

## Should Political Liberals Uphold Universal Values?\*

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Over the past few decades, two assumptions have increasingly taken hold in liberal democratic theory. First, deliberative models of democracy have largely chased their rivals from the field. When contemporary theorists imagine ideal democracies, they imagine something like a well-designed academic seminar in which all citizens have done the reading. Ideal democratic institutions are those which promote a politics of justification, as opposed, say, to the preference-maximizing models of rational choice, or the competing-interest models of traditional liberal theory.<sup>1</sup> Second, though we may talk long through the night, our most difficult moral and political controversies have proved surprisingly intractable, even when we concede the various procedural ideals proposed by different thinkers. This we know from our own experience: Even

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<sup>1</sup> See, for example, Stephen Macedo, "The Politics of Justification," *Political Theory* 18, no. 2 (May 1990): 280-304; Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs* 16, no. 3 (Summer 1987): 215-240; Joshua Cohen, "Moral Pluralism and Political Consensus," in *The Idea of Democracy*, eds. David Copp, Jean Hampton, and John E. Roemer (New York: Cambridge University Press, 1993); T.M. Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 2000); Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996); Gerald Gaus, *Justificatory Liberalism* (New York: Oxford University Press, 1996); Simone Chambers, *Reasonable Democracy* (Ithaca: Cornell University Press, 1996); Jürgen Habermas, *The Theory of Communicative Action*, vols. 1 and 2, trans. Thomas McCarthy (Boston: Beacon Press, 1984 and 1985); and Habermas's *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge: MIT Press, 1996).

when we aim at intersubjective agreement or consensus, we typically find ourselves clarifying our disagreements instead of converging toward shared conclusions.

At some point, every liberal democrat faces the same unsettling question: Given the tremendous diversity in beliefs, values, and ways of life characteristic of modern liberal states, and confronted by moral and political questions that give rise to expectable but ineliminable disagreements, how should political liberals talk to their fellow citizens? What kinds of language are likely to be persuasive when persons with very different moral understandings disagree about important issues? Do the normative foundations of a political liberalism preclude certain kinds of discourse? Do they provide an adequate vantage point for political and moral critique?

Both at home and abroad, critics of a political liberalism are anxious to know just what political liberals will say to illiberal or non-liberal minorities. On the one hand, critics charge that political liberals are too exclusionary, banishing (in particular) certain kinds of religious discourse from the public sphere.<sup>2</sup> On the other, there is the concern that political liberals are too permissive, lacking the necessary moral resources to criticize oppressive practices and beliefs.<sup>3</sup>

This paper cuts at the heart of these issues by asking whether political liberals should uphold universal values. What I will argue is that the two most important political liberals in the field – John Rawls and Charles Larmore – have, in their own way, articulated affirmative answers to this question, and that those answers are ones we should reject. Both thinkers, in other words, have insisted that we seek out common ground in our deliberations, or find a shared moral basis that all citizens can affirm. While that premise may seem uncontroversial, recall that both thinkers simultaneously ground their political liberalisms in the recognition of apparently ineliminable disagreements, on just those moral issues that give shape and content to our lives.

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<sup>2</sup> See Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square* (Lanham: Rowman & Littlefield, 1997), 67-120; and the several essays collected in *Religion and Contemporary Liberalism*, ed. Paul Weithman (Notre Dame: University of Notre Dame Press, 1997).

<sup>3</sup> Fernando Teson, *A Philosophy of International Law* (Boulder: Westview Press, 1998), 107-121; Darrel Moellendorf, “Constructing the Law of Peoples,” *Pacific Philosophical Quarterly* 77, no. 2 (1996): 135-144; Kok-Chor Tan, “Liberal Toleration in Rawls’s *Law of Peoples*,” *Ethics* 108, no. 2 (January 1998): 276-295, esp. 283-285.

At least when it comes to questions of “basic justice” and “constitutional essentials,” Rawls begins with a “reasonable pluralism” of conflicting and incompatible moral doctrines, but ends with a principled consensus.<sup>4</sup> Similarly, Larmore starts out by acknowledging that on “matters of supreme importance, the more we talk with one another, the more we disagree” and ends by insisting on new ways of talking that might nevertheless lead us toward agreement.<sup>5</sup>

Both Rawls and Larmore are thereby forced into paradoxical solutions: If we are to salvage a liberal politics grounded in uncoerced intersubjective agreement among diverse (but reasonable) citizens, they suggest, then we must suppose this minimum of common ground to exist, despite the reasonable pluralism they start out with.

I will argue that this seeming paradox is, in fact, a deep and irresolvable contradiction. The solution Rawls and Larmore give us is no solution at all, but rather, an attempt to wish away the more troubling idea at the heart of their theories: the ineliminability of reasonable disagreement on the most important moral controversies we face. On the account I give here, the main reason political liberals should avoid the language of universal values is that such language simply cannot, even under ideal conditions, bridge the kind of deliberative controversies that we encounter. Reasonable disagreement runs too deep; the language of moral commonality simply cannot do the work we need it to do.

Because I wish to avoid some of the attendant controversies surrounding Rawls’s definition of “reasonableness,” let me stipulate that the term ought not to indicate anything more than sincere and well-intentioned efforts to find mutually acceptable agreements on controversial moral and political matters. This definition is not so different from the one Rawls or Larmore endorses. On Rawls’s view, reasonable persons “stand ready to offer fair terms of social cooperation” and agree to abide by those terms, even if it should not be to their advantage in a

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<sup>4</sup> Rawls, “The Idea of Public Reason Revisited,” in *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 133. See also Rawls’s *Political Liberalism* (New York: Columbia University Press, 1996), xviii, xx, 227-230.

<sup>5</sup> Larmore, *The Morals of Modernity* (New York: Cambridge University Press, 1996), 122.

particular case.<sup>6</sup> For Larmore, reasonable persons are “those who think and converse in good faith and apply, as best they can, the general capacities of reason that belong to every domain of inquiry.”<sup>7</sup> For my purposes, what reasonable means is specifically a moral disposition, wherein we try to treat other persons fairly and expect to be treated fairly in turn.

Now, political liberals have insisted upon the idea of shared values because they believe that only the possibility of some such agreement-amidst-moral-diversity might provide a way out from the otherwise interminable disagreements that would otherwise divide us.<sup>8</sup> And it is important that this agreement-amidst-moral-diversity be genuinely moral in its own right – that is, that it not be the outcome of political bargaining or compromise, the result of some merely prudential political calculus, or simply the resigned acceptance of some *modus vivendi* arrangement that we accept as the price of living in a world not of our own making.<sup>9</sup>

The alternative solution that I propose aims to stay true to the motivating impulses behind Rawls’s and Larmore’s projects. Both thinkers, I believe, have put their finger on the single most important question that contemporary moral and political philosophy must address: Given the persistence of reasonable disagreement among diverse but fair-minded citizens, how might we nonetheless reach morally legitimate conclusions that all citizens can recognize and accept? How, in particular, is uncoerced intersubjective agreement even imaginable under such circumstances? Must we, in the end, fall back on majority procedures, even for those principles that define the “basic justice” or “constitutional essentials” of our polity? Does this kind of moral diversity lead, inexorably, to a strictly amoral *modus vivendi*, where questions of justice are subordinated to questions of stability?

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<sup>6</sup> In addition, reasonable persons “recognize and accept the consequences of the burdens of judgment,” or what Rawls calls “the fact of reasonable pluralism.” I return to those ideas below. See Rawls, “The Idea of Public Reason Revisited,” 177, and his *Political Liberalism*, 54-58.

