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THOMAS NAGEL

Moral Conflict and Political Legitimacy

I

Robert Frost defined a liberal as someone who can't take his own side in an argument. A bit harsh, but there is something paradoxical about liberalism, at least on the surface, and something obscure about the foundations of the sort of impartiality that liberalism professes. That is what I want to discuss.

Ethics always has to deal with the conflict between the personal standpoint of the individual and some requirement of impartiality. The personal standpoint will bring in motives derived not only from the individual's interests but also from his attachments and commitments to people, projects, and particular things. The requirement of impartiality can take various forms, but it usually involves treating or counting everyone equally in some respect—according them all the same rights, or counting their good or their welfare or some aspect of it the same in determining what would be a desirable result or a permissible course of action. Since personal motives and impartiality can conflict, an ethical theory has to say something about how such conflicts are to be resolved. It may do this by according total victory to the impartial side in case of conflict, but that is only one solution.

The clash between impartiality and the viewpoint of the individual is compounded when we move from personal ethics to political theory. The reason is that in politics, where we are all competing to get the coercive power of the state behind the institutions we favor—institutions under which all of us will have to live—it is not only our personal interests,

I am grateful to a number of people for comments, particularly T. H. Irwin, John Rawls, Lawrence Sager, Bernard Williams, and the Editors of *Philosophy & Public Affairs*.

attachments, and commitments that bring us into conflict, but our different moral conceptions. Political competitors differ as to both the form and the content of the impartial component of morality. They differ over what is good and bad in human life, and what kind of equal respect or consideration we owe each other. Their political disagreements therefore reflect not only conflicts of interest but conflicts over the values that public institutions should serve, impartially, for everyone.

Is there a higher-order impartiality that can permit us to come to some understanding about how such disagreements should be settled? Or have we already gone as far as necessary (and perhaps even as far as possible) in taking up other people's point of view when we have accepted the impartial component of our own moral position? I believe that liberalism depends on the acceptance of a higher-order impartiality, and that this raises serious problems about how the different orders of impartiality are to be integrated. To some extent this parallels the familiar problem in moral theory of integrating impartiality with personal motives; but the problem here is more complicated, and the motive for higher-order impartiality is more obscure.¹

It is so obscure that critics of liberalism often doubt that its professions of impartiality are made in good faith. Part of the problem is that liberals ask of everyone a certain restraint in calling for the use of state power to further specific, controversial moral or religious conceptions—but the results of that restraint appear with suspicious frequency to favor precisely the controversial moral conceptions that liberals usually hold.

For example, those who argue against the restriction of pornography or homosexuality or contraception on the ground that the state should not attempt to enforce contested personal standards of morality often don't think there is anything wrong with pornography, homosexuality, or contraception. They would be against such restrictions even if they believed it *was* the state's business to enforce personal morality, or if they believed that the state could legitimately be asked to prohibit anything simply on the ground that it was wrong.

1. Leading contemporary examples of philosophical liberalism are: John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Ronald Dworkin, "Liberalism," in *Public and Private Morality*, ed. Stuart Hampshire (Cambridge: Cambridge University Press, 1978); Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980); T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982).

More generally, liberals tend to place a high value on individual freedom, and limitations on state interference based on a higher-order impartiality among values tends to promote the individual freedom to which liberals are partial. This leads to the suspicion that the escalation to a higher level of impartiality is a sham, and that all the pleas for toleration and restraint really disguise a campaign to put the state behind a secular, individualistic, and libertine morality—against religion and in favor of sex, roughly.

Yet liberalism purports to be a view that justifies religious toleration not only to religious skeptics but to the devout, and sexual toleration not only to libertines but to those who believe extramarital sex is sinful. Its good faith is to some degree attested in the somewhat different area of free expression, for there liberals in the United States have long defended the rights of those they detest. The American Civil Liberties Union is usually glad of the chance to defend the Nazis when they want to demonstrate somewhere. It shows that liberals are willing to restrain the state from stopping something that they think is wrong—for we can assume most supporters of the ACLU think both that it is wrong to be a Nazi and that it is wrong for the Nazis to demonstrate in Skokie.

Another current example is that of abortion. At least some who oppose its legal prohibition believe that it is morally wrong, but that their reasons for this belief cannot justify the use of state power against those who are convinced otherwise. This is a difficult case, to which I shall refer again.

