

Justice *AND THE* Social Contract

Essays on Rawlsian Political Philosophy



Samuel Freeman

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Essays on Rawlsian Political Philosophy

SAMUEL FREEMAN

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To my mother; Clara Smith Freeman,
who taught me to persevere,
and in memory of my father,
Frank Freeman,
who, in a small Southern town,
first taught me about Justice

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Abbreviations

CE	Amaryta Sen, "Consequential Evaluation and Practical Reason," <i>Journal of Philosophy</i> 97 (September 2000)
CP	John Rawls, <i>Collected Papers</i> , ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999)
CPP	Will Kymlicka, <i>Contemporary Political Philosophy</i> (Oxford: Oxford University Press, 1990)
DP	Joseph Raz, "Disagreement in Politics," <i>American Journal of Jurisprudence</i> 43 (1998)
JLK	Susan Hurley, <i>Justice, Luck, and Knowledge</i> (Cambridge MA: Harvard University Press, 2003)
KC	John Rawls, "Kantian Constructivism in Moral Theory: The Dewey Lectures," <i>Journal of Philosophy</i> 77 (1980)
LCC	Will Kymlicka, <i>Liberalism, Community, and Culture</i> (Oxford: Oxford University Press, 1989)
Lectures	John Rawls, <i>Lectures in the History of Moral Philosophy</i> , ed. Barbara Herman (Cambridge, MA: Harvard University Press, 2000)
MA	David Gauthier, <i>Morals by Agreement</i> (Oxford: Oxford University Press, 1986)
Methods	Henry Sidgwick, <i>The Methods of Ethics</i> , 7th ed. (Indianapolis: Hackett, 1981)
OC	John Rawls, "The Idea of Overlapping Consensus," <i>Oxford Journal of Legal Studies</i> 7 (1987)
PL	John Rawls, <i>Political Liberalism</i> (New York: Columbia University Press, 1993; paperback ed., 1996, 2004)
Restatement	John Rawls, <i>Justice as Fairness: A Restatement</i> , ed. Erin Kelly (Cambridge, MA: Belknap Press, 2001)
RC	Kent Greenawalt, <i>Religious Convictions and Political Choice</i> (New York: Oxford University Press, 1988)

- SS Brian Barry, "John Rawls and the Search for Stability,"
Ethics 105 (July 1995)
- SV Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA:
Harvard University Press, 2000)
- TJ* or *Theory* John Rawls, *A Theory of Justice* (Cambridge, MA: Har-
vard University Press, 1971; revised ed., 1999)

Justice and the Social Contract

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Introduction

John Rawls is widely recognized as the most significant and influential political philosopher of the twentieth century. His main influence lies in two separate works, *A Theory of Justice* (1971) and *Political Liberalism* (1993).¹ Rawls revised his account of justice considerably in the twenty-two years intervening between these books, but there is a good deal of disagreement and confusion about how his views about justice changed. Some suggest that Rawls became more conservative, that he abandoned the difference principle, or that he altogether gave up on the idea of the original position and his social contractarianism. Others contend that in *Political Liberalism*, Rawls changed his thinking as a response to communitarian criticisms, or that he was primarily motivated to accommodate religion. In this book, I argue that all these claims are mistaken. There are powerful interconnections between *A Theory of Justice* and *Political Liberalism* that have not been sufficiently acknowledged in the literature. If one understands these connections, then one can better understand Rawls's project not only in *Political Liberalism* but also in *A Theory of Justice*. In this brief introduction, I provide the intellectual context for the chapters that follow, first by discussing the background to Rawls's transition to the doctrine of political liberalism and its basis in his social contractarianism, and then by foreshadowing the arguments of each chapter.

I. Rawls's Contractarianism and the Stability of a Well-Ordered Society

Rawls's aim in *A Theory of Justice* is to develop a theory of justice from the idea of a social contract found in Locke, Rousseau, and Kant.² He seeks to present

1. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971; rev. ed., 1999) (cited in text as *TJ*; sometimes referred to as *Theory*); *Political Liberalism* (New York: Columbia University Press, 1993; paperback edition, 1996, 2004) (cited in the text as *PL*; references are to the paperback edition).

2. Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 614 (cited in text as *CP*).

a contract theory that is not subject to objections often thought fatal to contract views and that is superior to the long-dominant tradition of utilitarianism in moral and political philosophy. Utilitarianism, Rawls believed, for all its strengths and sophistication is nonetheless incompatible with freedom and equality, the fundamental values of justice in a democratic society. By appealing to the social contract tradition Rawls hoped to derive a conception of justice more compatible with the values and ideals of a democratic society and with our considered convictions of justice.

Many contend that the idea of a social contract does no genuine work in Rawls, since (among other reasons) the parties' ignorance of facts in the original position prevents their bargaining and renders them all, in effect, the same person. I explain in chapter 1 how the original position involves an agreement that is not a bargain, but rather a joint precommitment to principles of justice. But in many respects, whether there is an agreement in the original position is beside the point. For, the way in which Rawls's justice as fairness is a social contract position has far more to do with his idea of a well-ordered society than does the original position. Rawls describes a well-ordered society as one in which all reasonable persons accept the same public principles of justice, their agreement on these principles is public knowledge, and these principles are realized in society's laws and basic social institutions. It is this general agreement among the members of a well-ordered society that mainly drives the contractarian element in Rawls's view, not simply the original position. The parties in the original position seek to discover and agree upon principles that reasonable persons with a sense of justice in a well-ordered society can generally accept and endorse as a public basis for justification. A well-ordered society is then one in which everyone can justify their social, political, and economic institutions to one another on reasonable terms that all accept in their capacity as free and equal, reasonable and rational citizens. It is (to use T. M. Scanlon's term) this "contractualist" idea of *reasonable agreement* among free and equal persons that is predominant in Rawls's social contract view, not the Hobbesian idea of rational agreement among persons motivated by their own interests that takes place in the original position.³

The overriding concern in Rawls's account of justice, early and late, is to describe how, if at all, a well-ordered society in which all agree on a public conception of justice is realistically possible. This accounts for Rawls's concern for the stability of justice as fairness. All along, Rawls aims to describe the conditions under which a "social contract"—general agreement upon principles of justice among free and equal persons with a sense of justice—can be achieved as a real possibility in the world. This continuing quest for the conditions of a stable social contract accounts for many controversial moves in Rawls for which he has been widely criticized—for example, it explains why he thinks that tendencies of human psychology, and general facts about social cooperation and economic relations, are relevant to the justification of fundamental principles of justice;

3. Rawls remarks that he considers the works of Locke, Rousseau, and Kant to be definitive of the contract tradition: "For all its greatness, Hobbes's *Leviathan* raises special problems" (TJ, 11n/10n rev.).

it also clarifies why he thinks the publicity of principles of justice is a condition upon their justification (see chap. 3). As I argue in this book, the reason that Rawls devotes so much attention to the question of the feasibility and stability of a well-ordered society of justice as fairness is, first, in order to show that justice is within the reach of our capacities and compatible with human nature and, second, to show that doing and willing what justice requires for its own sake is not just compatible with but also is an intrinsic aspect of the human good.