<sup>7</sup> Larmore, *The Morals of Modernity*, 168. See also Larmore’s “The Moral Basis of Political Liberalism,” *The Journal of Philosophy* 96, no. 12 (December 1999): 601-602.

<sup>8</sup> Cf. Larmore, *The Morals of Modernity*, 151.

<sup>9</sup> John Rawls, *Political Liberalism*, *xlii-xliv, xvii-xlviii*, 39-40, 143-149. Cf. Larmore, *The Morals of Modernity*, 132-133.

I do not think so, and even if the solutions Rawls and Larmore provide turn out to be faulty, I believe there remains a more compelling answer. Following David Hume, I offer a broadly experiential account of how liberals should articulate the comparative worth and value of their political institutions, a way of talking that seems more likely to lead us toward agreement despite the differing moral perspectives that we bring to our deliberations.

In order to bridge our differences, I suggest that we learn to put our practices first. Instead of ‘working up’ our institutions through rational argument (such that we would endorse our institutions according to how well they embody those universal values we start out with), we should begin our deliberations in the thick of our experience, and empirically affirm just those institutions that create a mutually agreeable or commodious common life. On this account, our institutions prove their legitimacy, and merit our endorsement, not by their consistent embodiment of principles we believe right, but by their concrete effects on the lives that we lead. The expectation is that we are far more likely to agree on the welcome or baleful effects of our political institutions than we are on the underlying principles that are alleged to legitimate them.

In short, our institutions should be judged by the common world they create. Political argument should try, as far as possible, to ‘stay on the surface’ instead of becoming excessively embroiled in controversial rationales sure to be rejected by at least some reasonable citizens.

Of course, neither Rawls’s view nor Larmore’s is reducible to some kind of strict insistence on foundational first principles, and so the differences between my view and theirs may not be so great as they first appear. In particular, Rawls’s method of reflective equilibrium and Larmore’s contextualist theory of justification are explicitly designed to ground rational argument in an historically conditioned context, allowing the movement of experience to give content to our deliberations.<sup>10</sup> Thus the model I describe is not so much a decisive break as it is an important change of focus. If anything, I want to move a political liberalism still further away

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<sup>10</sup> For Rawls’s understanding of reflective equilibrium, see *A Theory of Justice*, rev. ed. (Cambridge: Belknap Press, 1999), 15-19, 42-45. For Larmore’s contextualist theory of justification, see *The Morals of Modernity*, 11, 59-64, 115-116. Wayne Norman offers a particularly good discussion of Rawls’s methods. See his “‘Inevitable and Unacceptable?’ Methodological Rawlsianism in Anglo-American Political Philosophy,” *Political Studies* 46, no. 2 (June 1998): 276-294.

from any reliance on abstract argument, and toward a broadly experiential account that privileges the thickness of experience over the thinness of rational abstraction.

I begin by examining the views of Rawls and Larmore in more detail. I then return to my experiential account, both to clarify its strengths and to resist its apparent weaknesses. Among other things, I argue that the Humean emphasis on shared practices has a genuinely moral character; that it is not, in that respect, a strictly pragmatic or prudential *modus vivendi*; that it retains the commitment to uncoerced intersubjective agreement that is central to a political liberalism; and that the Humean view I propose is neither so complacent nor so conservative as it initially appears. Indeed, in its advocacy of a cross-cultural and trans-historical “comparative institutional analysis,” I will suggest that the Humean view promotes far-reaching critiques of our own institutions and practices.

In sum, the experiential account I develop is motivated by the same concerns that led Rawls and Larmore to the articulation of a political liberalism, but hopes to make that project more likely to succeed, and more likely to be persuasive, to the diverse citizens of liberal states.

## **I. The Search for Universal Values**

I suspect that readers familiar with Rawls’s middle essays will already be scratching their heads. Is Rawls really in the business of identifying universal values? Though Charles Larmore is well-known for defending “The Moral Basis of Political Liberalism,”<sup>11</sup> those familiar with Rawls’s 1985 essay on “Justice as Fairness: Political not Metaphysical” may recall the very pragmatic approach that he there proposed and recommended. In that essay, Rawls seemed to eschew universal values entirely, favoring a “method of avoidance” as a way of bracketing our philosophical disagreements.<sup>12</sup> The idea, Rawls suggested, was to restrict ourselves to just those political values that we happen to share, drawing “solely upon basic intuitive ideas that are

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<sup>11</sup> Larmore, “The Moral Basis of Political Liberalism,” 599-625.

<sup>12</sup> Rawls, “Justice as Fairness: Political not Metaphysical” in his *Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard University Press, 1999), 395.

embedded in the political institutions of a constitutional democratic regime.”<sup>13</sup> Our aim was to identify an “overlapping consensus” between differing reasonable moral conceptions, suggesting something like a Venn diagram, whose area of intersection is shared and affirmed even as the outlying areas specify remarkably different topographies.<sup>14</sup>

Eventually, however, Rawls came to see that such a view was too dependent on our present self-understandings, and too contingently specified, with the result that it was political in the wrong way. Suppose, for example, that an existing society was not well-ordered but deeply unjust. Striking a balance between competing doctrines, or practicing the “method of avoidance” just described, might lead to mutually acceptable outcomes, but ones that would be morally objectionable all the same. What was needed, then, was a way of grounding such deliberations so that we could find “stability for the right reasons.”<sup>15</sup>

In later writings, Rawls decisively rejected the kind of moral bracketing that he had earlier recommended. Although the goal is still that of working up shared political intuitions embedded in the background culture of well-ordered constitutional democracies, the best way to identify and defend those intuitions, Rawls argued, was through ideal deliberative procedures in which free and equal citizens exchange public reasons for their beliefs.<sup>16</sup>

This understanding of the overlapping consensus differed in two ways from the 1985 version. First, it was no longer a matter of striking a balance between our existing doctrines, but rather, of identifying a morally “freestanding” view whose terms, warrants, and evidentiary authorities were universally affirmed under ideal deliberative circumstances.<sup>17</sup> The overlapping consensus would then have an independent moral justification from any of the privately-held moral doctrines that find reasons to support it. Or as Rawls put it, “A political conception of justice is what I call freestanding when it is not presented as derived from, or as part of, any

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<sup>13</sup> Rawls, “Justice as Fairness: Political not Metaphysical,” 390.

<sup>14</sup> Rawls, “Justice as Fairness: Political not Metaphysical,” 390, 410-411.

<sup>15</sup> Rawls, *Political Liberalism*, xxxix, xlvii, 39-40.

<sup>16</sup> Rawls, “The Idea of Public Reason Revisited,” 131-148.

<sup>17</sup> Rawls, *Political Liberalism*, 158-168.

comprehensive doctrine. Such a conception of justice in order to be a moral conception must contain its own intrinsic normative and moral ideal.”<sup>18</sup> Thus the overlapping consensus was no longer conceived as representing whatever moral remainder we discover, once our differences had been appropriately bracketed and our commonalities sufficiently emphasized. On the contrary, it was now to support a freestanding moral conception that we could all find public reasons to affirm.

Second, as part of the ideal deliberative strictures that Rawls described, it was essential that the parties to such deliberations come to see themselves as free and equal citizens, even if the political ideas of freedom and equality were at odds with the values that gave form and content to their private lives. Thus citizens were required to distinguish what they presently believe from what they, as free and equal citizens, ought to affirm, and this too gave Rawls’s later formulation of an overlapping consensus a transcendent character that made possible a more radical critique of existing political and social arrangements.