Of course liberalism is not merely a doctrine of toleration, and liberals all have more specific interests and values, some of which they will seek to support through the agency of the state. But the question of what kind of impartiality is appropriate arises there as well. Both in the prohibition of what is wrong and in the promotion of what is good, the point of view from which state action and its institutional framework are supposed to be justified is complex and in some respects obscure. I shall concentrate on the issue of toleration, and shall often use the example of religious toleration. But the problem also arises in the context of distributive justice and promotion of the general welfare—for we have to use some conception of what is good for people in deciding what to distribute and what to promote, and the choice of that conception raises similar questions of impartiality.²

2. See T. M. Scanlon, "Preference and Urgency," *Journal of Philosophy* 72 (1975)—an essay to which I am much indebted.

II

This question is part of the wider issue of political legitimacy—the history of attempts to discover a way of justifying coercively imposed political and social institutions to the people who have to live under them, and at the same time to discover what those institutions must be like if such justification is to be possible. “Justification” here does not mean “persuasion.” It is a normative concept: arguments that justify may fail to persuade, if addressed to an unreasonable audience; and arguments that persuade may fail to justify. Nevertheless, justifications hope to persuade the reasonable, so these attempts have a practical point: political stability is helped by wide agreement to the principles underlying a political order. But that is not all: for some, the possibility of justifying the system to as many participants as possible is of independent moral importance. Of course this is an ideal. Given the actual range of values, interests, and motives in a society, and depending on one’s standards of justification, there may not be a legitimate solution, and then one will have to choose between illegitimate government and no government.

The practical and the moral issues of political motivation are intertwined. On the one hand, the motivations that are morally required of us must be practically and psychologically possible, otherwise our political theory will be utopian in the bad sense. On the other hand, moral argument and insight can reveal and explain the possibility of political motivations which cannot be assumed in advance of moral discussion. In this way, political theory may have an effect on what motives are practically available to ground legitimacy, and therefore stability.

Defenses of political legitimacy are of two kinds: those which discover a possible *convergence* of rational support for certain institutions from the separate motivational standpoints of distinct individuals; and those which seek a *common standpoint* that everyone can occupy, which guarantees agreement on what is acceptable. There are also political arguments that mix the convergence and common standpoint methods.

A convergence theory may begin from motives that differ widely from person to person, or it may begin from a single type of motive, like self-interest, which differs from person to person only because it is self-referential. In either case, the difference of starting points means that the motivational base itself does not guarantee that there is a social result which everyone will find desirable. A common standpoint theory, by con-

trast, starts from a single desire that is not self-referential, and this guarantees a common social aim, provided people can agree on the facts.

Hobbes, the founder of modern political theory, is a convergence theorist par excellence. Starting from a premoral motive that each individual has, the concern for his own survival and security, Hobbes argues that it is rational for all of us to converge from this self-referential starting point on the desirability of a system in which general obedience to certain rules of conduct is enforced by a sovereign of unlimited power. This is a convergence theory because the motive from which each of us begins refers only to his own survival and security, and it is entirely contingent that there should be any outcome that all of us can accept equally on those grounds: our personal motives could in principle fail to point us toward a common goal. And as is generally true of convergence theories, the political result is thought to be right because it is rationally acceptable to all, rather than being rationally acceptable to all because it is by some independent standard right.

Utilitarianism, on the other hand, is an example of a common standpoint theory. It asks each person to evaluate political institutions on the basis of a common moral motive which makes no reference to himself.³ If all do take up this point of view of impartial benevolence, it will automatically follow that they have reason to accept the same solutions—since they are judging in light of a common desire for everyone's happiness. A political result is then rationally acceptable to everyone because by the utilitarian standard it is right; it is not right because it is universally acceptable.

There are other types of convergence theories—notably those which find political legitimacy in a compromise among conflicting economic, social, and religious interests, acceptable to all as an alternative to social breakdown. And common standpoint theories can be based on motives other than general benevolence—commitment to the protection of certain individual rights, rejection of severe social and economic inequalities, even nationalism or a shared religious commitment.

But what I want to concentrate on is a type of mixed theory that is characteristic of contemporary liberalism. Recent political philosophy has

3. I am thinking of utilitarianism in a modern version, associated with Sidgwick. In Bentham and Mill, the motives that lead to compliance with the principle of utility are various, and not related to its truth.

seen the development of a new type of liberal theory, exemplified by the work of Rawls and others, whose distinctive feature is that it bases the legitimacy of institutions on their conformity to principles which it would be reasonable for disparate individuals to agree on, where the standard of individual reasonableness is not merely a premoral rationality, but rather a form of reasoning that includes moral motives. In contrast with Hobbesian convergence, reasonable agreement is in these theories sought by each person as an end and not merely as a means, necessary for social stability. At the same time, the moral motives which contribute to convergence are not sufficient by themselves to pick out an acceptable result: more individual motives also enter into the process. So the principles converged on are right because they are acceptable—not generally acceptable because they are by independent standards morally right.

With regard to Rawls, I am referring here not to the reasoning inside the Original Position (from which moral motives are excluded), but to the wider argument within which the Original Position plays a subsidiary role, the argument that we should regulate our claims on our common institutions by the principles that *would* be chosen in the Original Position.

It may seem surprising to characterize Rawls's theory as a mixed theory, for in asking us all to enter the Original Position to choose principles of justice, he seems simply to be proposing a common standpoint of impartiality which guarantees that we will all approve of the same thing. But an important element of Rawls's argument is his reference to the strains of commitment: even in the Original Position, not knowing his own conception of the good, each person can choose only such principles of justice as he believes he will be able to live under and continue to affirm in actual life, when he knows the things about himself and his position in society that are concealed by the Veil of Ignorance.⁴ This introduces an element of convergence.⁵

True principles of justice are those which can be affirmed by individuals motivated both by the impartial sense of justice as fairness and by their fundamental personal interests, commitments, and conceptions of the

4. *A Theory of Justice*, p. 176.