Rawls's "Kantian Constructivism in Moral Theory" (The Dewey Lectures, 1980)⁴ was an attempt to perfect the project Rawls began in the early 1950s and culminated in *A Theory of Justice*. Rawls sought to develop the Kantian interpretation of justice as fairness (*TJ*, sec. 40) and show how it informed the setup of the original position and the "construction" of principles of justice. Rawls's Kantianism was then at its most intense. With Kantian constructivism, he brought to fruition the primary problem that justice as fairness was designed to address. What conception of justice (if any) would be both generally acceptable and stably enduring among reasonable and rational people who regard themselves as free and equal and who are members of a well-ordered society where this conception is fully public, would be regulative of their social relations, and would provide citizens the public basis for political justification and criticism? Rawls hypothesized that modern moral awareness, our "sense of justice," had implicit within it democratic ideals of persons as free and equal, and of social cooperation on grounds of mutual respect. He did not think these ideals were *a priori*, as Kant might have; most likely Rawls believed that they were socially instilled.⁵

Noticeably, the problem Rawls set for himself in Kantian constructivism resembled Kant's contractarian formulation of the categorical imperative, often called "the formula of the Kingdom of Ends." (Because of his democratic sentiments, Rawls always preferred "Realm of Ends.") Kant's contractarian formula says (in effect) that in deciding what moral principles to act upon, we are to imagine ourselves as members of an ideal society, the members of which are all morally motivated to do what is right and just for its own sake; then we are to determine and will only those principles which these ideal moral agents would willingly accept and legislate as equal members of this Realm of Ends. The resemblances to Rawls's idea of a well-ordered society should be readily apparent. Rawls assumed there was a solution to the social contract problem he poses. To discover it, he sought to provide content to Kant's enigmatic notion of "autonomy," conceived as practical reason giving principles to itself out of its own resources. Already, in *A Theory of Justice*, Rawls had referred to the Kantian ideal of moral personality as "the decisive determining element" of principles of justice, and to the original position as "a procedural interpretation of Kant's conception of autonomy and the categorical imperative" (*TJ*, 256/222 rev.). Kantian constructivism is Rawls's attempt to develop this suggestion, in order to provide visible content to the Kantian idea of moral autonomy within a contractarian framework. Rawls did so by

4. See CP.

5. See Rawls's rejection of Kant's "dualisms" at the beginning to the Dewey Lectures, CP, chap. 16.

“modeling” the ideal conception of the person and of society that he thought implicit in our considered convictions of justice into a “procedure of construction,” the original position. This deliberative procedure is designed to incorporate “all the relevant requirements of practical reason” (*PL*, 90)—“relevant,” that is, to justice and to justifying principles of justice. If it can be shown that the same principles of justice can be derived from this deliberative procedure by all who “enter” or apply it, and we are confident that it incorporates all relevant aspects of rationality and reasonableness, then it might be said that the principles of justice that result are not only reasonable and objective; they have been “given to us” by our practical reason. And insofar as we act according to these principles’ demands, and desire to do justice for its own sake, we can be said to be morally autonomous.

It is because of the failure of the argument for stability of a well-ordered society as defined in *A Theory of Justice* and within Kantian constructivism that Rawls is driven to make the revisions in the justification of justice as fairness that result in *Political Liberalism*. Kantian constructivism was an ambitious project. It was masterful in that it provided content to some of Kant’s most influential but also enigmatic ideas; among these are the idea of autonomy conceived as reason giving principles to itself out of its own resources, and the idea of practical reason itself constituting the domain of morality. Rawls sought to do this without presupposing Kant’s dualisms between analytic/synthetic, a priori vs. a posteriori concepts, or necessary vs. empirical truth, and in a way that he thought was compatible with (though clearly not derivative from) twentieth-century scientific naturalism. But during the 1980s, Rawls gradually came to see that the Kantian project so conceived could not succeed. While many credit communitarians for this transition, Rawls himself avers that communitarian ideas and criticisms had nothing to do with his discovery of the problems that eventually led to political liberalism.⁶ Rather than communitarianism, the reason Rawls saw Kantian constructivism as flawed and overly ambitious is that its idea of a well-ordered society did not describe a feasible and enduring social world. This became evident to him once he clarified the “full publicity” condition of a conception of justice, to require that a conception must be capable of serving as a generally accepted basis for public justification in a feasible and enduring social world. (See chap. 6 of this volume.) For, what the full publicity of the Kantian interpretation and Kantian constructivism required for the stability of a well-ordered society was that citizens generally acknowledge the Kantian conception of agency and the person underlying their social relations, and that they endorse the public view that justice has its origins in practical reason and that moral autonomy is an intrinsic part of each citizen’s good. But because of certain empirical limitations Rawls

6. See *PL*, xixn. Rawls had very little to say in response to his communitarian critics, other than to say that they misunderstood his position. See also *PL*, 27n. Rawls was puzzled by communitarianism, for it seemed to him to be a term used to signify several philosophical and political positions: Thomism, Hegelianism, cultural relativism, anti-liberalism, social democracy, and so on. He regarded it at its best as a kind of perfectionism that regarded the human good as the pursuit of certain shared ends.

calls “the burdens of judgment” (*PL*, 54–58), reasonable people will always have different and conflicting moral, philosophical, and religious beliefs. It is then highly unlikely in any feasible social world that free and equal citizens will all come to agree on the Kantian foundations of justice or in any other “comprehensive moral doctrine” (*PL*, 59). Given the stability and publicity conditions that he imposed upon the justification of a conception of justice, Rawls came to see that no conception of justice, including justice as fairness, could meet the conditions for general agreement among members of a well-ordered society set forth in *A Theory of Justice* and in “Kantian Constructivism in Moral Theory.”

