why Political Liberalism?* wonderfully demonstrates, the stability argument in *Theory* was deeply embedded in a theory of the good which was committed to: plans of life with a certain structure (*TJ*: 358), “the sociability of humans” (*TJ*: 458), “natural sentiments of unity and fellow feeling” (*TJ*: 439), the value of sincerity in our relations with others (*TJ*: 499-500), the Aristotelian Principle and its companion effect (*TJ*: 374ff),<sup>9</sup> and human beings’ natural

<sup>9</sup> “[O]ther things equal, humans enjoy the exercise of their realized capacities (their innate or trained abilities) and this enjoyment increases the more the capacity is realized, or the greater its complexity” (*TJ*: 374) and the “exercise of our natural powers,” Rawls explains, “is a leading human good” (*TJ*: 374n); this is a “natural fact” (*TJ*: 376). Rawls adds a “companion effect”: “As we witness the exercise of well-trained abilities by others, these displays are enjoyed by us and arouse a desire that we

“desire to express their nature as free and equal moral persons” (*TJ*: 462).<sup>10</sup> Given all of this, Rawls sought to demonstrate that a devotion to the two principles of justice was congruent with our deepest convictions about a good life; consequently people would not be alienated from their sense of justice, and so would have a strong tendency to freely act as justice requires. It is, essentially, this argument that was undermined by Rawls’s recognition of a deep reasonable pluralism among reasonable conceptions of the good. While many liberals might endorse the stability argument from *Theory*, many reasonable citizens would not. Thus the beginning of the political liberalism project.

## 2.2 *The Consensus Part of Overlapping Consensus: the Free-standing Derivation of Justice as Fairness*

A society regulated by the two principles of justice, embodying a commitment to free institutions, would come to disagree about the theory of the good on which it relies. It is, then, critical to realize that the overly-controversial nature of the theory of the good in part III of *Theory* — which Rawls now saw as a part of a comprehensive moral doctrine — required that the argument from the original position be recast as a free-standing, political, conception of justice (*DP*: 474, 482, 485; *PL*: xlii, 12, 40, 140). His early insistence in “Justice as Fairness, Political Not Metaphysical” on the importance of a distinctly political conception of justice led to a number of complaints that he had abandoned political philosophy for some sort of pragmatic politics,<sup>11</sup> but the idea of a political conception was by no means a retreat from normativity: it sought to identify a public, shared basis of normativity (*PL*: xix, xxxvi, 87). The aim was a “freestanding political conception having its own intrinsic (moral) ideal” (*PL*: xlv). To be sure, there is

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should be able to do the same thing ourselves. We want to be like those persons who can exercise the abilities we find latent in our nature” (*TJ*, 376).

<sup>10</sup> For a further analysis of the relation of the argument in the original position to stability considerations, see Weithman’s “Stability and the Original Position” in *The Original Position*, pp. 224-46.

<sup>11</sup> See e.g., Jean Hampton, “Should Political Philosophy be Done Without Metaphysics?,” *Ethics*, vol. 99 (July, 1989): 791-814.

more than a whiff of Hegel in Rawls's approach, as he sought to identify this shared normative content by examining the ethical life of modern democracies which, he supposed, revealed their deep, shared, normative commitments that "are present in the public culture, or at least in the history of its main institutions and the traditions of their interpretations" (*PL*: 78, 8-9).

This recasting of the argument from the original position required what might be called "The Great Reshuffling." As Samuel Freeman notes, ideas associated with the thin theory of the good, which Rawls seems to take away with one hand in *Political Liberalism*, he then gives back with another.<sup>12</sup> One cannot understand the argumentative structure of this first (Recasting Justice as Fairness) model without tracking the migration (and consequent reinterpretation) of values and ideas that in *Theory* were in the "comprehensive good" set of values into the "political" set of values in *Political Liberalism*. The unifying idea behind this migration is the conception of citizens on which the freestanding, political set of reasons is based. Rawls's fundamental claim is that implicit in our democratic culture is a conception of citizens who conceive of themselves as free and equal in three senses. *First*, they understand themselves to possess a moral power to have and revise a conception of the good (*PL*: 30). In explicating this moral power Rawls thus reintroduces a version of goodness as rationality and rational plans of life from *Theory*, but now understood as political ideas (*PL*: 176). Thus, for example, the idea that it is a power of citizens to change their plan of life does not imply that within any comprehensive doctrine such freedom is valued; rather the crucial idea is that our concept of a citizen is such that one's political identity does not change as one's plan does (*PL*: 30). The *second* sense in which citizens see themselves as free and equal is that they view themselves as possessing valid claims against others, and the *third* is that they take responsibility for their ends and regulate them according to political justice (*PL*: 32-5). This last clearly concerns a sense of justice,

<sup>12</sup> Samuel Freeman, *Justice and the Social Contract* (Oxford: Oxford University Press, 2007), p. 195.

part of the moral powers of citizens (*PL*: 19) — understood now as part of the freestanding set of political values. All this allows Rawls to reintroduce the idea of primary goods, now as derived from our conception of citizens (*PL*: 178-90). Rawls also reintroduces (now as political values) the social union of social unions (*PL*: 320) and the (political) good of community (*PL*: 201-6).

In the 1993 Introduction Rawls tells us that, once this “serious” problem concerning part III is cleared up, *Political Liberalism* takes “the structure and content of *Theory* to remain substantially the same” (*PL*: xvi), which I assume implies the main features of justice as fairness remain untouched. It is appropriate to remind ourselves what the aims of justice as fairness in *Theory* really were, for in many ways they are indeed remarkably continuous with Model I of the political liberalism project. His aim in *Theory*, he observed, was to “formulate a reasonable conception of justice for the basic structure of society” (*TJ*: 7). In the Preface to the 1971 edition, Rawls remarked of justice as fairness that “[o]f the traditional views, it is this conception that, I believe, best approximates our considered judgments of justice and constitutes the most appropriate moral basis of a democratic society” (*TJ*: xviii). Later Rawls would essentially repeat this claim, arguing that the idea behind the original position is “to work out which traditional conception of justice, or which variant of one of those conceptions, specifies the most appropriate principles for realizing liberty and equality...” (*JFP*: 399; see also *PL*: 18n). Again, it is important to recognize that in *Theory* Rawls fully acknowledged multiple reasonable conceptions of justice; indeed, the aim of the original position was to show which, of the traditional conceptions, was the most reasonable (*TJ*: 15-6; cf. *PL*: xxxvi, xlvi) — of course, Rawls believed it to be justice as fairness, though he admitted that others may disagree (*TJ*: 14).

Now, as we are supposing that after justice as fairness is recast as a free-standing argument its structure and content remain the same, Model I of the political liberalism project retains the role of justice as fairness as the touchstone of public justice, upholding a view along the lines of



*Justice as Fairness as Public Justice* [provisional]: As shown by the derivation of its principles from the free standing original position, justice as fairness is *the most reasonable* shared basis for the justification of political and social institutions.

