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Reconceiving Rawls's Arguments for Equal Political Liberty and its Fair Value: On Our
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John Rawls bases his arguments for the moral importance of democracy on a conception of citizens' higher-order interests. On his view, citizens conceive of themselves as having a higher-order interest in the development and exercise of their two moral powers – the capacity for justice and the capacity for a conception of the good. Rawls argues that democratic procedures are needed to satisfy these higher-order interests. Despite the vast literature on Rawls's work, few have discussed his arguments for the value of democracy.¹ This is likely because Rawls's arguments, as arguments that the principle of equal basic liberty needs to include democratic liberties, are incomplete. In contrast to his trenchant remarks about core civil liberties, Rawls does not say much about the inclusion of political liberties of a democratic sort – such as the right to vote – among the basic liberties. And, at times, what he does say is unconvincing.

My aim in this paper is to complete and, where they fail, to reconceive Rawls's arguments and to show that a principle requiring equal political liberty and its fair value is an appropriate component of Rawls's theory of justice. I will not attempt to defend the

priority of liberty, that is, the priority that Rawls gives to the political liberties over other goods such as economic wealth. I will also not attempt to support Rawls's claim that only the political liberties are entitled to the guarantee of fair value, that is, that only in the case of the political liberties must it be ensured that their worth or usefulness is the same for every citizen. It may be that cases can be given for including both of these components in Rawls's theory of justice, but exploring these matters is beyond the scope of this paper.

My case for supporting equal political liberty and its fair value will largely be based on the importance of securing the liberty to vote. I focus on this liberty not only because the liberty to vote is the clearest example of a purely political liberty but also because it is the clearest example of, what is usually taken to be, a central democratic liberty. It is a liberty that is thought to be essential to the practice of democracy. I will also attempt to show that Rawls's arguments support public deliberation, another element that is often thought to be an integral part of democracy.ⁱⁱ In showing that Rawls is fundamentally committed to ensuring equal liberty to vote and to ensuring public deliberation, my arguments are a beginning step toward illustrating the "deeply democratic" nature of Rawls's conception of justice.ⁱⁱⁱ

My paper takes the following structure. In section 1, I make some preliminary remarks about Rawls's arguments. In section 2, I develop Rawls's arguments regarding the capacity for justice. In these arguments, I argue, Rawls fails to consider whether an argument that is independent of the capacity for a conception of the good can be given. As a result, Rawls misses out on a further and compelling argument for democratic procedures. In section 3, I supplement Rawls's arguments regarding the capacity for

justice with an alternative argument, the argument from ownership. I argue that the exercise of our capacity for justice requires a sense of ownership, and that a sense of ownership is most likely to develop under democratic institutions. In section 4, I develop Rawls's arguments regarding the capacity for a conception of the good. Rawls's arguments focus on the cognitive aspect of this capacity. As a result, I argue, his argument for democratic procedures regarding the capacity for a conception of the good fails. In section 5, I develop an alternative argument, the practical argument, which focuses on the practical aspect of the capacity for a conception of the good. I argue that experientially testing out tentative ends is integral to the formation of a rational conception of the good. I argue that exercise of this more practical aspect of the capacity for a conception of the good requires democratic procedures. In section 6, in response to critics such as Michael Sandel, I argue that, when amended in the ways I suggest, Rawls's arguments can account for the value of public deliberation. In section 7, moving beyond purely theoretical concerns, I raise some related pragmatic considerations in support of equal political liberty and its fair value.

§1. Rawls's Arguments

Rawls's arguments for democracy are found, primarily, in his arguments for the protection of equal basic liberty, that is, in his arguments for *the principle of equal liberty* and what he calls "*the proviso*."^{iv}

The principle of equal liberty states that "each person is to have an equal right to the most extensive system of equal basic liberties compatible with a similar system of liberties for all."^v Among other things, it requires protection of the political liberties such

as the rights to vote and to hold public office.^{vi} Also included in the first principle is *the proviso*; it states that the political liberties, and only the political liberties, are to be guaranteed their fair value. The worth (or usefulness) of political liberties must be sufficiently equal in the sense that all citizens have a fair opportunity to hold public office and to influence the outcomes of elections irrespective of their economic and social class.^{vii}

Rawls offers his arguments for democracy as a package deal. He believes that a few different arguments can be given for democratic institutions, and that these arguments work together to support the value of democracy. In this paper, I focus on arguments related to our “higher-order” interests, interests which flow from our moral powers as citizens.^{viii}

On Rawls’s view, from within the original position, we are to conceive of ourselves as citizens who are in possession of two moral powers: 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 willingly act from the principles of justice.^{ix} The capacity for a conception of the good is the capacity to form, to revise, and to rationally pursue a determinate conception of the good, a conception of what is valuable in human life.^x In addition to these two moral powers, persons are conceived of as having, at any given time, a determinate conception of the good that they try to achieve.

Rawls’s conception of the person (or citizen) is a political conception in the sense that it is “a conception that is suited for the basis of democratic citizenship.”^{xi} Following in the tradition of liberal democratic thought, Rawls views persons as free and equal citizens. The equal status of citizens is a function of their possession of the two moral

powers: having the two powers to the required minimum degree necessary to be a fully cooperating member of society makes citizens equal (not socioeconomic position or natural abilities).^{xii}

Return to Rawls's argument for the equality of political liberty. Rawls argues that, as citizens, we have higher-order interests in the development and exercise of the two moral powers. "To say that these interests are 'higher-order' interests means that, as the fundamental idea of the person is specified, these are interests that are viewed as basic and hence as normally regulative."^{xiii} It also means that they are interests that would not willingly be sacrificed. Rawls argues that we have a higher-order interest in the development and exercise of the two moral powers because it is either a means to, or a part of, our good (what exactly this means will become more clear as we proceed). Moreover, Rawls argues that equal political liberty and its fair value guarantee equally for all persons the social conditions necessary for the adequate development and the full exercise of the two moral powers. Hence, he concludes, persons would not accept anything less than equal political liberty and its fair value.

