

# How to Proceed in Social Philosophy: Contextualist Justice and Wide Reflective Equilibrium

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*Professor Nielsen argues that John Rawls's concept of 'wide reflective equilibrium' is a sustainable method of generating principles of justice compatible with liberal tolerance and the fact that modern societies are intractably plural. The author explains that 'wide reflective equilibrium' as a philosophical method successfully avoids foundationalist speculations, seeking instead to achieve an 'overlapping consensus' on principles of justice that is necessarily contingent and fallible. Against criticisms that the principles established by Rawls's method are incapable of legitimizing purely contingent principles of justice, Professor Nielsen argues that the method allows for the careful weighing and sifting of these principles. 'Wide reflective equilibrium', it is claimed, lends coherence to principles of justice referred to in the governance of plural societies. In doing so it provides a new something for philosophy to be after the collapse of the 'grand tradition' of foundationalism.*

*Most Anglo-American academic books and articles on moral philosophy have a fairy-tale quality, because the realities of politics, both contemporary and past politics, are absent from them.*

Stuart Hampshire, *Innocence and Experience*

## I

I articulate and defend a contextualist and historicist conception of social philosophy that deliberately eschews foundationalist speculations; that is, epistemological, metaphysical and 'grand moral' theories. Instead, it sees questions of justification as practical and pragmatic questions. In so proceeding I build on some conceptions of John Rawls, and, in the course of this building, I defend his conception of wide reflective equilibrium from criticisms that not a few have come to regard as effectively undermin-

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ing his account and indeed any similar account. I practice and theorize a practice which is a form of social philosophy (including moral, legal, and political philosophy) that travels metaphysically and epistemologically light. Conceptions of justice and conceptions of the good life (and the relations between them) are central in social philosophy, as are questions concerning their practical rationalization and justification. I defend this method of contextual and pragmatic justification of principles of justice and of social practices against claims that it is too *status quo* oriented or too relativistic or is blandly, or at least unwittingly, ethnocentric. However, unlike Rawls, and more like Richard Rorty, I align this appeal to considered judgments in wide reflective equilibrium with a metaphilosophical conception that is Wittgensteinian and Deweyian.

What is involved with the above gesture at Wittgenstein is a form of Anti-Philosophy *philosophy* building creatively on Wittgenstein's therapeutic conception of philosophy.<sup>1</sup> Anti-Philosophy

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1. See K. Nielsen, *After the Demise of the Tradition* (Boulder: Westview Press, 1991); K. Nielsen, "On There Being Philosophical Knowledge" (1990) LVI, Part 3, *Theoria* 193; K. Nielsen, "Can There Be Justified Philosophical Beliefs?" (1991) 40 *Iyyun* 235; and, K. Nielsen, "Anti-Philosophy Philosophy: Some Programmatic Remarks" (1994) 64 *Dialogos* 149. Anti-Philosophy *philosophy* is not anti-Philosophy *simpliciter*. It is not Aristophanes lampooning Socrates or, in our time, some academics (to say nothing of some non-academics) dismissing philosophy as either rhetorical hot air or 'logic chopping' to no point. Some anti-Philosophy philosophers will acknowledge that there is sometimes more in such scoffing dismissals than many philosophers are willing to acknowledge. The usual defense mechanisms are at work here. But anti-Philosophy philosophers also realize, and acknowledge, that there are deep intellectual as well as other pressures that drive some people into thinking philosophically. Philosophy has a long history in our Western tradition and cannot, and should not, just be shrugged off. Anti-Philosophy philosophers do not just engage in ridicule and shrugging off. But, with all the problems of pragmatic self-contradiction, they argue *philosophically* for the end of philosophy as it has been traditionally conceived, either in the grand metaphysical-epistemological tradition or in systematic analytic philosophy. Both Ludwig Wittgenstein's and Richard Rorty's work is crucially paradigmatic here. I suspect, however, that neither Wittgenstein nor Rorty would welcome the term 'anti-Philosophy philosophy'. (To say that of Wittgenstein is a radical understatement.) Rorty rightly argues that there is no sensible talk of 'the end of philosophy' *sans phrase*. See R. Rorty, "Habermas, Derrida and the Function of

sophy philosophy affords a powerful rationale for setting aside the ontotheological tradition of philosophy, the grand old tradition of philosophy. This tradition was very much the dominant tradition from Plato to Hegel and the neo-Kantians, right down to its contemporary reincarnations in much of the actual work of the logical positivists, and explicitly in the work of analytical

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Philosophy" *Revue Internationale de Philosophie* [forthcoming]. But all the same, both Wittgenstein and Rorty perfectly and brilliantly exemplify what I have called anti-Philosophy philosophy. Rorty is the more explicit of the two. He distinguishes, in a way that is very germane to this essay, between philosophy and Philosophy. The former is something he takes to be quite unproblematic and not about to come to an end. It is—Rorty adopts the phrase from Wilfred Sellars—"an attempt to see how things, in the broadest possible sense of the term, hang together, in the broadest possible sense of the term" (*Consequences of Pragmatism, infra* at XIV). He goes on to add that in "this sense, Blake is as much a philosopher as Fichte, Henry Adams more of a philosopher than Frege. No one would be dubious about philosophy, taken in this sense" (*Consequences of Pragmatism, infra* at XV). But besides philosophy—a desirable and, he believes, an unproblematic activity—there is Philosophy, something which is much more specialized, and, he believes, very dubious indeed. It is Philosophy—either in the grand metaphysical and epistemological traditions or in the naturalistic and scientific form of Quine and Armstrong—that Rorty opposes and rejects. He agrees with the pragmatist, indeed he is himself a pragmatist, in believing "that one can be a philosopher precisely by being anti-Philosophical, that the best way to make things hang together, is to step back from the issues between Platonists and positivists, and thereby give up the presuppositions of Philosophy" (*Consequences of Pragmatism, infra* at XVii). See key programmatic statements by Rorty which occur in R. Rorty, *Consequences of Pragmatism: Essays 1972-1982* (Minneapolis: University of Minnesota Press, 1982) at Xiii-XLvii, 211-30 [hereinafter *Consequences of Pragmatism*]. It is from this text that I have been quoting in this note. Given Rorty's distinction between philosophy and Philosophy, to call someone an anti-Philosophy philosopher, the anti-Philosophy part is with a capital 'P'. Wittgenstein, however, might plausibly be thought to be an anti-philosophy philosopher in both of Rorty's senses of 'philosophy'. See M. Williams, "The Elimination of Metaphysics" in G. Macdonald and C. Wright, eds., *Fact, Science and Morality: Essays on A.J. Ayer's Language, Truth and Logic* (Oxford: Basil Blackwell, 1986) 9. J.F. McDonald, in J.F. McDonald, *Wittgenstein's Therapeutic Conception of Philosophy* (Ph.D. Thesis, University of Ottawa, 1993) [unpublished], sets out a convincing textual and argumentative case for claiming that, from his early *Notebooks*, through the *Tractatus Logico Philosophicus*, the *Philosophical Investigations*, and on to, and through, *On Certainty*, Wittgenstein retained a thoroughly therapeutic conception of philosophy.

metaphysicians. (In its late formulations, understandably, it becomes more self-conscious and nervously defensive.) There is, in all of these philosophers, a hankering after the gaining of some necessary truths that would solve rather than dissolve the great ontotheological problems of philosophy. Wittgenstein, Richard Rorty, and Hilary Putnam, by contrast, show us how we can legitimately set those 'great problems' of the tradition aside.<sup>2</sup> Wittgenstein contents himself with nay-saying, while Rorty and Putnam go on, with some yea-saying as well, to an articulation, though more in the *idiom* of a kind of laid-back linguistic philosophy, of a Deweyian-like pragmatism, thoroughly historicized, in which the problems of human beings, the problems of our epoch, become the central subject matter of philosophy. This puts moral, political, and social philosophy centre-stage, though now done in a thoroughly anti-foundationalist way. Where philosophy is so focused, the work of John Rawls and, though in a very different way, the work of Michel Foucault become central. This is no place to state the detail of their work, let alone analyze them, but I shall take Rawls as a paradigm to show something of how philosophy looks, and what its essential tasks are, when it is so construed. We will then look a bit at whether this does yield a new (given our present history) and legitimate thing for philosophy, particularly social philosophy, to be.

In "Kantian Constructivism in Moral Theory," most programmatically in "Justice as Fairness: Political not Metaphysical," and in a series of subsequent articles, Rawls argues, to cite from the first mentioned article, that "the justification of a conception of justice is a practical social task rather than an

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2. L. Wittgenstein, *Remarks on the Foundations of Mathematics* (Oxford: Basil Blackwell, 1956); L. Wittgenstein, *Philosophical Investigations*, G.E.M. Anscombe, trans. (Oxford: Basil Blackwell, 1953); and, L. Wittgenstein, *On Certainty*, D. Paul and G.E.M. Anscombe, trans. (Oxford: Basil Blackwell, 1969). R. Rorty, *Consequences of Pragmatism*, *ibid.*; R. Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989); R. Rorty, *Objectivity, Relativism and Truth* (Cambridge: Cambridge University Press, 1991); R. Rorty, *Essays on Heidegger and Others* (Cambridge: Cambridge University Press, 1991); and, R. Rorty, "Feminism and Pragmatism" (1991) 59 *Radical Philosophy* 3. H. Putnam, *Renewing Philosophy* (Cambridge: Harvard University Press, 1992).

epistemological or metaphysical problem.”<sup>3</sup> He deliberately travels philosophically light, avoiding making claims, for example, about ‘universal truth’ or “about the essential nature and identity of persons.”<sup>4</sup> He does not say, positivist style, that these are pseudo-problems or even problems without interest or significance, but only that they must be set aside for the purposes of arguing for a normative political philosophy for modern constitutional democracies.<sup>5</sup>

In “Justice as Fairness: Political not Metaphysical,” Rawls starts by explaining why his conception of justice does not rest on controversial philosophical claims and why this is a good thing, given his understanding of what the aims of political philosophy and the political conception of justice should be in societies such as ours. Our constitutional democracies are deeply and ineradicably pluralistic in our present situation and indeed, they will probably grow more so. In such a world, Rawls argues, “the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines. Thus, to formulate such a conception, we apply the principle of toleration to *philosophy itself*: the public conception of justice is to be political, not metaphysical [emphasis added].”<sup>6</sup>

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3. J. Rawls, “Kantian Constructivism in Moral Theory: Rational and Full Autonomy” (1980) 77 *Journal of Philosophy* 518. See also J. Rawls, “Justice as Fairness: Political not Metaphysical” (1985) 14:3 *Philosophy and Public Affairs* 223; J. Rawls, “The Idea of an Overlapping Consensus” (1982) 7 *Oxford J. Leg. Stud.* 1; and, J. Rawls, “The Domain of the Political and Overlapping Consensus” (1989) 64:2 *N.Y.U.L.R.* 233. See also J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993). The above essays, along with some others, have been conveniently collected and perspicuously arranged in French translation. See J. Rawls, *Justice et Démocratie* (Paris: Editions du Seuil, 1993).