Rawls insists that a fundamental aim of political philosophy in a democratic society is to present a conception of justice that provides “a shared basis for the justification of political and social institutions” (OC: 421). Because the argument for justice as fairness is now free-standing, it can truly serve as a shared basis of justification in a pluralistic society; because the argument from the original position shows it to be the most reasonable traditional conception, it is uniquely the best free-standing moral basis for shared standards of justice in a democratic society. Again, it is critical to remember that even in *Theory* Rawls recognized multiple reasonable conceptions; such recognition does not in any way undermine Justice as Fairness as Public Justice.

### *2.3 The Thickening of the Derivation*

In *Theory* the argument from the original position called on settled convictions about justice and rationality, but because it was embedded in what Rawls later came to call a “comprehensive” moral theory, many of its elements (such as the theory of the person) could be drawn from that comprehensive doctrine. Because in Model I justice as fairness is now understood as standing free from comprehensive conceptions, it cannot rely on a broader comprehensive conception to apply and interpret its principles. Thus in addition to the derivation of the two principles of justice, “there must be a companion agreement on the guidelines for public inquiry and on the criteria as to what kind of information and knowledge is relevant in discussing political questions, at least when these involve the constitutional essentials and questions of basic justice” (*JFR*: 89, OC: 429; *PL*: 62, 225). This introduces what we might call the *guidelines of interpretation* role of public reason: public reason is the part of justice as fairness that enables us to apply it as a free-standing conception.

It is also worth noting another way in which the derivation has become “thicker.” Because of the Great Reshuffling, many values that were part of the comprehensive

doctrine are now free-standing political values. Thus the argument from the original position calls on a rich set of political values. As we are about to see, this allows it to stand more on its own when evaluating its stability. Whereas in *Theory* stability required what Rawls called “congruence” (*TJ*: 350, 496ff), a considerably less supportive relation suffices for Model I.

#### *2.4 The Overlapping Part of Overlapping Consensus: Convergence on Justice as Fairness*

To complete the above quote from “Overlapping Consensus,” in addition to a “shared basis for the justification of political and social institutions,” a conception of justice suitable to a democratic society must also “help ensure stability from one generation to the next” (*OC*: 421). Rawls retains from *Theory* the presentation of justice as fairness in two stages: first, the derivation of the principles in the original position and then a stability analysis (*DP*: 474, 486n). Now in all versions of political liberalism as a theory of public justice these two stages reflect the assumption that the overall view of citizens have two parts: (*A*) their shared beliefs and convictions, which are used to derive a conception of justice and (*B*) the values and beliefs that are distinctive to their comprehensive conceptions (*DP*: 489; *PL*: 38, xxiii; *JFR*: 187). Having derived the principles of justice as fairness from set *A*, we now turn to set *B*, which is the heart of the new stability analysis.

In both *Theory* and Model I (Recasting Justice as Fairness), the stability analysis has a complex relation to the justification of the principles. Let us distinguish, for want of better terms, the *reflective equilibrium* and *social normative equilibrium* elements of *Theory*’s and Model I’s justifications. The *reflective equilibrium* justification considers set *A*’s beliefs about justice, conceptions of persons and social cooperation and so on, constructing from them a conception of justice which, if successful, is in reflective equilibrium. The main point of the construction of the original position is to assist in this. But, as Weithman demonstrates, Rawls insists that people’s other evaluative commitments could tempt them away from their sense of justice, so that a conception suitable to a

well-ordered society must achieve a social equilibrium that takes account of the wider normative commitments of individuals, and so shows that the principles really perform their expected role in human life, and retain the free commitment of the members of a social order given their diverse overall normative commitments.<sup>13</sup>

In Model I, this stage of justification relies on overlapping consensus as a “convergence on a political conception of justice” that secures stability and social unity “in a long-run equilibrium, that is, over time from one generation to the next” (OC: 426, 430). Once again, the point of this stability argument is to show that, should a society encourage a sense of justice that affirms the public conception of justice, people’s wider normative commitments will not lead them to turn their backs on their sense of justice (PL: 141). If Rawls’s argument from the original position is correct, this overlapping consensus would be on justice as fairness as the most appropriate political conception (PL: lx, 65, 103). Now, critically, overlapping consensus on justice as fairness does not (in this model) require that all reasonable comprehensive doctrines participate in this equilibrium: here stability is a population-level trait, and so only the overall population of reasonable doctrines must be in a social normative equilibrium.<sup>14</sup> Thus in various places Rawls suggests that an effective overlapping consensus must involve a “plurality of opposing comprehensive doctrines” (DP: 493) a “substantial majority of ... politically active citizens” (DP: 475, 495, OC: 425n) or “all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents” (PL: 15, OC: 430).

The precise relations of justice as fairness to comprehensive doctrines participating in an effective overlapping consensus can be diverse. “[I]n such a consensus each of the comprehensive philosophical, religious, and moral doctrines accepts justice as fairness

<sup>13</sup> Weithman, *Why Political Liberalism?*, pp. 51ff.

<sup>14</sup> It is, I think, important to remind ourselves that stability was a population-level trait in *Theory*: Rawls did not think that everyone who accepted the argument from the original position could be encompassed in the congruence analysis. See Weithman, *Why Political Liberalism?*, pp. 58, 66.

in its own way; that is, each comprehensive doctrine, from within its own point of view, is led to accept the public reasons of justice specified by justice as fairness. We might say that they recognize its concepts, principles, and virtues as theorems, as it were, at which their several views coincide" (JFP: 411). However, less supportive relations will do: it could be sufficient that justice as fairness does not conflict with — or not conflict "too sharply with" — a comprehensive doctrine that participates in the overlapping consensus (*PL*, 11, 40, 140). Recall that the argument from the original position is now based on a robust set of values (§2.3), so the reasons implied by this weighty set of values could outweigh significant conflicts with set *B* of a person's overall view. In a critical sense, then, less turns on overlapping consensus in Model I than on the congruence analysis in *Theory*. The free-standing argument is presented as a stronger argument based on great values (OC: 438–40).

To sum up, then, Model I upholds

*Justice as Fairness as Public Justice* [complete]: (i) A well-ordered society *S* with a shared understanding of the guidelines and content of public reason requires a shared reasonable liberal conception of justice derived from their shared set *A* values. As shown by the derivation of its principles from the free-standing original position based on the shared set *A*, justice as fairness is *the most reasonable* shared basis for the justification of political and social institutions.

(ii) The second-stage population-level stability test indicates that given their diverse sets *B*s, a substantial majority of politically active citizens or all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents in *S* will (or could?) reasonably conclude that their set *B* values and commitments support, or do not conflict too sharply with, the derivation in (i).

### 3 MODEL II: POLITICAL LIBERALISM AS A META-THEORY

#### 3.1 *Justice as Fairness as an Example*

Much of the appeal of political liberalism, we think, derives from Model I. If one accepted justice as fairness as presented in *Theory*, and then came to worry about the congruence argument in part III (which does indeed seem rather contentious), then

Model I is the answer. If the derivation from the original position works on the basis of free-standing public moral commitments, a society that found itself well-ordered on justice as fairness would find that most members would continue to affirm it given their comprehensive doctrines, and so it would be stable. We see nothing outlandish in these claims. For what it is worth, we find Model I more compelling than *Theory*; in that (very limited) sense, we rate Rawls's political liberalism project a success. But of course Model I is by no means the whole story. Rawls depicted justice as fairness as "the main example" (*PL*: xlv, xxxvi; *DP*: 473) of a politically liberal conception of justice for a well-ordered society. Rawls came to stress that intrinsic to political liberalism is the recognition of multiple, competing, reasonable conceptions of justice (*PL*: xlvi-xlviii; *OC*: 427), with justice as fairness being one — Rawls thinks it is the "most reasonable" but "many reasonable people will disagree" (*PL*: xlvii-xlviii).