5. This observation comes from Scanlon, "Contractualism and Utilitarianism," p. 126. Another interpretation has been suggested to me, however, by Warren Quinn. Perhaps the strains of commitment are simply strains it is unfair to impose on people, and this is shown by our unwillingness, in the Original Position, to choose principles which carry the risk of subjecting us to those strains. This would restore Rawls to the common standpoint category.

good. As with other convergence theories, it is not logically guaranteed that there are such principles, but if there are, they will be shaped by the requirement of such convergence, and their rightness will not be demonstrable independent of that possibility. That is what Rawls means by describing the theory as a form of constructivism.

The other position I would like to mention is T. M. Scanlon's. The criterion of moral wrongness he proposes in "Contractualism and Utilitarianism" employs the notion of a rule which no one could reasonably reject, provided he had among his motives a desire to live under rules which no one who also had that motive could reasonably reject. This notion can be used to construct a mixed theory of political legitimacy, where the common standpoint is represented by the said harmonious desire and convergence enters because what people can and cannot reasonably reject is determined in part by their other, divergent motives as well.

Note that the standard is not what principles or institutions people will *actually accept*, but what it would be unreasonable for them not to accept, given a certain common moral motivation in addition to their more personal, private, and communal ends. As with Rawls, there would be no standard of political legitimacy or rightness independent of this possibility of convergence.

It is a distinctive feature of both these theories that they set moral limits to the use of political power to further not only familiar social and economic interests, but also moral convictions. They are mixed theories based not just on a mixture of benevolence and self-concern, but on limits to the *content* of benevolence. They distinguish between the values a person can appeal to in conducting his own life and those he can appeal to in justifying the exercise of political power.

III

What I want to know is whether a position of this type is coherent and defensible. I am concerned less with the specific views of Rawls or Scanlon than with the fundamental moral idea behind such a position, which is that we should not impose arrangements, institutions, or requirements on other people on grounds that they could reasonably reject (where reasonableness is not simply a function of the independent rightness or wrongness of the arrangements in question, but genuinely depends on the point of view of the individual to some extent). The question is

whether an interpretation of this condition, or something like it, can be found which makes it plausible, despite an initial appearance of paradox.

It is not clear why the possibility of this kind of convergence should be the standard of political legitimacy at all. Why should I care whether others with whom I disagree can accept or reject the grounds on which state power is exercised? Why shouldn't I discount their rejection if it is based on religious or moral or cultural values that I believe to be mistaken? Why allow my views of the legitimate use of state power to become hostage to what it would be reasonable for *them* to accept or reject? Can't I instead base those views on the values that I believe to be correct?

An antiliberal critic of Rawls could put the point by asking why he should agree to be governed by principles that he would choose if he did not know his own religious beliefs, or his conception of the good. Isn't that being *too* impartial, giving too much authority to those whose values conflict with yours—betraying your own values, in fact? If I believe something, I believe it to be *true*, yet here I am asked to refrain from acting on that belief in deference to beliefs I think are false. What possible moral motivation could I have for doing that? Impartiality among persons is one thing, but impartiality among conceptions of the good is quite another. Why isn't true justice giving everyone the best possible chance of salvation, for example, or of a good life? In other words, don't we have to start from the values that we ourselves accept in deciding how state power may legitimately be used?

And it might be added, are we not doing that anyway if we adopt the liberal standard of impartiality? Not everyone believes that political legitimacy depends on this condition, and if we forcibly impose political institutions because they do meet it (and block the imposition of institutions that do not), why are we not being just as partial to our own values as someone who imposes a state religion? It has to be explained why this is a form of impartiality at all.

To answer these questions we have to identify the moral conception involved and see whether it has the authority to override those more particular moral conceptions that divide us—and if so, to what extent or in what respects. Rawls has said in a recent article that if liberalism had to depend on a commitment to comprehensive moral ideals of autonomy and individuality, it would become just “another sectarian doctrine.”⁶ The question is whether its claim to be something else has any foundation.

6. “Justice as Fairness: Political not Metaphysical,” *Philosophy & Public Affairs*, vol. 14, no. 3 (Summer 1985): 246.

IV

If liberalism is to be defended as a higher-order theory rather than just another sectarian doctrine, it must be shown to result from an interpretation of impartiality itself, rather than from a particular conception of the good that is to be made impartially available. Of course any interpretation of impartiality will be morally controversial—it is not a question of rising to a vantage point above all moral disputes—but the controversy will be at a different level.