4. J. Rawls, “Justice as Fairness: Political not Metaphysical,” reprinted in J.A. Corlett, ed., *Equality and Liberty: Analyzing Rawls and Nozick* (London: Macmillan, 1991) 145 [hereinafter “Justice as Fairness”].

5. ‘Must be’ is perhaps too strong. ‘Are much better’ might seem to be preferable. But given the intractability of pluralism and the irrationalism of a belief that any comprehensive doctrine could gain society-wide acceptance, ‘must be’ seems the more appropriate.

6. “Justice as Fairness,” *supra* note 4 at 145.

It is important to see that the work in political philosophy here — the articulation, clarification, and defense of a political conception of justice — is not the second-order activity characteristic of analytical philosophy.<sup>7</sup> It is resolutely first-order discourse, normative, descriptive, interpretative and explanatory, as well as a discourse articulating a method of moral reasoning (reflective-equilibrium), at least in certain domains. It is not meta-ethical or meta-political. It does not analyze the concept of justice or any other normative concept. It articulates certain conceptions of justice showing their rationale, how they balance off the demands of liberty and equality, and what a well-ordered society would be like. Rawls does not, as I remarked, analyze the concept of justice, but takes ‘justice’ to be a primitive we understand well enough to engage in reasonable political deliberation, discussion and theorizing. He does not, except incidentally, talk about our talk about politics, morality, law, and society. The positivists thought that the only thing in the domains of morals and politics a philosopher, *qua* philosopher, could do would be meta-ethical or meta-political; that is, discussions of the logic of such discourse. Rawls, and most of the political and moral philosophers coming after him, resolutely violate that constraint.

On the firm terrain of first-order moral and political discourse, Rawls remarks that while “a political conception of justice is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions.”<sup>8</sup> His political conception of justice, but this could apply to the political conceptions of justice of others as well, is meant to apply to the basic structure of modern constitutional democracies. He means by ‘basic structure’ a “society’s

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7. It is tempting to say, instead of ‘characteristic of analytic philosophy’, ‘definitive of analytical philosophy’, but that is overly strong, for, since Quine’s attack on the significance of the analytic/synthetic distinction, analytic philosophy has taken many turnings and divided in many ways. Indeed probably so many of both that, apart from a concern for clear articulation and careful argument (certainly valuable things), there is not much left that is distinctive about it. Yet, if we are going to speak of analytic philosophers at all, Rawls would certainly count among them.

8. “Justice as Fairness,” *supra* note 4 at 146.

main political, social and economic institutions, and how they fit together into one unified system of social co-operation.”<sup>9</sup>

It is important that we keep the scope of Rawls’s inquiry firmly in mind. Unlike the principle of utility or perfectionist principles, “justice as fairness is not intended as the application of a general moral conception to the basic structure of society.”<sup>10</sup> The reason for this restriction may have theoretical grounds, but it has as well, and imperatively, practical ones. In pluralistic societies such as our own, “as a practical political matter no general moral conception can provide a publicly recognized basis for a conception of justice in a modern democratic state.”<sup>11</sup> Constitutional democracies emerged after the wars of religion between Protestants and Catholics. These wars resulted in a stalemate and in the exhaustion of the contending sides. This in turn led to a grudging *modus vivendi*. Both sides realized they could not win and that to continue to struggle would just lead to ever more destruction, chaos and misery. So reluctantly, and grudgingly, they agreed to tolerate each other. Slowly what was at first bitterly accepted as having only instrumental value came to be accepted as something which had intrinsic value as well. A principle of toleration came into play as an indispensable condition and *desideratum* for the constitutional democracies that came into existence in formerly contentious societies. Under adverse circumstances, this principle was often overridden or only given lip service. Indeed, in a Marxian sense, it often functioned ideologically. But where the constitutional democracies worked well, where conditions were stable and there was some reasonable social wealth, a principle of toleration became deeply entrenched, allowing for “the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by members of existing democratic societies.”<sup>12</sup> By now such a pluralism has become an almost unquestionable background assumption for a political

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9. *Ibid.*

10. *Ibid.*

11. *Ibid.*

12. *Ibid.* at 147.

conception of justice in a constitutional democracy. It is part of the very conditions of life for such societies.

Rawls's political conception of justice works, and is meant to work, within the confines of that tradition. It does not try to show what just social structures would look like in some ahistorical sense for any human being at any time and place. In this contextualist view of a political conception of justice, justification is seen as a practical and social task. A necessary condition for justifying such a conception of justice is the achieving of an overlapping consensus about it within such societies. This consensus about a political conception of justice and about practices of justice "includes all the opposing philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society."<sup>13</sup>

The first task of Rawls's political conception of justice — justice as fairness — is to provide, in "a reasonably systematic and practicable" way, "a more secure and acceptable basis for constitutional principles and basic rights and liberties than utilitarianism seems to allow."<sup>14</sup> Utilizing what he calls a 'method of avoidance', and with that, "applying the principle of toleration to philosophy itself," he does not seek to articulate "a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons."<sup>15</sup> Rawls seeks to avoid difficult issues (such as the nature of humanity, the nature of the good, how moral and other normative principles can be established to be true, the nature of practical rationality, the logical status of moral utterances, the controversy between realism and subjectivism about the status of moral and political values) in his articulation of a political conception of justice and of a political philosophy. As stated earlier, Rawls does not regard these philosophical questions about morality with indifference or think them to be unimportant. Indeed, our particular conceptions of the good may very well be of very great importance to us in our private lives as individ-

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13. *Ibid.*

14. *Ibid.*

15. *Ibid.* at 150, 151.



uals. Surely they will be important to us if we have much in the way of moral sensitivity. Moreover, where different conceptions of the good do not conflict with our political conception of justice, our respect for others will require that we respect these differences. But we will also recognize, if we are realistic, that there is no way to achieve consensus about such distinctive conceptions of the good, short of the autocratic use of state power to enforce a particular conception. This will be doubly true of philosophical articulations of a conception of the good. There is no chance at all of obtaining an overlapping consensus on the one true account of the good.<sup>16</sup> What we must recognize is that, “just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state’s infringement of basic liberties.”<sup>17</sup> But this is far too high a price to pay for philosophical agreement. Indeed, it is not even the kind of agreement philosophy seeks. It has many of the paradoxes and drawbacks of forcing faith or trying to force faith. People in societies such as ours — modern constitutional democracies — will not, if they are committed democrats, accept such a way of attaining agreement. Where they are clear that no unforced agreement can be attained they will, if they reflect carefully and stick with their deepest considered convictions, opt for the method of avoidance, setting aside, in their political deliberations concerning justice, such philosophical questions. They will seek instead a workable conception of political justice “so that social co-operation on the basis of mutual respect can be maintained.”<sup>18</sup> Rawls concludes that “[p]hilosophy as the search for truth about an independent metaphysical and moral order cannot . . . provide a workable and shared basis for a political conception of justice in a democratic society.”<sup>19</sup>

What would provide such a basis for social co-operation, what would resolve or at least ameliorate our sharp, politically rel-

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16. *Ibid.* at 150.

17. *Ibid.*

18. *Ibid.* at 151.

19. *Ibid.* at 150.

evant, moral conflicts — those we cannot relegate just to our private lives — would be a stable, overlapping consensus on principles of justice for the institutional design of constitutional democracies, which was also a consensus that could be sustained when the people in question get their beliefs in wide reflective equilibrium. We would look, that is, for agreement that would occur when we made a sustained use of the method of wide reflective equilibrium; the method that Simon Blackburn's nay-sayer, and perhaps Blackburn himself, thinks is such a non-starter.<sup>20</sup> Looking, as Rawls puts it,

to our public political culture itself, including its main institutions and the historical traditions of their interpretation, as the shared fund of implicitly recognized basic ideas and principles . . . [we] hope . . . that these ideas and principles can be formulated clearly enough to be combined into a conception of political justice congenial to our most firmly held convictions. We express this by saying that a political conception of justice, to be acceptable, must be in accordance with our considered convictions, at all levels of generality, on due reflection (or in what I have called 'reflective equilibrium').<sup>21</sup>

There have in the last few centuries been deep and persistent controversies over "the way basic institutions of a constitutional democracy should be arranged if they are to specify and secure the basic rights and liberties of citizens and answer to the claims of democratic equality when citizens are conceived as free and equal persons."<sup>22</sup> It is part of the shared convictions of all involved (part of an overlapping consensus) that citizens, indeed all people, should be considered as free and equal. Further, it is a conviction that equality, in some form, is a good thing and that it is important to secure the basic rights and liberties of everyone alike. People who reject such things on a Nietzschean, Stalinist, or de Maistrean basis are not part of the 'we' with whom we seek an overlapping consensus; they are not people committed to

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20. S. Blackburn, "Can Philosophy Exist?" in J. Couture and K. Nielsen, eds., *Méta-philosophie: Reconstructing Philosophy? New Essays on Metaphilosophy* (Calgary: University of Calgary Press, 1993).

21. "Justice as Fairness," *supra* note 4 at 149.

22. *Ibid.* at 147.

democracy. It is only to people so committed that Rawls addresses his conception of justification. But between democrats themselves “deep disagreements exist as to how the values of liberty and equality are best realized in the basic structure of society.”<sup>23</sup> What are the respective weights to be given to certain basic rights of the person and of property as over against political liberties and the values of political life?

All of these conceptions are, to a large extent at least, rooted in our considered convictions. We care, and care very deeply, about self-ownership, freedom of thought and conscience, and we care as well about having political control over our own lives. (Deep cynicism about it attests to how much we do care about it.) What justice as fairness tries to do is to articulate principles of political justice — for example Rawls’s famous two principles of justice — which seek to adjudicate between the Lockean democratic tradition, giving greater weight to individual liberties, and the Rousseauian tradition, giving greater weight to political liberties and the values of political life. The two proposed principles of justice are

to serve as guidelines for how basic institutions are to realize the values of liberty and equality, and [to serve as well to specify] a point of view from which these principles can be seen as more appropriate than other familiar principles of justice to the nature of democratic citizens viewed as free and equal persons.<sup>24</sup>

Other philosophers, in articulating alternative conceptions of political justice, or, using the same conception or similar conceptions, articulating different principles of political justice for constitutional democracies, should be concerned to show “that a certain arrangement of the basic structure, certain institutional forms, are more appropriate for realizing the values of liberty and equality”<sup>25</sup> in such societies and that their principles of justice more adequately articulate this than do Rawls’s principles.

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23. *Ibid.*

24. *Ibid.* at 148.

25. *Ibid.*

Finding a shared basis here for settling such a central political and moral question “as that of the most appropriate institutional forms for liberty and equality” is done by collecting together our deepest shared and considered convictions, such as our belief in the necessity of religious toleration and the rejection of slavery, and taking them, together with our well established relevant factual beliefs, to “organize the basic ideas and principles implicit in these convictions into a coherent conception of justice.”<sup>26</sup> We start with these considered convictions, regarding them as “provisional fixed points which any conception of justice must account for if it is to be reasonable to us.”<sup>27</sup> That is, we use the method of reflective equilibrium to gain a consistently held together, perspicuously displayed, collection of such considered judgments and related factual beliefs. To justify a political conception of justice is to do just that; reflective equilibrium is enough.