Now the mere recognition of multiple reasonable conceptions of justice, and that other reasonable people will disagree with Rawls, does not mark a departure from *Theory*, in which (as we have seen), he presents the argument as ranking "reasonable conceptions" of justice and his results as what he "believes" is "the most appropriate moral basis of a democratic society" (*TJ*: xviii, 15-6; compare *JFP*: 399-400). What pushes from Model I to Model II is wrestling with a deeper problem intrinsic to Model I. When Model I recasts justice as fairness as a free-standing doctrine, the reasonability of differences about the good could not be grounded in part III's comprehensive doctrine, which demonstrated the rationality of different plans of life. Now in the early essays in the political liberalism project Rawls was content to rely simply on the "fact" of plurality of comprehensive doctrines (*JFP*: 412; *OC*: 440). At this point we cannot see any compelling reason to move beyond Model I, which certainly accepts disagreement about comprehensive conceptions as a given — a fact about modern political culture. However, Rawls turns his attention to explaining this fact in "The Domain of the Political and Overlapping Consensus," in which we are introduced to the "burdens of reason" (*DP*: 475ff), which become the famous "burdens of judgment" in *Political*

*Liberalism* (PL: 54-8), where these now are critical to explaining the roots of “reasonable” pluralism.<sup>15</sup> We thus now have something like an official doctrine of the basis of reasonable disagreement.<sup>16</sup>

Once political liberalism has identified the sources of reasonable disagreement in this way, a troubling thought is just around the corner: the very doctrine of the sources of disagreement about the good applies to free-standing arguments based on the shared political values. Thus, as Rawls says in the introduction to the 1996 edition, the appreciation of reasonable pluralism not only leads us to see the need for a conception of justice that is viable in the face of reasonable disagreement among comprehensive doctrines (PL: xliv), but the burdens of judgment “lead us to recognize that there are different and incompatible liberal conceptions” (PL: xlvii). The relevant political values can be reasonably arranged in a variety of ways to yield different liberal conceptions of justice. So in Model II political liberalism identifies a “family of reasonable though differing liberal political conceptions” (PL: xxxvi, xlvi, 43). The apparent abandonment of Model I is starkly proclaimed in a late letter to his editor describing his planned next edition: “Many readers were misled into thinking that the book is about this idea [i.e., justice as fairness], but it is not. Political Liberalism is about a family of reasonable liberal ideas of political justice, and these are now specified in the early pages. *Justice as fairness itself now has a minor role as but one such political conception among others*” (PL: 439, emphasis added). As one among others, from political liberalism’s perspective justice as

<sup>15</sup> Rawls credits Joshua Cohen for insisting on the importance of replacing the “fact” of pluralism with “reasonable” pluralism (PL: 36) in Cohen’s “Moral Pluralism and Political Consensus” in *The Idea of Democracy*, edited by David Copp, Jean Hampton and John E. Roemer (Cambridge: Cambridge University Press, 1993): 270-91 at pp. 281-2.

<sup>16</sup> To remind ourselves, according to Rawls reasonable judgments so often are at odds because: (i) the evidence is often conflicting and difficult to evaluate; (ii) even when we agree on the relevant considerations, we often weigh them differently; (iii) because our concepts are vague, we must rely on interpretations that are often controversial; (iv) the manner in which we evaluate evidence and rank considerations seems to some extent the function of our total life experiences, which of course differ; (v) because different sides of an issue rely on different types of normative considerations, it is often hard to assess their relative merits; (vi) in conflicts between values, there often seems to be no uniquely correct answer.

fairness is not special — it is not identified as most reasonable (though of course from the perspective of an advocate of justice as fairness it is special). In his last writings Rawls clearly thinks of political liberalism as implying a two-level theory. Political liberalism itself is a higher-level theory that (i) seeks to resolve some sorts of conflicts (say, those deriving from irreconcilable comprehensive doctrines) and (ii) steps back from some of the claims made by its constituent first-level theories (for example, justice as fairness' claim that it is the "most reasonable" conception). But (iii), it also, Rawls says, simply leaves other matters (such as distributive justice) to be dealt with by one of its constituent, first-level, theories (*PL*: 487).

### *3.2 A Public Liberal Conception of Justice*

Model II's insistence that justice as fairness is no longer the touchstone of political liberalism does not imply that the ideal of social order regulated by a single, coherent, conception of public justice has been abandoned. "What is needed," Rawls writes, "is a regulative political conception of justice that can articulate and order *in a principled way* the political ideals and values of a democratic regime, thereby specifying the aims the constitution is to achieve and the limits it must respect. In addition, *this political conception* needs to be such that there is some hope of its gaining the support of an overlapping consensus..." (*OC*: 421, emphases added). Again, it is critical that Rawls insists that the public role of a "mutually recognized political conception of justice is to specify a point of view from which all citizens can examine before one another whether or not their political institutions are just" (*OC*: 426) and secure a public understanding of the claims it is appropriate for citizens to advance (*PL*: 179).

A public conception of justice is, of course, necessary to secure a well-ordered society, "in which everyone accepts, and knows that others accept, the very same principles of justice" (*PL*: 35). Rawls stresses that in political liberalism well-orderedness does not require the utopian condition that "all citizens affirm the same comprehensive doctrine, but only....the same public conception of justice" (*PL*: 39, 201). Sharing the

same conception of justice also provides the basis of a coherent understanding of public reason. We have seen that according to the guidelines of interpretation role (§2.3), a conception of justice requires public reason to provide for its interpretation and application. But the mirror image of this is that, as Freeman notes, a political conception is required to provide “content to *public reason*.”<sup>17</sup> The shared conception of justice serves, says Rawls, “as the basis of public reason” (*PL*: 48, 11). Without a common conception of justice citizens do not share the same guidelines regulating public discussion, nor do they share a common understanding of the materials on which it is appropriate to draw in public discussion. We might say that without a shared conception of justice public reason fractures; citizens disagree on even the principles regulating their public discourse and which adjudicate their claims (see §5).

The above considerations, then, lead Model II to replace the first model’s “Justice as Fairness as Public Justice” with

*Liberal Public Justice*: (i) A well-ordered society *S* with a shared understanding of the guidelines and content of public reason requires a shared reasonable liberal conception of justice, *j*, derived from their shared set *A* values. There are many reasonable liberal conceptions derivable from set *A*; *j* is a member of a set  $\{J\}$  of such conceptions (as is justice as fairness).

(ii) The second-stage population-level stability test indicates that given their diverse set *B* values and commitments, a substantial majority of reasonable politically active citizens or all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents in *S* will (could?) reasonably conclude that their comprehensive doctrines support, or do not conflict too sharply with, the derivation of *j* in (i).

