Lectures on the History of Political Philosophy

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To my students

—JOHN RAWLS
INTRODUCTION

Remarks on Political Philosophy

§1. Four Questions about Political Philosophy

1. We begin by asking several general questions about political philosophy. Why might we be interested in it? What are our reasons for thinking about it? What, if anything, do we expect to gain by doing so? In this spirit I review some more definite questions that might prove helpful.

Let's ask first: What is the audience of political philosophy? To whom is it addressed? Since the audience will vary from one society to another depending on its social structure and its pressing problems, what is the audience in a constitutional democracy? Thus, we begin by looking at our own case.

Surely, in a democracy the answer to this question is: all citizens generally, or citizens as the corporate body of all those who by their votes exercise the final institutional authority on all political questions, by constitutional amendment, if necessary. That the audience of political philosophy in a democratic society is the body of citizens has important consequences.

It means, for one thing, that a liberal political philosophy which, of course, accepts and defends the idea of constitutional democracy, is not to be seen as a theory, so to speak. Those who write about such a doctrine are not to be viewed as experts on a special subject, as may be the case with the sciences. Political philosophy has no special access to fundamental truths, or reasonable ideas, about justice and the common good, or to other basic notions. Its merit, to the extent it has any, is that by study and reflection it may elaborate deeper and more instructive conceptions of basic political ideas that help us to clarify our judgments about the institutions and policies of a democratic regime.

2. A second question is this: In addressing this audience, what are the credentials of political philosophy? What are its claims to authority? I use
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the term “authority” here because some have said that writers in moral and political philosophy claim a certain authority, at least implicitly. It has been said that political philosophy conveys a claim to know, and that the claim to know is a claim to rule. This assertion is, I believe, completely mistaken. In a democratic society at least, political philosophy has no authority at all, if by authority is meant a certain legal standing and possession of an authoritative weight on certain political matters; or if, alternatively, it means an authority sanctioned by long-standing custom and practice, and treated as having evidential force.

Political philosophy can only mean the tradition of political philosophy; and in a democracy this tradition is always the joint work of writers and of their readers. This work is joint, since it is writers and readers together who produce and cherish works of political philosophy over time and it is always up to voters to decide whether to embody their ideas in basic institutions.

Thus, in a democracy, writers in political philosophy have no more authority than any other citizen, and should claim no more. I take this to be perfectly obvious and as not needing any comment, were it not that the contrary is occasionally asserted. I mention the matter only to put aside misgivings about this.

Of course, one might say: political philosophy hopes for the credentials of, and implicitly invokes the authority of, human reason. This reason is simply the shared powers of reasoned thought, judgment, and inference as these are exercised by any fully normal persons beyond the age of reason, that is, by all normal adult citizens. Suppose we agree with this and say political philosophy does invoke this authority. But so likewise do all citizens who speak reasonably and conscientiously in addressing others about political questions, or indeed any other question. Seeking what we have called the authority of human reason means trying to present our views with their supporting grounds in a reasonable and sound manner so that others may judge them intelligently. Striving for the credentials of human reason does not distinguish political philosophy from any kind of reasoned discussion on any topic. All reasoned and conscientious thought seeks the authority of human reason.

Political philosophy, as it is found in a democratic society in texts that endure and continue to be studied, may indeed be expressed in unusually systematic and complete statements of fundamental democratic doctrines and ideas. These texts may be better argued and more perspicuously presented than those that do not endure. In this sense they may more successfully invoke the authority of human reason. Yet the authority of human reason is a very special kind of authority. For whether a text in political philosophy makes this appeal successfully is a collective judgment, made over time, in a society’s general culture, as citizens individually, one by one, judge these texts worthy of study and reflection. In this case there is no authority in the sense of an office or court or legislative body authorized to have the final say, or even a probative say. It is not for official bodies, or bodies sanctioned by custom and long-standing practice, to assess the work of reason.

