In this discussion I shall make some general remarks about how I now understand the conception of justice that I have called “justice as fairness” (presented in my book *A Theory of Justice*). I do this because it may seem that this conception depends on philosophical claims I should like to avoid, for example, claims to universal truth, or claims about the essential nature and identity of persons. My aim is to explain why it does not. 

Briefly, the idea is that in a constitutional democracy 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. Hence the title.

I want to put aside the question whether the text of *A Theory of Justice* supports different readings than the one I sketch here. Certainly on a number of points I have changed my views, and there are no doubt others on which my views have changed in ways that I am unaware of. I recognize further that certain faults of exposition as well as obscure and ambiguous passages in *A Theory of Justice* invite misunderstanding; but I think these matters need not concern us and I shan’t pursue them beyond a few footnote indications. For our purposes here, it suffices first, to show how a conception of justice with the structure and content of justice as fairness can be understood as political and not metaphysical, and second, to explain why we should look for such a conception of justice in a democratic society.
I.

... [J]ustice as fairness is intended as a political conception of justice. 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. In particular, justice as fairness is framed to apply to what I have called the “basic structure” of a modern constitutional democracy.[3] (I shall use “constitutional democracy” and “democratic regime,” and similar phrases interchangeably.) By this structure I mean such a society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation. Whether justice as fairness can be extended to a general political conception for different kinds of societies existing under different historical and social conditions, or whether it can be extended to a general moral conception, or a significant part thereof, are altogether separate questions. I avoid prejudging these larger questions one way or the other.

It should also be stressed that justice as fairness is not intended as the application of a general moral conception to the basic structure of society, as if this structure were simply another case to which that general moral conception is applied.[4] In this respect justice as fairness differs from traditional moral doctrines, for these are widely regarded as such general conceptions. Utilitarianism is a familiar example, since the principle of utility, however it is formulated, is usually said to hold for all kinds of subjects ranging from the actions of individuals to the law of nations. The essential point is this: 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. The social and historical conditions of such a state have their origins in the Wars of Religion following the Reformation and the subsequent development of the principle of toleration, and in the growth of constitutional government and the institutions of large industrial market economies. These conditions profoundly affect the requirements of a workable conception of political justice: such a conception must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies.

Finally, to conclude these introductory remarks, since justice as fairness is intended as a political conception of justice for a democratic society, it tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation. Justice as fairness is a political conception in part because it starts from within a certain political tradition. We hope that this political conception of justice may at least be supported by what we may call an “overlapping consensus,” that is, by a consensus that includes all the opposing philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society.[5]
II.

The course of democratic thought over the past two centuries or so makes plain that there is no agreement on 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. . . . A deep disagreement exists as to how the values of liberty and equality are best realized in the basic structure of society. To simplify, we may think of this disagreement as a conflict within the tradition of democratic thought itself, between the tradition associated with Locke, which gives greater weight to what Constant called “the liberties of the moderns,” freedom of thought and conscience, certain basic rights of the person and of property, and the rule of law, and the tradition associated with Rousseau, which gives greater weight to what Constant called “the liberties of the ancients,” the equal political liberties and the values of public life. This is a stylized contrast and historically inaccurate, but it serves to fix ideas.

Justice as fairness tries to adjudicate between these contending traditions first, by proposing two principles of justice to serve as guidelines for how basic institutions are to realize the values of liberty and equality, and second, by specifying 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. . . . [T]he two principles of justice (mentioned above) read as follows:

1. Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all.

2. Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.
We must now ask: how might political philosophy find a shared basis for settling such a fundamental question as that of the most appropriate institutional forms for liberty and equality? . . . We look . . . 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. The hope is 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. . . .

Now suppose justice as fairness were to achieve its aim and a publicly acceptable political conception of justice is found. Then 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. . . . [J]ustification is addressed to others who disagree with us, and therefore it must always proceed from some consensus, that is, from premises that we and others publicly recognize as true; or better, publicly recognize as acceptable to us for the purpose of establishing a working agreement on the fundamental questions of political justice. . . .