### 3.3 *Convergence and Social Unity in Model II*

Model II’s account of overlapping consensus is essentially the same as the first model’s. Overlapping consensus constitutes convergence on a liberal political conception’s arguments and principles by the majority, or substantial majority, of the reasonable

<sup>17</sup> Freeman, *Justice and the Social Contract*, p. 219. Emphasis in original.



comprehensive doctrines. A modification is that the basic structure could be regulated by a “mix” of political conceptions (*PL*: xlvi). The idea of a “mix” can be understood in two ways. Following the use of “mixed conceptions” in *Theory* (*TJ*: 107) a mixed conception can be understood as a single conception of justice that is derived from combining the elements of two or more other conceptions. Understood thus, a mixed conception of justice could constitute Liberal Public Justice and be the focus of a Model II overlapping consensus. However, if by “mix” we mean, as it were, a continual mixing and remixing of different conceptions as they serve as inputs into an ongoing process of public deliberation, then we will be led to Model IV (§5).

The difference between Models I and II is well brought out by contrasting Rawls’s two accounts of the basis of social unity within the covers of the 1996 edition of *Political Liberalism*. In the “Reply to Habermas” (*PL*: 391) Rawls seems to have Model I in mind, where he tells us that “the deepest and most reasonable basis of social unity available to us in a modern democracy” is provided when a society is “effectively regulated by the *most* reasonable political conception of justice” (emphasis added). In the introduction to this edition (*PL*: xlvi-xlvii), in a remarkably similar passage, he focuses not on the deepest and most reasonable basis but only on “the most reasonable basis of social unity,” which requires only “a basic structure of society is effectively regulated by one of a family of reasonable liberal conceptions of justice (or a mix thereof), which family includes the most reasonable conception.” Now we can read the relation between these passages in two different ways. According to the Model II we have presented, political liberalism itself is a meta-theory with no commitments from its perspective that justice as fairness is the most reasonable conception; this is consistent with insisting on the importance of the burdens of judgment applied to political conceptions, as well as Rawls’s letter to his editor proclaiming that in political liberalism justice as fairness only has a minor role, as of one reasonable liberal conception among others. On this interpretation, supposing our Model II, any claim about what is the “most reasonable” basis of social unity must come from within a first-level conception of justice. An

alternative reading invokes what we might dub Model II\*; it accepts that political liberalism is a meta-theory that admits a number of reasonable conceptions, *yet at the level of the meta-theory still confirms justice as fairness as the most reasonable* (a combination of our Models I and II). Here claims about what provides the deepest basis of social unity come from political liberalism as a meta-theory. If so, however, it can hardly be said that justice as fairness has a minor place within political liberalism, and to is hard to see a critical role for the burdens of judgment. To invoke the burdens of judgment and to simultaneously claim that one's conception is still the publicly most reasonable from the perspective of political liberalism would unravel the role of the burdens in justifying reasonable pluralism about the good — the perfectionist could make the same move, accepting the burdens about the good and then go on to say that from the *public* perspective his theory is the *most* reasonable. The worry about Model II\* is that it is a case of both eating and having your cake.<sup>18</sup>

### *3.4 New Solutions, New Problems*

Model II seems promising. It can retain the idea of a shared conception of justice, and so the critical idea of well-orderedness, as well as overlapping consensus and social unity for the right reasons, while allowing that reasonable pluralism applies to the derivation of a conception of justice from the shared political values. To all those who doubted Model I's claim that justice as fairness would be the focus of an overlapping consensus, Rawls can reply that political liberalism (as opposed to justice as fairness) does not require that; the focus can be on any reasonable conception of justice. We might be tempted to conclude that, from the perspective of philosophical argumentation, Model II dominates Model I: it can say everything Model I really needs to say without a

<sup>18</sup> Jonathan Quong seeks to assuage this worry in *Liberalism without Perfection* (Oxford: Oxford University Press, 2011), Chap. 7. For doubts about the effectiveness of his proposal, see Gerald Gaus, "Sectarianism Without Perfection? Quong's Political Liberalism." *Philosophy and Public Issues*, vol. 2, No. 2 (Fall 2012): pp. 7-15.

commitment to controversial claims about justice as fairness that seem to ignore the roots of reasonable pluralism. Alas, as always in the development of political liberalism, new solutions generate new problems. We do not claim that these problems cannot be solved – but Model II needs to, but does not, adequately address them.

(i) The main motivation for moving from Model I to II is the application of the burdens of judgment to the derivation of a conception of justice from set *A* values and concepts. Given this, a plausible version of Model II must integrate the idea that under free institutions reasonable citizens will continue to disagree about the most reasonable conception of justice. This, though, implies that Model II introduces into political liberalism what Gerald Gaus terms “the Gap.”<sup>19</sup> Consider Display 1:

Alf	Betty	Charlie
<i>x</i>	<i>x</i>	<i>y</i>
<i>y</i>	<i>y</i>	<i>x</i>
<i>z</i>	<i>z</i>	<i>z</i>

DISPLAY 1

Suppose that Alf, Betty and Charlie are three reasonable citizens, and *x*, *y* and *z* are three reasonable liberal conceptions of justice. Suppose further, in accordance with Model II, conception *x* (call it “justice as fairness”) is the Liberal Public Justice in their society. Conception *x* is known by all to be the public basis for the adjudication of claims, and *x* provides a coherent content to public reason. It is the focus of an overlapping consensus of Alf, Betty and Charlie, and constitutes the basis of their social unity. All this requires, though, that Charlie accept a Gap between what Liberal Public Justice requires and what his private judgment deems to be the most reasonable liberal conception (i.e., *y*) and *its* requirements: he must endorse a conception of public justice that, in an important sense, he believes falls short of what he thinks is the most reasonable conception. Some might say that he must think that a society ordered on *x* is somewhat

<sup>19</sup> Gerald Gaus, “The Commonwealth of Bees: On the Impossibility of Justice-through-Ethos,” *Social Philosophy and Policy*, vol. 33 (2016).

unjust or, less contentiously, that it is not as just as it might be.<sup>20</sup> In any event he must accept that he will live his life, and demand that others live their lives, under a reasonable but flawed conception of justice.<sup>21</sup>

Charlie must abandon what we might call the “Optimizing Stance” in relation to public justice: he cannot identify justice with what he sees as the most reasonable conception of justice, at least down to its “last details.”<sup>22</sup> This seems to weaken the idea of a well-ordered society. Although Charlie affirms  $x$  as the public conception of justice in his society, he does so with the proviso that it really is not the most reasonable, and so he has justice-based reasons to work toward changing it. While he would not simply impose it on others if he had the power, his own deliberations give him reason to try to convince others that they have achieved an inferior equilibrium, and perhaps take marginal action to nudge them toward it (such as some minor violations). So the stability of the  $x$  equilibrium is impaired; although Charlie generally will act on  $x$  as long as others do, he has good reason to induce others to endorse a  $y$  equilibrium. Model II may not secure the degree of stability Rawls originally sought — perhaps not a bad thing as too much stability can lead to stasis.<sup>23</sup> Nevertheless, the notion of a well-ordered society and the accompanying idea of moral stability significantly departs from both *Theory* and Model’s I understanding.