This situation is not peculiar. The same is true in the community of all scientists, or to be more specific, of all physicists. There is no institutional body among them with the authority to declare, say, that the theory of general relativity is correct or incorrect. In matters of political justice in a democracy, the body of citizens is similar to the body of all physicists in this matter. This fact is characteristic of the modern democratic world and rooted in its ideas of political liberty and equality.

3. A third question is: At what point and in what way does political philosophy enter into and affect the outcome of democratic politics? How should political philosophy view itself in this respect?

Here there are at least two views: the Platonic view, for instance, is the view that political philosophy ascertains the truth about justice and the common good. It then seeks a political agent to realize that truth in institutions, irrespective of whether that truth is freely accepted, or even understood. On this view, political philosophy’s knowledge of the truth authorizes it to shape, even to control, the outcome of politics, by persuasion and force if necessary. Witness Plato’s philosopher king, or Lenin’s revolutionary vanguard. Here the claim to truth is understood as carrying with it not only the claim to know, but also the claim to control and to act politically.

Another view, the democratic view, let’s say, sees political philosophy as part of the general background culture of a democratic society, although in a few cases certain classic texts become part of the public political culture. Often cited and referred to, they are part of public lore and a fund of society’s basic political ideas. As such, political philosophy may contribute to

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the culture of civic society in which its basic ideas and their history are discussed and studied, and in certain cases may enter into the public political discussion as well.

Some writers who dislike the form and style of much current academic political philosophy see it as trying to avoid and to render unnecessary the everyday politics of democracy—the great game of politics. Academic political philosophy is said by these writers to be, in effect, Platonic: it tries to provide basic truths and principles to answer or to resolve at least the main political questions, thus making ordinary politics unnecessary. These writers, critical of philosophy, also think that ordinary politics best proceeds by itself, without the benefit of philosophy, or without worrying about its controversies. They think that proceeding in that way would lead to a more vibrant and lively public life and a more committed citizen body.

Now, to say that a liberal political philosophy is Platonic (as defined above) is surely incorrect. Since liberalism endorses the idea of democratic government, it would not try to override the outcome of everyday democratic politics. So long as democracy exists, the only way that liberal philosophy could properly do that would be for it to influence some legitimate constitutionally established political agent, and then persuade this agent to override the will of democratic majorities. One way this can happen is for liberal writers in philosophy to influence the judges on a Supreme Court in a constitutional regime like ours. Liberal, academic writers, such as Bruce Ackerman, Ronald Dworkin, and Frank Michelman, may address the Supreme Court, but so do many conservatives and other non-liberal writers. They are engaged in constitutional politics, we might say. Given the role of the Court in our constitutional system, what may look like an attempt to override democratic politics may actually be the acceptance of judicial review, and of the idea that the Constitution puts certain fundamental rights and liberties beyond the reach of ordinary legislative majorities. Thus, the discussion of academic writers is often about the scope and limits of majority rule and the proper role of the Court in specifying and protecting basic constitutional freedoms.

Much depends, then, on whether we accept judicial review and the idea that a democratic constitution should put certain fundamental rights and liberties beyond the reach of the legislative majorities of ordinary, as opposed to constitutional, politics. I incline to accept judicial review in our case, but there are good arguments on both sides and it is a question that democratic citizens must themselves consider. What is at stake is a decision between two conceptions of democracy, constitutional democracy and majoritarian democracy. In any case, even those who support judicial review take for granted that, in ordinary politics, legislative majorities are normally governing.

Our third question was: At what point and in what way does political philosophy enter into and affect the outcome of democratic politics? To this let's say: in a regime with judicial review, political philosophy tends to have a larger public role, at least in constitutional cases, and political issues that are often discussed are constitutional issues concerning basic rights and liberties of democratic citizenship. Beyond this, political philosophy has an educational role as part of the background culture. This role is the subject of our fourth question.