Thus, the aim of justice as fairness as a political conception is practical, and not metaphysical or epistemological. That is, it presents itself not as 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. This agreement when securely founded in public political and social attitudes sustains the goods of all persons and associations within a just democratic regime. To secure this agreement we try, so far as we can, to avoid disputed philosophical, as well as disputed moral and religious, questions. We do this not because these questions are unimportant or regarded with indifference, but because we think them too important and recognize that there is no way to resolve them politically. The only alternative to a principle of toleration is the autocratic use of state power. Thus, justice as fairness deliberately stays on the surface, philosophically speaking. . . . Philosophy as the search for truth about an independent metaphysical and moral order cannot, I believe, provide a workable and shared basis for a political conception of justice in a democratic society.
Thus, in what I have called “Kantian constructivism,” we try to avoid the problem of truth and the controversy between realism and subjectivism about the status of moral and political values. This form of constructivism neither asserts nor denies these doctrines. Rather, it recasts ideas from the tradition of the social contract to achieve a practicable conception of objectivity and justification founded on public agreement in judgment on due reflection. The aim is free agreement, reconciliation through public reason. . . .

III.

Let’s now survey briefly some of the basic ideas that make up justice as fairness in order to show that these ideas belong to a political conception of justice. As I have indicated, the overarching fundamental intuitive idea . . . is that of society as a fair system of cooperation between free and equal persons. Justice as fairness starts from this idea as one of the basic intuitive ideas which we take to be implicit in the public culture of a democratic society. . . . In their political thought, and in the context of public discussion of political questions, citizens do not view the social order as a fixed natural order, or as an institutional hierarchy justified by religious or aristocratic values. Here it is important to stress that from other points of view, for example, from the point of view of personal morality, or from the point of view of members of an association, or of one’s religious or philosophical doctrine, various aspects of the world and one’s relation to it, may be regarded in a different way. But these other points of view are not to be introduced into political discussion.

We can make the idea of social cooperation more specific by noting three of its elements:

1. Cooperation is distinct from merely socially coordinated activity, for example, from activity coordinated by orders issued by some central authority. Cooperation is guided by publicly recognized rules and procedures which those who are cooperating accept and regard as properly regulating their conduct.
2. Cooperation involves the idea of fair terms of cooperation: these are terms that each participant may reasonably accept, provided that everyone else likewise accepts them. Fair terms of cooperation specify an idea of reciprocity or mutuality: all who are engaged in cooperation and who do their part as the rules and procedures require, are to benefit in some appropriate way as assessed by a suitable benchmark of comparison. A conception of political justice characterizes the fair terms of social cooperation. Since the primary subject of justice is the basic structure of society, this is accomplished in justice as fairness by formulating principles that specify basic rights and duties within the main institutions of society, and by regulating the institutions of background justice over time so that the benefits produced by everyone’s efforts are fairly acquired and divided from one generation to the next.

3. The idea of social cooperation requires an idea of each participant’s rational advantage, or good. This idea of good specifies what those who are engaged in cooperation, whether individuals, families, or associations, or even nation-states, are trying to achieve, when the scheme is viewed from their own standpoint.

Now consider the idea of the person. There are, of course, many aspects of human nature that can be singled out as especially significant depending on our point of view. This is witnessed by such expressions as *homo politicus*, *homo oeconomicus*, *homo faber*, and the like. Justice as fairness starts from the idea that society is to be conceived as a fair system of cooperation and so it adopts a conception of the person to go with this idea. Since Greek times, both in philosophy and law, the concept of the person has been understood as the concept of someone who can take part in, or who can play a role in, social life, and hence exercise and respect its various rights and duties. Thus, we say that a person is someone who can be a citizen, that is, a fully cooperating member of society over a complete life. . . .

Since we start within the tradition of democratic thought, we also think of citizens as free and equal persons. The basic intuitive idea is that in virtue of what we may call their moral powers, and the powers of reason, thought, and judgment connected with those powers, we say that persons are free. And in virtue of their having these powers to the requisite degree to be fully cooperating members of society, we say that persons are equal. We can elaborate this conception of the person as follows. Since persons can be full participants in a fair system of social cooperation, we ascribe to them the two moral powers connected with the elements in the idea of social cooperation noted above: namely, a capacity for a sense of justice and a capacity for a conception of the good. A sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation. The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue a conception of one’s rational advantage, or good. In the case of social cooperation, this good must not be understood narrowly but rather as a conception of what is valuable in human life. Thus, a conception of the good normally consists of a more or less determinate scheme of final ends, that is, ends we want to realize for their own sake, as well as of attachments to other persons and loyalties to various groups and associations. These attachments and loyalties give rise to affections and devotions, and therefore the flourishing of the persons and associations who are the objects of these sentiments is also part of our conception of the good. Moreover, we must also include in such a conception a view of our relation to the world—religious, philosophical, or moral—by reference to which
the value and significance of our ends and attachments are understood.