<sup>20</sup> Another possibility is that he somehow accepts that the shared public conception of justice overrides his judgment about what the most reasonable conception of justice is, so that he ends up accepting that  $x$  really is the most reasonable. We believe that Hobbes and Hobbesians have sought to explore this self-effacing understanding of private judgment without much success. We put it aside here. See Chad Van Schoelandt and Gerald Gaus, “Political and Distributive Justice,” in *The Oxford Handbook of Distributive Justice*, ed. Serena Olsaretti (Oxford University Press, forthcoming), sec. 2.3.

<sup>21</sup> Paul Weithman provides an important attempt to expand upon Rawls’s view, roughly along the lines of this model, to address how citizens may be autonomous despite such a gap under conditions of justice pluralism. See Weithman, “Autonomy and Disagreement about Justice in Political Liberalism,” *Ethics*, forthcoming.

<sup>22</sup> See PL: 226. Gerald Gaus argues for the importance of abandoning this stance in *The Tyranny of the Ideal: Justice in a Diverse Society* (Princeton: Princeton University Press, 2016), chapter IV.3.

<sup>23</sup> Cf. Gaus, *The Tyranny of the Ideal*, pp. 215ff.

(ii) Implicit in what has been said thus far is Model II's equilibrium selection problem. Each liberal conception of justice is a possible focus of an overlapping consensus, and thus what Rawls calls a long-term equilibrium. There are as many possible equilibria as there are members of  $\{J\}$ . A complete Model II would have to provide an account of how a definite equilibrium is, or should be, selected — or at least provide grounds for thinking that one would be selected.<sup>24</sup> The meta-theory of political liberalism might identify some procedure (say democracy, but cf. §5.1), or may model the selection process in terms of an iterated game leading to a Nash equilibrium. In the latter case we would be faced with the result that settling on a public conception of justice is a path-dependent process: depending on what moves are made in what order, an iterated game can lead to convergence on different equilibria.<sup>25</sup> Rawls, though, seems deeply averse to identifying any such procedure, simply supposing in Model II that a society somehow has settled on some member of  $\{J\}$ . However, given that reasonable pluralism applies to deliberations within  $\{J\}$  this is most unlikely. Without an account of equilibrium selection Model II is either (a) of extraordinarily limited application (restricted to cases where almost all reasonable citizens happen to agree on  $j$ ) or (b) critically incomplete.

(iii) To be sure, equilibrium selection is not a deep worry from what we might call the *ex post* perspective. Model II can explain, *ex post*, how a well-ordered society can be stably devoted to any liberal conception of justice — once it secures overlapping consensus and reasonable social unity. But the nature of the selection process looms larger when we take the *ex ante* perspective, and ask how a conception of justice should orient our quest for a just society. Recall that for Rawls a theory of justice provides “a

<sup>24</sup> We will highlight that satisfying this requirement for a selection procedure is compatible with a high degree of humility or agnosticism about which conception would, or should, be selected. For this aspect of Model II, the proper conception might not be dictated by the theorist, but instead left as a topic for “ongoing political discussion” (PL: 383). We thank an anonymous referee for highlighting the relevance of this distinction.

<sup>25</sup> For a further analysis, see Gaus, *The Tyranny of the Ideal* pp. 230ff.

long-term goal of political endeavor, and in working toward it gives meaning to what we can do today.”<sup>26</sup> Model II cannot perform this role if it cannot indicate which liberal conception of justice we should adopt. Recall that the liberal conceptions are incompatible (*PL*: xlvii). Therefore different conceptions will identify different long-term goals. While perhaps in the short-run, because they are all liberal conceptions they will point in the same direction, in the longer term they identify incompatible goals. But then political liberalism cannot perform this critical role of political philosophy. Nor does it seem obvious that its constituent theories, such as justice as fairness, can play this role in Model II. While justice as fairness may seem to give meaning to our lives by identifying *its* favored long-term goal, which *it* sees as most reasonable, because it is also embedded in political liberalism as a meta-theory, which denies that any of its constituents has a definite claim to be the most reasonable, justice as fairness is caught in a quandary. It sees itself as the most reasonable but, it would seem, it simultaneously is committed to affirming the meta-theory of political liberalism, which denies that there is from the meta-perspective a uniquely most reasonable theory. This was not a problem in Model I (or II\*). In our view it is quite remarkable that in the voluminous literature on political liberalism there has been no sustained analysis of the way in which the claims of justice as fairness are affected once it is embedded in, and affirms, a meta-theory that is noncommittal about some of its core claims. It is thus important to realize that Model I is not a special case of Model II: justice as fairness undergoes changes when integrated into the meta-theory.

#### 4 MODEL III: FULLY JUSTIFIED PUBLIC JUSTICE

##### 4.1 “Three Kinds of Justification”

<sup>26</sup> Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), p. 128. Rawls argues that political philosophy can perform the four roles of providing a basis political agreement, orientation, reconciliation, and a realistic utopia (*JFR*: 1-5). Since a conception of justice is essential to each of these roles, they provide additional considerations in support of our argument at this point. We thank an anonymous reviewer for highlighting the relevance of these four goals to our argument.

Central to the first two models is the division of a reasonable citizen's evaluative considerations into sets *A* (the shared public basis on which a conception of justice is constructed), and *B* (the person's unshared comprehensive commitments) (§2.4). As we have seen, the role of set *B* in these models is continuous with the role of the theory of the good in *Theory*: after uncovering the principles of justice in the first part of the argument from the original position, we wish to know whether citizens' wider evaluative commitments will lead them to ignore or renounce their sense of justice, and act on what they see as good. In Models I and II, the argument from overlapping consensus seeks to show that the substantial majority of reasonable comprehensive doctrines will not lead to this destabilization. Note that in this argument set *B* is relevant to the justification of a conception of justice in a secondary way (in securing what we called a "social normative equilibrium," §2.4). The free-standing argument based on set *A* yields a conception of justice, but because justice must serve a social function, a candidate conception must pass a secondary evaluative test, a test that makes what we have called a "population level" judgment about stability.

Model III attributes a much deeper role to set *B* in the justification of a conception of justice. The clearest statement of this third model is in "Reply to Habermas," where Rawls tell us that "political liberalism specifies three different kinds of justification" (*PL*: 385). First, "*pro tanto* justification.... takes into account only political values;" a complete political conception orders or balances the values in set *A* (*PL*: 386). However, Rawls maintains, "since political justification is *pro tanto*, it may be overridden by citizens' comprehensive doctrines once all values are tallied up" (*PL*: 386). This is critical. No longer is the focus on whether a person's *B* set of values will lead her to turn her back on justice; the question is now whether set *B* contains a defeater for the conclusions about justice based on set *A*.<sup>27</sup> Second, full justification occurs when "the citizen accepts a

<sup>27</sup> This, of course, is not Rawls's term, but explicates what it means to "tally up" values. See John Pollock, *Contemporary Theories of Knowledge* (Totowa: Rowman and Littlefield, 1986), p. 38. As Pollock notes, defeaters come in two types. Sometimes the defeater rebuts an inference by justifying the opposite belief – i.e., that  $\neg\beta$ . More formally, then:

political conception and fills out its justification by embedding it in some way into the citizen's comprehensive doctrine as either true or reasonable, depending on what that doctrine allows" (PL: 386). On this view, then, suppose we take justice as fairness as a political conception, and consider reasonable citizen Alf, and suppose that Alf cannot complete the justification arrived at during the *pro tanto* (partial justification) phase. It follows that justice as fairness is not fully justified to Alf: once all his values are tallied up, he no longer has sufficient reason to endorse justice as fairness. Alf's set *B* must have contained a defeater for the argument for justice as fairness based on set *A*. While he affirmed justice as fairness given the premises in *A* and sound inferences from them, when set *B* is considered these inferences are defeated.