4. A political view is a view about political justice and the common good, and about what institutions and policies best promote them. Citizens must somehow acquire and understand these ideas if they are to be capable of making judgments about basic rights and liberties. So let's now ask: What basic conceptions of person and political society, and what ideals of liberty and equality, of justice and citizenship, do citizens initially bring to democratic politics? How do they become attached to those conceptions and ideals, and what ways of thought sustain these attachments? In what way do they learn about government and what view of it do they acquire?

Do they come to politics with a conception of citizens as free and equal, and capable of engaging in public reason and of expressing through their votes their considered opinion of what is required by political justice and the common good? Or does their view of politics go no further than thinking that people simply vote their own economic and class interests and their religious or ethnic antagonisms, supported by ideals of social hierarchy, with some persons viewed as by nature inferior to others?

It would seem that a constitutional regime may not long endure unless its citizens first enter democratic politics with fundamental conceptions and ideals that endorse and strengthen its basic political institutions. Moreover, these institutions are most secure when they in their turn sustain these conceptions and ideals. Yet surely citizens acquire those conceptions and ideals

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2. For example, Benjamin Barber as mentioned above.
3. "The Great Game of Politics" was the name of a column in the Baltimore Sun by Frank R. Kent in the 1920s and 30s.
in part, although only in part, from writings in political philosophy, which themselves belong to the general background culture of civic society. They come across them in their conversation and reading, in schools and universities and in professional schools. They see editorials and discussions debating these ideas in newspapers and in journals of opinion.

Some texts achieve a rank that puts them in the public political culture, as opposed to the general culture of civic society. How many of us had to memorize parts of the Declaration of Independence, the Preamble to the Constitution, and Lincoln’s Gettysburg Address? While these texts are not authoritative—the Preamble is not part of the Constitution as law—they may influence our understanding and interpretation of the Constitution in certain ways.

Moreover, in these texts, and others of this status (if there are any), the values expressed are, let’s say, political values. This is not a definition, just an indication. For example the Preamble to the Constitution mentions: a more perfect union, justice, domestic tranquility, common defense, the general welfare, and the blessings of liberty. The Declaration of Independence adds the value of equality and connects it with equal natural rights.

It is safe to call these political values. I shall think of a political conception of justice as trying to give a reasonably systematic and coherent account of these values, and to set out how they are to be ordered in applying them to basic political and social institutions. The vast majority of works in political philosophy, even if they endure a while, belong to general background culture. However, works regularly cited in Supreme Court cases and in public discussions of fundamental questions may be viewed as belonging to the public political culture, or bordering on it. Indeed a few—such as Locke’s Second Treatise and Mill’s On Liberty—do seem part of the political culture, at least in the United States.

I have suggested that citizens had best learn from civic society its fundamental conceptions and ideals before they come to democratic politics. Otherwise a democratic regime, should one somehow come about, may not long endure. One of the many reasons why the Weimar constitution failed was that none of the main intellectual currents in Germany was prepared to defend it, including the leading philosophers and writers, such as Heidegger and Thomas Mann.

To conclude: Political philosophy has a not insignificant role as part of general background culture in providing a source of essential political principles and ideals. It plays a role in strengthening the roots of democratic thought and attitudes. This role it performs not so much in day-to-day politics as in educating citizens to certain ideal conceptions of person and political society before they come to politics, and in their reflective moments throughout life.

5. Is there anything about the politics of a society that encourages the sincere appeal to principles of justice and the common good? Why isn’t politics simply the struggle for power and influence—everyone trying to get their own way? Harold Lasswell said: “Politics is the study of who gets what and how.” Why isn’t that all there is to it? Are we naive, as the cynic says, to think that it could be anything else? If so, then why isn’t all talk of justice and the common good simply the manipulation of symbols that have the psychological effect of getting people to go along with our view, not for good reasons, plainly, but somehow mesmerized by what we say?