In the versions of liberalism formulated by Rawls, Ronald Dworkin, and Bruce Ackerman, exclusion of appeal to particular conceptions of the good at the most basic level of political argument is one of the ways in which it is required that social institutions should treat people equally or impartially. But since this is much less obvious than the requirements of impartiality with respect to race, sex, social class, or even natural endowments, it requires a special explanation by reference to more fundamental moral ideas. The requirement itself may be modified as a result of the explanation: the proposal I end up with does not correspond perfectly to the views from which I begin.⁷

What form should impartiality take, in the special conditions which are the province of political theory? The specialness of the conditions is important. We have to be impartial not just in the conferring of benefits, but in the imposition of burdens, the exercise of coercion to ensure compliance with a uniform set of requirements, and the demand for support of the institutions that impose those requirements and exercise that coercion. (Even if the support is not voluntarily given, it will to some degree be exacted, if only through payment of taxes and passive conformity to certain institutional arrangements.) I suggest that this element of coercion imposes an especially stringent requirement of objectivity in justification.⁸

If someone wishes simply to benefit others, there can in my view be

7. Rawls himself treats these issues from a somewhat different point of view in the article just mentioned and in his H. L. A. Hart Lecture, "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies*, in press. I shall not try to compare our approaches here, except to say that mine seems to depend less on actual consensus, and seeks an independent moral argument that can be offered to those holding widely divergent values.

8. This would be implied, on one reading, by the second formulation of Kant's categorical imperative—that one should treat humanity never merely as a means, but always also as an end. If you force someone to serve an end that he cannot share, you are treating him as a mere means—even if the end is his own good, as you see it (*Foundations of the Metaphysics of Morals*, Prussian Academy edition, pp. 429–30). See Onora O'Neill, "Be-

no objection if he gives them what is good by his own lights (so long as he does them no harm by theirs). If someone wants to pray for the salvation of my soul, I can't really complain on the ground that I would rather he gave me a subscription to *Playboy*. The problem arises when he wants to force me to attend church or pay for its upkeep instead of staying home and reading *Playboy*. The real problem is how to justify making people do things against their will.

We can leave aside the familiar and unproblematic Hobbesian basis for coercion: I may want to be forced to do something as part of a practice whereby everyone else is forced to do the same, with results that benefit us all in a way that would not be possible unless we could be assured of widespread compliance. This is not really forcing people to do what they don't want to do, but rather enabling them to do what they want to do by forcing them to do it.

There are two other types of coercion whose justification seems clear: prevention of harm to others and certain very basic forms of paternalism. In both these types of case, we can make an impersonal appeal to values that are generally shared: people don't want to be injured, robbed, or killed, and they don't want to get sick. The nature of those harms and the impersonal value of avoiding them are uncontroversial, and can be appealed to to justify forcibly preventing their infliction. From an impersonal standpoint I can agree that anyone, myself included, should be prevented from harming others in those ways.

I can also agree that under some conditions I should be prevented from harming myself in those ways, as should anyone else. The clear conditions include my being crazy or seriously demented, or radically misinformed about the likely results of what I am doing. Paternalism is justified in such cases because when we look at them from outside, we find no impersonal value competing with the values of health, life, and safety. If I say I would want to be prevented from drinking lye during a psychotic episode, it is not because the dangers of internal corrosion outweigh the value of self-expression. We are not faced here with a conflict of impartialities.

But in other cases we are. I have gone over these familiar examples for the sake of contrast. There are cases where forcing someone to do

tween Consenting Adults," *Philosophy & Public Affairs*, vol. 14, no. 3 (Summer 1985): 261–63; and Christine M. Korsgaard, "The Right to Lie: Kant on Dealing with Evil," *Philosophy & Public Affairs*, vol. 15, no. 4 (Fall 1986): 330–34.

what he doesn't want to do is problematic—not just because he doesn't want to do it, but because of his reasons for not wanting to do it. The problematic cases are those in which either the impersonal value to which I appeal to justify coercion would not be acknowledged by the one coerced, or else it conflicts with another impersonal value to which he subscribes but which I do not acknowledge, though I would if I were he. In such a case it seems that I shall have failed in some respect to be impartial whether I coerce him or not.

An example may help. I am not a Christian Scientist. If I ask myself whether, thinking of it from outside, I would want to be forced to undergo medical treatment if I *were* a Christian Scientist and had a treatable illness, it is hard to know what to say. On the one hand, given my beliefs, I am inclined to give no impersonal weight to the reasons I would offer for refusing treatment if I were a Christian Scientist, and substantial weight to the medical reasons in favor of treatment. After all, if I believe Christian Science is false, I believe it would be false even if I believed it was true. On the other hand, I am inclined to give considerable impersonal weight to the broader consideration of not wanting others to ride roughshod over my beliefs on the subject of religion, whatever they may be.

Or suppose a Roman Catholic who believes that outside the Church there is no salvation asks himself whether if he were not a Catholic he would want to be given strong incentives to accept the Catholic faith, perhaps by state support of the Church and legal discouragement of other religions.⁹ He may be torn between the impartial application of his actual religious values and the impartial application of a more general value that he also holds, of not wanting other people's religious convictions to be imposed on him.

Which of these should dominate? It is really a problem about the interpretation of the familiar role-reversal argument in ethics: "How would you like it if someone did that to you?" The answer that has to be dealt with is "How would I like it if someone did *what* to me?" There is often more than one way of describing a proposed course of action, and much depends on which description is regarded as relevant for the purpose of moral argument.