§2. The Argument Concerning the First Moral Power

Let us begin with considerations relating to the first moral power, the capacity for justice, that was earlier defined as the capacity to understand, to apply, and to willingly act from the principles of justice. Rawls argues that parties will be moved to adopt the principles of justice which most effectively secure the development and exercise of the capacity for justice.^{xiv} And they "are moved not from the desire to realize this moral power for its own sake, but rather view it as the best way to stabilize just social

cooperation and thereby to advance the determinate conceptions of the good of the persons they represent.”^{xv} On Rawls’s view, from the perspective of the original position, the value of developing and exercising the first moral power is purely instrumental.

A stable conception of justice is one where all citizens regularly comply with the principles of justice. However, Rawls is concerned not with simply general compliance, but with compliance for the right reasons. That is to say, he is concerned with citizens’ wholehearted and willing adherence, adherence that represents complete sincerity and commitment, to the principles of justice rather than reluctant adherence that results as a part of a *modus vivendi* or from some type of coercion.

Furthermore, Rawls argues that we have greater ability to advance our own determinate conceptions of the good when everyone adheres to the principles of justice willingly; “and a scheme of just social cooperation that is made stable by an effective sense of justice is a better means to this end than a scheme which requires a severe and costly apparatus of penal sanctions, particularly when this apparatus is dangerous to basic liberties” (i.e., when it involves coercion).^{xvi} So, because this is the best way of advancing citizens’ determinate conceptions of the good, we will want to ensure that citizens will act from the principles of justice willingly, i.e., that citizens have an effective sense of justice.

Rawls suggests that these considerations support equal political liberty and its fair value. For reasons having to do with ensuring the development and exercise of the capacity for a conception of the good (something I discuss in sections 4 and 5) and for reasons having to do with ensuring the social bases of self-respect (which is not

something that I discuss here and will put aside for the most part), the only system of justice that citizens will willingly agree to uphold is one that secures equal political liberty and its fair value. Citizens will only willingly uphold a scheme of justice, if it ensures that they will be able to fully develop and exercise their second moral power. And Rawls thinks that citizens will only be able to fully develop and exercise their second moral power when they have equal political liberty and its fair value.

This argument for equal political liberty and its fair value is not an independent argument. It stands and falls with the other arguments based on the capacity for a conception of the good. Rawls never considers whether an independent argument can be given. This may be because he thinks nothing further can be said for equal political liberty and its fair value regarding the capacity for justice that does not also depend on the capacity for a conception of the good. This presumption would be false, however. Rawls misses out on a plausible independent argument concerning the capacity for justice in his arguments for democratic procedures. A further argument from the capacity for justice can be given and it would bolster his position.

§3. The Argument from Ownership

In what follows, I supplement Rawls's arguments by giving an argument for equal political liberty and its fair value that concerns the capacity for justice, and is independent of considerations relating to the capacity for a conception of the good (and self-respect). Take as our starting point Rawls's claim that a developed or effective sense of justice is required for a stable society and that a stable society will advance citizens' determinate conceptions of the good. The next point is that having one's sense of justice come to bear

on political decisions will lead to a stable society. The general idea is this: stability for the right reasons involves having a sense of ownership of political decisions and institutions. If citizens participate in the development and application of fair terms of cooperation, then they will come to feel a sense of ownership over them. This sense of ownership will, in turn, make them more likely to adhere willingly to these terms and to the institutions they support.

As a free and equal citizen, I see the exercise of my two moral capacities as being constitutive of my identity. It is my capacity for the two moral powers that makes me what I am, that makes me a free and equal citizen. When I take part in making a decision, my exercise of my first moral capacity – that is, my capacity for intelligent reflection about justice and the common good – is taken into account and given weight in the decisions that are made. In this way, it can be said that the decision that is made is joined with an essential part of myself (namely, my exercise of my moral powers). Insofar as an essential part of myself is joined with that decision, I will properly come to feel that the decision, at least in part, is part of or belongs to me. I will properly come to feel a sense of ownership over the political decision made.^{xvii}

If citizens feel a sense of ownership over political decisions and institutions, then they will be more likely to adhere to them willingly (without penal sanctions, for example). Feelings of ownership will encourage citizens to be loyal to the scheme of justice. If citizens genuinely care about themselves, then they will want themselves and whatever they view as being part of (or associated with) themselves to do well and to be successful. In turn, they will be willing to put their efforts and energy into ensuring that this is the case. This is simply part of what it is to genuinely care about oneself. So, if

citizens genuinely care about themselves, and they feel a sense of ownership over the scheme of justice, then they will want the scheme of justice to be successful and will be willing to do what they can to ensure its success. This, in turn, will motivate citizens to adhere to the scheme of justice. So, if we wish to ensure that citizens feel a sense of ownership over the scheme of justice, then we must ensure that citizens are able to participate in the development of the scheme. For this reason, I would argue, we need to ensure equal political liberties (such as equal voting rights) and their fair value.