In practical deliberations, such as trying to work out just practices, we always start in an embedded context, giving initial weight to our considered judgments, but trying, as well, to justify them in relation to other beliefs by gaining, and clearly articulating, a coherent pattern of beliefs. There is, moreover, no breaking out of the circle of beliefs. Similarly with Rawls, no attempt is made to ‘get behind’ these considered convictions and to show that they represent some antecedently recognizable moral reality. For the purpose of articulating and justifying a conception of political justice, with its matching principles of justice, all such philosophical questions are left to benign neglect. The key question for the political philosopher should be: have we succeeded in collecting together such beliefs and settled convictions into a consistent package, perspicuously displayed, which yields a coherent conception of justice to guide us in determining how our basic institutions are to realize the values of liberty and equality?

What we need to articulate, in doing political philosophy, is “a new way of organizing familiar ideas and principles into a conception of political justice so that the claims in conflict, as previ-

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26. *Ibid.* at 149.

27. *Ibid.*

ously understood, are seen in another light.”<sup>28</sup> A conception of justice can be achieved only “if it provides a reasonable way of shaping into one coherent view the deeper bases of agreement embedded in the public political culture of a constitutional regime and acceptable to its most firmly held considered convictions.”<sup>29</sup> This is crucial, for, if it can be done, “this conception provides a publicly recognized point of view from which all citizens can examine before one another whether or not their political and social institutions are just. It enables them to do this by citing what are recognized among them as valid and sufficient reasons singled out by that conception itself.”<sup>30</sup> Without taking political or legal philosophy onto ontotheological grounds or even epistemological grounds, this would give it a scope far greater than that sanctioned by the positivist’s limitation of political or legal philosophy to a logical or conceptual analysis of the language of politics or the language of law. We would have got beyond the sterile formalism typical of most analytical philosophy. Philosophy would have a new lease on life, without going either second-order or back to the grand metaphysical tradition or to a foundationalist epistemological tradition.

## II

This distinctive, and indeed powerful, conception of political philosophy, and hence of philosophy, has been strenuously resisted even by some generally sympathetic to Rawls’s contractarianism and to his conception of justice as fairness. Some have thought this conception of the task of political philosophy for constitutional democracies is fundamentally wrong-headed; that, if accepted, it would destroy the fundamental Socratic ideal of doing philosophy, including political philosophy. I shall argue that, to the contrary, it does not reject the Socratic ideal but

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28. *Ibid.*

29. *Ibid.*

30. *Ibid.* at 149-150.

shows how it might reasonably be realized in a disenchanted, intractably pluralistic world.

It is said against Rawls's method of avoidance that in articulating a substantive normative political philosophy, we neither can nor should avoid the head on examination of controversial philosophical views, and we should defend those views which we believe are the more adequate.<sup>31</sup> In doing normative political philosophy in a way that is faithful to the Socratic ideal — that is, in a way that is genuinely critical — we cannot avoid (the claim goes) taking positions in the epistemology of morals, in meta-ethics, on the ontology of value, and we cannot avoid the articulation and defense of controversial moral principles, including principles which state a conception of the fundamental good for human beings.<sup>32</sup> In attempting to travel light philosophically, using the method of avoidance to set aside controversial philosophical issues, Rawls, the claim goes will not be able to confront the critical moral and political problems of our time. Rather, we will get an analytical and systematized sanctioning of the *status quo*. His very method, it has been claimed, makes impossible a critical political or moral philosophy, and even a reflectively critical public moral-political stance.

Moreover, considerations about the *status quo* aside, we would get a stable constitutional democracy, where such a political consensus would work, only if there were a sufficiently extensive overlapping consensus in the society such that there was no substantial minority advocating intolerance towards the beliefs of some others. Critics of Rawls, such as Jean Hampton (temperately) and John Gray (intemperately), claim that his world is not the real world of our democracies.<sup>33</sup> Our societies are pluralist all right, but they do not have the conditions of tolerance — the

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31. J. Hampton, "Should Political Philosophy Be Done without Metaphysics?" (1989) 99:4 *Ethics* 791. In critical response, see K. Neilsen, "Rawls and the Socratic Ideal" (1991) 13 *Analyse & Kritik* 67. Some philosophers of a more antique kind than Hampton make broadly similar charges against Rawls. See A. Bloom, *Giants and Dwarfs* (New York: Simon and Schuster, 1990) 322.

32. J. Gray, "Against the New Liberalism: Rawls, Dworkin and the Emptying of Political Life" (3 July 1992) *Times Literary Supplement* 13.

33. Hampton, *supra* note 31, and Gray, *ibid*.

reasonable pluralism — necessary for Rawls's political conception of justice to apply. Rawls, Gray claims, is living in a liberal's dream world. There is, for example, the extensive phenomena of religious fundamentalism. There are those who accept a principle of tolerance not as a moral principle to be adopted and cherished, but merely as a matter of expediency in the circumstances in which they find themselves.

Those empirical and pragmatic considerations for the moment aside, not a few moral and normative political philosophers think that both political and moral philosophy must concern itself with the pursuit of truth and not, except perhaps incidentally, with achieving overlapping consensus.<sup>34</sup> The central task is to find out what is the truth about moral and political matters. It is a secondary matter, not at the heart of political philosophy, to rationalize our considered convictions so as to form a consistently and perspicuously characterized representation of these convictions sustainable in an overlapping consensus. The philosopher's job is to ascertain (with or without consensus) true moral and political norms and to get as close as she can to the truth about such things.

Hampton, in a typical response to Rawls's program, remarks, "Socrates, the founder of our discipline, characterized philosophy as the pursuit of the truth."<sup>35</sup> This Socratic ideal is part of the very vocation of what it is to be a philosopher, but Rawls abandons it when he says that in political philosophy "noncoerced social agreement is to be our goal" rather than truth.<sup>36</sup> What really bothers Hampton, and bothers some other philosophers as well, is Rawls's eschewing of "attempts at philosophical proof through argumentation that involves the commitment to controversial philosophical premises."<sup>37</sup> It is an important part of philosophy, Socratically conceived, to resist True Believers, that is, people who put their cause over any consideration of truth. Philosophers wish to "examine the theoretical foundations of

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34. Hampton, *supra* note 31.

35. *Ibid.* at 807.

36. *Ibid.* at 808.

37. *Ibid.*

society as much to overturn what is unjustifiable as to find shared bases for agreement,” and this means to steadfastly maintain a search for truth whether the principles discovered are controversial or not.<sup>38</sup> In doing political philosophy in a way that is true to the vocation of philosophy, there can be no avoiding an activity “that is itself based upon substantive metaphysical beliefs about the nature of human beings.”<sup>39</sup> Even in doing political philosophy with a properly critical intent for societies such as our own, we must not use Rawls’s method of avoidance and set aside all controversial philosophical beliefs and questions. Hampton is claiming that to remain true to our vocation as philosophers, we cannot do that even for the purposes of doing political philosophy in defense of constitutional democracy. To use the method of avoidance, even in this circumscribed context, is in effect to be anti-philosophical, implicitly denying what it is to be a philosopher, for a philosopher must be prepared to follow the argument where it will go. That, in Max Weber’s sense of ‘vocation’, is just an essential part of his vocation as a philosopher.

However, it is plainly an error to characterize Rawls’s method of doing political philosophy as concerned solely with persuasion and consensus building, and not with trying to ascertain what is warrantably assertible. To be sure, his judgments are context-dependent, but they are all the same judgments concerning what it is reasonable, in the circumstances in which we find ourselves, to believe about a just society and how people would and should act in such a society. Moreover, he is describing what it is to be a well-ordered constitutional democracy worthy of our allegiance.

Rawls, early and late, is centrally concerned with justification. He wants to make sense of our disparate moral and political beliefs, to show that many of them can at least reasonably be seen to fit together into a coherent web of belief and conviction, and to articulate underlying moral-*cum*-political claims such as

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38. *Ibid.* at 812.

39. *Ibid.* at 814.



justice as fairness, which will reveal their rationale and show how it is reasonable — indeed more than reasonable — powerfully attractive, perhaps even compelling, to people situated as we are. This is not (*pace* Hampton) failing to follow the argument wherever it will go, for Rawls is after the justification of certain very fundamental moral and political beliefs. He seeks to show which ones are the most reasonable to hold in the circumstances in which we find ourselves and in changed circumstances that are feasibly possibilities — that is, circumstances that could be brought about by resolute but still morally acceptable action. Rawls wants to show how certain of those beliefs (ones central to constitutional democracies) can be justified. He wants to show that it is more reasonable for human beings — constituted as we are or as we could be if we became more informed and reflective — to accept certain principles of justice within the structure of a given type of society.

Rawls's argument is a justificatory argument that is both context-sensitive and empirical-fact sensitive. It is analogous to asking, and proffering an answer to the question, how we should live given the inescapability of death. Rawls is asking (and proffering to answer), what political conception of justice we should hold given: (1) that we are in constitutional democracies that are intractably pluralist; (2) that in such societies no controversial philosophical premise will gain acceptance in a justificatory argument that is meant to gain society-wide acceptance; and, (3) that ought implies can. Given this situation, what should be taken as the most adequate political conception of justice with its associated principles of justice? (He is, of course, concerned to articulate a conception of justice that would actually guide conduct.)

In the broad sense of a Socratic ideal, this can (without distortion) be called the search for truth. It is the attempt to find out what conception of justice under the circumstances is the best justified, the best warranted. And, as what is best warranted, it is what is most plausibly thought to be true or to be taken as

true.<sup>40</sup> This does not entail a belief in a speculative philosophical doctrine that a non-cognitivist or error-theorist would reject, namely, that there is something called moral truth, or that moral utterances are bivalent (either true or false) or anything of the sort. It does, however, involve the belief that some moral beliefs are warranted. Where the argument is about how we are to justify our moral and political beliefs here and now, we will proceed by using wide reflective equilibrium. In such a context, this is the way to follow the argument where it will go. Rawls does not think that the traditional Socratic ideal (the ideal articulated by Hampton) can yield a rationally justified political conception of justice in the circumstances in which we find ourselves. Hampton's conditions cannot be met. Instead, we should proceed, more internally and holistically, to realize a very similar ideal, adjusting here and there the web of beliefs and norms, until we get the most coherent account which we can for the time being attain. Of the alternatives, this is the most reflectively attractive to people such as ourselves situated as we are.