9. "He would want," in these examples, is not a conditional prediction of what his desires would be in those circumstances; rather, it refers to what he *now* wants to happen should those counterfactual circumstances obtain—as in the statement "I would want to be restrained if I tried to drink lye during a psychotic episode." The "want" goes outside rather than inside the conditional.

V

This general problem is familiar in the context of interpreting universalizability conditions in ethics, but I am thinking of a particular version of it. Should a Catholic, considering restriction of freedom of worship and religious education for Protestants from an impersonal standpoint, think of it as

- (1) preventing them from putting themselves and others in danger of eternal damnation;
- (2) promoting adherence to the true faith;
- (3) promoting adherence to the Catholic faith;
- (4) preventing them from practicing their religion; or
- (5) preventing them from doing something they want to do?

For the purpose of argument, let me suppose that as far as he is concerned, he would be doing all of these things. The question then is, which of them determines how he should judge the proposed restriction from an impersonal standpoint?

The defense of liberalism depends on rejecting (5) as the relevant description, and then stopping with (4) rather than going on to (2) or (1). Roughly, the liberal position avoids two contrary errors. To accept as an authoritative impersonal value everyone's interest in doing what he wants to do, for whatever reason (that is, to rely on description [5]), is to give too much authority to other people's preferences in determining their claims on us. To accord impersonal weight to our own values, whatever they are (that is, to rely on descriptions [1] and [2]), is on the other hand not to give others enough authority over what we may require of them.

The characteristic of description (4) that the others lack is that it has some chance of both (a) being accepted by all parties concerned as a true description of what is going on (something it shares with [3] and [5]), and (b) being accorded the same kind of impersonal value by all parties concerned (something it shares, more or less, with [1] and [2]).

This makes (4) a natural choice for the morally relevant description which provides a basis for impartial assessment. However several objections have to be dealt with.

First, why isn't (5) at least as impartial as (4)? No one wants to be prevented from doing what he wants to do. Why can't we all agree that

impersonal value should be assigned to people's doing or getting what they want, rather than to something more restricted like freedom of worship?

But the fact is that we cannot. To assign impersonal value to the satisfaction of all preferences is to accept a particular view of the good—a component of one form of utilitarianism—which many would find clearly unacceptable and which they would not be unreasonable to reject.¹⁰ The objection to making it the basis of political legitimacy parallels the objection to making any other comprehensive individual conception of the good the basis of political and social institutions. A liberal who is a utilitarian should no more impose his conception of the good on others than should a liberal who is a Roman Catholic or a devotee of aesthetic perfection—that is, he should pursue the good so conceived for himself and others only within the limits imposed by a higher-order impartiality.

This reply, however, leads to another objection: If (5) is ruled out, why shouldn't (4) be ruled out for parallel reasons? The value of liberty seems more neutral than the value of preference-satisfaction, but perhaps it is not. The problem with assigning impersonal value to the satisfaction of preferences per se (description [5]) is that if a nonutilitarian is asked, "How would you like to be prevented from doing something you want to do?" he can reply, "That depends on what it is, and why I want to do it." A similar move might be made against assigning uniform impersonal value to religious toleration (description [4]). If a Catholic is asked, "How would you like to be prevented from practicing your religion?" why can't he reply, "That depends on whether it's the true religion or not"?

But in that case we are left with no version of what is going on that permits a common description resulting in a common impersonal assessment. If the description can be agreed on the assessment cannot be, and vice versa. Impartiality has been ruled out.

VI

A solution to this impasse requires that we find a way of being impartial not only in the allocation of benefits or harms but in their identification. The defense of liberalism requires that a limit somehow be drawn to appeals to *the truth* in political argument, and that a standpoint be found

10. See Scanlon, "Preference and Urgency."

from which to draw that limit. It may seem paradoxical that a general condition of impartiality should claim greater authority than more special conceptions which one believes to be, simply, true—and that it should lead us to defer to conceptions which we believe to be false—but that is the position.

Gerald Dworkin discusses this issue in an essay called “Non-neutral Principles.” He means principles like “The true religion should be taught in the public schools”—whose application to particular cases “is a matter of controversy for the parties whose conduct is supposed to be regulated by the principle in question.”¹¹

Dworkin argues that the liberal position has to rest on a skeptical epistemological premise—“that one cannot arrive at justified belief in religious matters.”¹² That, he claims, is the only possible justification for suppressing knowledge of the parties’ religious beliefs in Rawls’s Original Position—a condition essential to Rawls’s argument for tolerance. “If there were a truth and it could be ascertained,” asks Dworkin, “would those in the original position who contemplated the possibility that they would be holders of false views regard their integrity as harmed by choosing that it [sic] should be suppressed?”¹³

Rawls, however, claims that his position depends on no such skepticism.¹⁴ “We may observe,” he says, “that men’s having an equal liberty of conscience is consistent with the idea that all men ought to obey God and accept the truth. The problem of liberty is that of choosing a principle by which the claims men make on one another in the name of their religion are to be regulated. Granting that God’s will should be followed and the truth recognized does not as yet define a principle of adjudication.”¹⁵

He intends to put forward not a skeptical position about religious knowledge but a restriction on the sorts of convictions that can be appealed to in political argument. In his recent discussion he says: “It is important to stress that from other points of view, for example, from the point of view of personal morality, or from the point of view of members of an association, or of one’s religious or philosophical doctrine, various aspects

11. *Journal of Philosophy* 71 (1974): 492.