Some might worry that these claims, about ownership and what underwrites an effective sense of justice, are psychological in nature and as such need to be verified by empirical data. In response, I follow Rawls in emphasizing that “it is a *moral* psychology drawn from the political conception of justice as fairness. It is not a psychology originating in the sciences of human nature but rather a scheme of concepts and principles for expressing a certain political conception of the person and an ideal of citizenship.”^{xviii} The kinds of considerations that I appeal to here, such as the sense of ownership and what underwrites it, for example, are not only reasonable but justified given that citizens conceive of themselves in a particular way, that is, as having the two moral powers.

This moral psychology distinguishes the moral underpinnings of the Rawlsian argument, as I have framed it, from more common claims about a sense of ownership over political decisions and institutions. In a sense, the argument from ownership is commonly held and has, perhaps, been evident since the time of the Greeks.^{xix} However, in its more typical form, the argument is an empirical or psychological one. The claim is that under certain conditions, citizens will predictably come to feel ownership over

decisions they take part in and, in turn, will predictably be motivated to adhere to those decisions. The problem with this version of the argument is that it gives us no reason for thinking that it is morally appropriate for individuals to come to feel this way about the decisions that they take part in.

Drawing on the moral conception of the person, the Rawlsian framework gives us such reasons. We appropriately come to feel a sense of ownership over political decisions that we participate in because, in taking part, we join that decision with our exercise of our capacity for justice, something that we view as being an essential part of who we are. In this sense, the political decision becomes “ours” and we rightly view it as such. If we genuinely care about ourselves and what is “ours”, then it follows that we should be willing to do what it takes to ensure the success of the political decisions we take part in (e.g., adhering to them). Insofar as it gives us an account of why citizens should come to feel a sense of ownership over the political decisions that they participate in and why they should be motivated to adhere to those decisions, the Rawlsian argument advances over the commonly held empirical view about political participation and ownership.

One might legitimately wonder whether the argument from ownership supports not just political liberty but *equal* political liberty and its *fair value* – that is, not just having a say, but having an equally effective or influential say. Imagine that the government consists solely of men and that only they have the authority to make final decisions about the arrangement of social institutions. Imagine that there is also a procedure of consultation in which the voices of women are heard.^{xx} Women, through this consultative procedure, can express political dissent and the government has an

obligation to take this dissent seriously, to provide a conscientious reply, and to make institutional changes where necessary. The government is responsive to the views of women. Call this a *consultative assembly*.^{xxi} In this case, though to a lesser degree than those who are part of the government, women are able, through the process of consultation, to influence political decision-making. The decisions that are made are responsive to and are, in this sense, a result of women's intelligent reflection about justice and the common good. For this reason, it seems that a sense of ownership and, in turn, a sense of justice (a genuine desire to adhere to the laws and decisions) would develop among the women.

Nevertheless, a consultative assembly is not a compelling way of ensuring a stable society. Rawls argues that, other things being equal, persons in the original position will be moved to adopt the most stable system. On his view, "one conception of justice is more stable than another if the sense of justice that it tends to generate is stronger and more likely to override disruptive inclinations and if the institutions it allows foster weaker impulses and temptations to act unjustly."^{xxii} In this sense, a democracy seems more stable than a consultative assembly. This is because a democracy is likely to engender stronger feelings of ownership over political decisions. While members will certainly feel some sense of ownership over the decisions made in a consultative assembly, in the sense that their intelligent reflection and values play a significant role in the outcomes of decisions, it seems obvious that they will feel a greater sense of ownership when their influence over political decision-making is equal to that of others, that is, when their intelligent reflection and values play an equal role in the outcomes of

decisions. For this reason, parties within the original position will be moved to ensure the fair value of political liberty.

Similar considerations support other mechanisms – such as public financing of political campaigns – that are thought to flow from the commitment to the fair value of political liberty (and not just equal political liberty).^{xxiii} Imagine a society where the poor have the right to vote, but are less able to make effective use of their right to vote, say, because the wealthy are able to make greater contributions to political campaigns and, in turn, are more able to influence legislation. Since their intelligent reflection and values do play, at least, some role in the outcomes of political decisions, the poor will feel some sense of ownership over the decisions that are made. However, the sense of ownership that develops will be much weaker than what would develop under a scheme that requires public financing of political campaigns. Establishing the fair value of political liberty through public financing of political campaigns would allow for more equal influence over political decision-making among the rich and the poor and, in turn, would allow for a greater sense of ownership to develop among all citizens.

§4. Argument Concerning the Second Moral Power

Let us now turn to the second moral power, the capacity for a conception of the good. Our capacity for a conception of the good enables us “to think of ourselves as affirming our way of life in accordance with the full, deliberate and reasoned exercise of our intellectual and moral powers.”^{xxiv} And, Rawls argues, this relationship between our way of life and our deliberative reason becomes part of our determinate conception of the good.^{xxv} Because we have the capacity to intelligently and reflectively form our ends, we come to want our conceptions of the good to be the result of our own moral and

intellectual reflection, rather than their being forced on us or handed down to us. As Rawls puts it, we “seek to make our conception of the good our own;” and we will not be content “to accept it ready-made from our society or social peers.”^{xxvi} “This possibility is contained in the conception of the person.”^{xxvii}