It is these problems internal to the justification of justice as fairness that led to the revisions found in *Political Liberalism*. There, Rawls altered not his commitment to the difference principle or the argument from the original position, but the conditions needed for the stability of justice as fairness, conceived as a fully public conception of justice for a well-ordered society of free and equal citizens. This means that Rawls remained true to his contractarianism, and to justice as fairness and the liberal egalitarian requirements that it imposes, to the end. For, all along he is guided by the confidence that a well-ordered society, where free and equal, reasonable and rational citizens can all agree upon a public conception of justice, is a realistically possible aspiration for us, one that is compatible with the human good.

The underlying unity of Rawls’s work, I argue, is further manifest in *The Law of Peoples*,⁷ where Rawls extends his contractarian theory to international relations. Rawls’s cosmopolitan critics argue that the absence of a global distribution principle is evidence of disunity in Rawls’s account, due to his failure to understand the implications of his own position.⁸ But Rawls is a social contractarian, not a global contractarian; the social/domestic grounding of distributive justice and the absence of a global distribution principle are integral to Rawls’s social contract position. I contend that they are required by his ideas of the social and political bases of economic relations, the reciprocity of democratic social cooperation, and the conditions of political autonomy within a well-ordered society.

I discuss Rawls’s idea of the stability of a well-ordered society in several chapters of this book (chaps. 3, 5, and 6). As suggested, my view is that it is difficult to understand what Rawls is doing in both *Political Liberalism* and *A Theory of Justice* (and also in *The Law of Peoples*) without understanding the central role of the stability argument in justifying justice as fairness. The extraordinary fact is that, though thousands of articles have been written upon *A Theory of Justice*, there are very few written on the role of the stability argument in *A Theory of Justice* and virtually none on Rawls’s primary argument for stability based in the congruence of the right and the good. (An exception is chap. 5 of this volume, originally published in 2003.) But it is mainly this argument and the subsequent problems

7. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999) (cited in text as *LP*).

8. See Thomas Pogge, “Incoherence between Rawls’s Theories of Justice,” *Fordham Law Review* 72 (2004): 1739.

Rawls finds with it that lead him to political liberalism and his reformulation of the argument for justice as fairness.

II. Outline of Chapters

In many of the papers in this volume, I focus on issues and aspects of *A Theory of Justice* and its aftermath that have not been discussed much (if at all) in the literature on Rawls heretofore. As already indicated, a good deal of attention is given here to part III of *A Theory of Justice*, the argument for the stability of justice as fairness. This is not to say that parts I and II of that book have been neglected. The first four chapters of this book deal mainly with topics connected with them and with Rawls's original motivations. In particular, in this volume I devote attention to Rawls's conception of the social contract (chaps. 1 and 6); his difference principle and account of distributive justice (see chaps. 3, 4, 8, 9); his criticisms of utilitarianism and consequentialism (chaps. 2 and 3); and the Kantian background and structure of his view (chaps. 2, 5, and 6). Other recurring topics in these papers are Rawls's idea of public reason (chaps. 1, 6, and 7), and his account of international justice in *The Law of Peoples* (chaps. 8 and 9).

A good deal of the discussion in these chapters is not directly interpretation or defense of Rawls, but rather involves extensions or applications of Rawls's positions. (Thus, rather than subtitling the book "Essays on Rawls," I have used "Essays on Rawlsian Political Philosophy.") This is particularly true of the discussions of public reason and contractarian agreement in chapter 1, consequentialism in chapter 3, luck egalitarianism in chapter 4, distributive justice in chapters 3, 4, 8 and 9, and judicial review in chapters 6 and 7. I do not pretend that Rawls would have addressed these subjects exactly in the same way I do, however, much of my approach is informed by his framework. I do feel they share the spirit of his position.

Six of the seven previously published papers in this volume are presented with minor changes from the originals. Most changes were introduced to reduce repetition within overlapping discussions and to remedy infelicitous expressions. Four of the papers (chaps. 1, 2, 5, and 6) were written and (except for chap. 5) published over 10 years ago. Chapters 3, 4, 7, 8, and 9 were written over the past two years. I have incorporated a good deal of new material into chapter 9 since its original publication. Chapters 3 and 4 are heretofore unpublished.

In the following remarks, I foreshadow the main ideas in each chapter.

A Theory of Justice

Rawls says in the preface to *A Theory of Justice* that his aim in the book is to revive the social contract tradition by drawing on the natural rights theories of Locke, Rousseau, and Kant, in order to offer the most appropriate moral conception of justice for a democratic society. Before Rawls, social contract doctrine had laid dormant since the eighteenth century—largely due to Hume's and Bentham's still-influential criticisms. Partly as a result, it is often difficult to see how Rawls's work ties in with social contractarian doctrine. In chapter 1, "Reason and Agree-

ment in *Social Contract Views*” (1990), I seek to fit justice as fairness within the liberal and democratic social contract tradition of Locke, Rousseau, and Kant, and show how its conception of practical reason and general agreement differ significantly from the alternative Hobbesian contract tradition. I mainly contrast Rawls’s contractarianism with the Hobbesian position set forth by David Gauthier. I discuss the two different kinds of reasons Rawls recognizes, stemming from his distinction between reasonable and rational. I defend Rawls against Gauthier’s and others’ objection that Rawls does not have a genuine contractarian position since there is no role for bargaining between the parties in the original position due to the veil of ignorance. The general aim of the paper is to show that there is a distinctive idea of agreement underlying Rawls’s contractarian position, which stems from the idea of reasonableness that is so integral to Rawls’s account of practical reason. My suggestion is that the parties to Rawls’s original position rationally agree to principles of justice in so far as they jointly precommit themselves to upholding cooperative institutions that mutually benefit everyone. This rational agreement among the parties in the original position is designed to reflect the reasonable agreement among free and equal citizens in a well-ordered society who are motivated by their sense of justice, and want to cooperate on grounds of reciprocity and mutual respect.

I discuss here an idea of “public reason,” distinguishing it, as Rousseau does, from an idea of “private reason,” which I construe as the particular reasons that enable a person to decide what is rational to do. It is the idea of practical rationality as a person’s private or particular reasons that exclusively informs the Hobbesian tradition. At the time that Rawls initially revived Rousseau’s and Kant’s idea of public reason (implicitly in “Kantian Constructivism” [1980] then explicitly in “Political not Metaphysical”⁹ [1985]), he seems to have conceived of it as roughly synonymous with the idea of “the Reasonable” (or so I believed at the time), which he contrasts with “the Rational” or the idea of a person’s good. This is how I treat the concept in the first chapter. As the idea of public reason subsequently developed in Rawls’s thought within the context of political liberalism, it took on a different meaning than Rousseau’s or Kant’s uses of it, coming to be defined in terms of the considerations that reasonable and rational persons can accept in their capacity as free and equal democratic citizens. (Rawls’s developed sense of public reason is discussed in chaps. 6 and 7.)