Once Rawls admitted the necessity of a morally freestanding view, the question then arose of how it could be articulated in ways that all citizens could recognize and accept. Here again Rawls proposed two main innovations. First, he explicitly limited the domain of those reasons to questions of “basic justice” and “constitutional essentials,” in the hope that we might agree on the most fundamental principles of our polity (stages 1-2) even as we employ less-than-unanimous procedures for determining the application of those principles down the road (stages 3-4).<sup>19</sup>

Second, Rawls advanced a number of epistemic restrictions as to the kind of public reasons we should offer, and how they should be defended:

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<sup>18</sup> Rawls, *Political Liberalism*, xlv, 10, 12.

<sup>19</sup> The four stages of deliberation were first developed in *A Theory of Justice* and later reaffirmed in Rawls’s *Reply to Habermas*. Stage 1 refers to the adoption of the two principles of justice in the Original Position (or, more broadly, the clarification of essential principles under ideal deliberative circumstances); stage 2 is the “constitutional convention,” stage 3 is the “legislative stage,” and stage 4 involves “the application of rules to particular cases by judges and administrators.” See *A Theory of Justice*, 171-176, and Rawls’s “Reply to Habermas” in *Political Liberalism*, 397-406.

We add to this that in making these justifications we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial...

This means that in discussing constitutional essentials and matters of basic justice we are not to appeal to comprehensive religious and philosophical doctrines...As far as possible, the knowledge and ways of reasoning that ground our affirming the principles of justice and their application to constitutional essentials and basic justice are to rest on the plain truths now widely accepted, or available, to citizens generally.<sup>20</sup>

In his “Idea of Public Reason Revisited,” Rawls qualified those arguments in several important respects. In particular, there Rawls introduced what he calls the “proviso,” wherein we can, in fact, appeal to our comprehensive conceptions in publicly-reasoned debates, provided that “in due course” we also give arguments that meet the deliberative strictures of a freestanding political conception.<sup>21</sup> Rawls also insisted, in the later work, on a sharp distinction between the freewheeling debates of our “background culture” and the publicly-reasoned debates of judges, government officials, and candidates for public office.<sup>22</sup> Citizens are to follow the strictures of public reason only when matters of basic justice and constitutional essentials are debated, and then only when the prospect of coercion is in play.<sup>23</sup>

Despite these modifications, Rawls continued to insist that “when political liberalism speaks of a reasonable overlapping consensus of comprehensive doctrines, it means that all of these doctrines, both religious and nonreligious, support a political conception of justice underwriting a constitutional democratic society whose principles, ideals, and standards satisfy the criterion of reciprocity.”<sup>24</sup>

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<sup>20</sup> Rawls, *Political Liberalism*, 224-226.

<sup>21</sup> Rawls, “The Idea of Public Reason Revisited,” 152-156.

<sup>22</sup> Rawls, “The Idea of Public Reason Revisited,” 133-134.

<sup>23</sup> Rawls, “The Idea of Public Reason Revisited,” 135-136.

<sup>24</sup> Rawls, “The Idea of Public Reason Revisited,” 172.

We then see the central oddity at the heart of Rawls's enterprise. The same thinker who so drastically reformulated his *Theory of Justice* on account of deep-seated reasonable disagreement now insists that we identify a shared minimum of "principles, ideals, and standards" in order to ground our political and social arrangements.

Much more explicitly than Rawls, Charles Larmore similarly argues that a political liberalism must rest on a moral basis (or a "core morality") that all citizens can be brought to affirm.<sup>25</sup> Moreover, as with Rawls's considered view, Larmore insists that our core morality cannot be reduced to just those values and beliefs that we (in our present self-understandings) happen to share. On the contrary, our core morality must refer to those values and beliefs that we *ought* to endorse, once we come to see ourselves as free and equal citizens deserving of mutual respect.<sup>26</sup>

So Rawls's "overlapping consensus" and Larmore's "core morality" are, in fact, much more similar than we might initially suspect. And both are importantly driven from the same hope (or fear), that unless we *can* identify some subset of "universal values" as a moral or political touchstone for our community, a political liberalism risks foundering on the very diversity it starts out with. If individual persons truly are so divided in their values, beliefs, and ways of life, and if that division is both so reasonable and so permanent as Rawls and Larmore imagine, then we must hope for some agreement-amidst-moral-diversity if we wish to have a genuinely moral basis to our politics at all.

For Rawls, the seeming permanence of "reasonable pluralism" is best explained by the "burdens of judgment," a tentative epistemological hypothesis that tries to depict why otherwise sincere and fair-minded persons might find themselves in ineliminable disagreement on controversial moral and political matters. The burdens include, for example, the fact that the available evidence for our beliefs can be complex and difficult to interpret; that different reasoners are inclined to disagree about the considerations that are relevant, or the weight they

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<sup>25</sup> Larmore, *The Morals of Modernity*, 12-13, 122-123, 132-133, 151.

<sup>26</sup> Larmore, "The Moral Basis of Political Liberalism," 608-611, and *The Morals of Modernity*, 145-146, 148-149.

should be accorded in a particular case; that important moral terms are typically vague and hard to specify; that our moral perspectives are often indebted to our own (highly idiosyncratic) life experience; or that some moral problems seem to allow more than one right answer.<sup>27</sup> Resulting disagreements are then “reasonable” insofar as they are neither irrational nor improperly motivated, and “permanent” inasmuch as they seem “the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime.”<sup>28</sup>

Larmore agrees that such disagreements are both expectable and ineliminable, but wants to affirm the presence of such “reasonable disagreements” as something we moderns have discovered – that the more we talk, the more we disagree, even with ourselves.<sup>29</sup> Despite his sympathies, Larmore resists writing Rawls’s tentative explanation into the normative structure of a political liberalism, insisting that even the “burdens of judgment” are likely to be an object of reasonable disagreement among diverse persons. We do better to take the idea of reasonable disagreement as something we find in everyday experience, he suggests, and leave the possible explanations for individual persons to determine on the basis of their own comprehensive moral views.<sup>30</sup>

Whatever its underlying causes, what I will suggest is that if the political liberals are right, and the fact of reasonable pluralism exists, the likelihood of our converging upon shared principles and values is prohibitively remote. What’s more, the likelihood of those values leading us to affirm a specified set of political institutions and practices is smaller yet. So even if these universal values exist, and even if they truly are universal, political liberals will need to learn to do without them. They will need to find, in other words, some other ways of talking,

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<sup>27</sup> I say “tentative” because Rawls refers to his list of burdens as “not complete.” See Rawls’s *Political Liberalism*, 54-58. In his earlier work, Rawls referred to the burdens of judgment as the “burdens of reason.” See “The Domain of the Political and Overlapping Consensus” in Rawls’s *Collected Papers*, 475-478.

<sup>28</sup> Rawls, *Political Liberalism*, xviii.

<sup>29</sup> Larmore, *The Morals of Modernity*, 12, 122, 144, 151.

<sup>30</sup> Larmore, *The Morals of Modernity*, 170-171. Indeed, Larmore goes so far as to say that it is the persistence of reasonable *agreement*, especially in the sciences, that is the real puzzle to be solved.

ways that are more likely to be persuasive, and more consistent with the reasonable pluralism they start out with.