What the cynic says about moral and political principles and ideals cannot be correct. For if it were, the language and vocabulary of morals and politics referring to and appealing to those principles and ideals would long since have ceased to be invoked. People are not so stupid as not to discern when those norms are being appealed to by certain groups and their leaders in a purely manipulative and group-interested fashion. This is not to deny, of course, that principles of justice and fairness and the common good are often appealed to in a manipulative way. Such an appeal often enough rides piggy-back, so to speak, on those same principles’ being invoked sincerely by those who mean them and can be trusted.

Two things, it seems, make an important difference in what ideas citizens have when they first come to politics: one is the nature of the political system in which they grow up, the other is the content of the background culture, how far it acquaints them with democratic political ideas and leads them to reflect on their meaning.

The nature of the political system teaches forms of political conduct and political principles. In a democratic system, say, citizens note that party

4. My answer to this question has followed that of Michael Walzer, referred to in note 1 above.
leaders, in forming working majorities, are constrained by certain principles of justice and the common good, at least as regards their explicit public political program. Here again the cynic may say that these appeals to public principles of justice and the common good are self-interested, because to remain relevant, a group must be recognized as “inside the system,” and that means that its conduct must respect various social norms consistent with those principles. This is true, but it overlooks something: that in a reasonably successful political system, citizens in due course become attached to these principles of justice and the common good, and as with the principle of religious toleration, their allegiance to them is not purely, even if it is in part, self-interested.

6. An important question, then, is: what features, if any, of political and social institutions tend to prevent the sincere appeal to justice and the common good, or to fair principles of political cooperation? Here I conjecture that we can learn something from the failure of Germany to achieve a constitutional democratic regime.

Consider the situation of German political parties in Wilhelmine Germany of Bismarck’s time. There were six noteworthy features of the political system:

(1) It was a hereditary monarchy with very great though not absolute powers.
(2) The monarchy was military in character as the army (officered by the Prussian nobility) guaranteed it against an adverse popular will.
(3) The chancellor and the cabinet were servants of the crown and not of the Reichstag, as would be the case in a constitutional regime.
(4) Political parties were fragmented by Bismarck, who appealed to their economic interests in return for their support, turning them into pressure groups.
(5) Since they were no more than pressure groups, political parties never aspired to govern, and they held exclusive ideologies which made compromise with other groups difficult.
(6) It was not considered improper for officials, not even the chancellor, to attack certain groups as enemies of the empire: Catholics, Social Democrats, national minorities: French (Alsace-Lorraine), Danes, Poles, and Jews.

Consider the fourth and fifth features, that political parties were nothing more than pressure groups, and because they never aspired to rule—to form a government—they were unwilling to compromise or to bargain with other social groups. The liberals were never ready to support programs wanted by the working classes, while the social democrats always insisted on the nationalization of industry and dismantling of the capitalist system, which frightened off the liberals. This inability of the liberals and the social democrats to work together to form a government was fatal in the end to German democracy, because it persisted into the Weimar regime with its disastrous outcome.

A political society with a structure of this kind will develop enormous internal hostility between social classes and economic groups. They never learn to cooperate in forming a government under a properly democratic regime. They always act as outsiders petitioning the chancellor to meet their interests in return for their support of the government. Some groups, like the social democrats, were never thought of as possible supporters of the government at all; they were simply outside the system, even when they came to have the greatest number of votes, as they did before the First World War. Since there were no genuine political parties, there were no politicians: people whose role is not to please a particular group but to put together a working majority behind a political and social democratic program.

§2. Four Roles of Political Philosophy

1. I see four roles that political philosophy may play as part of a society's public political culture. These are discussed at length in §1 of the Restatement. So I will only briefly recount them here.

(a) The first is its practical role arising from divisive political conflict when its task is to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered, or differences can at least be narrowed so that social cooperation on a footing of mutual respect among citizens can still be maintained.

(b) The second role, which I call orientation, is one of reason and reflection. Political philosophy may contribute to how a people think of their political and social institutions as a whole, of themselves as citizens, and of their basic aims and purposes as a society with a history—a nation—as opposed to their aims and purposes as individuals, or as members of families and associations.