Going again at another round of putative self-referential contradictions, it could be objected that Rawls's method of wide reflective equilibrium is itself a controversial philosophical conception and thus, given his own method of avoidance, should be avoided. Rawls could, in turn, respond that while this method starts as a controversial philosophical thesis, it commends itself, on examination, to reflective common sense. It is a systematization of a way of proceeding we pervasively apply commensensically in inquiry and in the justification of belief and action. The method of wide reflective equilibrium, I would contend, is enlightened common sense rooted in our considered judgments and our use of public reason. Adequately reflected on, it should not remain controver-

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40. It might seem that I am unsaying what I just said. If moral utterances need not, or perhaps even properly cannot, be said to be bivalent (true or false), then how can a conception of justice or any other moral conception be taken as true? The answer is that '*taken as true*' in such a context need not be understood as being anything more than a firm way in which it is said, and thought, to be very strongly warranted, having as much warrant as we reasonably believe such a claim can have in the most propitious circumstances feasibly possible for such a claim. This is what '*thought to be true*' or '*taken as true*' comes to in such contexts.

sial as one philosophical framework set against another. Like much of John Dewey's work, it should be seen as a method squaring with, and in effect explicating, a part of our reflective common sense. It is a way of conceptualizing what we do when we are being reflective and careful and are not being carried away by some religious, philosophical, or ideological extravagance or other. We are claiming that, for Rawls to avoid pragmatic self-contradiction, the method of wide reflective equilibrium must be so defensible.

Rawls (again *pace* Hampton) is not just after the acceptance of some principles of justice but after their *rational* acceptance. Moreover, it is also important to remember that for Rawls, as for Jürgen Habermas, for the acceptance to count as a rational acceptance it must be informed and uncoerced and reached by citizens in ways consistent with their being viewed as free and equal persons.<sup>41</sup> The consensus achieved will, of course, be a particular consensus, gained for a time and place. This may seem to imply some kind of relativism. But while there is clearly an inescapable contextualism and historicism, there need be no relativism. Rawls, like communitarians, takes very seriously indeed the shared values, beliefs and traditions of our society. Moreover, there is no ahistorical Archimedean point in accordance with which we can gain a critical purchase on them. But wide reflective equilibrium gives us an *internal* way of gaining that critical purchase. And this enables us to evade relativism or being stuck with some traditional morality. After all, wide reflective equilibrium, though giving initial weight to our considered judgments, is also holistically coherent. It gains a critical purchase on traditional morality because the beliefs of traditional morality, to be reflectively sustainable, must yield a consistent cluster compatible with what we know or justifiably believe about people, society and nature.

This cluster of beliefs will be compatible with our general moral principles (principles which also may be our considered judgments), conceptions of morality and morality's underlying

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41. "Justice as Fairness," *supra* note 4 at 154-155.

rationale. These are principles and conceptions that we devise and, reflecting on them, find them attractive and perhaps even compelling. We must, to rationalize our morality and politics, get all of this into a consistent and coherent package. For such principles and conceptions so to stand with each other sometimes even requires modifying or even abandoning a more general moral principle. In this adjusting, to gain consistency and coherence (if they do not come to the same thing), there no doubt will be quite a winnowing of the considered convictions coming from the tradition or from the life-world. This yields a historicist but non-relativist critical morality. The source of moral legitimation is not simply society or the community. We start with the norms and values of our tradition, but they get critically assessed, though not all at once, in various concrete situations.

Socrates characterized philosophy as the pursuit of truth, but there is not much to the pursuit of truth without a pursuit of the *knowledge* of the truth. In practice, in what we can achieve, that can be nothing more than a pursuit of what we are best justified in believing at a given time and place, and that in turn comes to what is the most reasonable thing for us to believe at a given time and place. This is a demythologized sense of the Socratic conception of philosophy. In the pursuit of what it is most reasonable for us to believe are the most just social structures for constitutional democracies, either here and now or as those democracies might reasonably be expected to be transformed during our epoch, I should, as does Rawls, take the 'us' quite literally as being the people living in these constitutional democracies *and* committed to them. The 'us' or the 'we' are also taken to be in favourable circumstances (circumstances such as described in his early "An Outline of a Decision Procedure for Ethics"<sup>42</sup>) and reasoning in a certain way, namely, the way described in the method of wide reflective equilibrium or some reasonable approximation to it. With such an application of this demythologized Socratic conception of philosophy to political philosophy, Rawls shows how we can fallibly argue that certain

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42. J. Rawls, "An Outline of a Decision Procedure for Ethics" (1951) 60 *Philosophical Review* 177.

social structures are the most just structures possible in such societies, while eschewing attempts at philosophical proof through argumentation using controversial philosophical premises; premises upon which our pluralistic societies would never reach consensus.

### III

We need to return to the factual claim, made by Hampton and Gray, among others, that there is not in fact in our societies the overlapping consensus that Rawls finds necessary for the carrying on of political philosophy as he conceives it. The principle of toleration, which is at the heart of the self-conception of a liberal society, is, they claim, only accepted as a mere *modus vivendi* by religious fundamentalists, Stalinists, and very right-wing conservatives. If they had sufficient power, they, depending on who they are specifically, would not be tolerant at all of the beliefs of communists, socialists, atheists, agnostics, liberal theologians or more generally of liberals. Religious fundamentalists and right-wing conservatives would, in circumstances of secure power, not be tolerant of any of the above mentioned people. In the Soviet Union, communists were not tolerant of liberals or religious believers and were not even tolerant of dissident communists.

It is also the case, and relatedly, that there are sharply divisive moral beliefs with clear political implications in our society. Moreover, these are beliefs that many of us are very attached to indeed. There is no foreseeable possibility that we could achieve consensus on them, even after extensive reasonable discussion (assuming — which is surely to assume a lot — that we could ever get something even approximating that). Moreover, we should keep firmly in mind that for some of these beliefs, at least, there is little toleration of dissent. We cannot in fact gain a consensus on them, but still many people (including some sincere democrats), are not willing to be tolerant on such matters: to agree to disagree and to let everyone, in these respects, live and act as they will. Yet they are beliefs which require a political

solution. Differences about the morality of abortion or pornography are such issues. As a matter of sociological fact, people in our actual constitutional democracies sometimes have very different and indeed conflicting considered convictions about them. Moreover, there are a not inconsiderable number of people in our societies who are vociferously intolerant of the views, and sometimes even of the persons, with which or with whom they so fundamentally disagree.

There are a number of responses that could plausibly be made here. I will restrict myself to one line of argument. Rawls's justificatory arguments are made not to all and sundry but to people committed to constitutional democracy. That Fascists, Stalinists, and religious and racial fanatics (for example, the Aryan Nation, the Jewish Defense League, and the KKK) cannot be brought into the consensus is beside the point. They do not start by accepting constitutional democracy, except instrumentally and manipulatively. Rawls seeks to justify a conception of political justice to people who are committed to a constitutional democracy, but who are sharply divided over positive and negative liberty, the respective weights of liberty and equality, the role, weight, the scope of rights, and the like. That will include people who will disagree over whether there are any collective rights.

However, this response is not sufficient to meet all the objections discussed above. Sincere democrats can, and sometimes do, differ over issues such as abortion and pornography. But, as I have noted, many, perhaps most, people who have deep seated convictions about abortion or pornography are not prepared to be tolerant of those they oppose. They would make their views on such matters prevail if they could. But since they cannot, they accept (though with hostility) the presence of those who hold what are to them utterly abhorrent views. Still, these True Believers (particularly since they are also sincere democrats) will also have many other beliefs, including central moral and political beliefs, that are within the overlapping consensus of constitutional democracies. And at least some of these beliefs will conflict with their beliefs which are not in an overlapping consensus (for example, their beliefs concerning abortion, homophobia, or pornography). Moreover, they will want, unless they are utterly

irrational (something it would be very *parti pris* to ascribe to them), to have their own beliefs form a consistent cluster. There is, of course, extensive room for rationalization (in the bad sense), and being captive to an ideology, but in struggling against the rationalization when it occurs, there remains room for argument in accordance with Rawls's model. Moreover, even where rationalization occurs, that is something that can be noted and again argument can continue, only there it will be more difficult. But being difficult should not be translated into being impossible.

It is a deep underlying belief of modern democrats (including True Believers) that all persons, the greatest and the smallest, are to be respected. Hampton, and presumably Gray as well, believe, on the contrary, that there is no consensus on the idea that all humans deserve equal respect. The plain facts are, Hampton points out, that sexism, racism and exploitation are a pervasive and enduring part of our world, including our modern democracies. This certainly is true, but it is also true that in constitutional democracies they are on the defensive. Moreover, in such societies it is only from marginal figures, culturally speaking, that such beliefs get an explicit and self-conscious defense. Exploitation goes on, but apologetically so, and its defenses are indirect. It is said, by its defenders, to be an inescapable evil, or a necessary evil, tolerated only to avoid worse evils. Still, it is acknowledged that in itself it is a bad thing, to be gotten rid of if we can and if the costs are not too great. It is not something simply to be viewed with equanimity or indifference. It is also true that racist and sexist attitudes remain, but they are usually not defended as such. Everywhere, except among a few marginalized people, racism and sexism are taken to be evils. Now, as distinct from times in the not too distant past, their expression characteristically comes out in indirect ways that could not be consciously defended. When brought to the light by critical analysis, explicitly racist and sexist views will be rejected. Often there will be a lot of resistance (in the psychoanalytic sense) to recognizing them as racist or sexist, but that is a different matter. The relevant fact is that they cannot be consciously accepted.

Political philosophers in the rich capitalist democracies from right to left believe in rights: the good of self-respect; the equality

of persons; equality of opportunity; and, moral equality. The life of everyone matters and matters equally. As modernization goes on, these beliefs, ever more extensively, trickle down to the non-intelligentsia of our societies. However badly people violate it in practice, they give conscious assent to the belief that all human beings deserve equal respect. There are some hold-outs of course, but they grow fewer as modernization runs its inexorable course. It is reasonable to believe, or at least to hope, that people with sexist, racist, and exploitation-justifying beliefs (or their children or grandchildren) can, over time, be rationally argued out of them, using what is in effect the non-metaphysical apparatus of wide reflective equilibrium. Some of them will just be socialized out of them, but remember that even so, such attitudes and beliefs will have the background conditions (including procedures of argumentation and evidence giving and reception) captured by wide reflective equilibrium. Remember, also, that reflective equilibrium is little more than a philosophical, and perhaps pedantic, articulation of reflective common-sense reasoning in social contexts.

Still, that this can be said about beliefs about abortion, pornography, and homosexuality is less clear. Some moral disputes *may* remain intractable. There is no principle of sufficient reason in morals. This does not show that reflective equilibrium does not work, but only that not all beliefs, at a given time or perhaps ever, can be gotten into reflective equilibrium. Reflective equilibrium will always be incomplete. It is not a kind of unacknowledged rationalism about morality. But even here, it is not evident, even over such seemingly morally intractable issues, that, at the level of society, wide reflective equilibrium could not, or even would not, be effective, bit by bit, case by case, in gaining a resolution. Sometimes what is intractable in one epoch is not in the next. Racism is on the defensive today; in a decade or so, given struggle, general affluence, and education, it is reasonable to expect that homophobia will be similarly on the run. Already there are signs of it. The moral world does not stand still.

Moreover, even concerning, for a time at least, such intractable issues, what is to be believed here could still be the subject of rational argumentation. To illustrate: someone who rejects a ban



on hard pornography on the grounds that banning it would violate our rights to freedom of speech would, if he or she would have to use wide reflective equilibrium arguments, carefully attending to what free speech comes to, have to seriously consider whether freedom of speech is really at issue here at all. And even if it were, he or she would compare the weight of his or her other considered convictions regarding the wrongs of exploitation and degradation (particularly of children), conceptions of respect for people and the immorality of brutalizing people, and the like. It is not reasonable to take the undoubted value of free speech just by itself as some kind of 'absolute value' without considering how it squares with other things we deeply care about, and without considering what it is sensible to believe (for example, does a ban on pornography really violate our free speech rights?).