## II. A Misplaced Faith in Deliberation?

As we've seen, a political liberalism rests on a curious paradox. It begins with the recognition that on many controversial matters of morality and politics, reasonable persons are likely to disagree.<sup>31</sup> And yet what this disagreement calls for, ideally and optimistically, is not a hard-won resignation to the virtues of plurality votes, a politics anchored in competing interests, or a well-ordered republic pitting one faction against another.<sup>32</sup> On the contrary, we are urged to look for still higher levels of agreement, as we prescind away from otherwise intractable differences.<sup>33</sup>

I have already indicated my hesitation in labeling this path the surest one to practical success. As Rawls's discussion of the abortion controversy in *Political Liberalism* makes clear<sup>34</sup> (or his endorsement of campaign finance reform in *The Law of Peoples*)<sup>35</sup>, whenever Rawls tried to give a concrete example of where a publicly-reasoned consensus might lead, it seemed almost comically unlikely that some diverse persons – call them Catholics and the Christian Right in the first instance, or the libertarian wing of the Republican Party in the second – could be brought towards consensus.

Nevertheless, that is not to say that Rawls's solution should, on that basis, be rejected. (We will come to some better reasons in a moment.) Even in the cases above, for example, Rawls might have replied that the parties in disagreement were simply not reasonable in their deliberations, and that a freestanding political conception prescribes only what reasonable

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<sup>31</sup> Larmore, *The Morals of Modernity*, 12, 122, 151, and chap. 7. See also Larmore's "The Moral Basis of Political Liberalism," 599-625.

<sup>32</sup> Here I'm thinking of Madison and the argument of Federalist #10. See *The Federalist Papers*, ed. Clinton Rossiter (New York: Mentor, 1961), 77-84.

<sup>33</sup> Larmore, *The Morals of Modernity*, 126-127.

<sup>34</sup> Rawls, *Political Liberalism*, 243 n.32.

<sup>35</sup> Rawls, *The Law of Peoples*, 50. See also his *Political Liberalism*, 356-368.

persons *should* accept, not what actual, flesh-and-blood persons really *do* accept. Less controversially, Rawls could modestly claim that his own publicly-reasoned arguments may be in error on this score, and that there remains some as yet undiscovered consensus to be found by better public reasoners in the future.<sup>36</sup>

Rawls's understanding of liberal citizenship, and the moral respect we are due as reasonable persons, together disposed him to think that only a politics grounded in mutual consent can ultimately confer upon liberal citizens the dignity they deserve. In particular, insofar as we wish to be the authors of those coercions we accept – what Rawls calls “the liberal principle of legitimacy”<sup>37</sup> – then reasonable consensus is to be preferred to majority votes, or to any other institutional solutions that simply mask our moral disagreements instead of transcending or working through them. Again, in the words of Charles Larmore:

Liberalism has been the hope that, despite this tendency toward disagreement about matters of ultimate significance, we can find some way of living together that avoids the rule of force. It has been the conviction that we can agree on a core morality while continuing to disagree about what makes life worth living. In the end, this conviction may turn out to be baseless. Liberalism may necessarily be just one more partisan ideal. But if that is so, then unless the modern experience is to dissolve in the light of the one irresistible, all-encompassing Good, our political future will indeed be one “where ignorant armies clash by night.”<sup>38</sup>

Like Larmore, I am apprehensive as to whether this core morality can, in fact, be discovered and made the basis for political agreement. But unlike Larmore, I do not believe that our failure to find this morality would necessarily result in such dire political consequences.

For once we drop the idea of universal values (or a “core morality”) that can be endorsed by all reasonable persons, it does not follow that a *modus vivendi* must, in the end, be illegitimately imposed. The citizens of the *modus vivendi* state can endorse their institutions for

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<sup>36</sup> Indeed, Rawls later described his famous abortion footnote in just these terms, as a hypothetical attempt to develop one possible line of argument. See “The Idea of Public Reason Revisited,” 169 n.80.

<sup>37</sup> Rawls, *Political Liberalism*, xlvii, 137.

<sup>38</sup> Larmore, *The Morals of Modernity*, 151.

reasons that are neither shared nor freestanding in any meaningful sense. But as long as those citizens do, in fact, endorse their institutions – and as long as that endorsement comes as a result of uncoerced and transparent dialogue – such a *modus vivendi* view can be described as not only moral but liberal as well. Or so, at any rate, I will argue below.

The distinctive virtues of the Humean approach are best seen in comparison with the existing models of public reason developed by Rawls and Larmore. The latter two thinkers emphasize a universality of values that all citizens can be brought to affirm. The Humean approach, on the contrary, emphasizes a universality of practices that can be affirmed by diverse persons for different reasons. In what follows, I will try to show how my experiential account is consistent with the underlying motivations of a political liberalism, even as it steers a different course.

### **III. A More Truly Political Liberalism?**

Perhaps the simplest way to define a political liberalism – as opposed to a traditional or “comprehensive” one – is to say that a political liberalism rejects the idea that there should be an enforced one-to-one correspondence in the beliefs we uphold as citizens and the beliefs we uphold as persons. A political liberalism does not deny that the liberal polity is a moral community, that is a community committed to treating citizens as free and equal persons deserving of mutual respect. Where a political liberalism departs from a comprehensive one is in its insistence that the values of liberal citizenship are not necessarily the values of the good life more generally – and in particular, that because there are many good lives, each with its own particular constellation of worthwhile values, the liberal state has no business interfering in the private choices of its diverse citizenry (unless those choices prove unduly coercive to other persons).

The politically liberal state can then loudly proclaim the worth and value of free expression, or freedom of religious worship, or the right of mature persons to decide their own minds on important political matters. What is important, however, is that these values be

defended as part of our civic aspirations, or what we try to accomplish politically, and that the liberal state not presume that the values that make for a good liberal politics are necessarily the same ones that make for good private lives.

Some readers may doubt just how far earlier liberal thinkers were willing to go in using the coercive machinery of state to impose liberal values on other persons. Certainly one can find evidence in earlier writers that tends in opposite directions: John Locke's toleration of Protestant dissidents, for example, in his *Letter Concerning Toleration*, went hand in hand with a deliberate exclusion of Catholics and atheists; Immanuel Kant's recognition of a "nation of devils," in *Perpetual Peace*, sits uneasily beside his unapologetic defense of rational autonomy in the essay *What is Enlightenment?*; John Stuart Mill's embrace of eccentric ways of living in *On Liberty* somehow also made room for imperial rule over "barbarians," while both *Representative Government* and *Utilitarianism* speak favorably of political hierarchies.<sup>39</sup>

A political liberalism then makes explicit what was often only half-acknowledged by earlier liberal thinkers – that the liberal state has no business managing our conscience, in matters religious or otherwise, and that in the face of moral diversity, we do great harm in coercively imposing a single way of life.

The truly political liberal state aims to leave individuals as they are, in the fullness of their private lives, provided that they live peacefully with their neighbors, and do no serious harm to their neighbors' lives and possessions. It does so not because the state is cruelly indifferent to the oppressions individuals may face, nor because it is unconcerned with their welfare or individual flourishing. On the contrary, the liberal state seeks to keep coercive political power to a minimum, precisely because there are so many ways of living authentically flourishing lives, and so many worthwhile paths for individual decision-makers to choose. In that respect, the liberal state ought to have only instrumental significance, as simply the best institutional means we can devise in which individual persons can pursue their individual visions of the good.

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<sup>39</sup> Here I have in mind both the "competent judges" of *Utilitarianism*'s higher-order pleasures, and Mill's preference for an educational weighting of the vote in *Representative Government*.