(c) A third role, stressed by Hegel in his Philosophy of Right (1821), is that of reconciliation: political philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood, from a philosophical point of view, are rational, and developed over time as they did to attain their present, rational form. When political philosophy acts in this role, it must guard against the danger of being simply a defense of an unjust and unworthy status quo. This would make it an ideology (a false scheme of thought), in Marx's sense.

(d) The fourth role is that of probing the limits of practicable political possibility. In this role, we view political philosophy as realistically utopian. Our hope for the future of our society rests on the belief that the social world allows at least a decent political order, so that a reasonably just, though not perfect, democratic regime is possible. So we ask: What would a just democratic society be like under reasonably favorable but still possible historical conditions, conditions allowed by the laws and tendencies of the social world? What ideals and principles would such a society try to realize given the circumstances of justice in a democratic culture as we know them?

§3. Main Ideas of Liberalism: Its Origins and Content

1. Since a good part of these lectures will be concerned with conceptions of liberalism and four of its main historical figures and one of its greatest critics, I should say something about how I understand it. There is no settled meaning of liberalism; it has many forms and many features, and writers characterize it in different ways.

Liberalism's three main historical origins are the following: the Reformation and the religious wars of the sixteenth and seventeenth centuries ending with the, at first, reluctant acceptance of the principle of toleration and liberty of conscience; the gradual taming of royal power by the rising middle classes and the establishment of constitutional regimes of limited monarchy; and the winning of the working classes to democracy and majority rule? These developments occurred in different countries in Europe and North America at different times; yet thinking of England, it is roughly true that liberty of conscience was well on its way to being won at the end of the 17th century, constitutional government during the 18th, and democracy and majority rule with universal suffrage during the 19th. This movement is not, of course, complete. Important aspects of it have not yet been won even today, and some still seem a long way off. All existing allegedly liberal democracies are highly imperfect and fall far short of what democratic justice would seem to require.

For example, five reforms needed in the United States are indicated here: campaign finance reform to overcome the present system of money

8. For Marx an ideology is a false scheme of thought that sometimes helps to obscure from those within the social system how it works, making them unable to penetrate beneath the surface appearance of its institutions. In this case it buttresses an illusion, as classical political economy helped, in Marx's view, to obscure the fact that a capitalist system is a system of exploitation. An ideology serves to firm up a necessary delusion: decent capitalists do not want to believe that the system is exploitative; so they believe the classical doctrine of political economy, which assures them it is a scheme of free exchanges in which all factors of production—land, capital, and labor—appropriately receive what they contribute to social output. In this case ideology buttresses a delusion. [See Marx, Lecture III in this volume, for a discussion of ideological consciousness. —Ed.]

9. This is a philosopher's schematic version of speculative history, and to be recognized as such.
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buying access to power; fair equality of educational opportunity; some form of assured health care for all; some form of guaranteed and socially useful work; and equal justice for and equality of women. These reforms would greatly mitigate if not remove the worst aspects of discrimination and racism. Others will have their list of essential reforms whose importance is also undeniable.

2. Expressed in broad terms, the content of a liberal political conception of justice has three main elements: a list of equal basic rights and liberties, a priority for these freedoms, and an assurance that all members of society have adequate all-purpose means to make use of these rights and liberties. Note that the liberties are given by a list. Later we try to make these elements more definite.

To give the general idea: the equal basic liberties include the equal political liberties—the right to vote and to run for public office, and the right of free political speech of all kinds. They include also the civic liberties—the right of free non-political speech, the right of free association and, of course, liberty of conscience. Add to these freedoms equality of opportunity, freedom of movement, the right to one’s own mind and body (integrity of the person), the right of personal property, and finally, the liberties covered by the rule of law and a right to a fair trial.