It still may be felt that my above account of democratic consensus in the rich capitalist democracies is too optimistic. It remains, some believe, a liberal's myth, distant from social reality. This issue is, of course, empirical and cannot be settled in a philosopher's or academic lawyer's armchair. Certainly there is a lot of racism, sexism, exploitation, and homophobia around. That is all too evident. Moreover, while an overt and conscious defense of racism and sexism is limited to a few marginalized groups, this certainly is not true of homophobia. On the contrary, it is entrenched in a broad social majority in many, perhaps most, of the liberal democracies. It has, for example, had an articulate elaboration and defense by the Supreme Court of the United States<sup>43</sup> and by the Roman Catholic Church. Similar reactions have come from many parliamentarians in liberal constitutional states. There is no overlapping consensus here any more than there is over pornography and abortion.

But I did not claim that there is an overlapping consensus on all major social issues. Far from it. What I did claim is that there is a not inconsiderable overlapping consensus on many social issues as well as on many other normative and factual matters and that this affords us a toehold to use in deliberations aimed at

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43. *Bowers v. Hardwick*, 478 U.S. 186 (1986).

widening the consensus. Tolerant views, to say nothing about egalitarian views on sexuality (including homosexuality) are pretty much limited to a liberal cultural elite and to those institutions where such opinions are influential. But a few decades ago this was also true of sexism and racism. Now we have, more or less across the board, at least at the level of the media and media-like expressions of belief and in expressed attitudes that tend to follow along with them, a kind of vague 'official egalitarianism' paying at least lip service to the belief that the life of everyone matters and matters equally. In such a modernizing society, at the level of ideology and at the level of public conception, everyone has equal moral standing. As a recognition of the sociological and anthropological facts trickle down into the society, racism and sexism have been put on the defensive. It is reasonable to expect that in the next few decades the same thing will happen about homophobia. Indeed there are already signs that it is commencing, though probably for Freudian reasons resistance will be more entrenched here.

Some might continue to object to my account. They could still claim that it is too optimistic, but not for the reasons discussed above. What I crucially fail to note, the claim could go, is that while the citizenry of the liberal democracies do indeed pay lip service to anti-racism and anti-sexism and a very large majority of these citizens sincerely believe they are not racists or sexists, they do so in the context of a considerable disagreement about what practices really are racist or sexist. I shall illustrate this with respect to sexism only. But similar things can be said about racism. Some say that pornography is sexist, others deny it; some say that failure to include unpaid household labour in our conception of gainful employment is sexist, others deny it; some say that affirmative action programs for women are sexist, others deny it. Behind a general consensus about the problem of sexism, there stands deep disagreement on what it is to be sexist and over what practices are actually sexist. So my optimism is not warranted.<sup>44</sup>

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44. I am indebted for the above cluster of observations both to an anonymous referee and to Jocelyne Couture.

I certainly do not deny, and indeed I would wish to stress, that there is a lot of sexism, racism, homophobia, exploitation, severe class and caste division and stratification, and the like in the world. There are also powerful currents of blind fanaticism, including, as I write (1994), the rise of neo-Fascist parties in Europe, the occurrence of 'ethnic cleansing', and the growing power of ethnocentric and anti-liberal forms of nationalism. To understate it, such things make our world a very bleak place, about which it is hard to generate much optimism. Issues like Fascism that we thought were settled come again on the agenda.

However, if we take a longer view and look at things over the last few hundred years, there is more equality in the world now than there was at the turn of the century, to say nothing of the seventeenth and eighteenth centuries. If our world can attain something approaching the economic wealth of the richer capitalist states, and reasonable security widely dispersed, it is reasonable to expect that there will be more movement in the direction of social equality and with it a withering away of homophobia and the remaining hidden forms of racism and sexism. It is true the world may not turn that way. We may not be able to generate that much wealth, our educational systems may remain impoverished, and it is a fact, even in the wealthy capitalist democracies, that economic insecurity is on the rise. If these things are not overcome, racism, sexism, and the other ills I have just described will not be defeated and may even be exacerbated. But it is not unreasonable to believe that we may muster sufficient economic and moral reasonableness to solve these problems. It is not evident that we cannot construct and sustain a socio-economic order that is both efficient and egalitarian.

## IV

Wide reflective equilibrium looks like just a fancy way of talking about being reasonable and commonsensical. It is far from evident (*pace* Hampton and Gray) that Rawls's metaphysics-free method would not suffice for argumentation and deliberation about the proper institutional design for a just society. Even

when we are imaginatively disputing with great figures of the past, this remains so, *pace* both Rawls and Rorty. It isn't that figures such as de Maistre, Nietzsche, Loyola, or the people depicted in the Icelandic sagas have systems of belief which are incommensurable with ours. We cannot rule out *a priori* that somewhere in the web of our and their beliefs and considered convictions we could find some toehold which would allow us, if we could (counterfactually could) actually be together, to deliberate together, fragile though our deliberations would be. Considerations about what is necessary for communication to obtain would make it seem very unlikely, perhaps even impossible, that we could be so totally distant from each other such that no argument and resolution, or at least a narrowing of differences, would be possible. For people even to conflict, they must have some understanding of each other and with such understanding there are some grounds for reasoning together and there are grounds for believing that sometimes people reasoning together will change some of their beliefs. Sometimes the change in moral or political beliefs would be on one side only, but sometimes (perhaps even more characteristically) the adjustment and change would be one in which both sides altered to some extent some of their beliefs as a result of honestly deliberating together. They would, in such a circumstance, come to a mutual accommodation that was not just, or perhaps even at all, a *modus vivendi*.

This, of course, is an idealized picture, for often people just throw insults or slogans at each other, or even fight. But sometimes people do deliberate together reasonably, or the force of circumstances can bring them to deliberate reasonably. That always remains an open possibility. It is not a liberal's myth. We, in short, have available here a social instantiation, or at least the possibility of an approximation, of the holist's conception of reflective equilibrium such that we would be justified in saying with the holist that "reflective equilibrium is all we need to try for," there being "no natural order of justification of beliefs, no

pre-determined outline for argument to trace.”<sup>45</sup> This does not entail or justify relativism, nor is it clearly compatible with any form of relativism.<sup>46</sup>

## V

Reflective equilibrium, whether narrow (partial) or wide, is, as we have noted, a coherence conception of justification. When wide reflective equilibrium is used, the intent in the justification of moral principles is “to make sure support for the moral principles is brought from as wide a justificatory circle as possible.”<sup>47</sup>

I will briefly characterize what this coherence method of moral justification is, starting with narrow (partial) reflective equilibrium, which I will contrast with wide (broad) reflective equilibrium. Narrow (partial) reflective equilibrium is an inadequate method typically used by contemporary intuitionists. It is sometimes just taken, by its less perceptive critics, to be the appeal to considered judgments in reflective equilibrium. It involves getting a match between our considered particular moral convictions (judgments) and a moral principle or cluster of moral principles (which may themselves be more general considered convictions) that systematize the more particular considered convictions. This allows us to see how they all could be derived from that principle or those principles (or at least come to recognize that they are in accordance with that principle, and are explained and rationalized by it). Through this process, the more particular moral convictions and more generalized moral principles form a consistent

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45. R. Rorty, “The Priority of Democracy to Philosophy” in M.D. Petersen and R.C. Vaughn, eds., *Virginia Statute for Religious Freedom* (Cambridge: Cambridge University Press, 1988) 271. This essay is reprinted in R. Rorty, *Objectivity, Relativism and Truth*, *supra* note 2 at 175.

46. K. Nielsen, “Relativism and Wide Reflective Equilibrium” (1993) 76:3 *The Monist* 316.

47. N. Daniels, “Reflective Equilibrium and Archimedean Points” in J.A. Corlett, ed., *Equality and Liberty: Analyzing Rawls and Nozick*, *supra* note 4 at 105.

whole, perspicuously displayed. Moral principles that do not so match with the great mass of our specific considered judgments will rightly be rejected. Also to be rejected are specific considered judgments in conflict with the mass of specific considered judgments and, as well, specific considered judgments different from (but not in conflict with) the mass of specific considered judgments but in conflict with moral principles widely and reflectively held. Furthermore, when two specific considered judgments conflict and one is in conflict with, or (if that is possible) simply not covered by, a moral principle widely and reflectively held, and the other specific considered judgment is in accordance with that principle, then the latter specific considered judgment is to continue to have our acceptance and the former is to be rejected or modified until it is no longer in conflict with the other considered judgment and the relevant moral principle.

Wide (broad) reflective equilibrium retains the features characterized by narrow reflective equilibrium, though subject to further constraints that I will specify. Wide reflective equilibrium, as its name connotes, casts a wider net than narrow reflective equilibrium. Many more considerations become relevant in giving a coherence account of moral and normative political justification. It seeks to produce, and perspicuously display, coherence among (1) our considered moral convictions, (2) a consistent cluster of moral principles, (3) a consistent cluster of background theories (including moral theories) about our social world and how we function in it, (4) an empirically based, broadly scientific conception and account of human nature, and (5) accurate social description. The aim is to show which moral judgments, including which political conception of justice and its allied principles, cohere best with these various elements. Those that do so are the judgments and principles we should accept (take to be justified) for as long as that equilibrium holds and is not replaced by another equilibrium with wider or better coherence. Coherence is given pride of place throughout. The intent is to get a consistent package, giving our moral principles and conceptions, such as the conception of justice as fairness, the widest consistent justificatory circle possible. The method is unreservedly holistic. We want a moral and political theory, more broadly a social theory, which

we are also taking to be a philosophical theory. It is crucial, however, to recognize that here I am taking 'philosophical theory', as a pragmatist would, as a theory which seeks to help us understand how things hang together and to see how some of the ways in which things could (in an empirically feasible sense of 'could') hang together, answer more adequately to human needs, and be more liberating of human powers than others.<sup>48</sup>

## VI

Simon Blackburn, or at least Blackburn's nay-sayer, thinks all this talk of reflective equilibrium is a very considerable mistake.<sup>49</sup> In such an account there is, he believes, a kind of unwitting rationalism that the development of philosophy should have taught us to set aside. As Blackburn puts it, "[t]here is an implicit *rationalism* in the pursuit of theory, as if the common intelligence of mankind (in place of God) must have dictated a hidden order in the various deposits, whose nature and whose unfolding the initiate might be privileged to uncover."<sup>50</sup> He comments: "But there is no reason to believe this in the case of intellectual and moral deposits from the shifting seas of cultural necessity and history."<sup>51</sup>

I do not think there is any such implicit and unwitting rationalism in such thoroughly historicist defenders of reflective equilibrium as Rawls, Daniels, or Rorty. They are all constructivists in normative political or moral theorizing and are not looking, as do moral realists or rational intuitionists, for the hidden underlying-

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48. See generally *supra* note 1.