Rawls says in the preface to *A Theory of Justice* that he seeks to revive social contract theory in order to offer an alternative conception of justice to utilitarianism, which he regards as the dominant tradition in moral and political philosophy. In chapters 2 and 3, I take up Rawls’s relation to, and major differences with, utilitarianism and consequentialism and topics related to them. In chapter 2, “Utilitarianism, Deontology, and the Priority of Right” (1994), I discuss utilitarianism in order to clarify Rawls’s distinction between teleological and deontological moral conceptions and his idea of the priority of right over the good. Ronald Dworkin and Will Kymlicka have argued that utilitarianism is not

9. Rawls, “Justice as Fairness: Political not Metaphysical,” *Philosophy & Public Affairs* 14, no. 3 (Summer 1985) (cited in text as JF).

teleological as Rawls asserts but is as deontological as any other position, for it is grounded in a conception of equality that requires giving equal consideration to everyone's interests. I discuss why this is a mistaken understanding of Rawls's distinction between teleology and deontology, which addresses the substantive content and requirements of moral principles and not the reasons used to justify or apply those principles. Simply because utilitarians invoke justificatory principles requiring equal consideration does not render the substantive content of the principle of utility itself an egalitarian or deontological principle. The principle of utility is teleological since it says we are to maximize the aggregate good of individuals' happiness without regard to how it gets distributed. I then discuss and clarify Rawls's idea of the priority of right, which is often confused with deontology (by Sandel, Kymlicka, and many others as a result). Rather than being a claim about the justification of a moral conception (such as Sandel's mistaken claim that Rawls relies only on principles of right and no conception of the good in arguing for his principles), the priority of right over the good addresses the structure of the practical reason of reasonable moral agents. Instead of aiming to maximize individual or social good (such as individual or aggregate utility), a reasonable moral agent is one who regulates his/her deliberations about the good according to requirements of moral principles of right and constrains the pursuit of ends accordingly. This basically is what is meant by Rawls's idea of the priority of right—it is a claim about the composition of the practical reasoning of conscientious moral agents and their commitment to regulate their ends and pursuits by moral requirements of justice.

Chapter 3, "Consequentialism, Publicity, Stability, and Property-Ownng Democracy," is heretofore unpublished. The paper begins with a discussion of consequentialism and why I believe Rawls did not devote attention to many alternatives to utilitarianism proposed by contemporary consequentialists. Only utilitarianism, Rawls believed, could provide anything near the degree of systematicity and ordering of moral judgments that is required by a practical moral conception of political justice. (Here it is interesting to reflect whether Rawls would have been more amenable to a form of non-utilitarian pluralist consequentialism, given his apparent change of view later regarding the degree to which a political conception of justice can provide anything resembling a decision procedure or ordering method for resolving problems of justice.) This leads into a discussion of a distinct problem with pluralist consequentialist views that seek to incorporate rights and other moral principles into the state of affairs to be maximized or otherwise instrumentally promoted. Positions of this kind have been suggested by Amartya Sen and others, and they are popular among consequentialists who seek to avoid the gross distributive inequalities allowed by utilitarianism. I contend that these positions are confused, and that in the end they are forms of non-consequentialist intuitionism.

In sections III and IV of chapter 3 (along with chap. 6), I discuss the ideas of publicity and the stability of a moral conception of justice, which Rawls heavily relies upon to argue that the principles of justice would be chosen over the principle of utility in the original position. The main question I consider is why Rawls regards the publicity and stability of a moral conception of justice as conditions of its justification (as opposed to its application), especially given the fact that

publicity and stability both depend upon facts about human nature and social cooperation. This question is of particular significance in light of criticisms (by G. A. Cohen, Juergen Habermas, and many consequentialists) that the publicity and stability of a moral conception are not relevant to its justification but rather are important factors to take into account in applying a moral conception to regulate human conduct.

Finally, chapter 3 ends with a discussion of alternative economic frameworks supported by utilitarianism and justice as fairness. It takes up Rawls's rejection of the capitalist welfare state, which he regarded as having primarily a utilitarian justification. Rawls argues instead, on the basis of justice as fairness, for a property-owning democracy, in part because it results in less inequality of primary goods than the welfare state and provides for widespread ownership and control of the means of production, mitigating the control of production by a capitalist class and the resulting wage-relationship that workers must tolerate. In this regard Rawls's account of distributive justice is guided not by welfarist concerns as is often assumed but by concerns similar to those that Mill and Marx had for the dignity and self-respect of working people and their control of their productive capacities. Related to these discussions are my later discussions of economic justice and the difference principle in chapters 4, 8, and 9. There I discuss why Rawls regards distributive justice and the difference principle as based in democratic social and political cooperation. This explains in large part why Rawls later rejects the idea of global distributive justice.

Chapter 4, "Rawls and Luck Egalitarianism," is also a new paper, prepared for the 2005 APA Meetings, Pacific Division, for a session on Susan Hurley's book *Justice, Luck, and Knowledge*. While I largely agree with Hurley's criticisms of so-called "luck egalitarianism" in her book, I take issue with her and others' claims (e.g., Richard Arneson and Will Kymlicka) that Rawls himself starts from or is committed to a position that seeks to equalize the consequences of fortune (especially the "natural lottery" [*TJ*, 74/64 rev.]) in deciding distributive justice. I show why this is a misunderstanding of Rawls's supposed remarks that people do not deserve their natural talents and that natural talents should be regarded as a "common asset" (e.g., *TJ*, sec.12). To begin with, Rawls never said these things. Instead, he said that "differences" in natural talents are undeserved and are to be regarded as a common asset, which, I explain, is a very different claim than those attributed to him. In any case, whatever Rawls said, it does not commit him to the position that distributive justice requires that the consequences of the "natural lottery," or any other effect of (mis)fortune, be equalized or that misfortune be compensated. Rawls does think the effects of luck should be "mitigated" and not allowed to "improperly influence" distributions, but he intends this to mean something which is very different than luck egalitarians think and which is entirely compatible with the aims of the difference principle. I also discuss in this paper the differences between Rawls's and Ronald Dworkin's positions that markets are to be used to hold people responsible for their choices. Unlike Rawls, Dworkin assigns a greater role to markets in determining just distributions since they reflect people's choices. I question the wisdom of allowing people's "value to others" to serve as any kind of benchmark for just distributions. I end this chapter with a brief defense (in response to G. A. Cohen's criticism)

of Rawls's appeal to incentives in justifying inequalities of income and wealth under the difference principle. The primary reason Rawls builds incentives into the difference principle is not to encourage capitalist self-seeking but to accommodate the plurality of goods and citizens' freedom to determine and pursue their conception of the good.