This list of the basic liberties is, of course, familiar. The difficult part lies in specifying them more exactly and in ordering them in relation to one another when they conflict. At the moment the essential thing is to stress the great significance that liberalism attaches to a certain list of liberties, rather than to liberty as such. With this in mind, the second element of the content of liberalism is that the liberties are assigned a certain priority, that is, a certain force and weight. This means, in effect, that they cannot normally be sacrificed in order to gain greater social welfare, or for the sake of perfectionist values; and this restriction is, practically speaking, absolute.

The third element of liberalism’s content is that, as indicated above, its principles assign to all members of society claims to adequate all-purpose material means to make use of their freedoms, as detailed and given priority by the preceding elements. These all-purpose means fall under what I shall call primary goods. They include, in addition to the basic liberties and equal opportunities: income and wealth, and as appropriate, claims to goods in kind, for example, to education and health care.

By saying that the content of liberal views has these three elements I mean that the content of any familiar liberal view would more or less fit this broad description. What distinguishes different liberalisms is how they specify these elements and the general arguments used to do this. There are views, often described as liberal, for example, libertarian views, that don’t exemplify the third element of assuring to citizens adequate all-purpose means to make use of their freedoms. But the fact that it does not is, among other things, what makes a view libertarian and not liberal. Libertarianism doesn’t fit the third element. Of course, this is not an argument against it, but simply a comment about its content.

§4. A Central Thesis of Liberalism

1. There are, no doubt, several candidates for the central thesis of liberalism—the securing of the basic liberties is certainly one of them—and writers will differ on this. One central element is certainly the following:

A legitimate regime is such that its political and social institutions are justifiable to all citizens—to each and every one—by addressing their reason, theoretical and practical. Again: a justification of the institutions of the social world must be, in principle, available to everyone, and so justifiable to all who live under them. The legitimacy of a liberal regime depends on such a justification.

While political liberalism (of which justice as fairness is an example) does not reject or question the importance of religion and tradition, it insists that political requirements and obligations imposed by law must answer to citizens’ reason and judgment.

This requirement of a justification to each citizen’s reason connects with the tradition of the social contract and the idea that a legitimate political order rests on unanimous consent. The aim of a contractual justification is to show that each member of society has a sufficient reason to agree to that order, to acknowledge it, on the condition that other citizens acknowl-


11. Justice as fairness is the name I have given to the political conception of justice developed in A Theory of Justice and in Justice as Fairness: A Restatement.
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edge it as well. This yields unanimous consent. The reasons invoked must be reasons from the point of view of each reasonable and rational person.

“Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own Consent. The only way whereby any one divests himself of his Natural Liberty and puts on the bonds of Civil Society is by agreeing with other men to join and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it.” Locke: Second Treatise on Government, ¶95.

In this passage from Locke it seems that consent is something citizens actually do at some point; or at any rate this interpretation is not excluded. In Kant we get a different idea. He says that we cannot assume the original contract arises from an actual coalition of all private individuals existing, for this cannot possibly be so.

[The original contract] is in fact merely an idea of reason, which none the less has undoubted practical reality: for it can oblige the legislator to frame his laws in such a way that they could have been produced by the united will of the whole nation. . . . This is the test of rightfulness of every public law. For if the law is such that a whole people could not possibly agree to it (for example, if it stated that a certain class of subjects must be the privileged ruling class), it is unjust; but if it is at least possible that a people could agree to it, it is our duty to consider the law as just, even if the people is at present in such a position or attitude of mind that it would probably refuse to consent to it were it consulted. Kant, Theory and Practice (1793): Ak-VIII:287 (Reiss, 79).12

2. Now I note some distinctions that enable us to understand the meaning of different social contract views and to separate them from one another.

First, the distinction between actual and non-historical agreements: The former is found, it seems, in Locke (we shall discuss whether this is so when we come to Locke). The latter is found in Kant, who has in mind an agree-

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ment that could arise only from a coalition of all wills; but since historical conditions never allow for this, the original contract is non-historical.