But this is exactly why Rawls's reliance on deliberation, as a means of finding higher-order agreements, seems at odds with the kind of liberalism we ourselves should defend. Whatever the drawbacks of political liberalism conceived as a set of well-ordered political institutions, or as a procedural attempt to moderate moral conflict, the underlying normative rationale for each view seems generous and profound. Rawls's emphasis on affirming shared values signals, I believe, a desire to accomplish something more than this – to forge feelings of communal solidarity, or provide opportunities for particular kinds of civic action, or (more modestly) to ensure that the diverse citizens of a politically liberal state are neither so uninformed nor apathetic that their political interests and needs are ignored by ruling majorities.

It is worth emphasizing the idea of civic solidarity that underlies Rawls's understanding. Too often Rawls's concern for civic unity, or what Charles Larmore terms “a spirit of reciprocity,” has gone unremarked and unacknowledged.<sup>40</sup> Indeed, Rawls credits Larmore for encouraging him to see public reason as an important means for securing “civic friendship” among a diverse and eclectic citizenry.<sup>41</sup> As Larmore puts it,

We honor public reason when we bring our own reason into accord with the reason of others, espousing a common point of view for settling the terms of our political life. The conception of justice by which we live is then a conception we endorse, not for the different reasons we may each discover, and not simply for reasons we happen to share, but instead for reasons that count for us because we can affirm them together. This spirit of reciprocity is the foundation of a democratic society.<sup>42</sup>

Ultimately, Rawls argues, “the idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another.” His understanding of public reason is then no

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<sup>40</sup> Larmore, “Public Reason,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (New York: Cambridge University Press, 2003), 368. Larmore has long been an exception in this regard. See his “Political Liberalism” in *Political Theory* 18, no. 3 (August 1990): 339-360. See also Patrick Neal, “In the Shadow of the General Will: Rawls, Kant and Rousseau on the Problem of Political Right,” in *Liberalism and its Discontents* (New York: New York University Press, 1997), 51-70.

<sup>41</sup> Rawls, “The Idea of Public Reason Revisited,” 155 n.56.

<sup>42</sup> Larmore, “Public Reason,” 368.

small addition to the theory. On the contrary, it determines the very “political relationship” on which the rest of a political liberalism is built.<sup>43</sup>

I do not doubt that most of us would find lives of radical atomistic detachment to be woefully incomplete. What I want to resist, however, is the idea that the solidarities that we seek should be found at the level of the state.<sup>44</sup> As far as providing opportunities for civic engagement, on the other hand, this too I believe is properly left to individual decision-makers to decide, in terms of how and where they wish to participate. Some may feel that their individual conceptions of the good are best accomplished in a radical withdrawal from political life. Others may look to the various institutions of civil society as the proper forum for engaging their fellow citizens. And the few neo-Aristotelians among us may actually run for public office, or participate in political campaigns, as a means of accomplishing their telos and realizing their humanity. But the liberal state ought not to assume that the value of civic participation will be recognized by all, or that all citizens have first-order interests in assuming a consistent and deliberate hand in the workings of their government.

The fear of possible abuses, or of non-participating citizens becoming politically neglected, is surely of significance. But abuses are experienced in different ways, and a great many minorities in our own polity have shown that they too can be roused to political action once important lines are crossed. Thus the Pueblo convene for only the second time in their history to resist legal encroachments on their property rights; Amish communities mobilize for the right to withdraw their children from public schools; etc.<sup>45</sup> So long as such groups are not prevented from mobilizing when they choose, I see no reason to keep apolitical persons and groups constantly attuned to the workings of their government.

In short, if the kind of solidarity Rawls seeks were absolutely essential in ensuring the continued survival of liberal institutions, or necessary for the liberal state to secure the lives and

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<sup>43</sup> Rawls, “The Idea of Public Reason Revisited,” 132-133.

<sup>44</sup> In this I have great sympathy for the argument Chandran Kukathas advances in *The Liberal Archipelago: A Theory of Diversity and Freedom* (New York: Oxford University Press, 2003).

<sup>45</sup> Kukathas discusses these and other apolitical groups in his *Liberal Archipelago*. See, in this instance, p. 33.

property of individual persons pursuing their individual conceptions of the good, Rawls would be on much safer ground. But there seems little evidence that such solidarities are necessary. In fact, even if we were to assume the worst-possible case, of a nation of self-regarding individuals, wholly dedicated to selfish pursuits, and wholly unconcerned with the common good, we would still find an extraordinarily powerful, technologically-accomplished, artistically-prospering, economically vibrant society in which all persons would gladly lend their resources to the common defense when threatened. Such, at least, was the argument that Kant himself advanced in *Perpetual Peace*.

#### **IV. Some Better Ways of Talking**

Even if one accepted the foregoing, I suspect that many liberals would be disheartened to see so many persons left to their own devices. Surely part of the liberal project – even the most important part – has been to emancipate oppressed persons, overturn stifling customs and traditions, challenge prejudices and superstitions, and lay the groundwork for the kinds of values, beliefs, and practices that make individual lives go better and our community as a whole more progressive and upright. If the politically liberal state foregoes that emancipatory mission, if it fails to bring diverse citizens into conversation with one another, if it simply leaves us as we are, even when we are neck-deep in barbaric community practices, or ill-educated and unprepared to make effective use of our freedoms, then something has gone horribly awry.

I agree. But a political liberalism does no such thing. To be sure, it does deny that any such emancipatory project should have the coercive backing of the state (excepting those cases where persons' lives or property is imperiled, in which case the state will act to protect them). So a political liberalism will not forcibly educate its citizens to a particular self-understanding, and it will not presume to enter into a minority community and start refashioning practices to its own liking. What a political liberalism does, however, is to make possible the right kind of political and moral pressures, the pressures that we exert not by forcing our way but by appealing to other persons. The politically liberal state, in other words, provides an institutional framework

in which any belief or practice can be challenged or examined. What's more, those beliefs and practices, no matter how sacred or inviolable, can be scrutinized, ridiculed, even mischaracterized and attacked. They can be condemned or mocked, punctured or scandalized, investigated or reproached. In short, liberalism's emancipatory project remains alive and well, but is now rightly relocated away from state power.

Initially, debates over the merits of a political liberalism centered around Rawls's proposed division between our identities as persons and our identities as citizens. More generally, the question was whether our so-called "comprehensive" and "political" moral conceptions could be kept apart, morally and psychologically, or whether Rawls's theory demanded a kind of moral schizophrenia wherein diverse persons were allowed to believe some things in the home but required to say other things in public.<sup>46</sup>

In the last few years, with Rawls's increasing emphasis on the use of public reason, it is no accident that the deliberative strictures of a political liberalism have come to receive greater scrutiny.<sup>47</sup> Whether Rawls's theory is ultimately some suitably-modified version of social contract theory (as Rawls had insisted since the publication of *Theory of Justice*)<sup>48</sup> or whether a political liberalism is best understood as a procedural solution to the problem of diversity (as thinkers like Stuart Hampshire and Stephen Holmes have alleged)<sup>49</sup>, in his last writings Rawls seemed to move closer to Habermas and the deliberative democrats.<sup>50</sup>

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<sup>46</sup> I advanced an argument much like this myself, in "Political Liberalism and the Emancipatory Tradition: Rawls and the Problem of Civic Education" (now appearing as Chapter 3 in my dissertation).

<sup>47</sup> For a good overview of some evolutions in the Rawlsian literature, see Anthony Laden's "The House That Jack Built: Thirty Years of Reading Rawls," *Ethics* 113, no. 2 (January 2003): 367-390.