In chapter 5, "Congruence and the Good of Justice" (2003), I take up Rawls's discussion in part III of *A Theory of Justice*, his argument for the stability of justice as fairness. I discuss here (continuing the discussion begun in chap. 3) the importance of the stability requirement to the argument for justice as fairness. There are two reasons Rawls focuses on the stability of a conception of justice: First, he seeks to show that regularly doing what justice as fairness requires of us is within human capacities and moral sentiments. Second, the purpose of the stability argument is to show how justice and having a sense of justice are not self-destructive and do not undermine our pursuit of important goods but rather are compatible with our good. Rawls makes more than one argument in *Theory* for stability (among these is his argument from social union). I discuss what I take to be the central argument Rawls provides for the stability of a well-ordered society: Rawls's Kantian argument for the "congruence of the Right and the Good" (TJ, sec. 86). The purpose of the argument is to show how in a well-ordered society it can be in everyone's rational interest to act not just according to but also for the sake of principles of right and justice. I show how this argument relies upon the Kantian interpretation of justice as fairness, particularly the idea of moral personality and realization of the moral powers as the condition for free moral and rational agency. The implication of the congruence argument is that we fully realize our moral and rational capacities by acting for the sake of justice, and to do so is to achieve moral autonomy, an intrinsic good for each person in a well-ordered society. I discuss some potential problems with this argument, problems which I contend, here and in chapter 6, lead Rawls to think that this argument for the stability of a well-ordered society is unrealistic. These problems lay the background for Rawls's project in *Political Liberalism*.

Political Liberalism

Chapter 6, "*Political Liberalism* and the Possibility of a Just Democratic Constitution" (1994), begins with a discussion of why Rawls made the changes to the justification of justice as fairness that led him to *Political Liberalism*. As suggested earlier, the main reasons are problems he found with the Kantian philosophical commitments implicit in the congruence argument.¹⁰ I then discuss the main changes and new basic ideas in *Political Liberalism*—including the domain of the political and a freestanding political conception of justice, the overlapping consensus of reasonable comprehensive doctrines, and public reason as a basis for public justification—and provide an account of why each of these ideas is necessary once Rawls gives up the Kantian congruence argument.

10. See PL, 388n, where Rawls confirms this interpretation as one of his reasons for the transition to political liberalism.

Chapter 6 (and also, to a degree, chap. 7) ends with a discussion of Rawls's position regarding the role of the institution of judicial review in a democracy. It is a common criticism that judicial review is incompatible with democracy. Here it is relevant that Rawls does not regard democracy simply as a form of government but rather as a kind of constitution and more generally as a particular kind of society. His aim from the outset was to discover the most appropriate principles of justice for the basic structure of a *democratic society* (TJ, viii/xviii rev.), including its democratic constitution and economic and legal systems. It is within this framework that he argues that there is nothing intrinsically undemocratic about the practice of judicial review—it is not incompatible with a democratic society so long as it is needed to maintain the social and political institutions constituting the basic structure. In the context of the conditions necessary for a democratic society, the frequent criticism that judicial review is nonetheless incompatible with a democratic government appears rather limp, for if democracy is simply defined as nothing more than a voting procedure incorporating equal voting rights and majority rule, then of course the objection is a truism. But why should we artificially truncate a conception of democracy in this way? Rawls has a far more robust conception of democracy as a society of free and equal citizens who possess constitutive political power and design social and political institutions that maintain their status as equals cooperating on a basis of mutual respect. This conception of democracy puts democratic voting procedures in their proper context, enabling us to understand their intended purpose as well as their limits.

Chapter 7, “Public Reason and Political Justifications” (2004), is a discussion of Rawls's idea of public reason as it develops and emerges from his work in its final form, of its centrality to political liberalism, and its role in his account of political justice. Here I distinguish Rawls's idea of public reason from accounts and misunderstandings by others. I explain how public reason, rather than being simply reasons that are shared by people of different persuasions, is an idea patterned upon Rawls's conception of democracy. Public reason has to do with the reasons and political values that free and equal citizens can reasonably accept in their capacity *as* citizens, and on the basis of their fundamental interests as citizens. Here I also discuss how the complex idea of reasonableness is to be understood in Rawls's later works. It differs from others' accounts of reasonableness and even from Rawls's own earlier account insofar as that was influenced by a Kantian account of practical reason. I defend the idea of public political justification and public reason against objections by Joseph Raz and Ronald Dworkin. I also show how one can apply the idea of public reason to address the political debate over abortion and therewith justify a limited political right to abortion. I conclude this paper with further thoughts on the proper role of judicial review, discussing its relationship to Rawls's idea of public reason.

The Law of Peoples

Chapters 8 and 9 begin with general discussions of what Rawls is trying to achieve in this much-misunderstood final work of his. I defend Rawls against numerous frequent objections by cosmopolitans and others. I discuss the role of the idea of human rights in *The Law of Peoples* and their relation to the duty of assistance

owed to burdened peoples; why Rawls sees human rights as distinct from liberal rights; and why he did not see it to be the role of liberal peoples to impose liberalism upon “decent” societies. I mainly focus, in both papers, on why Rawls does not extend the difference principle globally as many have suggested, or indeed why he does not endorse any global principle of distributive justice. Here I emphasize the centrality of social and political cooperation to Rawls’s account of distributive justice. In chapter 8, “The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice” (2006), I argue that Rawls regards distributive justice as domestic rather than global, largely because he sees it not as an allocative problem but as a question of how to design basic social institutions within a democratic society. This is a question for democratic political cooperation, which does not exist at the global level. The absence of a global basic structure, particularly a democratic world-state and global legal system, underlies the domestic rather than global reach of principles of distributive justice. In chapter 9, “Distributive Justice and the Law of Peoples” (2006), I discuss why distributive justice for Rawls ultimately involves the political design and social maintenance of basic social institutions (particularly property and economic relations) that make social cooperation possible. Part of the explanation is that, for Rawls, decisions regarding appropriate principles of distributive justice involve the task of deciding on reasonable terms of social cooperation *among free and equal persons*, on a basis of *reciprocity* and mutual respect. Free and equal persons are conceived as socially productive and politically cooperative citizens, each of whom does his fair part in contributing to economic and political life. I argue that it is not reasonable, and there is no reciprocity involved in structuring social and political relations among democratic citizens so as meet the requirements of a global distribution principle. It is this idea of social cooperation among free and equal citizens on a basis of reciprocity and mutual respect that supplies the argument for the difference principle; outside of that democratic context the argument for the difference principle cannot succeed.