Third and last is public justification by political society. This is a basic idea of political liberalism and works in tandem with the other three ideas: those of a reasonable overlapping consensus, stability for the right reasons, and legitimacy. Public justification happens *when all the reasonable members of political society carry out a justification of the shared political conception* by embedding it in their several reasonable comprehensive views. In this case, reasonable citizens take one another into account as having reasonable comprehensive doctrines that endorse that political conception, and this mutual accounting shapes the moral quality of the public culture of political society (PL: 387, emphasis added).

In Model III public justification occurs only if *all* the reasonable members of a society affirm a *shared* conception of justice based on set *A* and, when they consult their set *B* values and commitments, they find no defeaters for the *A*-based argument. If any reasonable member of the political society finds such a defeater, this conception is not all things considered justified to them. Recall that in Models I and II, if we had a

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If  $R_1$  is a reason for Alf to believe  $\beta$ ,  $R_2$  is a rebutting defeater for this reason if and only if  $R_2$  is a defeater (for  $R_1$  as a reason for Alf to believe  $\beta$ ) and  $R_2$  is a reason for Alf to believe  $\neg\beta$ .

In contrast:

If  $R_1$  is a reason for Alf to believe  $\beta$ ,  $R_2$  is an *undermining defeater* for this reason if and only if  $R_2$  is a defeater (for  $R_1$  as a reason for Alf to believe  $\beta$ ) and  $R_2$  is a reason for Alf not to hold  $R_1$  is a reason to believe  $\beta$ .

A rebutting defeater can allow that there is a bona fide inference from  $R_1$  to  $\beta$ , but that there is a better or more powerful inference from  $R_2$  to  $\neg\beta$ ; an undermining defeater directly challenges the inference from  $R_1$  to  $\beta$ . See further Gerald Gaus, *Justificatory Liberalism: An Essay on Epistemology and Political Theory* (New York: Oxford University Press, 1996) pp. 66-70.



political society  $S$  in which (i) all reasonable citizens affirmed the argument from set  $A$  for conception  $j$  and (ii) a substantial majority concluded that  $j$  coheres with, does not conflict with, or does not conflict too sharply with their set  $B$ , then  $j$  is justified in  $S$ . Not so in Model III: when *only* a substantial majority of reasonable citizens in  $S$  achieve full justification  $j$  is not fully justified to the minority, and so  $j$  is not publicly justified in  $S$ .

#### *4.2 The Opacity of Public Justification?*

Rawls insists that “A crucial point here is that while the public justification of the political conception for political society depends on reasonable comprehensive doctrines, this justification does so only in an indirect way. That is, the express contents of these doctrines have no normative role in public justification; citizens do not look into the content of others’ doctrines, and so remain within the bounds of the political. Rather, they take into account and give some weight to only the fact — the existence — of the reasonable overlapping consensus itself (*PL*: 387). “Indirect” is a vague term; we should not quibble about it. In whatever sense set  $B$  has an indirect role in the justification of a public conception of justice in Model III, as we have said, it is more central than in Models I and II. Those models do not imply that if “some reasonable Alf, a member of  $S$ , cannot affirm conception  $j$  on the basis of his set  $B$ ” then “ $j$  fails as a publicly justified conception of justice in  $S$ .” Model III does. However indirect the role of set  $B$  might remain, it is much more important.

In this passage Rawls seems to maintain that citizens will not appeal to, or interrogate, each other’s sets  $B$  in the political forum, though the fact that  $j$  is publicly justified (and so supported by all reasonable citizens’ set  $B$ ) is a relevant, and known, fact in the political sphere. So the knowledge that  $j$  conforms to  $B$  is politically relevant, but how it does so is not. This raises deep problems. In Model III citizen Betty cannot know whether conception  $j$  is publicly justified in  $S$  unless she knows whether the set  $B$ s of all reasonable citizens in  $S$  support it; so she cannot reasonably endorse  $j$  as publicly justified unless she has reasonable grounds for thinking there is an overlapping

consensus of *all* reasonable citizens' set *B*s on *j*. But if the nature of the relation between each reasonable citizen's set *B* and *j* is not itself a matter of public relevance, how can Betty reach reasonable judgments about this matter? This is not such a pressing problem in Models I and II; as they are concerned with population stability of a conception of justice, in those models Betty might infer that since no politically active citizens seem alienated from *j*, it has achieved sufficient overlapping consensus. But in Model III whether *j* is fully justified to all is at stake; it seems much harder to infer much about *j*'s universal full and public justifications from the acquiescence of the politically active. To hold that the overlapping consensus of every rational citizen's set *B*'s on *j* is a "basic case of public justification" (PL: 388), and yet declare as inadmissible public interrogation as to whether it obtains implies that the public justification of our conception must remain opaque.

#### 4.3 Two Foci of Overlapping Consensus

Model III, then, upholds

*Two-part Publicly Justified Liberal Public Justice:* (i) PART 1: A well-ordered society *S* with a shared understanding of the guidelines and content of public reason requires a shared reasonable liberal conception of justice, *j* derived from set *A*. There are many reasonable liberal conceptions  $\{J\}$  derivable from set *A*; *j* must be a member of  $\{J\}$  (as is justice as fairness). This derivation constitutes a *pro tanto* justification of *j*.

(ii) PART 2: *j* is fully justified for reasonable person Alf in society *S* if and only if, given the *pro tanto* justification of *j* in (i), Alf's set *B* has no defeaters for *j*.

(iii) STABILITY CLAIM: *j* is publicly justified in *S* only if *j* is fully justified for all reasonable members of *S*. Assuming that *S* is overwhelmingly composed of reasonable citizens, a publicly justified *j* will be stable in regard to people's tendencies to defect from public justice on the basis of their set *B* views.

Claim (iii), the Stability Claim, follows from the fact that public justification is a strong stability feature, indicating that Alf will endorse conception *j* only if the justification based on set *A* is not defeated by his set *B* values and beliefs. Of course none of this shows that conception *j* is absolutely stable (it does not show that *j* is stable in light of all

possible reasons to defect). But it does show that it is stable in light of reasonable pluralism of set *B* concerns, the critical concern of the political liberalism project.