To ensure that our ideals, attachments, and loyalties are really our own (shaped by our own moral and intellectual faculties, that is), we must have room to fall into error, to revise our existing conceptions of the good or to form other and more rational conceptions of the good. For as Rawls points out, there is no guarantee that we will identify all aspects of our present way of life as the most rational for us.^{xxviii} For instance, there is no guarantee that all aspects of our present way of life best cohere with our other commitments and priorities. So, it may happen that our conception of the good is in need of some kind of revision.^{xxix} Thus, Rawls argues, in order to allow for this possibility, we would adopt principles that protect the liberty of conscience. Rawls never fills this argument out fully, but the idea seems to be something like this: Imagine that we are essentially handed down a religion and forced to accept it, no questions asked (say, on pain of being persecuted, or subject to hostility or ill treatment by state officials). In such a state, we would have little if any understanding of alternative religious and secular traditions. Without an understanding of alternative practices and traditions, we could not be certain that the state enforced religion is most rational for us. To make a rational decision about whether the state enforced religion is part of our conception of the good, we must have access to a variety of rich and diverse practices and traditions, both secular and religious. We must acquire a real understanding of alternative practices and traditions in order to know which we would most identify with as rational and moral

agents, that is, in order to determine which best coheres with our other commitments, values, and priorities. Insofar as a state enforced religion would prevent this, we would not agree to such an arrangement. In short, we need freedom of conscience to ensure that we will have the space to form rational conceptions of the good that are genuinely our own.^{xxx}

Rawls has focused on the liberty of conscience in arguing for equal liberty. We must now determine how and whether this kind of argument can apply in the case of equal political liberties, such as equal voting rights. It is not clear that an analogous argument can be made. After considering the argument for the freedom of conscience, it seems that, on Rawls's view, the capacity for a conception of the good is largely a cognitive capacity. I exercise this capacity by thinking about what is most rational for me and choosing in this light.^{xxxii} It is hard to see how this kind of exercise could require equal voting rights. After all, as long as I have freedom of conscience, I can think about what is most rational for me, even if I do not have a vote in political decision-making. It is not clear, then, that Rawls's argument concerning equal liberty of conscience can be generalized to the case of equal political liberty and its fair value.

§5. The Practical Argument

Though Rawls's own arguments regarding the capacity for a conception of the good fail, I believe that an alternative argument can be given in its place. It seems to me that the cognitive or intellectual capacity to choose final ends in one's head is intimately connected with a practical capacity, a capacity to implement or put into practice final ends. It is this more practical aspect that supports equal voting rights. Rawls ignores or

at least misses out on this kind of argument for equal voting rights because he over intellectualizes the capacity for a conception of the good.^{xxxii} He is mainly concerned with the cognitive aspect of this capacity. However, I do think that Rawls would grant the importance of the practical element in the capacity for a conception of the good. Though he never discusses this matter in any detail, in describing the capacity for a conception of the good, he describes it not only as the capacity “to form” and “to revise” one’s determinate conception of the good but also as the capacity to “rationally *pursue* a determinate conception of the good.”^{xxxiii}

On my view, barriers to implementing one’s ends can be barriers to rationally revising one’s ends. This is because, in order to determine if my ends are most rational for me, I need to be able to implement or put into practice my ends. As Mill says, we need “different experiments of living.”^{xxxiv} On Mill’s view, conceptions of the good must be tested by trying them out. He writes, “the worth of different modes of life should be proved practically.”^{xxxv} For example, I cannot appropriately determine if being a doctor is part of my good just by thinking about and reading books about being a doctor. I need to experience, at least in some sense, what is it like to be a doctor. I need to engage in some kind of practice. To appropriately determine whether being a doctor is the most rational end for me, I need to participate in frog dissections in high school biology and volunteer at hospitals and clinics.^{xxxvi} Similarly, to appropriately determine whether literature and music are parts of my conception of the good, I need to experience what it is like to read books and to hear music. It is essential to pick up books and to read them, to try my hand at a variety of instruments, to hear a variety of music, contemporary and classical. Similar things can be said with respect to religion as well. I cannot

appropriately determine if Christianity or Islam is right for me just by reading and studying about these religions. Without putting religious customs and traditions into practice – without actually going to church services, or praying, for example – I cannot appropriately determine which (if any) religious conceptions are most rational for me. My suggestion is that appropriately determining which ends are most rational for me requires some kind of experience or practice; it is a matter of putting my tentative ideas about the good to a kind of experiential test.

Experience is essential to forming a rational conception of the good because it gives me access to information that is new and different from what I acquire when I simply think about what is best for me. The information is of a specific qualitative kind; it is a what-it-is-like experience. Having this kind of information is important to making appropriately informed decisions about what is most right for me. After all, the what-it-is-like experience of hearing classical music is part and parcel of what it is to listen to classical music. The what-it-is-like experience of cutting into flesh is an essential part of being a surgeon. Without an understanding of the qualitative aspect of listening to music or of dissection, I cannot make an appropriately informed decision about whether listening to classical music or being a surgeon is genuinely right for me. In short, being able to put into practice or to experience a determinate conception of the good is essential to finding out whether a particular conception of the good is the one I identify with most as a rational and moral agent.

In forming a rational conception of the good, I not only need to make decisions about what career or which religion is right for me but I also need to make decisions about the value of participating in political life and whether it is right for me. This seems

particularly important for those who view themselves as free and equal citizens. As in the other cases, practice is important to making such decisions. In order to make an appropriately informed decision about whether participation in political life is part of my rational conception of the good, I need to try my hand at it. It is only by actually participating in political decision-making with fellow citizens that I can come to understand its value and the feeling of fellowship with other citizens that it underwrites.

This argument supports equal political liberty and its fair value. If each citizen is given a vote with equal weight in political decision-making, then each can genuinely participate in the process of political decision-making and, in turn, each can make an appropriately informed decision about whether such participation is part of her rational conception of the good.