... [T]he conception of persons as having the two moral powers, and therefore as free and equal, is ... a basic intuitive idea assumed to be implicit in the public culture of a democratic society. ...

IV.

I now take up the idea of the original position.[11] This idea is introduced in order to work out which traditional conception of justice, or which variant of one of those conceptions, specifies the most appropriate principles for realizing liberty and equality once society is viewed as a system of cooperation between free and equal persons. Assuming we had this purpose in mind, let's see why we would introduce the idea of the original position and how it serves its purpose.

Consider again the idea of social cooperation. Let's ask: how are the fair terms of cooperation to be determined? Are they simply laid down by some outside agency distinct from the persons cooperating? Are they, for example, laid down by God’s law? Or are these terms to be recognized by these persons as fair by reference to their knowledge of a prior and independent moral order? For example, are they regarded as required by natural law, or by a realm of values known by rational intuition? Or are these terms to be established by an undertaking among these persons themselves in the light of what they regard as their mutual advantage? Depending on which answer we give, we get a different conception of cooperation.

Since justice as fairness recasts the doctrine of the social contract, it adopts a form of the last answer: the fair terms of social cooperation are conceived as agreed to by those engaged in it, that is, by free
and equal persons as citizens who are born into the society in which they lead their lives. But their agreement, like any other valid agreement, must be entered into under appropriate conditions. In particular, these conditions must situate free and equal persons fairly and must not allow some persons greater bargaining advantages than others. Further, threats of force and coercion, deception and fraud, and so on, must be excluded.

. . . But agreements in everyday life are made in some more or less clearly specified situation embedded within the background institutions of the basic structure. Our task, however, is to extend the idea of agreement to this background framework itself. . . . [W]e must find some point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between free and equal persons can be reached. The original position, with the feature I have called “the veil of ignorance,” is this point of view. [12] And the reason why the original position must abstract from and not be affected by the contingencies of the social world is that the conditions for a fair agreement on the principles of political justice between free and equal persons must eliminate the bargaining advantages which inevitably arise within background institutions of any society as the result of cumulative social, historical, and natural tendencies. . . .

. . . [T]he original position is simply a device of representation: it describes the parties, each of whom are responsible for the essential interests of a free and equal person, as fairly situated and as reaching an agreement subject to appropriate restrictions on what are to count as good reasons. [13]

. . .

. . .[W]e introduce an idea like that of the original position because there is no better way to elaborate a political conception of justice for the basic structure from the fundamental intuitive idea of society as a fair system of cooperation between citizens as free and equal persons. There are, however, certain hazards. As a device of representation the original position is likely to seem somewhat abstract and hence open to misunderstanding. The description of the parties may seem to presuppose some metaphysical conception of the person, for example, that the essential nature of persons is independent of and prior to their contingent attributes, including their final ends and attachments, and indeed, their character as a whole. But this is an illusion caused by not seeing the original position as a device of representation. . . . We must keep in mind that we are trying to show how the idea of society as a fair system of social cooperation can be unfolded so as to specify the most appropriate principles for realizing the institutions of liberty and equality when citizens are regarded as free and equal persons.
V.

[Now I will] sketch a positive account of the political conception of the person, that is, the conception of the person as citizen (discussed in Section III), involved in the original position as a device of representation. To explain what is meant by describing a conception of the person as political, let’s consider how citizens are represented in the original position as free persons. The representation of their freedom seems to be one source of the idea that some metaphysical doctrine is presupposed. I have said elsewhere that citizens view themselves as free in three respects, so let’s survey each of these briefly and indicate the way in which the conception of the person used is political.[14]

First, citizens are free in that they conceive of themselves and of one another as having the moral power to have a conception of the good. . . . [A]s citizens, they are regarded as capable of revising and changing this conception on reasonable and rational grounds, and they may do this if they so desire. . . . Given their moral power to form, to revise, and rationally to pursue a conception of the good, their public identity as free persons is not affected by changes over time in their conception of the good. . . .