However, as we argued in section 4.2, it seems puzzling that set *B* reasons supporting or defeating *j* concerns can be critical to full, and so to public, justification, but must remain politically opaque. If we are convinced that set *B* must be of public relevance to the justification of *j*, we might be tempted to uphold a view inspired by the “inclusive” view of public reason (*PL*: 247)

*One-part Publicly Justified Liberal Public Justice*: (i) A well-ordered society *S* with a shared understanding of the guidelines and content of public reason requires a shared reasonable liberal conception of justice, *j*. There are many reasonable liberal conceptions  $\{J\}$ . As a member of  $\{J\}$ , *j* is fully justified for reasonable person Alf in society *S* if and only if *j* is, all things considered, justified by his entire set of normative considerations.

(ii) STABILITY CLAIM: *j* is publicly justified in *S* only if *j* is fully justified for all reasonable members of *S*. Assuming *S* is overwhelmingly composed of reasonable citizens, a publicly justified *j* will be stable in the face of reasonable divergent views of justice and comprehensive conceptions.

Of course Rawls does not endorse the one-part account, but a crucial advantage is that it expands the set of individuals participating in the overlapping consensus on *j*. To see this, consider three individuals Alf, Betty, and Charlie. Suppose Alf is the quintessential Model III Rawlsian: he first accepts *j* on the basis of *A*, and then finds no defeaters in *B*, and so confirms *j*. Betty, on the other hand, does not hold that set *A* justifies *j* (even as a member of the reasonable family), but does believe that  $\{A \ \& \ B\}$  together justify *j*. Lastly, consider Charlie, who rejects the shared set *A*, but instead upholds *A'*, yet he holds that  $\{A' \ \& \ B\}$  justify *j*. In the one-part version of Model III, all three participate on the overlapping consensus on *j*, the conception of justice, while on the two-stage Rawlsian model only Alf participates in the overlapping consensus on the freestanding argument for *j* from *A*. If we wish to maximize the reasonable individuals participating in the overlapping consensus, the one-part version of Model III has much to say for itself.

Yet, it might be pressed, the one-part account undermines public reason as a shared discourse based on the shared set *A*. There seems no common basis for their reasoning about justice, as they are bringing in their diverse set *Bs*. Prima facie this seems compelling, but recall that the companion agreement to conception of justice *j* is a conception of public reason (§2.3), which defines the relevant criteria and values for public discourse. In Models II and III a conception of justice is required to provide content to public reasoning, not the entire set *A* upon which the derivation of the conception depended (§3.2). Given this, those in the one-part version of Model III *do* have a way to conduct their shared discourse, and signal to each other their shared devotion to conception *j*.

## 5 MODEL IV: PUBLIC REASON WITHOUT PUBLIC JUSTICE

### *5.1 Eternal Recurrence: Disagreement and Reasonable Pluralism*

Model I, we saw, does not apply the critical idea of the burdens of judgment to the derivation of the political conception from the shared values. Models II and III do so, but then pose a justice selection problem: if there are multiple reasonable conceptions of justice, it seems one must be selected as *our* common conception. But Rawls rejects selection processes — certainly any democratic ones. “The conception of political justice can no more be voted on than can the axioms, principles, and rules of inference of mathematics or logic” (*PL*: 388n).<sup>28</sup> The hope that we might all simply come to eventually settle on the same conception as the *most* reasonable (*PL*: 227) resurrects the problem from *Theory* with which we began. If under conditions of freedom such as guaranteed by liberal justice people will come to disagree because of the burdens of judgment, to stabilize liberal justice by assuming that all — or even most — reasonable citizens will come to agree on the same conception is as self-contradictory as the

<sup>28</sup> But if we have a meta-theory of logic that identifies a family of incompatible plausible axioms, and a well-ordered logic needs to settle on one, what *shall* we do?

stabilizing assumption in *Theory* that we would all affirm the same rational good. The initial problem from *Theory* has not been solved — at least to Rawls's satisfaction.

### *5.2 Public Reason as Defined by the Entire Set*

So our problem is that we have a set of reasonable conceptions of justice  $\{J\}$ , but *pace* Model I, because of reasonable pluralism reasonable free citizens disagree on the ordering of the set; but deeply problematic for Models II and III, Rawls rejects ways to collectively select from the set. This, we think, is the fundamental problem of political liberalism. Model IV's solution is to define public reason not in terms of a shared conception of liberal justice (as in Models I-III), but in terms of the entire "family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity" (PL: 442). On Model IV, "citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation *according to what they consider the most reasonable conception of political justice....* Citizens will of course differ as to which conceptions of political justice they think the most reasonable, *but they will agree that all are reasonable, even if barely so*" (PL: 446, emphasis added). Such a political society is characterized by multiple reasonable conceptions of justice (PL: 463), and in political dispute each citizen appeals to that which she sees as the most reasonable.

Model IV thus describes political liberalism without a public conception of justice; a society characterized by Model IV cannot be well-ordered in anything like the way of *Theory* or Models I-III<sup>29</sup> — yet it was the very idea of a well-ordered society that Rawls set out to save in Model I's move to political liberalism (§2.1). Insofar as Model IV is presented as the core model,<sup>30</sup> it is hard not to see it as an admission of defeat for the quest

<sup>29</sup> "[P]ublic reason does not ask us to accept the very same principles of justice" (PL: 241). See Freeman, *Justice and Social Contract*, pp. 254-6.

<sup>30</sup> In his letter to his editor, sketching the main revisions for the planned next edition, Rawls points to "Public Reason Revisited" as the best presentation of political liberalism (PL: 438-9); Model IV manifestly dominates there, though it certainly appears in the early versions of the political liberalism

for a liberal public conception of justice. In the seminal 1958 “Justice as Fairness” the very aim of a theory of justice was to establish a shared public basis of complaints (JF: 53). In Model IV Alf’s conception of justice — that member of the family of liberal conceptions he sees as most reasonable — performs two roles: it is an admissible basis of arguments in the political arena with Betty justifying the coercive use of state power, and he can privately conclude that laws in conflict with it are “unjust,” though he must add “this is just an opinion of mine.”<sup>31</sup> One’s conception of justice is certainly admissible in the political arena, but not rationally compelling for many other reasonable persons. It seems to become more akin to a reasonable ideological commitment rather than a demand that justice must be done. As we learned as undergraduates, “laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust” (*TJ*: 3).

In lieu of shared public justice Model IV gives us “the idea of political legitimacy based on the criterion of reciprocity [i.e.]... our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions— were we to state them as government officials — are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons” (*PL*: 446-7). And “only a political conception of justice that all citizens might be reasonably expected to endorse [as reasonable] can serve as a basis of public reason and justification” (*PL*: 137). Now *ex hypothesi*, any member of the family of reasonable conceptions of justice qualifies as such a conception: although citizens may disagree as to which is the most reasonable, Rawls stipulates that they agree on the set. Only if the use of political power is justified by appeal to a member of the set of reasonable conceptions, could all reasonable citizens recognize the use of political power to be legitimate, since it is based

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project. In the “Reply to Habermas” Model IV seems to be something of a back-up model, should Model III be too unrealistic to hope for (*PL*: 392-3).