Second, the distinction as to how the content is determined: whether by the terms of an actual contract, or by analysis (that is, by figuring out from the situation of those making the contract what they could, or would agree to), or by some combination of the two ways. In part, Kant calls the original contract an idea of reason because it is only by reason—both theoretical and practical—that we can figure out what it is possible for people to agree to. In this case the contract is hypothetical.

A third distinction is whether the content of the social contract concerns what people could do—or could not possibly do—or what they would do. These are very different: often it is much harder to work out the content of a hypothetical contract saying what people would do rather than what they could do, or could not possibly do. Thus, when Locke is attacking Charles II, he is mainly interested in showing that in setting up a form of government, the people could not possibly have agreed to royal absolutism. So the King's behaving as a sovereign with such powers makes his conduct illegitimate. Locke need not show what the people would have agreed to, other than inferring what they would not do from what they could not possibly do. (Here he relies on: if we could not possibly do X, we would not do X.)13

A fourth distinction is whether the content of the social contract is seen as specifying when a form of government is legitimate, or whether that content is seen as determining the (political) obligations that citizens have to their government. The idea of the social contract can serve two distinct purposes: either as yielding a conception of political legitimacy, or as giving an account of citizens' political obligations. Of course, a social contract doctrine may do both; but the distinction between the two is significant: for one thing, the idea of the social contract works differently in the two cases, and can be quite satisfactory in one case but not the other.14 I think Hume's critique of the social contract view is effective for Locke's account of political obligation,15 but it doesn't touch Locke's account of legitimacy, or so I believe.


13. Thus: could not do X implies would not do X; but, could do X does not imply would do X.


15. See Hume's Of the Original Contract (1752).
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There are other distinctions and aspects of a social contract. For example, who are the parties to the contract? Is it all citizens with each other, or is it all citizens with the sovereign? Or are there two or more contracts: first citizens with each other and then citizens with the sovereign? In Hobbes and Locke, the parties are all citizens contracting with each other; the sovereign is not a party at all. There is no second contract. But this and further distinctions can be considered as we proceed.

§5. Initial Situations

1. Every social contract doctrine needs an account of the situation in which the social contract, whether historical or non-historical, is to be made. Let’s refer to this situation as the initial situation. To develop a contract doctrine at all clearly, numerous aspects of this situation have to be expressed filled in. Otherwise, they are left to be inferred from the nature of what is agreed to, or from what must be presupposed if the reasoning is to be sound, and this risks misunderstanding.

We have many items to specify: for example, What is the nature of the parties involved in the initial situation, and what are their intellectual and moral powers? What are the parties’ aims and wants? What are their general beliefs, and how much do they know about their particular circumstances? What alternatives do they face; or what are the several contracts they may enter into? Answers to these questions and to many others must in some way be provided. And in each case there are various possibilities.

2. Consider first the nature of the parties. Are they persons in a state of nature, as with Locke? Are they all the members of society, as with Kant? Are they neither of these but the representatives of the individual citizens of society, as supposed in justice as fairness?

What is the original contract an agreement about? Is it agreement as to what is a legitimate form of government, as with Locke? Or is it, as with Kant, an understanding as to what all members of society collectively could possibly will, with this understanding to be used by the legislator as a test of just law? (In Kant this test is to be followed by the sovereign in enacting laws.) Or is it perhaps, as with Rousseau, an agreement about the content of what he calls the general will, that is, what it is that the general will wills?

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Or is it, as justice as fairness says, an agreement about the content of a political conception of justice—the principles and ideals of justice and the common good—to be applied to the basic structure of society as one unified system of social cooperation? And beyond this, as justice as fairness also says, an understanding about the restrictions of public reasoning concerning fundamental political questions and the duty of civility? Any social contract doctrine has to decide on these questions and adopt an approach to them that ties them into a consistent unity.