49. Blackburn, *supra* note 20. I speak of Blackburn's nay-sayer, for Blackburn first develops a case against philosophy, and analytic philosophy specifically, and then briefly responds to it. The case against, I call the 'nay-saying' part. But much of that is something Blackburn articulates only to reject. His remarks about reflective equilibrium occur in the nay-saying part. But the trouble is that it is not clear how much of the nay-saying Blackburn, after giving it a run for its money, is repudiating.

50. *Ibid.* at 92.

51. *Ibid.*

ing structure to be revealed by moral or normative deliberation. They are not trying to discover some hidden moral structure of the world or even of the social or moral world. Instead, as Rawls puts it, they “collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent conception of justice.”<sup>52</sup>

The idea is to try out a conception of justice, in a way analogous to how a scientist would try out a hypothesis (something he or she invents and does not find) to see how well it rationalizes (makes sense of) our considered convictions at all levels of generality where our considered convictions themselves are not taken to have the status of rational intuitions. (Here Rawls’s procedure is very like Dewey’s.) If it so rationalizes our considered convictions and does it better than any of the extant alternative conceptions, then it is, for the nonce, a justified conception of justice. To be acceptable, it “must be in accordance with our considered convictions, *at all levels of generality*, on due reflection [emphasis added].”<sup>53</sup> This is not the uncovering of hidden structures, but the forging, inventing, constructing of a consistent package of beliefs, norms, theories, and the like. Shutling back and forth between an extensive range of considerations — not infrequently conflicting considerations — by pruning here, deleting there, by rejecting or reformulating elsewhere and, sometimes as well, by bringing into view new conceptions or articulating new norms, we seek to forge a consistent pattern of beliefs, coherently organized.

As Blackburn himself stresses, we cannot avoid starting with our beliefs (our considered convictions), but that is compatible with jettisoning or modifying many of them as we go along. The often cited metaphor of rebuilding the ship at sea is apposite here. In doing these things we seek a reflective equilibrium, taking it to be a philosophical and rational task, but there is there no implicit rationalism, either with a belief in an underlying

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52. “Justice as Fairness,” *supra* note 4 at 148.

53. *Ibid.*



moral structure there to be discovered or with the assumption of some principle of sufficient reason in ethics. There is no rationalistic belief that if we just try hard enough for a very long time, we will achieve reflective equilibrium and discover some underlying structure revealing what the truth about morality really is. There is no belief at all — even as a heuristic ideal — that if we apply this procedure long enough, diligently enough, intelligently enough, we will finally have some approximation of ‘the one true morality’. That is no more possible, or perhaps even intelligible, than is the idea of there being a uniquely true description of the world: a one true description of the world. We may or may not gain a temporary, and invariably incomplete, reflective equilibrium (as any reflective equilibrium must be) in a world in which that is as much as it is reasonable to expect; that is, in a world which has taken to heart the lessons of fallibilism. Achieving such a reflective equilibrium remains a crucial *desideratum* of moral and political thinking. But it need not be, nor is it thought to be, by Rawls, Daniels, or myself, to be the discovery of some underlying structure that our moral notions, or at least some of them, must answer to.

A difficulty with coming to grips with Blackburn’s attack on reflective equilibrium is that he creates a straw man. He does not argue against any of the extant accounts of reflective equilibrium such as Rawls’s or Daniels’s. And what he takes to be reflective equilibrium does not mesh well with their conceptions; conceptions of which they, along with Nelson Goodman, are the creators. After all, ‘reflective equilibrium’ is a term of art. It is difficult to ascertain whether the difficulties which Blackburn finds in what he calls ‘reflective equilibrium’ — difficulties which, in the view of his nay-sayer, would make ethical theory impossible — are difficulties in the conception of reflective equilibrium of which I am speaking.

All that to the contrary notwithstanding, my guess is that Blackburn’s account will be thought to be persuasive by many. Moreover, the errors he isolates in his straw man are errors that should not be made by articulators of reflective equilibrium or anyone else. So I shall examine his arguments.

Blackburn starts by remarking:

Let us suppose that an ethical or political theory would aspire to do two things. It would simplify and explain the apparent complexity of everyday ethical or political judgment. And it would thereby gain didactic authority, dictating or at least certifying verdicts in new and disputed cases.<sup>54</sup>

Reflective equilibria accounts, such as Rawls's and Daniels's, do indeed both seek to explain (using an approach which is analytic and explicative) and to give a coherence-type justificatory account of certain moral and political conceptions. What is so justified would have (though this is not their language) some didactic authority. But there is no suggestion that it would *dictate* anything. There is nothing even remotely like a totalitarian or authoritarian streak in Rawls or in Rawlsians. What reflective equilibrium would rather aspire to is to fallibly justify some ethical or normative political principles. But it sees the explicative (explanatory) and the justificatory tasks as distinct. The former Daniels refers to as the modest role for reflective equilibrium and the latter the daring role.<sup>55</sup> They are, of course, related, but from the first we cannot claim that anything thereby follows for the second, though what is ascertained of the first is relevant to the second.

Blackburn maintains "that the best descriptions of what ethics is and how it is actually conducted suggest very strongly that there is no serious place for any such theory."<sup>56</sup> Reflective equilibrium, he has it, yields nothing like a stable balance of the competing considerations. Rather, the conflicting and competing considerations lock, leading to bafflement. What we get by way of resolution is in reality a plumping for one or another alternative rather than anything approaching a reasoned resolution.<sup>57</sup> It is true, as we have seen, there remains substantial disagreement about the relationship of justice to equality and liberty, and about issues concerning entitlements and distribution. But there

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54. Blackburn, *supra* note 20 at 90.

55. Daniels, *supra* note 47.

56. Blackburn, *supra* note 20 at 90.

57. Blackburn does not cite or articulate who or what establishes this.

has also been a gradual refinement of the accounts, and *some* agreement about some not unimportant things. (It should be kept in mind that a similar state of affairs obtains both in science and in the philosophy of science.) If one looks at recent analytical accounts of justice, it will become evident that there are important areas of agreement as well as disagreement, and it is not unreasonable to think some progress has been made and will continue to be made. Whether the method of wide reflective equilibrium is subscribed to or not, it, or something rather like it, at least appears to be in operation here and to afford a way of characterizing this progress. Thus philosophers, social theorists and legal theorists dispute and, even though they continue to dispute, it is clear that their views undergo modification in terms of each other. Moreover, it would hardly be accurate to say that they end up, when push comes to shove (as it never does), just plumping for one account rather than another: just cheerleading for equality or autonomy or an entitlement account or a distributive account. They highlight different things on the moral and political map and they make mistakes, and some turns may simply be wrong turns. But through the conflict — the point-counterpoint of their accounts — we gain an increasingly more adequate drawing of the moral and political map. It is clear, after reading Susan Okin, for example, that Rawls, Robert Nozick, and Alasdair MacIntyre have not found an adequate place for the family in their discussions of justice.<sup>58</sup> But Okin's arguments also show how a theory of a basically Rawlsian type would be strengthened by taking on board something like her account of the family and how this could be done without any deep changes for his theory.

Settled intuitions, Blackburn claims, can have no didactic authority. He remarks that

settled intuitions are the unreflective convictions of a particular kind of animal with a (very) particular experience, history and cultural background. Such a background will largely include infection by the attitudes, emotions and beliefs of

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58. S. Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989).

other imperfect parents, mentors and peers operating in circumstances in which some ways of life worked and others did not, and in which some attitudes were fashionable, and others too expensive to be functional.<sup>59</sup>

Responding to this, it should be noted that 'settled intuitions' are precisely not the *unreflective* convictions but the *considered* convictions held by people who have reflected in a certain way, roughly in the way the ideal observer theory specifies. This restriction on appeal to convictions and judgments is very clear in all the writers who use the method of reflective equilibrium. In Rawls, for example, it was stressed from his early "An Outline of a Decision Procedure in Ethics" onward.<sup>60</sup> Moreover, with the stress by Rawls, Daniels, and Rorty on appealing to an overlapping consensus in constitutional democracies, the convictions being appealed to are plainly not those of the very particular experience of someone with a very limited history and cultural background.<sup>61</sup> In those considered convictions there is the input of a complex, varied, extensive and long Western tradition. To be sure, the Western tradition is not everything, but it is very *parti pris* and inaccurate to describe these as very particular local, rather accidental, attachments. It is also again *parti pris* and distorting to describe the considered convictions in the overlapping consensus as a 'jumble of attitudes' that theory (such as wide reflective equilibrium) systematizes in a very ethnocentric way.

Blackburn argues that "it is a delusion to expect there to emerge one theory that best justifies present intuitions and guides for future cases. We came to those intuitions not by a synchronic exercise of selection and weighing, but by a historical evolution: the theories whereby earlier participants in that history might have justified their intuitions to themselves are very probably virtually unintelligible to us, and there is no reason to imagine just one synthesis covering all the heterogeneous deposits."<sup>62</sup> Surely that would be a reason to expect many competing reflec-

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59. Blackburn, *supra* note 20 at 91.

60. Rawls, *supra* note 42.

61. Rorty, *supra* note 45.

62. Blackburn, *supra* note 20 at 92.

tive equilibria, as Rawls in fact does. They compete, and usefully so, but in seeking *wide* reflective equilibria, we seek equilibria which would, among other things, appeal to general social theory, theory of moral development, theory of the role of morality in society, and theory of human nature, as well as to a wide range of factual considerations. With such varied things being appealed to, and being through and through holistic, we have ways of coherently discussing the comparative adequacy of different reflective equilibria. After such discussion some might come to be seen, for a time, to yield a more comprehensive, more coherently articulated, equilibrium than others. But, of course, there will be no claim that one, or any other, yields the 'true comprehensive account for all time'. Such an account is at best unattainable and at worst (and more probably) incoherent. And even if we drop 'for all time' things are not much improved.

To say we did not come by those intuitions by 'a synchronic exercise of selection and weighing' is both true and false. It is true that they result non-rationally from enculturation, but it is also true that with poets, dramatists, philosophers, essayists, critical journalists, theologians, legal and political theorists, historians, among a host of others, there is a long tradition of critical reflection on these intuitions (refining them, pruning them, interpreting them, reinterpreting or reconceptualizing them, reflecting on how they fit together, making strenuous efforts to forge a better fit, and the like). If we do not mind sounding scientific and pedantic, this could very well, at a given time, be described as 'a synchronic exercise of selection and weighing'. Moreover, such weighing and historical evolution do not exclude each other; both factors are at work and it is not clear which influence has the greater causal import.