12. *Ibid.*, p. 505.

13. *Ibid.*, pp. 503–4.

14. *A Theory of Justice*, pp. 214–15.

15. *Ibid.*, pp. 217–18.

of the world and one's relation to it, may be regarded in a different way. But these other points of view are not to be introduced into political discussion."¹⁶

I believe that true liberalism requires that something like Rawls's view be correct, that is, that exclusion of the appeal to religious convictions not rely on a skeptical premise about individual belief. Rather it must depend on a distinction between what justifies individual belief and what justifies appealing to that belief in support of the exercise of political power. As I have said, liberalism should provide the devout with a reason for tolerance.

But is Rawls right? It is not sufficient to exclude knowledge of one's religious beliefs from the Original Position on the ground that this is needed to make agreement possible. The question is whether there is a viable form of impartiality that makes it possible to exclude such factors from the basis of one's acceptance of political institutions, or whether, alternatively, we have to give up the hope of liberal legitimacy.

I believe that the demand for agreement, and its priority in these cases over a direct appeal to the truth, must be grounded in something more basic. Though it has to do with epistemology, it is not skepticism but a kind of epistemological restraint: the distinction between what is needed to justify belief and what is needed to justify the employment of political power depends on a higher standard of objectivity, which is ethically based.

The distinction results, I believe, if we apply the general form of moral thought that underlies liberalism to the familiar fact that while I cannot maintain a belief without implying that what I believe is true, I still have to acknowledge that there is a big difference, looking at it from the outside, between my believing something and its being true.

On the view I would defend, there is a highest-order framework of moral reasoning (not the whole of morality) which takes us outside ourselves to a standpoint that is independent of who we are. It cannot derive its basic premises from aspects of our particular and contingent starting points within the world, though it may authorize reliance on such specialized points of view if this is justified from the more universal perspective. Since individuals are very different from one another and must lead complex individual lives, the universal standpoint cannot reasonably

16. "Justice as Fairness: Political not Metaphysical," p. 231.

withhold this authorization lightly. But it is most likely to be withheld from attempts to claim the authority of the impersonal standpoint for a point of view that is in fact that of a particular individual or party, against that of other individuals or parties who reject that point of view. This happens especially in the political or social imposition of institutions that control our lives, that we cannot escape, and that are maintained by force.

Morality can take us outside ourselves in different ways or to different degrees. The first and most familiar step is to recognize that what we want should not depend only on our own interests and desires—that from outside, other people's interests matter as much as ours do, and we should want to reconcile our interests with theirs as far as possible. But liberal impartiality goes beyond this, by trying to make the epistemological standpoint of morality impersonal as well.

The idea is that when we look at certain of our convictions from outside, however justified they may be from within, the appeal to their truth must be seen merely as an appeal to our beliefs, and should be treated as such unless those beliefs can be shown to be justifiable from a more impersonal standpoint. If not, they have to remain, for the purpose of a certain kind of moral argument, features of a personal perspective—to be respected as such but no more than that.

This does not mean we have to stop believing them—that is, believing them to be *true*. Considered as individual beliefs they may be adequately grounded, or at least not unreasonable: the standards of individual rationality are different from the standards of epistemological ethics. It means only that from the perspective of political argument we may have to regard certain of our beliefs, whether moral or religious or even historical or scientific, simply as someone's beliefs, rather than as truths—unless they can be given the kind of impersonal justification appropriate to that perspective, in which case they may be appealed to as truths without qualification.

We accept a kind of epistemological division between the private and the public domains: in certain contexts I am constrained to consider my beliefs merely as beliefs rather than as truths, however convinced I may be that they are true, and that I know it. This is not the same thing as skepticism. Of course if I believe something I believe it to be true. I can recognize the possibility that what I believe may be false, but I cannot with respect to any particular present belief of mine think that possibility is realized. Nevertheless, it is possible to separate my attitude toward my

belief from my attitude toward the thing believed, and to refer to my belief alone rather than to its truth in certain contexts of justification.

The reason is that unless there is some way of applying from an impersonal standpoint the distinction between my believing something and its being true, an appeal to its truth is equivalent to an appeal to my belief in its truth. To show that the two are not equivalent I would have to show how the distinction could be applied, in political argument, in a way that did not surreptitiously assume my personal starting point—by, for example, defining objective truth in terms of the religion to which I adhere, or the beliefs I now hold. I have to be able to admit that I might turn out to be wrong, by some standards that those who disagree with me but are also committed to the impersonal standpoint can also acknowledge. The appeal to truth as opposed to belief is compatible with disagreement among the parties—but it must imply the possibility of some standard to which an impersonal appeal can be made, even if it cannot settle our disagreement at the moment.