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Part I

A Theory of Justice

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Reason and Agreement in Social Contract Views

Social contract views work from the intuitive idea of agreement. The appeal of this notion lies in the liberal idea that cooperation ought to be based in the individuals' consent and ought to be for their mutual benefit. Social contract views differ according to how the idea of agreement is specified: Who are the parties to the agreement? How are they situated with respect to one another (status quo, state of nature, or equality)? What are the intentions, capacities, and interests of these individuals, and what rights and powers do they have? What is the purpose of the agreement? Is the agreement conceived of in historical or nonhistorical terms? Since these and other parameters have been set in different ways, it is difficult to generalize and speak of the social contract tradition. Hobbes's idea of agreement differs fundamentally from Rousseau's, just as Gauthier and Buchanan conceive of agreement very differently than Rawls and Scanlon.

Rather than being a particular kind of ethical view, the general notion of agreement functions as a framework for justification in ethics. This framework is based on the liberal idea that the legitimacy of social rules and institutions depends on their being freely and publicly acceptable to all individuals bound by them. If rational individuals in appropriately defined circumstances could or would agree to certain rules or institutions, then insofar as we identify with these individuals and their interests, what they accept should also be acceptable to us now as a basis for our cooperation. Seen in this way, the justificatory force of social contract views depends only in part on the idea of agreement; even more essential is the conception of the person and the conception of practical reason that are built into particular views.

In this paper, I discuss the concept of practical reason and its relation to the idea of social agreement in two different kinds of social contract views. My ultimate concern is to address a criticism, often made of Rawls, Rousseau, and Kant, that because of the moral assumptions made, the principles or institutions sought to be justified are not the product of a collective choice or agreement at all; the appeal to a social contract is an unnecessary shuffle that masks the true character of these views. This criticism has been formulated in more than one way. I

shall focus on a version given by David Gauthier, directed against Rawls.¹ I will show (in secs. III through V) that Rawls's idea of agreement is not spurious but is closely tied to his conceptions of practical reason, justification, and autonomy. To do this, I need first to examine the different ways reasons are conceived of in social contract views (sec. I) and to consider the structure of Gauthier's own version of the social contract (sec. II).

I. Two Kinds of Social Contract Views

Let us begin with a rough distinction between Hobbesian, or purely interest-based, and right-based contract views.² Both take the idea of reciprocity—the idea that social cooperation should be for mutual advantage—as fundamental. They differ, however, in their characterization of this basic idea. In Hobbesian views, cooperation for mutual advantage involves no irreducible moral elements. Hobbesian views aim to show that morality is a subordinate notion, grounded in individuals' antecedent desires and interests. Each person's basic desires or interests are seen as definable without reference to any moral notions, and normally in terms of certain states of the person. The objective is to demonstrate that (1) moral principles are among the rational precepts necessary to promote one's prior and independent ends; (2) any sentiments we might have for such principles are conditioned by these ends; and (3) compliance with precepts that promote everyone's antecedent purposes is the most rational course of action for each individual to take in order to realize his interests, whether in himself or in other particular persons or objects.³

So construed, the conception of cooperation that Hobbesian views employ is one of efficiently coordinated activity for each person's benefit. The task is to show that, from among several modes of cooperation that might appear to be mutually advantageous when compared to the status quo or a noncooperative baseline, there is a unique set of institutions which will ensure cooperation on

1. David Gauthier, "The Social Contract as Ideology," *Philosophy & Public Affairs* 6, no. 2 (Winter 1977): 139n; see also Gauthier's "Bargaining and Justice," in *Ethics and Economics*, ed. Ellen Paul, Jeffrey Paul, and Fred D. Miller, Jr. (Oxford: Blackwell, 1985), 40–45. Jean Hampton develops a similar but more sympathetic argument in greater detail in "Contracts and Choices: Does Rawls Have a Social Contract Theory?" *Journal of Philosophy* 77 (1980): 315–38.

2. Rawls used the term "interest-based" in his lectures on political philosophy to indicate a contract conception like Hobbes's that is based in a nonmoral account of a person's good; he attributes the term to Joshua Cohen. I use the term "right-based," not in the sense of individual rights but in Rawls's sense of principles of right. A moral conception that is based in a conception of individual or natural rights would be right-based, but so, too, is a position like Rawls's, which is based in other principles of right. Rawls refuses to accept Ronald Dworkin's suggestion that justice as fairness is based in a natural right to equal concern and respect. He says, instead, that his position is "conception-based" or "ideal-based" insofar as it works from an ideal conception of persons and society. "Rights, duties and goals are but elements of such idealized conceptions." See Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 400–401n (cited in text as CP).

3. This description represents a particular kind of moral conception often attributed to Hobbes and captures the central elements of Gauthier's view. Whether Hobbes himself actually held such a

stable terms and which is acceptable to everyone. The primary modern proponents of this view are David Gauthier and James Buchanan, both of whom argue for a form of *laissez-faire* capitalism.

Major representatives of right-based social contract views are Locke, Rousseau, Kant, and, among contemporaries, Rawls and Scanlon. The common feature of these accounts is not that they base the agreement primarily on an assumption of prior moral or “natural rights.” (Locke, Kant, and Rousseau may make this assumption, while Rawls and Scanlon do not.) It is, rather, that principles of right and justice cannot be accounted for without appeal to certain irreducible moral notions.⁴ This assumption affects the conception of social cooperation employed. It has a dual aspect: in addition to a conception of each individual’s rational good, the idea of social cooperation has an independent moral component (characterized in Rawls by the notion of fair terms and what is reasonable and in traditional views by an assumption of innate moral rights). Moreover, right-based views ascribe to persons a basic interest defined in moral or social terms. Consequently, in contrast to Hobbesian views, social relations are not defined as a rational compromise among conflicting interests. This affects fundamentally the way right-based conceptions interpret the social contract. These contrasts have the following consequence: if we see the role of a unanimous collective agreement as an account of what we have reason to do in our social and political relations, then, according to right-based views, these reasons are not sufficiently accounted for in terms of what it is rational to do to promote our prior and independent ends. There are reasons that apply to us without reference to our antecedent desires and interests. What is the nature of these independent reasons, and where do they originate?