It is essential to stress that citizens in their personal affairs, or in the internal life of associations to which they belong, may regard their final ends and attachments in a way very different from the way the political conception involves. . . . They may regard it as simply unthinkable to view themselves apart from certain religious, philosophical, and moral convictions, or from certain enduring attachments and loyalties. These convictions and attachments are part of what we may call their “nonpublic identity.” These convictions and attachments help to organize and give shape to a person’s way of life, what one sees oneself as doing and trying to accomplish in one’s social world. . . . But our conceptions of the good may and often do change over time, usually slowly but sometimes rather suddenly. When these changes are sudden, we are particularly likely to say that we are no longer the same person. We know what this means: we refer to a profound and pervasive shift, or reversal, in our final ends and character; we refer to our different nonpublic, and possibly moral or religious, identity. . . . There is no change in our public or political identity, nor in our personal identity as this concept is understood by some writers in the philosophy of mind.[15]
The second respect in which citizens view themselves as free is that they regard themselves as self-originating sources of valid claims. They think their claims have weight apart from being derived from duties or obligations specified by the political conception of justice, for example, from duties and obligations owed to society. Claims that citizens regard as founded on duties and obligations based on their conception of the good and the moral doctrine they affirm in their own life are also, for our purposes here, to be counted as self-originating.

That this aspect of [citizens’] freedom belongs to a particular political conception is clear from the contrast with a different political conception in which the members of society are not viewed as self-originating sources of valid claims. Rather, their claims have no weight except insofar as they can be derived from their duties and obligations owed to society, or from their ascribed roles in the social hierarchy justified by religious or aristocratic values. Or to take an extreme case, slaves are human beings who are not counted as sources of claims, not even claims based on social duties or obligations, for slaves are not counted as capable of having duties or obligations.

The third respect in which citizens are regarded as free is that they are regarded as capable of taking responsibility for their ends and this affects how their various claims are assessed. Very roughly, the idea is that, given just background institutions and given for each person a fair index of primary goods (as required by the principles of justice), citizens are thought to be capable of adjusting their aims and aspirations in the light of what they can reasonably expect to provide for. Moreover, they are regarded as capable of restricting their claims in matters of justice to the kinds of things the principles of justice allow. Thus, citizens are to recognize that the weight of their claims is not given by the strength and psychological intensity of their wants and desires (as opposed to their needs and requirements as citizens), even when their wants and desires are rational from their point of view.
I now take up a point essential to thinking of justice as fairness as a liberal view. Although this conception is a moral conception, it is not, as I have said, intended as a comprehensive moral doctrine. The conception of the citizen as a free and equal person is not a moral ideal to govern all of life, but is rather an ideal belonging to a conception of political justice which is to apply to the basic structure. . . . In a constitutional democratic state under modern conditions there are bound to exist conflicting and incommensurable conceptions of the good. This feature characterizes modern culture since the Reformation. Any viable political conception of justice that is not to rely on the autocratic use of state power must recognize this fundamental social fact. This does not mean, of course, that such a conception cannot impose constraints on individuals and associations, but that when it does so, these constraints are accounted for, directly or indirectly, by the requirements of political justice for the basic structure.\[17\]

Given this fact, we adopt a conception of the person framed as part of, and restricted to, an explicitly political conception of justice. . . . Persons can accept this conception of themselves as citizens and use it when discussing questions of political justice without being committed in other parts of their life to comprehensive moral ideals often associated with liberalism, for example, the ideals of autonomy and individuality. . . . These comprehensive ideals, despite their very great importance in liberal thought, are extended too far when presented as the only appropriate foundation for a constitutional regime.\[18\] So understood, liberalism becomes but another sectarian doctrine.

. . .

By contrast with liberalism as a comprehensive moral doctrine, . . . justice as fairness seeks to identify the kernel of an overlapping consensus, that is, the shared intuitive ideas which when worked up into a political conception of justice turn out to be sufficient to underwrite a just constitutional regime. This is the most we can expect, nor do we need more.\[19\] . . .