VII

The real difficulty is to make sense of this idea, the idea of something which is neither an appeal to my own beliefs nor an appeal to beliefs that we all share. It cannot be the latter because it is intended precisely to justify the forcible imposition in some cases of measures that are not universally accepted. We need a distinction between two kinds of disagreement—one whose grounds make it all right for the majority to use political power in the service of their opinion, and another whose grounds are such that it would be wrong for the majority to do so.

For this purpose we cannot appeal directly to the distinction between reasonable and unreasonable beliefs. It would be an impossibly restrictive condition on political power to say that its exercise may be justified only by appeal to premises that others could not reasonably reject (though less restrictive than the condition that the premises be *actually* accepted by all). If the impossibility of reasonable rejection comes in at all, it must come in at a higher level, in justifying some less stringent standard for the justification of particular employments of political power.

Reasonable persons can disagree not only over religious doctrines and ultimate conceptions of the good life, but over levels of public provision of education and health care, social security, defense policy, environ-

mental preservation, and a host of other things that liberal societies determine by legislative action. What distinguishes those disagreements from the ones where liberalism rejects majority rule? When can I regard the grounds for a belief as objective in a way that permits me to appeal to it in political argument, and to rely on it even though others do not in fact accept it and even though they may not be unreasonable not to accept it? What kinds of grounds must those be, if I am not to be guilty of appealing simply to my belief, rather than to a common ground of justification?

By a common ground I do not mean submerged agreement on a set of premises by which the claim could in principle be settled in a way that all parties would recognize as correct. Public justification in a context of actual disagreement requires, first, preparedness to submit one's reasons to the criticism of others, and to find that the exercise of a common critical rationality and consideration of evidence that can be shared will reveal that one is mistaken. This means that it must be possible to present to others the basis of your own beliefs, so that once you have done so, *they have what you have*, and can arrive at a judgment on the same basis. That is not possible if part of the source of your conviction is personal faith or revelation—because to report your faith or revelation to someone else is not to give him what you have, as you do when you show him your evidence or give him your arguments.

Public justification requires, second, an expectation that if others who do not share your belief are wrong, there is probably an explanation of their error which is not circular. That is, the explanation should not come down to the mere assertion that they do not believe the truth (what you believe), but should explain their false belief in terms of errors in their evidence, or identifiable errors in drawing conclusions from it, or in argument, judgment, and so forth. One may not always have the information necessary to give such an account, but one must believe there is one, and that the justifiability of one's own belief would survive a full examination of the reasons behind theirs. These two points may be combined in the idea that a disagreement which falls on objective common ground must be open-ended in the possibility of its investigation and pursuit, and not come down finally to a bare confrontation between incompatible personal points of view. I suggest that conflicts of religious faith fail this test, and most empirical and many moral disagreements do not.

The large question I have not addressed is whether there are significant differences of fundamental moral opinion which also fail the test—and if so, how the line is to be drawn between those cases and others, which fall into the public domain. My sense is that the sort of liberal restraint I have been describing should apply, in the present state of moral debate, to certain matters besides the enforcement of religious views. I would include abortion, sexual conduct, and the killing of animals for food, for example. Admittedly, if we refrain from enforcing any moral position on these matters, it has the same effect as we would get if the law were based on the positive position that whatever people choose to do in these areas is permissible. But the two justifications for restraint are very different, and if I am right, the first is available to those who may not accept the second.

To defend this claim would require serious analysis of the issues. I would try to argue that such disagreements come down finally to a pure confrontation between personal moral convictions, and that this is perceptibly different from a disagreement in judgment over the preponderant weight of reasons bearing on an issue. Of course there are reasons and arguments on both sides, but they come to an end in a different and more personal way than arguments about welfare payments or affirmative action, for example. This does not mean that such disagreements cannot move into the public category through further development of common grounds of argument. But at any given stage, the justifications on opposite sides of an issue may come to an end with moral instincts which are simply internal to the points of view of the opposed parties—and this makes them more like conflicts of personal religious conviction.

I realize that this is vague. It also raises a further problem: Why can't the same be said of some fundamental issues that clearly fall within the public domain? Aren't people's disagreements about the morality of nuclear deterrence and the death penalty just as ultimate and personal as their disagreements over abortion?

The question requires much more discussion than I can give it here. Briefly, these issues are poor candidates for liberal toleration because they are not matters of individual conduct, which the state may or may not decide to regulate. So no conclusion about what the state should do can be derived from the refusal to justify the use of state power by reference to any particular position on the moral issue. The application of the death penalty or the possession by the military of nuclear weapons cannot be

left to the private conscience of each individual citizen: the state *must* decide.¹⁷

The same question might also be raised about fundamental issues of social justice—the conflicts of economic liberals with radical libertarians, or with radical collectivists who regard individualism as an evil. Here I would give a more complex answer. I do not believe these moral oppositions are as “personal” as the others: even radical disagreements about freedom and distributive justice are usually part of some recognizable public argument. On the other hand, social provision is not so essentially the function of the state as is warfare: voluntary collective action is certainly possible. So to the extent that some of these disagreements are like religious disagreements, there would be a place for liberal toleration in the economic sphere—for example, toleration of private ownership even by those who think it is an evil.