However, let us suppose, perhaps not implausibly, that it has been historical evolution, as Blackburn argues. It is also reasonable, by analogy with natural selection, to believe that those intuitions which have remained, and have become so culturally ubiquitous as to be a part of an overlapping consensus, are those which had the greatest importance to human beings or at least the greatest survival value. Blackburn objects to this by saying we are just arbitrarily handing ourselves "a Burke-like confidence in

the inherited wisdom of the ages.” There is, he adds, no reason to believe such a Burke-like story for “[w]hat has evolved is unlikely to be a masterly capacity for thinking through life’s problems in a coherent and principled way, but a series of ‘kludges’ or *ad hoc* and partial responses to pressures that have at best stood our genes in good stead in some local circumstances.”<sup>63</sup>

Again, this is a very partisan and problematic way to describe things; there is no reason to prefer it to a more Rawlsian one. Indeed, there is very good reason for accepting the Rawlsian one instead, on a principle of interpretative charity, namely, a methodological principle that says that, if without other costs, we can make sense of the phenomenon in question, by all means characterize it in a way that enables us to make sense of it. What has survived centuries of cultural and historical winnowing, facing challenges, scepticism, and the pressure of human living, is hardly likely to be such *ad hoc* responses as Blackburn alleges. One does not have to be a Burkean conservative, or any kind of conservative, to recognize that. Moreover, the alternatives proffered by Blackburn are by no means exhaustive alternatives. We do not have to choose between extensive Socratic capacities and ‘kludges’. It is not that individuals, any individuals at all, should have such masterful Socratic capacities. What is being claimed is that, through reflection, debate, argument and co-operative efforts over the centuries, we human beings, viewing ourselves collectively, have come to have a somewhat better understanding of certain social issues; in our theories of morality and politics, we have been able to make some sense of our social life and to articulate some norms which are reliable but fallible guides to action and social policy. (If this is whiggish, then so be it.) The most that is being claimed for individuals is that some philosophers or all-purpose intellectuals have developed something of a capacity to think about life’s problems in a coherent and principled way. Socrates, Montaigne, Pascal, Spinoza, Hume, Mill, Nietzsche, Arnold, Emerson, James, and Dewey have developed this capacity in some rather refined ways. Similar things could be said about

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63. *Ibid.*

Rawls, Berlin, Dworkin, Waltzer, Rorty, Foucault, Hampshire, and Habermas. This is a rare ability, an ability that no one has very completely, but there are some rudiments of it in some of us. But the crucial thing to see here is that in our deliberations together, we — ‘we’ as a collectivity — have slowly over time developed some understanding of morality, that we have articulated something like critical and reflective moral beliefs and attitudes, and that we have a rather commonsensical way of doing it. This is the way society has of deliberating and reasoning concerning our social problems — thinking them out in a tolerably disciplined way. Thus, we have good reasons for being sceptical of the conclusion of Blackburn’s nay-sayer (roughly the tradition of non-cognitivism) that there will be no ethical or political theory but only practical advocacy and cheerleading for various social orders and ways of life. Such a view has not been sustained.

## VII

Moral, social, and political philosophy should travel metaphysically and epistemologically light for both Rawlsian and Rortyan reasons; reasons which are different but do not conflict. Rorty accepts Rawls’s reasons, but has some reasons of a very different type of his own.<sup>64</sup> Rawls, however, would not accept, or would, at least for the purposes of political philosophy, remain agnostic about, the Rortyan ones. The Rawlsian ones, as we have seen, are not rooted in metaphilosophical, metaphysical or epistemological considerations, but in: (1) a distinctive liberal moral belief, the principle of tolerance; and, (2) what he takes to be, it seems to me rightly, a pervasive and intractable fact about modern societies, their pluralism. There are in our societies different, indeed often conflicting, conceptions of the good, including comprehensive conceptions; there are differing, and not infre-

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64. Rorty, *supra* note 45; and, R. Rorty, “Method, Social Science and Social Hope” in R. Rorty, ed., *Consequences of Pragmatism*, *supra* note 1 at 191. See also the perceptive: R. Rorty, “Paroxysms and Politics” (1993) 97 *Salmagundi* 61.

quently conflicting, conceptions of how to live our lives and of what is really worth having and doing. Moreover, there is no even remotely realistic possibility that this plurality of views, often rooted even in the same person, will end and that we will attain some consensus on the good life or human flourishing. This could only be achieved, if at all, by authoritarian state force. Rawls's distinctively liberal moral belief, a belief that would be widely shared, is that such forced consensus is too high a price to pay for agreement about the good life or for the common acceptance of any comprehensive moral or social doctrine. Yet we plainly need some public agreed on political conception of justice with its derivative rights, freedoms and duties. We need a way of fairly adjudicating conflicts of interest in a world of moderate scarcity. (What we should do when we consider the world at large, where it is a lie to speak of moderate scarcity, is a very different matter.) However, because of the intractable facts of pluralism and the moral unacceptability of authoritarian state enforcement of any comprehensive conception of the good, we cannot ground our political conceptions of justice in a comprehensive conception of the good. So if we are to ground it at all, it must be in a way that travels philosophically light, using what Rawls calls the method of avoidance.

Rawls argues that his conception of justice as fairness does just that with its linked contractarian and wide reflective equilibrium methodology. It makes no controversial philosophical assumptions, neither having, nor unwittingly assuming, any controversial metaphysical or epistemological doctrines. Philosophical avoidance in Rawls's case is rooted in moral, political, and factual considerations and not in any metaphilosophical argument that all such philosophical conceptions are moonshine. Rawls could be resisted, as Michael Sandel and Charles Taylor resist him, on the grounds that his own account unwittingly makes just the epistemological and metaphysical assumptions he would avoid.<sup>65</sup>

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65. M.J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); C. Taylor, "The Nature and Scope of Distributive Justice" in *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985) 289; and, C. Taylor, "Cross-Purposes: The Liberal-Communitarian



But he could also be resisted, as Blackburn and Gray do, on the grounds that the method of wide reflective equilibrium can neither produce nor articulate a reasonable consensus. I have resisted the second critique of Rawls here, and the first has been adequately resisted by Rawls himself.<sup>66</sup>

As I have already remarked, Rorty, with a social democratic liberalism similar to Rawls's, would accept Rawls's factual-moral-political rationale for setting aside epistemology and metaphysics and the like (in short, the baggage of the grand tradition). But Rorty also has another reason for doing so; namely, that they are all moonshine. There can be no ahistorical God's eye view of the world, an 'absolute conception' of the world, either moral or physical. Such philosophical foundations are impossible. We need, he maintains, Donald Davidson's nay-saying against the coherence of global scepticism or conceptual relativism (Davidson's nay-saying itself not being a metaphysical doctrine) and we need Rawlsian wide reflective equilibrium.<sup>67</sup> We should see them as being both a part of a holism that is resolutely commonsensical.

Rawlsian justice as fairness articulates liberal social democratic values more clearly and perspicuously than did previous liberal theorists, showing how these values fit together into a coherent view. It cannot provide a philosophical grounding for them, for no philosophical grounding is possible. But it is also important to see that no such grounding is necessary, and not to be spooked

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Debate" in N. Rosenblum, ed., *Liberalism and the Moral Life* (Cambridge: Harvard University Press, 1989) 159.

66. See "Justice as Fairness," *supra* note 4. See also Rorty, *supra* note 45.

67. D. Davidson, "Language and Reality" in D. Davidson, ed., *Inquiries into Truth and Interpretation* (Oxford: Clarendon Press, 1984) 181; D. Davidson, "The Myth of the Subjective" in M. Krausz, ed., *Relativism* (Notre Dame: University of Notre Dame Press, 1989) 159. R. Rorty, *Objectivity, Relativism and Truth* (Cambridge: Cambridge University Press, 1991); and, R. Rorty, "Pragmatism as Anti-Representationalism" in J.P. Murphy, *Pragmatism from Peirce to Davidson* (Boulder: Westview Press, 1990) 1. Nielsen, *supra* note 1; K. Nielsen, "Perspectivism and the Absolute Conception of the World" (1993) *Critica* 25:74 105; K. Nielsen, *Transforming Philosophy: A Metaphilosophical Inquiry* (Boulder: Westview Press, 1985); and, K. Nielsen, "Anti-Philosophy Philosophy: Some Programmatic Remarks" (1994) 64 *Dialogos* 149.

by the spectres of post modernist nihilism or be caught in a pre-modern nostalgia for the Absolute. Wide reflective equilibrium is enough. The rest is more spinning our wheels in mud.

## VIII

Moral philosophy, even politically relevant moral philosophy, does not stop at the coastline of a contractarian problematic. In Anglo-American philosophy, most prominently in the last thirty years, conceptions of justice and the dialectic between various forms of Kantianism, Hobbesianism, and utilitarianism have been centre stage. Much of this — though not all — has been foundationalist in a way that is fundamentally mistaken. Moral philosophy typically tags along behind the cutting edge of philosophical development. As we have seen in the recent work of Rawls, there are accounts of justice which have broken free of foundationalism and traditional philosophical preoccupations classically captured in moral theory in the work of Kant and Sidgwick. But there has also been a recent return to the ancients in the form of ‘virtue ethics’.<sup>68</sup> Much of it, as in the work of MacIntyre, Allan Bloom, and Leo Strauss, though sometimes expressed in an updated idiom, is in reality a throwback to pre-modernity and is thoroughly entangled in the grand old problems of philosophy.<sup>69</sup> Here the wheels really are spinning in mud.

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68. For a brilliant brief overview, see M. Nussbaum, “Virtue Revived: Habit, Passion, Reflection in the Aristotelian Tradition” (3 July 1992) *Times Literary Supplement* 9. For traditionalist articulations of such views, see also A. Bloom, *The Closing of the American Mind* (New York: Simon and Schuster, 1987); L. Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953); A. MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1984); and, A. MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988).

69. Though with MacIntyre there is also an acute sensitivity to the philosophical problems involved in turning to a pre-modern tradition.

But there are others — Stuart Hampshire, Martha Nussbaum, and Charles Taylor — of which this is not true.<sup>70</sup> Their ‘Aristotelianism’ is not at all caught in an anti-Enlightenment traditionalism of a deeply conservative nature. Although they defend particularity and recognize the importance of our historicity, they do this while still fully accepting the Enlightenment rooted values of universality, impartiality and equality. They criticize what they regard as certain excesses of Enlightenment *rationalism* without setting themselves in opposition to the Enlightenment. Moreover, Nussbaum gives us an Aristotelian ethics which does not become entangled, any more than Rawls or Rorty does, in epistemological or metaphysical issues or any kind of foundationalist issues. Yet, for all these Aristotelians, it is vital that we work out a comprehensive theory of the good: that we ascertain, if we can, what is the good life for human beings. There is, for them, no ascertaining what justice, even political justice, is, and then either stopping there or going on to ascertain what the good life for human beings is or vice versa. These inquiries are so linked that in determining what the good for human beings is, we will also have automatically determined what justice is, and in determining what just institutions and social practices are — what entitlements human beings have and what fair distributions are — we will also have to determine at least something of what the good life is. They believe there is no resolving the problems of a just society without working out a comprehensive theory of the good.<sup>71</sup>

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70. M. Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press, 1986); M. Nussbaum, *Love's Knowledge: Essays on Philosophy and Literature* (New York: Oxford University Press, 1990); M. Nussbaum, *The Therapy of Desire: Theory and Practice in Hellenistic Ethics* (Princeton: Princeton University Press, 1993); S. Hampshire, *Morality and Conflict* (Cambridge: Harvard University Press, 1983); S. Hampshire, *Innocence and Experience* (Cambridge: Harvard University Press, 1989) [hereinafter *Innocence and Experience*]; C. Taylor, *Sources of the Self* (Cambridge: Cambridge University Press, 1989); and, C. Taylor, *The Ethics of Authenticity* (Cambridge: Harvard University Press, 1992).