Consider the skeptical thesis, advanced by Hume, that moral considerations do not give each individual a reason for acting, whatever his ends or situation.⁵ Philippa Foot once argued for a similar position.⁶ She contended not that moral judgments have an automatic reason-giving force but that they “give reasons for

view is open to debate. For a different interpretation, see Keith Thomas, “Social Origins of Hobbes’ Political Thought,” in *Hobbes Studies*, ed. K. C. Brown (Oxford: Blackwell, 1965).

4. “Right-based” refers to, then, principles of right, and is to be distinguished from “rights-based.” Among the principles of right relied on by right-based conceptions, there may be certain moral rights, as in Locke’s and Kant’s versions of the social contract. Rawls, however, denies that his view is a rights-based conception. See Rawls, “Justice as Fairness: Political not Metaphysical,” *Philosophy & Public Affairs* 14, no. 3 (Summer 1985): 236n (cited in text as JF), where Rawls claims that “justice as fairness is a conception-based, or . . . an ideal-based view,” since it works from certain fundamental intuitive ideas that reflect ideals implicit in the public culture of a democratic society. Certain principles of right are, Rawls aims to show, implicit in these ideals.

5. I use “skeptical” here to refer not to moral skepticism (which Hume did not hold) but to a skepticism about the reason-giving force of moral judgments independent of desires and nonmoral interests. See David Hume, *A Treatise of Human Nature*, ed. L. A. Selby Bigge and P. H. Nidditch, 2nd ed. (Oxford: Clarendon Press, 1978), bk. 2, pt. 3, sec. 3; and bk. 3, sec. 1, 1.

6. Philippa Foot, “Morality as a System of Hypothetical Imperatives,” *The Philosophical Review* 81 (1972): 305–16; see also Foot’s *Virtues and Vices and Other Essays* (Berkeley: University of California Press, 1978), chap. 11. Foot expands her position in chapters 10 and 12. Foot’s position in these essays is not characteristic of her earlier or subsequent work.

action in ordinary ways.”⁷ What we have reason to do depends upon our ultimate purposes, as given by our desires, interests, and affections. Whether one has reason to act on moral considerations is contingent upon whether it is in her prudential interests to do so, or upon her having a benevolent disposition, a love of justice, or some other moral motivation. Thus, it is not always irrational to be amoral and act against moral requirements. One who rejects morality may be villainous but is not necessarily acting contrary to reason.⁸ We might look upon the Humean position as presenting a challenge which is taken up by both kinds of social contract views but which they respond to in different ways. Hobbesian contract views attempt to meet this challenge on its own ground. They share with the Humean view a conception of reasons that I shall refer to as “agent-centered.”⁹ Agent-centered conceptions approach the notion of reasons by focusing on the deliberations of single agents with given desires and interests in fixed circumstances in which they face a range of options from which they must choose. Reasons are then interpreted in instrumental terms by reference to the agent’s desires and interests as an individual. Given this conception of reasons, Hobbesian contract views seek to defeat the skeptical argument on the basis of certain empirical assumptions. They posit a noncooperative situation in which persons are described as fundamentally self-centered and individualistic, and they interpret morality as the cooperative norms that all can rationally accept in this situation. Other-regarding sentiments and our sense of duty are then explained as, at best, secondary motivations that effectively promote our basic interests in ourselves (self-preservation and the means for “commodious living” in Hobbes, or utility maximization in Gauthier and Buchanan). A leading problem in moral philosophy then becomes how to demonstrate that the amoral or noncooperative person fares worse in cooperative contexts, in terms of the satisfaction of his self-regarding interests, than he would have fared had he steadfastly observed moral requirements and cultivated social preferences and dispositions.

Right-based contract views accept the Humean premise that we have primary desires not focused on the self and reject the Hobbesian approach to moral inquiry from the point of view of isolated individuals abstracted from social relationships. Their response to the skeptical argument is directed at the contention that all reasons must refer to the antecedent ends of particular individuals. The ultimate aim is to show that moral principles and our sense of duty, while not derivable from given desires and interests conjoined with principles of rational choice, still have a basis in reason. Where does this conception of reasons come from?

7. Foot, *Virtues and Vices*, 154. Foot does not hold that desire is a condition of having a reason. She departs from Hume in contending that there are prudential reasons for acting that are independent of an agent’s existing desires (148). But she states that there are no independent moral reasons of this kind that require us to take others’ interests into account or act for their good (153–56).

8. Foot, *Virtues and Vices*, 152, 161–62.

9. I use the term “agent-centered” because, on this conception, all reasons center on the desires and interests of particular agents. The term is not meant to imply egoism; the content of one’s desires and interests is left open. I aim to encompass a wide range of views. The rough idea is to represent what Kant had in mind by the Hypothetical Imperative. Besides Foot, many others, including Williams, Harman, and Gauthier, contend that reasons are adequately characterized in this way.

If we focus on reasons solely from the perspective of single agents under conditions of choice, and interpret this notion purely by reference to their desires and interests as individuals, then the skeptical question, “Why should I be moral?” is a natural one to ask. And from that perspective it would appear that the only kind of considerations that can supply an answer to particular persons are instrumental ones about what promotes their antecedent ends. But these considerations are too narrow. They leave no place for the intuitive sense that practical reasons are not just normative considerations that must motivate an individual but also have a justificatory aspect extending beyond the individual’s particular concerns. To account for this intuition, suppose we approach reasons differently, from the standpoint of our membership in a social group. When we ask for people’s reasons in social contexts, we are not concerned simply with their intentions and motives, and we may not be interested at all in their having adopted effective means to realize their ends. Instead, our primary concern is whether their ends are legitimate and their means justified, as measured by the system of norms generally accepted within the group or by society as a whole.

Every social group has norms of cooperation, certain practices and procedures that regulate interaction and are necessary to sustain the life of the group. The norms do not simply characterize accepted constraints on conduct. They also serve a social role in providing a public basis for justification. Members of the group assess one another’s activities and pursuits in terms of its system of norms. When someone’s conduct departs from standard practices, he is subject to criticism according to these standards and is expected to justify his actions by reference to them. The system of norms has a central place in the public life of the group: certain rules and institutions are seen as providing reasons for and against people’s actions and ends, whatever their desires and interests may be.¹⁰

Seeing reasons in a social context, as those considerations that count in public argument and structure public justification and criticism, is very different from seeing them as purely instrumental considerations taken into account by single individuals concerned to advance their particular ends. For, it is just the function of reasons in this social sense to provide a commonly accepted basis for assessing individuals’ ends and desires and the courses of conduct they adopt in order to realize them. A separate dimension is added to the normative considerations that motivate particular individuals.