As with the previous arguments concerning ownership, one might wonder whether these arguments require the fair value of political liberty and not merely equal political liberty, that is, one might wonder whether these arguments support having an equally effective say and not just having a mere say in political decision-making. Return to the notion of a consultative assembly. In a consultative assembly, the government is responsive to the views of minorities. In this case, though to a lesser degree than those who are part of the government, racial minorities are able, through the process of consultation, to participate in political decision-making. They are able to experience what-it-is-like to participate in political life and political decision-making. In turn, it might seem that considerations relating to the capacity for a conception of the good cannot explain why racial minorities should have the fair value of political liberty and not merely equal political liberty.

I concede the point. It follows from my arguments, regarding our capacity for a conception of the good, that each citizen should have a say in political decision-making, but it does not necessarily follow that every citizen must have an equally influential say in political decision-making. In short, these arguments do not necessarily require the fair value of political liberty. They support any political arrangements that allow citizens to have first-hand experience of participation in political decision-making. Participation in political life through a consultative assembly can be sufficient to determine whether such participation is part of one's rational conception of the good. If citizens are able, through consultation, to discuss their political views, and have others genuinely listen to and conscientiously respond to these views (which will at times involve institutional changes), then citizens will have first-hand experience of what-it-is-like to take part in political decision-making. Consequently, I would argue, participation in a consultative assembly can provide citizens with sufficient experiential basis for determining whether participation in political life is right for them. On this argument, the fair value of political liberty is not, strictly speaking, necessary.

However, in order for citizens' interest in exercising their capacity for a conception of the good to be satisfied by participation in a consultative assembly it is integral that consultations be genuinely responsive. To see that this is the case, consider a mock consultative assembly. Just as before imagine that citizens are part of a consultative assembly but that the consultations are not genuine. Citizens give voice to their political opinions and dissent, but political officials do not genuinely listen to these concerns and only pretend to give conscientious responses. Participation in this kind of mock consultative assembly does not satisfy citizens' interest in exercising their capacity

for a conception of the good. There is a relevant difference between genuine participation and pretend participation in political decision-making. If I share my political views and dissent and they are not heard or taken seriously, then I am not in fact participating in political decision-making. I am simply an observer. It is much like standing on the sidelines at a game of football. If I am on the sidelines, then I do not experience what-it-is-like to play football. I only experience what-it-is like to watch football. Watching football isn't enough to determine if football is the right sport for me. I need to actively play football to make an informed decision about whether it is right for me. Similarly, standing on the sidelines in political decision-making is not sufficient to determine if participation in political life is right for me. To determine if political life is right for me, I must experience what-it-is-like to take part in political life. This means that I must genuinely take part in political decision-making. Only a genuine consultative assembly, with genuinely responsive consultations, allows for this possibility. So, only when a consultative assembly is genuine, can it realize citizens' interest in exercising their capacity for a conception of the good. Insofar as, genuine political participation can occur even when fair value of political liberty does not, this suggests that the fair value of political liberty is not required for the satisfaction of citizens' interest in exercising their capacity for a conception of the good.

The argument from the capacity for a conception of the good may not in itself provide reason for preferring fair value of political liberty. However, as I noted earlier, Rawls gives different arguments to support equal political liberty and its fair value, and they are meant to work together. This is to say, the matter of ownership is still relevant and does provide reasons for preferring fair value of political liberty rather than mere

equality of political liberty. Even if minorities are able to participate in political decision-making through consultation, for example, they play less of a role than those in power. To this extent, they will lack a sense of ownership over decisions made and they will be less apt to adhere to them willingly. So, if we wish to ensure the most stable system, we will still want to ensure equal political liberty *and* its fair value, for this will support a greater sense of ownership and hence a more effective sense of justice among citizens.

§6. The Value of Public Deliberation

Rawls has been criticized by deliberative democrats such as Michael Sandel for failing to account for the value of public deliberation. The main thesis of deliberative democrats is that participation in political discussions with fellow citizens is an important good. Arguments for the value of public deliberation take different forms. Some argue for the intrinsic value of public deliberation, while others argue for the instrumental value of public deliberation. On the intrinsic view, there is something inherently valuable about participating in the process of deliberation. On the instrumental view, public deliberation is valuable because of its contribution to just outcomes.

In many cases, the importance of political deliberation is established by an appeal to a comprehensive conception of the good. Consider Sandel's argument. Sandel argues for the intrinsic value of public deliberation. He argues "it is only as participants in political association that we can realize our nature and fulfill our highest ends."^{xxxvii}

Sandel's argument is Aristotelian in structure. It is the view that man is a social-political animal and that his essential nature is realized most fully in a democratic society where

participation in political life is pervasive.^{xxxviii} On Sandel's view, taking an active part in public political discussion is not just one good among many but, rather, is a necessary part of the good life. This kind of argument is not available to Rawls. The Aristotelian view is a comprehensive conception of the good; it is a particular view of what the best human life consists in. In the original position agents know that they have determinate conceptions of the good life, but they do not know their content. Consequently, any appeal to a comprehensive conception of the good, such as the Aristotelian one, is in violation of the restrictions placed on agents (and their reasoning) by the original position. These considerations suggest that Rawls, as he is traditionally interpreted, is unable to account for the value of public deliberation.

However, if we extend his arguments in the ways I have suggested, then Rawls can account for the value of public deliberation. Consider the argument from ownership. Citizens feel a sense of ownership over political decisions when they play a role in the making of these decisions. This is because citizens' exercise of their sense of justice is given weight and taken into account in political decision-making. So, in order for citizens to feel a sense of ownership over the decisions that are made, it is essential that they exercise their sense of justice; it is essential that they reflect intelligently on the common good and justice. It is the connection between this exercise and political decision-making that gives rise to a sense of ownership among citizens.