<sup>48</sup> Rawls, *A Theory of Justice*, xviii and 10.

<sup>49</sup> Stuart Hampshire, "Liberalism: The New Twist," *The New York Review of Books* 40, no. 14 (August 1993): 46. Stephen Holmes, "The Gatekeeper: John Rawls and the Limits of Tolerance," in *The New Republic* 209, no. 15 (October 11, 1993): 43.

<sup>50</sup> No doubt this reading was helped by Rawls's own engagement with Habermas in the *Journal of Philosophy*. See Habermas's "Reconciliation through the Public Use of Reason: Remarks on John Rawls's *Political Liberalism*," *The Journal of Philosophy* 92, no. 3 (March 1995): 109-131; and Rawls's "Reply to Habermas" in that same volume, 132-180. For an excellent analysis of that debate, see Larmore's "The Moral Basis of Political Liberalism." In his review essay, Anthony Laden concludes that "the centerpiece of Rawls's work" has come to be "a model of political deliberation in a pluralist democracy" such that we need to think of him "as not primarily a liberal or an egalitarian, but, first and foremost, a democrat." Larmore agrees, signaling that Rawls's later work places him firmly within "a

In the literature on Rawls's later work, so much attention has been paid to the question of how we should talk to one another – or what public reason means, and how it should be employed – that we forget that there Rawls was explicitly concerned with the conversations that we have *when the prospect of state coercion is in play*. (Admittedly, Rawls bears some fault for never clarifying this himself – a point on which Charles Larmore, among others, has rightly taken him to task.)<sup>51</sup> But that is why, when Rawls comes back to the subject of public reason after *Political Liberalism*, he explicitly restricts its use to the discourse of judges, legislators, chief executives, and government officials.<sup>52</sup> In each case, the looming possibility of state coercion is ever present, and in the final group Rawls identifies – that of candidates running for office – the prospect of coercion is at least implied, should the candidate be successful down the road.<sup>53</sup>

Thus whatever one thinks of Rawls's deliberative model, whether one finds the idea of public reason attractive or not, we ought not to forget that, whenever our arguments are *not* conjoined with the possibility of state coercion, we are free to say just about anything we like. We can be disrespectful and inflammatory; we can be willful misinterpreters and metaphorical bomb-throwers. We can, in short, show others the respect they truly deserve, as individuals capable of taking it on the chin and deciding their own minds about controversial political and moral questions.

So once the rather dull, tedious, and worthy business of getting our institutions right is out of the way – once we have the right normative and institutional framework for a political liberalism that takes the fact of reasonable pluralism to heart – we can get down to the real business of becoming our own private Voltaires. I suspect I am not the only one longing for the day.

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complex model of deliberative democracy.” See Laden’s “The House That Jack Built,” 389, and Larmore’s “Public Reason,” 368.

<sup>51</sup> Larmore, “Public Reason,” 380-384.

<sup>52</sup> Rawls, “The Idea of Public Reason Revisited,” 133-134.

<sup>53</sup> Rawls, “The Idea of Public Reason Revisited,” 133-134.

With that caveat in mind, what kinds of conversation are possible when the possibility of political coercion is, in fact, somewhere on the horizon? On Rawls's view, what seems imperative is that there be a single shared language, whose terms and evidentiary authorities are acceptable to all reasonable persons. Rawls begins by insisting that our identities as citizens and persons are capable of being severed: that we can defend the autonomy of politics from contested moral views, finding an "overlapping consensus" in the midst of a plurality of reasonable conceptions.<sup>54</sup> From that division in our self-understanding, Rawls goes on to insist on a highly centralized (or unitary) conception of public reason – one whose standards of evidence are open to all, whose terms are "freestanding" from any particular comprehensive doctrine, whose authority rests ultimately on treating everyone alike, as free and equal citizens.<sup>55</sup> An "essential feature of public reason," Rawls tells us, "is that its political conceptions should be complete. This means that each conception should express principles, standards, and ideals, along with guidelines of inquiry, such that the values specified by it...can give a reasonable answer to all, or to nearly all, questions involving constitutional essentials and matters of basic justice."<sup>56</sup> The language that Rawls offers is then one of transparency and equal standing. It is, in that sense, a highly rarefied *lingua franca*, one which diverse persons can hold in common.

But even if we concede Rawls's search for solidarity, why must all persons agree to the same terms and evidentiary authorities? Why have *one* conversation, in other words, and not many different conversations, whose terms and authorities change according to the persons one addresses?<sup>57</sup>

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<sup>54</sup> As Joseph Raz has observed, Rawls aims to strike a "delicate balance between diversity and agreement." See Raz, "Facing Diversity: The Case of Epistemic Abstinence," *Philosophy & Public Affairs* 19, no. 1 (Winter 1990): 7.

<sup>55</sup> Here I follow Stephen Holmes, who similarly discounts the few passages where Rawls suggests a less unitary approach. See "The Gatekeeper," 47.

<sup>56</sup> Rawls, "The Idea of Public Reason Revisited," 144-146.

<sup>57</sup> James Bohman explores some of these issues in his "Public Reason and Cultural Pluralism: Political Liberalism and the Problem of Moral Conflict," *Political Theory* 23, no. 2 (May 1995): 253-279.

In particular, why should we look to our common *participation* in a shared dialogue, and not our shared agreement on the results of many different dialogues? On this second view – which looks a great deal like Cass Sunstein’s “incompletely theorized agreements”<sup>58</sup> – the citizens of a liberal polity can agree on certain shared civic ends, even if each person has different reasons for embracing them.

Elsewhere I’ve argued that John Locke made early and effective use of this style of argument.<sup>59</sup> I’ll therefore call this second approach the “Lockean” one, although I do not have the space here to show that Locke actually held such a view himself.

On the Lockean view, we try to secure overlapping agreements by adopting the terms and expressions of the interlocutors we engage. Thus if we, as non-Catholics, wished to persuade doctrinally committed Catholics of the merits of *Roe v. Wade*, we should do so by engaging Catholic doctrine, and not by prescinding away from controversial religious beliefs. That is not to say that the secular feminist and the doctrinal Catholic would actually come to some kind of agreement, as to exactly when and how abortion should be regulated by the state. But insofar as such an agreement is even *imaginable*, it would surely begin with the feminist trying to argue her case ‘from the inside,’ appealing to Catholic scripture and papal history in order to make her case for the legitimacy of certain practices. Similarly, the Catholic would surely do better to try to engage the feminist on her own terms, couching his arguments in the language of respect for persons and rights of self-determination, while trying to show a parallel between the plight of the pregnant woman and that of her unborn fetus. This way of talking shows far more respect to diverse persons, I believe, and is much more likely to be persuasive in practice.

A third approach takes its cue from David Hume, and insists that we focus our attention on the concrete effects or practical consequences of our decisions. Thus, to return to the example

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<sup>58</sup> Cass Sunstein, “Practical Reason and Incompletely Theorized Agreements,” in *Reasoning Practically*, ed. Edna Ullmann-Margalit (New York: Oxford University Press, 2000), 98-119.