71. Nussbaum, *supra* note 68, expresses this view succinctly.

As far as I can see, this runs square into, and it seems at least to flounder on, Rawls's political objection; to wit, that by requiring for an adequate account of justice such a comprehensive view, we will never get an account of justice that can also function as an effective guide in intractably pluralist societies such as our own. This is so because in our societies, given their pluralism, it is *de facto* impossible that there will in the foreseeable future ever be agreement on the good for human beings.

I do not see any way around Rawls's point here. One might try to respond, weakly to seem to me, that practically, and as a matter of political expediency, we can perhaps, come to agree on some approximation to justice, some political conception of justice, along Rawls's line, that we can all live with in our pluralistic societies, while acknowledging that we will only *really* know what justice is when we know what the good for human beings is and we will only know that when we know what justice really and truly is. The two moral notions, though conceptually distinct, go together like equilateral triangle and equiangular triangle, or, like hand and glove, to switch the analogy. Moreover (*pace* Rawls), and more powerfully than in the above rejoinder, we can make a philosophical inquiry into the good, throwing it out as an idea to be *entertained* in our society without ever attempting to give it, in Blackburn's phrase, didactic authority. That seems fair enough, and it will not violate the respect for persons and the principles of toleration that are so central to liberalism. But, as Rawls stresses, it means that, in pluralistic societies, such a norm can never effectively govern, or even guide, the conduct of our social life. Practically speaking, we will have to live with what the Aristotelian regards as an approximation to justice.

However, the Aristotelians (Nussbaum is particularly effective here) are right in stressing, as both Habermas and Foucault do as well, how questions of self-understanding (who we were, are, who we might become, what is the best sort of life for us to live) are central ethical questions for us, which only a pervasive scepti-

cism and despair would let us set aside.<sup>72</sup> They are questions which we face individually and collectively when we think about our lives.

According to Aristotelian theories, the “goal of human choice . . . is eudaemonia or ‘human flourishing’, the good (complete) life for a human being.”<sup>73</sup> Nussbaum makes very clear how complex such a conception is, and its very great distance from a hedonistic utilitarianism. What makes Aristotelianism attractive is that it takes as the subject matter of ethics “not simply a narrow domain of specifically moral duties and obligations, but the whole conduct of life. Its starting point is the question, How should one live? It considers the whole living of a life.”<sup>74</sup> Unlike many foundationalist inquiries, it stresses what Marx, de Beauvoir and Sartre stressed as well — that “good lives have material and institutional necessary conditions” and that serious ethical inquiry (*pace* Sidgwick and Moore) cannot ignore these necessary conditions.<sup>75</sup> It is a central task of moral philosophy, Nussbaum asserts in good Aristotelian fashion, to enumerate the most important functions of human life and to inquire into how well people in societies such as ours are enabled to perform them and how society can be and should be altered so human flourishing would be as widespread and as full as possible.

To find out what human flourishing comes to it is still vital to identify the most important functions of human life, and to come to have a clear understanding of them. One important function of human life — Dewey rightly stresses it is only one — is to become reflective and to achieve something by way of

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72. J. Habermas, “Discourse Ethics, Law and *Sittlichkeit*” in P. Dews, ed., *Autonomy and Solidarity: Interviews with Jürgen Habermas* (London: Verso, 1992) 245 [hereinafter *Autonomy and Solidarity*]; J. Habermas, *Moral Consciousness and Communicative Action* (Cambridge: M.I.T. Press, 1990); M. Foucault, “Practices and Sciences of the Self” in P. Rabinow, ed., *The Foucault Reader* (New York: Pantheon Books, 1984) 331; and, M. Foucault, “The Ethic of Care for the Self as a Practice of Freedom” in J. Bernauer and D. Rasmussen, eds., *The Final Foucault* (Cambridge: M.I.T. Press, 1988) 1.

73. Nussbaum, *supra* note 68 at 10.

74. *Ibid.*

75. *Ibid.*

self-understanding, as well as an understanding of others and of the society and epoch in which one lives.<sup>76</sup> To exercise and cultivate one's capacity to be reflective is vital here. Both Hampshire and Nussbaum argue that reflectiveness about life, about the human good, and about what general human possibilities there are, will force such moral agents out of any kind of uncritical acceptance of local habits and toward the commonly human. Our very reflective capacity, if exercised carefully and without evasion, will drive a moral philosopher into "telling an outline story about the form of life of a rational being in a world of nature."<sup>77</sup>

Nussbaum recognizes that "neither in science nor in ethics can judgments be justified by an appeal to an altogether extra-historical reality."<sup>78</sup> But she also stresses, not incompatibly, that there can and should be universalizing reflection about human goods, human flourishing, general human possibilities, and the functions of human life. Virtues are the modes of characteristic human flourishing. A central task of moral philosophy is to specify what they are and to see, as Nussbaum puts it, how they are "answers to questions about how best to deal with a variety of problems faced by more or less all human lives."<sup>79</sup> Moral philosophers need to ask, as they have characteristically not, "what are the most common problems of human life and what is a good way to face them?" So, against Hobbesian, duty-based, and rights-based traditions, questions about what a good life would be become central for these neo-Aristotelians. Also

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76. J. Dewey, *Reconstruction in Philosophy* (Boston: Beacon Press, 1957); and, J. Dewey, *Theory of the Moral Life* (New York: Holt, Rinehart and Winston, 1960). For Dewey updated and powerfully developed, see I. Levi, "Conflict and Inquiry" (1992) 102 *Ethics* 814.

77. Nussbaum, *supra* note 68 at 11.

78. See Nussbaum, *ibid.* See also Rorty, *supra* note 45. H. Putnam, *Renewing Philosophy*, *supra* note 2; H. Putnam, *Realism with a Human Face* (Cambridge: Harvard University Press, 1992); J. Habermas, "Life Forms, Morality and the Task of the Philosopher" in *Autonomy and Solidarity*, *supra* note 72 at 187; J. Habermas, "The Limits of Neo-Historicism," *ibid.* at 237; and, J. Habermas, "Discourse, Ethics, Law and *Sittlichkeit*," *ibid.* at 245.

79. Nussbaum, *supra* note 68 at 11.

against the anti-theory conceptions of Foucault, Rorty or Walzer, they would stress the desirability of a systematic ethical theory yielding a universal theory of the human good.

This seems, at least on the face of it, to take us back into the philosophical swamp with the spectre of more wheels spinning in mud. But while such an account is compatible with foundationalism and a return to epistemology and metaphysics, it plainly does not require these problematic things. Dewey, as much as Aristotle, considered what are the most common problems of human life and what is a good way to face them, and Hilary Putnam has recently gestured at the importance of philosophers returning to that task.<sup>80</sup> But they both do this without taking us back into the ontotheological swamp. Moreover, nothing in what Nussbaum has set out requires us, justifies us, or should urge us, to go back into that swamp. For Plato, Aristotle, and the Stoics, their talk of the good and of the functions of human life was embedded in a metaphysical theory. But Nussbaum, in vivid contrast with MacIntyre, does a very good job of bringing out the ethical and political import of their theories without getting entangled in such contestable, perhaps even incoherent, philosophical disputes or doctrines. In enumerating the most important functions of human life, epistemology and metaphysics — pure philosophy of the grand tradition — has very little to say, but literature, history, psychology, and the social sciences have a lot to say, in different ways. Moral inquiry, given Nussbaum's aims and the aims of other such non-Thomistic Aristotelians such as Hampshire and Taylor, like critical theory or Rorty's conception of philosophy after the end of Philosophy, should be something that is integrated into the human sciences and into literature. It has lost, and blessedly so, its distinctive niche.

That seems to me to be all to the good. We can, and perhaps should, have a comprehensive account of the good, without philosophical foundations. In articulating it we will use wide reflective equilibrium, as we did in articulating a political concep-

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80. Putnam, *supra* note 2.

tion of justice. We will have an inquiry which will utilize the empirical, while not simply being either an empirical inquiry or a formal one, and will yield a critical morality and a critical politics: a morality and a politics which could be of some use in guiding conduct and in our coming to have a knowledgeable and reflective grip on our lives.<sup>81</sup> Whether it should attempt to articulate a comprehensive account of the good, as Nussbaum and Taylor believe, or should limit itself to a political conception of justice, as Rawls believes, or be more general while still giving priority to justice, as Dworkin believes, is a vital internal dispute within a common conception of what moral theory could be, and how it could flourish, even after the demise of the tradition.<sup>82</sup> In other words, even if, as I have argued, metaphysics, epistemology and foundationalist ethics should come to an end — and perhaps are slowly coming to an end — these contemporary philosophers, as did Dewey before them, have set out a not unimportant some-

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81. *Innocence and Experience*, *supra* note 70.

82. I say something about what I mean about the demise of the tradition in K. Neilsen, *After the Demise of the Tradition*, *supra* note 1; and in K. Neilsen, "Philosophy as Critical Theory" (September 1987) 61:1 Proceedings and Addresses of the American Philosophical Association (supplement) 89.



thing for philosophy to be: a something which is common to them, notwithstanding their anything but trivial differences.<sup>83</sup>

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83. It still might be objected that wide reflective equilibrium is larger than life. In aiming at it, we, as we have seen, appeal to general social theory, theory of moral development, theory of the role of morality in society, conceptions of human nature and a wide range of more purely factual considerations. This, taken together, is a lot, to put it minimally. Is it at all plausible to believe that such an equilibrium will emerge or even receive a reasonable approximation? I am not, of course, saying that individuals can master that range of material. But the method of wide reflective equilibrium is appealed to as a *social* conception. As a way of going about things, it requires wide social acceptance to be effectively and collectively utilized on a social level (the level for which it was conceptualized), to, as well, be embedded in the procedures of institutions and would need, to be effective, to be extensively practiced. It is envisioned as a way that a society should explicitly and consistently come to fix its beliefs, plans for action and devise its social policies. At least, if such a method obtains, this is how it would have to obtain to be thoroughly effective. But it is also thought that not infrequently something like this, though not self-consciously, is approximated in some of our common-sense and scientific practices. Is it so implausible, or even implausible at all, to believe that at the level of institutions and institutional practices such an array of considerations can be handled to good effect? Of course our equilibrium will always be incomplete. Fallibilism is the name of the game. However, it is not unreasonable to believe, or at least to hope, that in societies in fortunate circumstances (reasonable economic abundance and security and with high levels of education), we can gradually achieve an approximation of such an equilibrium — an equilibrium which will change again and again as our knowledge and our circumstances change. For an argument that this does not imply relativism, see K. Nielsen “Relativism and Wide Reflective Equilibrium” (July 1993) 76:3 *The Monist* 316. For remarks about wide reflective equilibrium repeatedly changing and always being incomplete, see J. Rawls, *Political Liberalism*, *supra* note 3 at 96-97.