Public deliberation is vital to the exercise of one's sense of justice in two respects. First, public deliberation encourages citizens to exercise their sense of justice. Hearing others' views on the requisites of justice and the common good and being in a sphere that encourages citizens' response to these views, will encourage citizens to think about what

their own views on such matters are. Second, public deliberation is necessary for the exercise of the sense of justice. In support of this claim, consider the kinds of skills that are required to exercise one's capacity for justice. In reflecting on what justice and the common good require, one must take into account the impact of various schemes and policies on a diverse populace. To do this properly it is important to take other people's interests and points of view into account adequately. Deliberating with others and hearing their views is essential to this process, for it is by discussing with others and hearing their views that we are able to understand their interests (what they are, what weight they give them, and so on). As Rawls suggests, "no one . . . knows everything the others know, or can make all the same inferences that they can draw in concert. Discussion is a way of combining information and enlarging the range of arguments."^{xxxix} In this way, deliberation is essential to intelligent reflection about justice.

The practical argument also supports the value of public deliberation. I argued earlier, in order to make an informed decision about whether participation in political life is part of their rational conception of the good, citizens need to experience what-it-is-like to participate in political life. If citizens were only to vote, then they would not experience what-it-is-like to participate in political life. Taken in itself, the act of voting is much like standing on the sidelines and watching a football game. Voting requires only that one tick a box, and to tick a box is not to take an active role in political life. It is more like watching politics take place than it is actually participating in politics. For this reason, voting is not in itself sufficient to determine if participation in political life is right for me. In order to make such a decision, I must take a more active role in political life. Active participation in political life requires reflection about justice and the common

good (i.e., the exercise of our sense of justice). It also requires that we discuss and confer with fellow citizens about what justice and the common good require. I must actively engage in political deliberations and other facets of political life to genuinely experience what-it-is-like to engage in political life. This is essential to making an informed decision about what is right for me. In short, insofar as it allows citizens to make an informed decision about the value that participation in political life holds for them, participation in public deliberation is essential to the exercise of our capacity for a conception of the good.

The account of the value of public deliberation that I have given here is instrumental but not straightforwardly so. The value of public deliberation is cashed out in terms of outcomes, but value is also placed on the process of public deliberation. Participation in public deliberation is instrumentally valuable because it ensures that citizens are able to satisfy their higher-order interests in developing and exercising their two moral powers. Participation in the process of deliberation is also valuable, for it is only by actively participating in the process of public deliberation that citizens are able to satisfy their higher-order interests.

§7. Pragmatic Concerns

In developing his theory of justice, Rawls is committed to showing that his conception is plausible not only from a theoretical perspective but also from a practical perspective. As he suggests in the *Law of Peoples*, his conception of justice must be “realistically utopian.” This means that it must not only use and appeal to “political (moral) ideals, principles, and concepts to specify the reasonably right and just political

and social arrangements”^{xli} but it must also comprise “a workable conception of justice in light of what we know from general social theory, including psychology, sociology, history, economics and political science.”^{xli}

The argument from ownership and the practical argument are theoretical arguments for equal political liberty and its fair value. However, there are also more pragmatic grounds, that are closely related to the theoretical grounds, for preferring equal political liberty and its fair value.

In my discussion of the practical argument, I suggested that the fair value of political liberty may not be, strictly speaking, necessary to satisfy citizens’ higher order interests in developing and exercising their capacity for a conception of the good. I suggested that a *genuine* consultative assembly – where some individuals have greater influence than others – is sufficient for satisfaction of this interest. While this may be true in theory, it will not be in practice.

While one can certainly imagine a political process, such as a genuine consultative assembly, in which citizens without the right to vote are able to adequately exercise their moral powers, in the real world, deep and pervasive facts of human psychology make this an unrealistic option. It is very unlikely that there are or that there will be any real-life examples of a *genuine* consultative assembly. As a result, in the real world, citizens’ interest in developing and exercising their capacity for a conception of the good is not likely to be satisfied by anything other than democratic institutions.

As Rawls himself emphasizes, the tendency toward partiality is an ineliminable characteristic of human nature.^{xlii} The tendency toward partiality makes meeting the conditions of a consultative assembly, especially that of genuine responsiveness, very

difficult. In particular, non-democratic political elites are not likely to yield to good consultative arguments in important matters. They are more likely to favour their own views over others', even when they are in consultation with others. Political elites are often blinded by self-interest and greed. Yet, even when this is not the case, and those in power have good motives, it may still be difficult for them to give way to or be responsive to good consultative arguments. For example, even well-meaning citizens have gotten it wrong when it comes to the place of racial minorities in the political order. Genuinely responsive consultations are difficult because it is often hard to listen to those who have different backgrounds and viewpoints from our own. It is also easy to see the downside, without seeing the upside, of other people's views, especially when they are very different from our own. For these reasons, it will likely be difficult for those in power to be genuinely responsive to the arguments and positions of those they are in consultation with. Given our tendency toward partiality and the unlikelihood of genuine consultations, if, as parties within the original position, we wish to ensure that citizens have an opportunity for active and genuine participation in political life – because it will allow for citizens to make informed decisions about what constitutes their rational good – then we need to ensure that citizens have not only an equal say but an equally influential say.