<sup>59</sup> Cyrenne, “Locke’s Political Liberalism,” presented at the American Political Science Association’s Annual Meeting in 2002 (now Chapter 1 in my dissertation). Jeremy Waldron advances a similarly “political” critique of Rawls’s work in his *Law and Disagreement* (New York: Oxford University Press, 2001) and in *The Dignity of Legislation* (New York: Cambridge University Press, 1999).

above, instead of relying on a minimum of shared values in order to decide the permissibility of abortion (as with Rawls), or arguing our case ‘from the inside,’ by empathetically adopting the moral perspective of our adversaries (as with Locke), on the Humean view we ask what concrete effects (or institutional consequences) *Roe v. Wade* will have for the common world we inhabit, and whether those consequences are, in fact, preferable to the alternatives.

Thus the pro-life camp asks what kind of institutions our society must support, in order for abortions to be available and performed (from the training of doctors to taxpayer-subsidized operations for poor women, along with specific sites for the extraction and disposal of fetuses). The pro-choice side asks what institutions would be required if we tried to prevent all illicit abortions, or forced all women to carry pregnancies to term.

Here again, to the extent that there is any middle ground, it may lie in the kind of political institutions each side is willing to countenance. Despite their deep disagreements on the moral permissibility of abortion, both pro-life and pro-choice persons can find reasons to endorse similar (or reasonably similar) political institutions, once they come to see that the institutions most amenable to their views on abortion may, in fact, run counter to other interests that they hold dear. Thus the pro-life partisan draws the line at invasive political practices that, while safeguarding the lives of fetuses, would excessively intrude into his own private life; the pro-choice side may resist forcing doctors (or publicly-subsidized hospitals) to perform abortions, on the grounds that some doctors or taxpayers will thereby be implicated in a practice that violates their own moral beliefs. (Note that I avoid the specifically moral discussion of abortion’s permissibility, since that is a question that, if it can be solved at all, can be solved only by the method Locke recommends.)

What I find persuasive in Hume is his repeated insistence that we rely on experience and observation in order to make headway in moral and political argument. As Hume famously put it in his introduction to the *Second Enquiry*:

Men are now cured of their passion for hypotheses and systems in natural philosophy, and will hearken to no arguments but those which are derived from

experience. It is full time they should attempt a like reformation in all moral disquisitions; and reject every system of ethics, however subtle or ingenious, which is not founded on fact and observation.<sup>60</sup>

Or again, as Hume said earlier, in his *Treatise of Human Nature*:

We must therefore glean up our experiments in this science from a cautious observation of human life, and take them as they appear in the common course of the world, by men's behaviour in company, in affairs, and in their pleasures. Where experiments of this kind are judiciously collected and compar'd, we may hope to establish on them a science, which will not be inferior in certainty, and will be much superior in utility to any other of human comprehension.<sup>61</sup>

In a similar vein, the experiential account I offer wants to avoid unnecessary controversy on the underlying values that are said to legitimate our political and social arrangements. On the contrary, I wish to limit our disagreements to the observed effects that our institutions have, in the hope that we might agree on shared practices even as we disagree on underlying principles.

## V. Putting Practices First

Of the three models listed above, I think David Hume's is the most attractive. First, Rawls's unitary understanding of public reason founders, I believe, on the reasonable pluralism he starts out with. After all, if our moral beliefs, values, and conceptions of the good truly are as diverse as Rawls imagines, then why should we expect that there lies, just waiting to be discovered, a set of terms and evidentiary authorities capable of resolving just those questions we thought were irresolvable? Nor will it do to say that these are terms or authorities that all persons *should* accept, bracketing the question of whether they are so accepted in practice. For absent an actual agreement among diverse and reasonable persons, Rawls would have no way of

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<sup>60</sup> Hume, *An Enquiry Concerning the Principles of Morals*, ed. Tom L. Beauchamp (New York: Oxford University Press, 2002), 77.

<sup>61</sup> Hume, *A Treatise of Human Nature*, eds. David Fate Norton and Mary J. Norton (New York: Oxford University Press, 2002), 6.

knowing whether the presumed unreasonableness of the deliberations lies on his side of the table or theirs.<sup>62</sup>

Locke's model has some obvious attractions, which I think would go furthest in terms of securing actual agreement on difficult issues. The problem with Locke's model, however, is that it is simply too demanding. Again, if reasonable pluralism truly cuts as deeply as Rawls imagines, then there are just too many diverse persons, with too many diverse values and beliefs, for us to engage them all on their own terms. One could spend a lifetime trying to understand one or two other communities 'from the inside' (or, indeed, understanding just one other person, otherwise known as our significant other). It seems impossible to imagine that one could find the resources to make a pro-choice argument (say) in terms that doctrinal Catholics, secular feminists, Hindu Brahmins, Sunni Muslims, Primitive Baptists, and Marxist agitators could each recognize and accept, and in each case from within their own comprehensive doctrines. The situation is compounded when one realizes that with Locke it is not simply a matter of getting another person's comprehensive doctrine right, but also understanding the particular place within that doctrine of whatever issue is on the table. Should the debate move from abortion to the ordination of women, for example, we might well have to start from scratch.

In ordinary circumstances, we would, no doubt, follow Locke's lead and concentrate our energies on our most numerous, powerful, and determined political opponents. While this would certainly not be a bad strategy, either politically or normatively, it would still ignore or set aside the values and beliefs of all other groups. In addition, Locke's strategy puts winning coalitions ahead of a more broad-based political agreement. Thus Locke can get us to the political consultant's cherished '50 plus 1' percent of the vote, but that is still a far cry from the kind of solidarity Rawls had in mind.

The Humean approach circumvents this problem by asking individuals to consider how a particular policy or institutional change would impact their own experience. In particular, we try

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<sup>62</sup> Thus Rawls might have been offered genuinely fair terms of cooperation, and yet refuse to recognize them as such, on account of his own biases or prejudices.

to bridge our differences not at the level of first principles, but rather, by something like a comparative institutional analysis, asking whether the institutional consequences of one set of beliefs are, in fact, noticeably different from the institutional consequences of another set – and if so, which institutions are to be preferred, in terms of their effects on the common world we inhabit.

It is that “comparative institutional analysis” that gives the Humean model a deliberately transformative character. For in making those comparisons, we may find our own views and institutional expectations unexpectedly challenged or called into question. Seeing how other countries have experimented with different policing strategies, or immigration policies, or inducements for minority integration, or educational reforms, or health care management, may lead us to consider entirely different ways of organizing our own political community. Thus the more we learn of alternate institutional possibilities, the more we may discover just how contingent (and revisable) our own institutions and practices truly are.

Nor need we restrict ourselves to just those practices or institutional arrangements now being tried in other societies. We can, in addition, consult the historical record, in order to see which institutional strategies have proved most successful in accommodating religious disagreement, or promoting economic growth, or protecting human rights, or reducing governmental corruption.

In determining which practices and institutions we wish to affirm, we may find that seemingly opposed values nevertheless issue in a common set of institutions – so that if both sides are committed to minority religious practices, for example, each will have good reason to uphold a general freedom of worship even though they find the other side to be heretical. This is perhaps the clearest case of how the Humean model might improve upon the Rawlsian one by “putting practices first” in its accommodation of moral disagreement.

Where there *are* genuine institutional differences, on the other hand, there are a number of things we might say in order to defend a liberal politics: the wealth of material possessions that even the poorest of liberal citizens enjoy (*vis-à-vis* populations in developing countries); the

minimum of health care that most liberal citizens receive; the access they have to a range of cultural and artistic pursuits; their freedom to worship as they like; their right to express themselves on any and all issues; to change employment; to move around their country; or to participate in civil institutions.