It may appear that, so understood, the public acceptance of justice as fairness is no more than prudential; that is, that those who affirm this conception do so simply as a *modus vivendi* which allows the groups in the overlapping consensus to pursue their own good subject to certain constraints which each thinks to be for its advantage given existing circumstances. The idea of an overlapping consensus may seem essentially Hobbesian. But against this, two remarks: first, justice as fairness is a moral conception: it has conceptions of person and society, and concepts of right and fairness, as well as principles of justice with their complement of the virtues through which those principles are embodied in human character and regulate political and social life. . . .
Second, in such a consensus each of the comprehensive philosophical, religious, and moral doctrines accepts justice as fairness . . . from within its own point of view. . . . We might say that they recognize [the] concepts, principles, and virtues [of justice as fairness] as theorems, as it were, at which their several views coincide. But this does not make these points of coincidence any less moral or reduce them to mere means. For, in general, these concepts, principles, and virtues are accepted by each as belonging to a more comprehensive philosophical, religious, or moral doctrine. . . . The doctrines in an overlapping consensus differ in how far they maintain a further foundation is necessary and on what that further foundation should be. These differences, however, are compatible with a consensus on justice as fairness as a political conception of justice.

VII.

I shall conclude by considering the way in which social unity and stability may be understood by liberalism as a political doctrine (as opposed to a comprehensive moral conception).[20]

One of the deepest distinctions between political conceptions of justice is between those that allow for a plurality of opposing and even incommensurable conceptions of the good and those that hold that there is but one conception of the good which is to be recognized by all persons, so far as they are fully rational. Conceptions of justice which fall on opposite sides of this divide are distinct in many fundamental ways. Plato and Aristotle, and the Christian tradition as represented by Augustine and Aquinas, fall on the side of the one rational good. Such views tend to be teleological and to hold that institutions are just to the extent that they effectively promote this good. Indeed, since classical times the dominant tradition seems to have been that there is but one rational conception of the good, and that the aim of moral philosophy, together with theology and metaphysics, is to determine its nature. Classical utilitarianism belongs to this dominant tradition. By contrast, liberalism as a political doctrine supposes that there are many conflicting and incommensurable conceptions of the good, each compatible with the full rationality of human persons, so far as we can ascertain within a workable political conception of justice. As a consequence of this supposition, liberalism assumes that it is a characteristic feature of a free democratic culture that a plurality of conflicting and incommensurable conceptions of the good are affirmed by its citizens. Liberalism as a political doctrine holds that the question the dominant tradition has tried to answer has no practicable answer; that is, it has no answer suitable for a political conception of justice for a democratic society. In such a society a teleological political conception is out of the question: public agreement on the requisite conception of the good cannot be obtained.
As I have remarked, the historical origin of this liberal supposition is the Reformation and its consequences. Until the Wars of Religion in the sixteenth and seventeenth centuries, the fair terms of social cooperation were narrowly drawn: social cooperation on the basis of mutual respect was regarded as impossible with persons of a different faith; or (in the terminology I have used) with persons who affirm a fundamentally different conception of the good. Thus one of the historical roots of liberalism was the development of various doctrines urging religious toleration. . . . One task of liberalism as a political doctrine is to answer the question: how is social unity to be understood, given that there can be no public agreement on the one rational good, and a plurality of opposing and incommensurable conceptions must be taken as given? And granted that social unity is conceivable in some definite way, under what conditions is it actually possible?

In justice as fairness, social unity is understood by starting with the conception of society as a system of cooperation between free and equal persons. Social unity and the allegiance of citizens to their common institutions are not founded on their all affirming the same conception of the good, but on their publicly accepting a political conception of justice to regulate the basic structure of society. The concept of justice is independent from and prior to the concept of goodness in the sense that its principles limit the conceptions of the good which are permissible. A just basic structure and its background institutions establish a framework within which permissible conceptions can be advanced. Elsewhere I have called this relation between a conception of justice and conceptions of the good the priority of right (since the just falls under the right). I believe this priority is characteristic of liberalism as a political doctrine and something like it seems essential to any conception of justice reasonable for a democratic state. Thus to understand how social unity is possible given the historical conditions of a democratic society, we start with our basic intuitive idea of social cooperation, an idea present in the public culture of a democratic society, and proceed from there to a public conception of justice as the basis of social unity in the way I have sketched.

As for the question of whether this unity is stable, this importantly depends on the content of the religious, philosophical, and moral doctrines available to constitute an overlapping consensus. . . .