A more realistic example will make the case for the fair value of political liberty clearer. As Norman Daniels, notes our “historical experience is that inequalities of wealth and accompanying inequalities in powers tend to produce inequalities of liberty.”^{xliii} For example, equal political liberty guarantees the wealthy and the poor identical voting rights. However, the rich still have a greater ability, through their

financial contributions to political campaigns, to influence public opinion, to select candidates, to influence elected officials, and thereby to influence legislation. In the real world, these advantages tend to accrue and to entrench the superior influence of the rich, leaving the poor with consistently less influence than the rich over political decision-making. This kind of entrenchment of unequal influence over political decision-making is not consistent with poor citizens' interest in exercising their capacity for a conception of the good. When the poor are consistently unable to influence the course of political decision-making, they are essentially pushed to the sidelines and left to watch politics take place. They are no longer able to actively take part in political decision-making. In turn, the poor are unable to appropriately determine if participation in political life is part of their rational conception of the good. So, if, as parties within the original position, we wish to ensure that we are able to satisfy our interest in forming rational conceptions of the good, which in turn requires, active participation in political decision-making, we must ensure that we have equal influence over political decisions. We must ensure the fair value of political liberty.

When we focus on the real world, it seems that our interest in genuine public deliberation gives further support to equal political liberty and its fair value. In part, deliberation is important because it helps citizens to reflect intelligently on justice and the common good, which is important to the development of a sense of ownership. Public deliberation is meant to help citizens understand and take into account the interests of a diverse populace. This is essential to intelligent reflection about justice and the common good. In the real world, our tendency toward partiality makes genuine discussion quite difficult. Because of partiality to our own views and interests, we often fail to listen to

and to take seriously the opinion of others, even when these opinions are given voice. Equal political liberty and the fair value of political liberty are important because they can correct for this kind of partiality to ourselves. If, for example, racial minorities have an equally effective say, then non-racial minorities (such as educated white males) will work harder to listen to, to understand, and to take into account the views of racial minorities, even if these views are very different from their own. This is because non-racial minorities will have to reach out to racial minorities if they want to win and implement policies. They cannot afford to ignore the views and opinions of racial minorities. In short, in the real world, equal political liberty and its fair value are essential to genuine deliberation.

§8. Conclusion

In this paper, I have attempted to complete and, where they fail, to reconceive Rawls's arguments for equal political liberty and its fair value. The arguments that I have given are meant to supplement Rawls's own arguments for equal political liberty and its fair value. My arguments go beyond Rawls's own arguments in two important respects. First, in contrast to Rawls, I developed an argument for democratic procedures that is based on our higher-order interest in developing and exercising our capacity for justice, and is independent of considerations relating to our capacity for a conception of the good. I argued that the development and exercise of our capacity for justice requires a sense of ownership and that a sense of ownership is most likely to develop under democratic institutions. Second, while Rawls emphasizes the cognitive aspect of our capacity for a conception of the good in his arguments regarding this capacity, I focused on the

practical aspect of this capacity, arguing that experientially testing out our tentative ends and aims is integral to the formation of a rational conception of the good. I argued that exercise of this more practical aspect of the capacity for a conception of the good requires democratic decision-making procedures. If Rawls's arguments are augmented in these two ways, then they support a much richer notion of democracy than is usually attributed to him. They not only provide support for mechanisms such as public financing of campaigns but they also provide support for the value of public deliberation, both in terms of its contribution to just outcomes and in terms of the process of deliberation itself.^{xliv}

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ⁱ There are a few exceptions: Joshua Cohen, "For A Democratic Society," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), pp. 86-138; Amy Gutmann, "Rawls on the Relationship between Liberalism and Democracy," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), pp. 168-199; and Harry Brighouse, "Political Equality in Justice as Fairness," *Philosophical Studies* 86.2 (1997): 155-184. The three of these papers are largely in support of Rawls's arguments.

Challenges to Rawls's arguments are raised in Steven Wall, "Rawls and the Status of Political Liberty," *Pacific Philosophical Quarterly* 87(2006): 245-270.

ⁱⁱ I also attempt to show that Rawls's arguments support the public financing of political campaigns, something that may or may not be viewed as being "integral" to democracy.

ⁱⁱⁱ Steven Wall argues that Rawls's theory is not "deeply democratic" in his paper, "Rawls and the Status of Political Liberty," p. 246.

^{iv} Rawls did not initially include the proviso in the principle of liberty. His inclusion of the proviso was in response to criticisms made by Norman Daniels in "Equal Liberty and Unequal Worth of Liberty," in N. Daniels (ed.), *Reading Rawls* (Oxford: Basil Blackwell, 1975), pp. 253-281. Daniels argued that merely guaranteeing equal political liberty, such as equal rights to vote, would not ensure equal influence over political decision-making. In particular, Daniels worried that unequal worth in political liberty would allow those with greater wealth a greater ability than the poor to influence the outcomes of political decision-making (through their unequal access to the media and lobbyists, for example). Rawls accepted this criticism and, in response, modified the principle of equal liberty to include the proviso.

^v John Rawls, *A Theory of Justice* (Cambridge: Belknap Press of Harvard University Press, 1999) (hereafter *ATJ*), p. 220. For Rawls, "liberty" simply means that persons are not under a constraint (or a set of constraints) to do (or not to do) a particular act (or particular acts). Rawls is concerned with liberty in the sense of constitutional and legal restrictions.