In short, by comparing the relative attractions of daily life in diverse societies, liberal and non-liberal persons will be better able to judge whether the particular burdens of their societies are sufficiently offset by the particular benefits. This rudimentary cost-benefit analysis, grounded in our own experience, ought to lead us toward more generally desirable outcomes, because (a) it is our *shared* set of institutions that we examine; and because (b) individual men and women can have good reasons to support the same institutions, even when – especially when! – each holds to a highly idiosyncratic constellation of values.

Now this Humean method may seem woefully naïve, given that the attractions of liberal states have been known for some time, while a great many illiberal persons or states have seemed loath to embrace them. But not so fast. First, on the international stage, there is no question that we are witnessing a massive explosion of liberal regimes around the world – ones that are often imperfectly liberal, to be sure, but at least moving in the right direction.<sup>63</sup> Though I cannot offer more than a conjecture, my suspicion is that much of the impetus behind the “democratic wave” lies in the widespread portrayal and dissemination of what life actually looks like within liberal regimes, particularly through television. For the first time in history, small communities in far-off countries have reasonable access to how ordinary men and women go about their lives in liberal states (at least in idealized sitcom format). Of course, most of our lives do not resemble “Baywatch” in any meaningful respect. But for other peoples to imagine a

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<sup>63</sup> Larry Diamond, “Universal Democracy?” *Policy Review* 119 (June 2003), accessed online at: <http://www.policyreview.org/jun03/diamond.html>.

country where Baywatch is possible may be a powerful inducement to liberalize their own mores and institutions.<sup>64</sup>

Second, as I've already mentioned, liberal states do not require or expect that their citizens will embrace the liberal values for which they stand. On the contrary, a great many illiberal persons, and a great many illiberal groups, have historically embraced liberal institutions precisely because these polities were far more willing to allow them to organize their communities as they saw fit.

A main advantage of putting our practices first is that it focuses liberal arguments exactly where they should be focused – on the political institutions that make diverse ways of life possible, and not the controversial and contested values that liberals might wish all persons would adopt. Because liberals can continue to argue for the merits of their values in their roles as private citizens, and because the fact of reasonable pluralism makes it normatively undesirable to impose any *one* way of life (no matter how desirable or worthy) through political coercion, the emphasis on institutions is both normatively sound and rhetorically wise. Putting our practices first allows us to bracket insoluble questions about the worth or value of particular ways of life, not because these questions are unimportant, but because they are insoluble.

There are, of course, different ways of putting practices first. In the face of deep moral diversity, perhaps the simplest and most effective method was described by Judith Shklar in her “Liberalism of Fear.”<sup>65</sup> Like Hobbes before her, Shklar recognized that there are many worthwhile ways of life, with no one *summum bonum* that all persons would embrace.<sup>66</sup> But we can, nonetheless, find considerable agreement among otherwise diverse persons for the *summum*

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<sup>64</sup> I mention “Baywatch” because this was apparently the most-watched program around the globe a few years ago, followed closely by “Married with Children.” If these cultural products aren’t turning would-be liberals away, imagine what better programming might accomplish.

<sup>65</sup> Shklar, “The Liberalism of Fear,” in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge: Harvard University Press, 1989), 21-38.

<sup>66</sup> Shklar’s relationship with Hobbes is actually more complicated than this, so fearful was she that Hobbes embodied the very worst of liberal fears: the all-powerful belligerent state, determined to have its way and stamp out minority dissent. Thus she takes pains, in “The Liberalism of Fear,” to insist that “Hobbes is not the father of liberalism.” Nevertheless, at least to the extent I describe them here, I think one can find important parallels between the two writers. See Shklar, “The Liberalism of Fear,” 24.

*malum* that each would avoid if she could. The great virtue of liberal regimes, Shklar argued, is that they keep the prospect of cruelty at bay, securing us from the poor, nasty, brutish, and short life that Hobbes feared above all.

More positively, liberal states can point to the many attractions I cited earlier, from freedom of expression to freedom of religious worship, access to basic health care or to artistic and cultural pursuits. That is not to say that liberal states are simply unqualified success stories. No doubt a great many liberal citizens, particularly in the United States, have far less access to basic health care than ought to be the case. But when one compares the plight of uninsured Americans with that of persons elsewhere in the world, especially in illiberal or undemocratic regimes, one quickly realizes that the most neglected of American citizens still have quick and reliable access to the most important health good there is: clean water.<sup>67</sup> (I give the example to emphasize just how concrete a comparative institutional analysis should be.)

Nor would it be right to accuse a Humean emphasis on practices of elevating the agreeable over more pressing normative considerations (including what is just, or fair, or praiseworthy and noble). On the contrary, a political liberalism begins with the assumption that the liberal state is, of all possible regimes, the one most likely to accomplish a minimum of political and social justice, and to treat diverse persons as they ought to be treated. The normative desirability or justification for liberal political institutions is not at issue here – those institutions are, on the contrary, defended for securing just that kind of common life that liberals believe all persons would choose if they could.

Similarly, this Humean emphasis does not give undue emphasis to the possession of material goods, as if that alone were enough to settle all political and moral controversies in favor of liberal institutions. While liberals would certainly be remiss not to emphasize their greater economic success in providing more material goods to more persons than has been the case in other political regimes, surely the most important and attractive benefits of liberal

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<sup>67</sup> For some, that may seem a very low bar to set, and indeed it is. Nevertheless, to spend any time in a regime where clean water is unavailable or hard to come by is to realize what a tremendous difference such a seemingly small thing can be, not just in the longevity of people's lives, but in the quality as well.

citizenship lie elsewhere: in our ability to pursue our lives without fear of arbitrary detention or arrest; to be secure from ongoing civil violence or attacks from political factions; to be literate and have access to a wealth of information on any issue we might consider; to worship our God as we like, and change the beliefs that we hold, or the religious practices that we follow, according to our own judgment and experience; etc.

Granted, the Humean emphasis is philosophically a little dull. But it need not be so conservative as it first appears. It need not encourage liberal citizens to accept their present institutions as the best of all possible combinations – since people are starving in Mali, for example, or fighting a civil war in the Congo. On the contrary, other liberal polities can serve as models for our own, as they experiment with institutions of their own making. Thus we may learn a great deal from the French experience with *parité* (mandating equal numbers of male and female candidates for office in most elections), or from Canadian experiments with legalizing marijuana and gay marriage.

Moreover, putting practices first does not guarantee that liberal arguments will always carry the day, or that liberals have nothing to learn from non-liberal ways of life. For decades there has been a net migration into Amish communities, for example, as non-Amish persons have sought the rigors and comforts of pastoral small-community life.<sup>68</sup> Whether liberal regimes will come out on top or not will depend entirely on the kind of life they can provide for their citizens.

## VI. Conclusion

I return, then, to the question I started out with. Should political liberals uphold universal values? My answer is that they can do so if they like, in the confines of their private lives, and should they be fortunate enough to discern those universal values in the midst of a reasonable pluralism that otherwise informs their politics. But whenever the possibility of political coercion is at issue, either in a specific policy one recommends, or when speaking as a judge or legislator,

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<sup>68</sup> In fact, in *Wisconsin v. Yoder* there was evidence that up to *two-thirds* of the present Amish population has been assimilated from outside the community. *Wisconsin v. Yoder* 406 U.S. 240, in the footnote.

political liberals would do better to put their practices first. When faced with a difficult moral or political decision, we ought to ask what the institutional consequences of adopting a particular course of action would be, and how those institutional consequences would likely be experienced by ordinary men and women in the future. Doing so ought to lead us closer to agreement, while keeping us focused on just those institutions that are critical for a liberal politics.