This implies a certain ambiguity in the notion of practical reasons. This ambiguity is often reflected in the structure of our individual deliberations. Practical reasoning normally involves (as agent-centered views correctly point out) clarifying our ends, making them consistent, and deciding on the most effective

10. The sense in which I use “reasons” here comes out in such claims as, “The Supreme Court’s reasons for curtailing abortion rights were rather weak,” and, “That slavery involves the domination of humans and holding them as property is sufficient reason for condemning it.” The fact that an act is deceptive, coercive, or involves the breach of a promise or other commitment functions as a reason in the context of argument or assessment of a person’s actions. In political debate, the fact that a law would violate individuals’ constitutional rights, create unemployment, increase poverty, or undermine national security constitutes a reason against that law. These are examples of what I call “public reasons.”

means to achieve them. But in our private deliberations we take for granted a background of social norms, which manifests itself in the following way. When some doubt arises as to the legitimacy of our ends or proposed actions, the question we normally confront is not whether abiding by these norms will effectively promote our purposes. It is, rather, whether our ends and proposed actions can be publicly justified to others according to the system of norms generally accepted within the group. We appeal to certain social norms to appraise our claims and expectations, and to assess the instrumental means that we have already determined effectively promote our purposes. The practice of public justification is in effect reflected in our private deliberations. In this way, certain social rules and institutions occupy a privileged position in the course of practical reasoning; they provide special reasons that subordinate the reasons that are instrumental to realizing our particular ends and concerns.

Being an adult member of a social group requires that one has developed the capacities to understand, apply, and act on these “public reasons” (as I shall call them). These capacities are, on the face of it, different from the abilities of individual agents to deliberate about their particular ends and the most effective means for realizing them. For, what is involved is a social capacity, an ability to assess critically and justify the pursuit of one’s ends according to the requirements of a different kind of norm.

Hobbesian views need not deny that we have such a capacity, nor must they deny the social role of reasons in public justification. They contend, however, that since social principles are but an extension of principles of rational individual choice, whatever justificatory force public reasons have, they must have by virtue of their instrumental relation to each agent’s more particular concerns. So the capacities to understand and apply social norms, and justify our actions by reference to them, are still subordinate to each individual’s abilities to deliberate about the effective pursuit of his own particular ends. One of the primary points of Rousseau’s *Second Discourse* is to show the shortcomings of Hobbes’s conflation of these independent capacities and the two kinds of reasons they support.¹¹

Rousseau maintains, contrary to Hobbes, that as an isolated being, man is a “stupid and shortsighted animal,”¹² tranquil by nature, and driven only by sensation and instinct. Being asocial, he is without language, and so also without reason and the realized capacities for rational choice. He is not moved by a concern for satisfying his future appetites (Hobbes’s desire for “power after power”¹³), for without reason he has no conception of himself or his future. He has no need for reason, language, or prudential concerns; in his isolated condition, his needs are wholly satisfied by natural instinct. His capacities for reasoning are not activated until he enters into cooperative circumstances. Reason is the instrument of adap-

11. Jean-Jacques Rousseau, *Discourse on Inequality* [*Second Discourse* (1755)], in *Rousseau’s Political Writings*, ed. Alan Ritter and Julia C. Bondanella (New York: Norton, 1988).

12. Rousseau, *On Social Contract or Principles of Political Right* (1762), in *Rousseau’s Political Writings*, ed. Ritter and Bondanella, bk. 1, chap. 8, 95. See also his *Discourse on Inequality*, 15.

13. Thomas Hobbes, *Leviathan* (1651), ed. C. B. MacPherson (New York: Penguin, 1968).

tation man acquires to deal with social environments, as instinct is his mode of adaptation to the state of nature. And as a socially adaptive capacity, its primary role is to enable him to understand, apply, act on, and, if necessary, devise the norms of cooperation necessary for social life. It is in conjunction with the development and exercise of this social capacity, and not prior to it, that man is able to apply his rational capacities to the task of adopting and adjusting his individual ends and deliberating on effective means for realizing them.

Rousseau's state of nature is an analytical device, designed to show what we owe to society: the development and exercise of our capacities for reasoning according to both prudential and moral norms.¹⁴ Being a member of a social group, recognizing and accepting that group's cooperative norms, and understanding how these norms function as public reasons within the group are conditions of our realizing our capacity for reasoning in agent-centered terms. This says nothing about the moral content of a group's cooperative norms; they may be quite perverse. It simply brings out their separate function, and shows the artificiality of Hobbesian attempts to use the instrumental aspect of practical reasoning as a sufficient basis for accounting for social cooperation and our capacities for reasoned justification. By defining reasons purely by reference to isolated agents with given desires, Hobbesian views start out by ignoring the public role of reasons in enabling us to justify our conduct to one another, and then explain our choice of ends according to norms that are a condition for the existence of the social group.

One way to look at right-based contract views is as views that begin with this other conception of reasons by focusing on the social role of norms in public justification. If we think of morality and justice in this way, and if our aim is to formulate principles that serve this social role, then the question is not whether members of society can be given reasons, as individuals, to comply with the norms of the group on the basis of their given ends. It is, rather, whether they can freely accept and abide by the normative system that provides the primary basis for public reasons, or whether they are entitled to complain. Unlike Hobbesian views, right-based views do not seek a set of rules that it is rational for every individual to comply with whatever that person's prior purposes. Basic norms of justice need not connect instrumentally with everyone's given desires and interests.¹⁵ This fact is reflected in the starting assumption of right-based views; they do not take individuals' desires as given, or as having value on their own terms. Instead, they seek to provide a notion of our legitimate interests, defined by reference to what can serve as a common basis for public agreement, and supply standards for critically assessing people's desires and expectations. Given the necessity of social coopera-

14. Rousseau, *Discourse on Inequality*, 9–10. On the role of the state of nature in traditional social contract views, see Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), chap. 9.

15. Compare Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971; rev. ed., 1999), 576/505 rev. (cited in text as *TJ*; sometimes referred to as *Theory*); and T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), 105, 119.