^{vi} *Ibid.*, p. 53. While Rawls often refers to the right to vote and the right to hold public office as examples of political liberties, he never gives us a complete list of the political

liberties. Rawls suggests that a list of basic liberties can be drawn up by considering “what liberties provide the political and social conditions for the adequate development and full exercise of the two moral powers” (*Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001) (hereafter *JF*), p. 45). The political liberties are distinguished from other liberties in the sense that they “enable citizens to develop and exercise their two moral powers in judging the justice of the basic structure of society and its social policies” (*JF*, p. 45).

^{vii} *JF*, p. 149. C.f., *ATJ*, p. 197 and John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996) (hereafter *PL*), p. 358. The proviso is essentially fair equality of opportunity applied to the political realm.

^{viii} Though I do not discuss it here, Rawls also gives an argument from our higher-order interests that relates to the value of self-respect. He also gives arguments that relate to our “fundamental interests” – interests that are commonly thought to be part of our conceptions of the good. For an exploration of these arguments, see Joshua Cohen, “For A Democratic Society” and Steven Wall, “Rawls and the Status of Political Liberty.”

^{ix} *PL*, p. 19.

^x *Ibid.*, p. 19. A conception of the good usually “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 attachments to other persons and loyalties to various groups and associations” (*ibid.*, p. 19).

^{xi} *Ibid.*, n. 20, p. 18.

^{xii} C.f., *ibid.*, p. 19.

^{xiii} *Ibid.*, p. 74.

^{xiv} Ibid., p. 317.

^{xv} Ibid., p. 318.

^{xvi} Ibid., p. 316.

^{xvii} One might worry that citizens will not feel a sense of ownership over decisions that they deeply disagree with. This is not the case, however. To the extent that our intelligent reflection about justice and the common good is given weight and taken into account whenever we participate in political decision-making, our exercise of our two moral powers is joined with the outcome. In turn, we will still feel a proper sense of ownership over decisions that we disagree with (so long as we participated in those decisions).

^{xviii} *PL*, p. 87.

^{xix} I thank an anonymous reviewer for pointing this out to me.

^{xx} I borrow this example from John Rawls, *Law of Peoples* (Cambridge: Harvard University Press, 1999), pp. 71-78.

^{xxi} I am doubtful that there are or that there is likely to be any real-life examples of a consultative assembly. I say more about this in §7. Nevertheless, even if unrealistic, the notion of a consultative assembly is useful as a theoretical device in that it helps us to get at the crux of what underwrites the fair value of political liberty rather than mere equality of political liberty.

^{xxii} *ATJ*, p. 398.

^{xxiii} Rawls was particularly concerned with public financing of political campaigns. See *PL* VII, §7, §12.

^{xxiv} *PL*, p. 313.

^{xxv} Ibid., p. 313.

^{xxvi} Ibid., p. 313.

^{xxvii} Ibid., p. 313.

^{xxviii} Ibid., p. 313.

^{xxix} This is not to say that, on Rawls's view, we must always revise our conceptions of the good. We may affirm a conception of the good that we have been raised and educated in, and "which we find, at the age of reason, to be a center of our attachments and loyalties. In this case what we affirm is a tradition that incorporates ideals and virtues which meet the tests of our reason and which answers to our deepest desires and affections" (ibid., p. 314).

^{xxx} This argument illustrates that the social conditions necessary for the development and full exercise of the second moral power are quite demanding. It, for example, implies that much more is required than simply "no persecution." Indeed, much more is required than liberty of conscience.

^{xxxi} For example, when discussing our capacity for a conception of the good, Rawls suggests that our final ends are the result of "conviction, reason, and reflection" (*PL*, 312). He also speaks of "examining our beliefs" and determining whether our ends meet the "tests of our reason" (ibid., 314). This suggests that, for Rawls, the capacity for a conception of the good is largely a cognitive capacity.

^{xxxii} The practical component is something that Raz emphasizes in his work. See Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 371.

^{xxxiii} *PL*, p. 19; my italics.

^{xxxiv} See John Stuart Mill, *On Liberty*, Vol. 18 (1832), in *Collected Works of John Stuart Mill*, ed. J.M. Robson (Toronto: University of Toronto Press, 1963-1991), pp. 260-267.

^{xxxv} *Ibid.*, p. 261.

^{xxxvi} This may explain why a variety of programs, including medical and teaching programs require (among other things) a significant amount of volunteer hours in related areas (e.g., in the hospital or at schools) before granting admittance. Before admitting you, they want you to be sure that this is the right career for you.

^{xxxvii} Michael Sandel, *Democracy and Its Limits* (Cambridge: First Harvard University Press, 1996), p. 7. Charles Taylor outlines a similar argument in *Philosophical Papers*, Vol. 2 (Cambridge: Cambridge University Press, 1985), p. 334f.

^{xxxviii} *PL*, p. 206.

^{xxxix} *ATJ*, p. 315.

^{xl} *LP*, p. 18.

^{xli} Norman Daniels, "Equal Liberty and Unequal Worth of Liberty," in N. Daniels (ed.), *Reading Rawls* (Oxford: Basil Blackwell, 1975), p. 255. Daniels can be taken as aptly summarizing what Rawls later describes as the two necessary conditions for a conception's being "realistic": First, it must take people as they are (by the laws of nature). The second condition for a conception of justice to be realistic is that its principles and precepts be workable. See *LP*, p 12.

^{xlii} Consider one of Rawls's arguments against utilitarianism. Rawls suggests that promoting average utility is not the right social standard. It leads people to be governed by calculations that they will tend to get wrong because of being partial to themselves. In

other words, it is hard for us to calculate what is in the best interests of all because we tend to be partial to our own interests.

^{xliii} Norman Daniels, “Equal Liberty and Unequal Worth of Liberty,” p. 256.

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