The strength of a conception like justice as fairness may prove to be that the more comprehensive doctrines that persist and gain adherents in a democratic society regulated by its principles are likely to cohere together into a more or less stable overlapping consensus. But obviously all this is highly speculative and raises questions which are little understood, since doctrines which persist and gain adherents depend in part on social conditions, and in particular, on these conditions when regulated by the public conception of justice. Thus we are forced to consider at some point the effects of the social conditions required by a conception of political justice on the acceptance of that conception itself. Other things equal, a conception will be more or less stable depending on how far the conditions to which it leads support comprehensive religious, philosophical, and moral doctrines which can constitute a stable overlapping consensus. These questions of stability I cannot discuss here. It suffices to remark that in a society marked by deep divisions between opposing and incommensurable conceptions of the good, justice as fairness enables us at least to conceive how social unity can be both possible and stable.

[2] [footnote omitted]


[5] This idea was introduced in Theory, pp. 387f., as a way to weaken the conditions for the reasonableness of civil disobedience in a nearly just democratic society. Here and later in Secs. VI and VII it is used in a wider context.


[7] [footnote omitted].

[8] Although Theory uses this idea from the outset (it is introduced on p. 4), it does not emphasize, as I do here and in “Kantian Constructivism,” that the basic ideas of justice as fairness are regarded as implicit or latent in the public culture of a democratic society.

[9] It should be emphasized that a conception of the person, as I understand it here, is a normative conception, whether legal, political, or moral, or indeed also philosophical or religious, depending on the overall view to which it belongs. In this case the conception of the person is a moral conception, one that begins from our everyday conception of persons as the basic units of thought, deliberation and responsibility, and adapted to a political conception of justice and not to a comprehensive moral doctrine. It is in effect a political conception of the person, and given the aims of justice as fairness, a conception of citizens. Thus, a conception of the person is to be distinguished from an account of human nature given by natural science or social theory. On this point, see “Kantian Constructivism,” pp. 534f.

[10] Theory, Sec. 77.

[11] Ibid., Sec. 4, Ch. 3, and the index.

[12] On the veil of ignorance, see ibid., Sec. 24, and the index.

[13] The original position models a basic feature of Kantian constructivism, namely, the distinction between the Reasonable and the Rational, with the Reasonable as prior to the Rational. (For an explanation of this distinction, see “Kantian Constructivism,” pp. 528–32, and passim.) The relevance of this distinction here is that Theory more or less consistently speaks not of rational but of reasonable (or sometimes of fitting or appropriate) conditions as constraints on arguments for principles of justice (see pp. 18f., 20f., 120f., 130f., 138, 446, 516f., 578, 584f.). These constraints are modeled in the original position and thereby imposed on the parties: their deliberations are subject, and subject absolutely, to the reasonable conditions the modeling of which makes the original position fair. The Reasonable, then, is prior to the Rational, and this gives the priority of right. Thus, it was an error in Theory (and a very misleading one) to describe a theory of justice as part of the theory of rational choice, as on pp. 16 and 583. What I should have said is that the conception of justice as fairness uses an account of rational choice subject to reasonable conditions to characterize the deliberations of the parties as representatives of free and equal persons; and all of this within a political conception of justice, which is, of course, a moral conception. There is no thought of trying to derive the content of justice within a framework that
uses an idea of the rational as the sole normative idea. That thought is incompatible with any kind of Kantian view.

[14] [footnote omitted]

[15] [footnote omitted]


[17] For example, churches are constrained by the principle of equal liberty of conscience and must conform to the principle of toleration, universities by what may be required to maintain fair equality of opportunity, and the rights of parents by what is necessary to maintain their children’s physical well-being and to assure the adequate development of their intellectual and moral powers. Because churches, universities, and parents exercise their authority within the basic structure, they are to recognize the requirements this structure imposes to maintain background justice.

[18] For Kant, see The Foundations of the Metaphysics of Morals and The Critique of Practical Reason. For Mill, see On Liberty, particularly Ch. 3 where the ideal of individuality is most fully discussed.

[19] For the idea of the kernel of an overlapping consensus (mentioned above), see Theory, last par. of Sec. 35, pp. 220f. For the idea of full autonomy, see “Kantian Constructivism,” pp. 528ff.


[21] [footnote omitted]