3. Next consider the question of how much the parties know. One might think that the most reasonable answer is to suppose the parties know all that is known to them in ordinary life. We may think: surely it leads to a worse answer for everyone when people are deprived of information. How can a lack of knowledge lead to an agreement that is more reasonable and better for all?

Now, it is usually correct that in applying a conception of justice already accepted and on hand, we normally want all the information available. Otherwise we cannot apply its principles and standards properly. But agreeing to, or adopting a conception of justice in the first place is another matter. Here we want to achieve consensus, and full knowledge often stands in the way of doing this. The explanation is that the kind of knowledge that people often have may lead to endless wrangling and enable some to drive hard bargains, setting the stage for the nastiest individuals getting more than their share.

It is easy to see how this happens by looking at cases where people have too much information. In Elster’s example of the tennis game, rain intervenes after the third set with the first player ahead 2 sets to 1. How are they to divide the prize, as the match must now end? The first player claims the whole prize; the second player says it should be divided equally, claiming to be in excellent shape and always reserving energy and coming on strong in the fourth and fifth sets; the spectators say it should be divided in thirds with the first player getting 2/3 and the second 1/3. Plainly the matter should have been settled before the game started, when no one knew the particulars of current circumstances.

16. An exception is in a criminal trial where rules of evidence may exclude some kinds of available information, as when spouses may not testify against each other. This is to help ensure a fair trial.

much health care society should provide in a situation in which no one knows their age, but only that they will live through different phases of life—from youth to old age—during which their need for health care will vary. They must balance their needs at one time against their needs at another, as well as society’s needs for other things. I follow a similar approach in discussing the flexibility of primary goods.19

5. All these examples suggest the need for something like the so-called veil of ignorance. Yet there are many veils of ignorance, some thicker than others (excluding more information) and some excluding different kinds of information. Note Elster’s meritocratic veil of ignorance, which allows information about citizens’ natural abilities and skills, and Dworkin’s restrictions, which still allow citizens to know their ambitions and aspirations. I only mention these views, but they may be expected to lead to different conclusions.20

I should mention also that much the same effect as that of a veil of ignorance may result from a combination of other elements. Thus, rather than exclude information, we can allow people to know whatever they now know and yet make the contract binding in perpetuity and suppose the parties to care about their descendants, indefinitely into the distant future.21 In protecting their descendants as well as themselves, they face a situation of great uncertainty. Thus, roughly the same arguments, somewhat modified, pertain as with a thick veil of ignorance.

Finally, I call attention to the idea of discourse ethics of Jürgen Habermas and a related idea of Bruce Ackerman.22 The thought here is that with certain rules of discourse restricting the participants in an ideal speech situation, only norms with a suitable moral content can be generally endorsed by everyone. A valid norm is one that can be established, or redeemed, as

20. See Elster, Local Justice, pp. 206f.
21. This was actually the form the limits on information took in my first articles stating justice as fairness. See “Justice as Fairness” in Rawls, Collected Papers, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), pp. 47–72.
Habermas says, in such an ideal discourse situation. There is no veil of ignorance, or other restrictions beyond the rules of ideal discourse. It is these rules that serve to filter out all norms that cannot be generally accepted and, in this sense, do not further generalizable interests.

The reason for mentioning these various views is to indicate how widespread is the idea of an initial situation. Indeed, it is not a strange idea, a philosopher's fancy, but a rather common and I think highly intuitive idea. It is clearly foreshadowed, I believe, in Rousseau and Kant, and no doubt in other classical writers as well.

The initial situation of justice as fairness I refer to as “the original position.” It is characterized so that the agreement reached there by the parties, who are viewed as representatives of citizens, expresses the content—the principles and ideals—of the political conception of justice that specifies the fair terms of social cooperation.

As a concluding remark, I stress that the original position, as I have often said, is a device of representation. Were we to look through the history of the tradition of the social contract we would find many different things the initial situation has been used to represent, even if the idea of a device of representation is not made clear, or possibly even understood by the author. It has been so used whether so understood or not.