<sup>31</sup> We do not think this is an unfair reading. “I do think,” says Rawls, “that justice as fairness has a certain special place in the family of political conceptions.... But this opinion of mine is not basic to the ideas of political liberalism and public reason” (*PL*: 451).

on grounds they can see as reasonable — though they will not agree that it is just (given their rankings of the set of conceptions) (*PL*: 428).

Note that strictly speaking Model IV does not acknowledge what we have called the Gap (§3.4) between what one judges to be optimal justice and what is identified as public justice. On Model IV, each citizen's judgment of justice is always based on her top-ranked conception of justice. Model IV avoids the Gap by avoiding the very idea of public justice. The critical shared public criterion is now legitimacy. Yet as Rawls understands the concept of legitimacy, at Model IV's core is a similar gap — call it the Gap\* — between what is “perfectly just” and what is “sufficiently just” (*PL*: 428). Reasonable people must be willing to accept the Gap\* in Model IV, just as they must be willing to accept the Gap in Models II and III. Each must be willing to admit that the unjust exercise of political power is legitimate, as long as the Gap\* is not too great. A political system will be stably legitimate only if legislation is within the Gap\* of all reasonable citizens. If some law *l* falls outside Alf's acceptable Gap\*, he will not see it as “sufficiently just” to merit allegiance.

### *5.3 The Possible Incoherence of Public Reason*

“A citizen engages in public reason,” Rawls tells us, “when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values that others, as free and equal citizens might also reasonably be expected reasonably to endorse. Each of us must have principles and guidelines to which we appeal in such a way that this criterion is satisfied” (*PL*: 450). A reasonable political conception is, at least partially, a reasonable ordering of the political values (*PL*: 98, 454). Suppose that the relevant political values are *a*, *b*, *c*, *d*, and *e*, and conceptions I, II and III order them as in Display 2.

<b>I</b>	<b>II</b>	<b>III</b>
<i>a</i>	<i>b</i>	<i>c</i>
<i>b</i>	<i>c</i>	<i>a</i>
<i>c</i>	<i>a</i>	<i>b</i>
<i>d</i>	<i>d</i>	<i>e</i>
<i>e</i>	<i>e</i>	<i>d</i>

DISPLAY 2

As Rawls stresses, some orderings of political values can be unreasonable (*PL*: 243n), so let us say that all reasonable orderings must accept that *a*, *b* and *c* are to be ranked above *d* and *e*. All three conceptions meet this constraint. All three are also coherent rankings of the political values. Now according to Model IV, “citizens must vote for the ordering of political values they sincerely think the *most reasonable*” (*PL*: liii, emphasis added), and explain their votes in terms of their reasonable balance (*PL*: 243). Assume that a political society is equally divided among these three conceptions, and there is a series of pairwise democratic votes over a matter of basic justice with three options, *x*, *y*, *z*, where all agree that only three political values are at stake, *a*, *b*, *c*. Display 3 translates the conceptions into positions on this issue.

<b>I</b>	<b>II</b>	<b>III</b>
<i>x</i>	<i>y</i>	<i>z</i>
<i>y</i>	<i>z</i>	<i>x</i>
<i>z</i>	<i>x</i>	<i>y</i>

DISPLAY 3

The problem is obvious and familiar: the result of a majority vote is a cycle at the top, where  $x > y$ ,  $y > z$  and  $z > x$ .<sup>32</sup> Public reason, Rawls says, seeks to resolve political questions by a reasonable ordering of political values (*PL*: li), but when public reason is based on different conceptions of justice, each with its own coherent reasonable balance and guidelines (*PL*: 450-51), the upshot of a vote may well be a result that is not justified by any coherent political conception. A shared public conception of justice is a strong force

<sup>32</sup> Read “>” as “ranked higher than.”



toward a coherent public reason. Recall Rawls's insistence that, "[w]hat is needed is *a regulative political conception* of justice that can articulate and order *in a principled way* the political ideals and values of a democratic regime" (OC: 421, emphasis added). By abandoning public justice, and tying the content of public reason to a family of reasonable balances (PL: 442), Model IV leaves itself far more open on matters of basic justice to the types of incoherence that can result from aggregation procedures.<sup>33</sup>

## 6 ON THE GREATNESS OF POLITICAL LIBERALISM

Here, then, are four models, each worthy of development. In our own works, we have each found a development of the one-step variant of Model III most promising; others will to explore different ways of thinking about the political, social and moral lives of free and equal persons under conditions of deep evaluative diversity. As we said at the outset, our aim has been to present four compelling models, while inviting others to reassemble Rawls's insights in other ways. The conviction underlying this approach is that the greatness of *Political Liberalism* is not best honored by insisting on its baroque unity.<sup>34</sup> Let us begin to understand *Political Liberalism* as a rich mine of models to be

<sup>33</sup> Some Rawlsian philosophers have taken up something like Model IV and effectively given up on having a shared, regulative conception of justice. On such a view, what might really matter just is that citizens can mutually recognize that each is appealing to some reasonable conception, without them all having to appeal to the same conception. Though they do not get the social regulation and ordering that Rawls emphasized, this mutual recognition of commitments to reasonable views may ground a sort of community or civic friendship. Some theorists even seem inclined to abandon the need for anyone to have a coherent conception of justice at all, with citizens only needing to appeal to some broad set of reasonable liberal values, such as freedom and equality. For views along these lines, see Gillian K. Hadfield and Stephen Macedo, "Rational Reasonableness: Toward a Positive Theory of Public Reason," *Law and Ethics of Human Rights* 6, no. 1 (2012): 7–46; R. J. Leland, "Political Liberalism and Political Community," in *Justifying Political Liberalism* (Stanford, Calif.: dissertation manuscript, 2014); Andrew Lister, *Public Reason and Political Community* (New York: Bloomsbury, 2013).

<sup>34</sup> One may be reminded of Nietzsche's aphorism: "The philosopher believes that the value of his philosophy lies in the whole, in the building; posterity discovers it in the bricks with which he built and which are then often used again for better building: in the fact, that is to say, that the building can be destroyed and *nevertheless* possess value as material." Friedrich Nietzsche, *A Nietzsche Reader*, trans. R. J. Hollingdale, Reprint edition (Harmondsworth ; New York etc.: Penguin Classics, 1978), 33.

developed and exploited, not a minefield of quotations, deployed by scholastic interpreters to explode any proposed development or engagement.<sup>35</sup> The political liberalism project advanced a breathtakingly original and vibrant philosophical agenda, generating new problems, concepts and models at an astounding rate. Rawls has left us with exciting avenues to explore, problems to solve, and fecund ideas to develop. What more could we ask from a great philosopher?

<sup>35</sup> We thus have great sympathy with those deeply frustrated philosophers who, seeking to engage with political liberalism, are met with the Rawls expert who points out that their claim about political liberalism is not consistent with the  $n^{\text{th}}$  feature of the reasonable stated in footnote  $x$  in the second introduction to *PL*. Careful and thorough readings are important, but should not be weaponized to prevent even the possibility of ongoing development. Those who greatly admire Rawls should not follow Lord Peter — “I always have a quotation for everything — it saves original thinking.” Dorothy L. Sayers, *Have His Carcase* (New York: Open Road Integrated Media, 2012), p. 57.