VIII

It is important to stress that the nondogmatic moral disagreements which fall within the public domain may nevertheless be irresolvable in fact. That there is common ground does not mean that people will actually reach agreement, nor does it mean that only one belief is reasonable on the evidence. I may hold a belief on grounds that I am willing to offer in objective justification, suitable for the public domain, while acknowledging that others who consider that justification and yet reject the belief are not being irrational or unreasonable, though I think they are wrong.

The idea is that in such a case there is a common reason in which both parties share, but from which they get different results because they cannot, being limited creatures, be expected to exercise it perfectly.¹⁸ Differences in evidence result from the different experiences people have had and the different testimony and arguments to which they have been exposed. Even more important are differences in assessment of the evidence and the arguments, and these inevitably involve differences of judgment. In most significant cases reasonable belief is not strictly determined by the grounds that can be explicitly offered: that is why there can be reasonable disagreement—disagreement in judgment—even

17. Conscientious objection is another matter: its legal acceptance can probably be explained by the liberal principle I am defending.

18. This resembles the conception of “free public reason” that Rawls introduces in section II of “The Idea of an Overlapping Consensus.”

among those who are in general agreement about what kinds of grounds are relevant to the matter at hand, and what the evidence and arguments in the case are. (In some cases they may agree more precisely on what evidence not now available would demonstrate decisively which of them is right; but this need not be so—either in factual matters, if they are sufficiently general, or in questions of value.)

I believe—though I wish I could express it more clearly than this—that the parties to such a disagreement can think of themselves as appealing to a common, objective method of reasoning which each of them interprets and applies imperfectly. They can therefore legitimately claim to be appealing not merely to their personal, subjective beliefs but to a common reason which is available to everyone and which can be invoked on behalf of everyone even though not everyone interprets its results in the same way.

There is something of a paradox here: How can I believe something if I think others presented with the same grounds could reasonably refuse to believe it? Doesn't this mean I believe it but think also that it would be reasonable for *me* not to believe it—and is that possible?

Well, perhaps if I actually think that as things are and as I am, it would be reasonable for me not to believe *p*, I cannot believe it. But I may think it would be reasonable for someone else either to believe or not to believe *p* on the evidence available to me that I can specifically identify, yet find that I do believe it. Perhaps in that case I must also judge that it would not be reasonable for *me*, as I am, not to believe it on that evidence—though I don't know why. This would be true whether my grounds are highly personal, or impersonal and objective. There may be people enough like me in whatever determines judgment so that if I judge that they could reasonably disbelieve *p*, I cannot reasonably believe it. But if there is such a class of persons, it is not coextensive with my political community, and cannot determine the standard of public justification.

We therefore have to recognize that there can be enough considerations on more than one side of a question in the public domain so that reasonable belief is partly a matter of judgment, and is not uniquely determined by the publicly available arguments. But I do not believe this makes the distinction between a disagreement in the common, public domain and a clash between irreconcilable subjective convictions too rarefied to be of political significance. Judgment is not the same as faith, or pure moral intuition.

Admittedly it will be controversial in many cases whether an appeal to

truth collapses into an appeal to belief—some people might try to deny objective, public status to scientific methods that most of us would take as clear cases of impersonal verification, whereas others might claim objective status for certain theological arguments or forms of revelation. Religious believers no doubt vary in this respect: some would deny that belief is a matter of reasonable judgment; but others would presumably claim that the truth of their doctrines is supported by objective reasons and evidence of a kind available to all. These issues have to be argued out one by one; I do not have a general test of public epistemological justification—which is not, I repeat, the same as intersubjective agreement. But I believe that the basic idea remains intelligible even if its application is problematic.¹⁹ The appeal to truth in political argument requires an objective distinction between belief and truth that can be applied or at least understood from the public standpoint appropriate to the argument in question. Disagreements over the truth must be interpreted as resulting from differences of judgment in the exercise of a common reason.

Otherwise the appeal to truth collapses into an appeal to what I believe, and belief carries a very different kind of weight in political arguments. The fact that someone has certain religious or moral convictions has its own considerable importance, from an impersonal standpoint, in determining how he should be treated and what he should do, but it is not the same as the importance that the truth of those convictions would have, if it could be admitted as a premise in political argument. There would be no inclination to accept impersonally a general right to try to use state power to limit the liberty of others in order to force them to live as I *believe* they should live. None of us would be willing to have our liberty limited by others on such grounds. But if I am right, the appeal to the truth of a certain religion to justify enforcement collapses into just such an appeal to belief.

We can now return to the distinction between (4) and (5), which was left hanging at the end of Section V. Why is liberty a more neutral standard of evaluation than preference-satisfaction? I have tried to explain why a believer, if asked, “How would you like to be prevented from practicing your religion?” cannot legitimately reply, “That depends on whether it’s

19. It may be that further development of this idea would also exclude disagreements based on exceptionally subtle and difficult forms of reasoning, whose results are not testable in any other way. But I shall not try to pursue the suggestion here.

the true religion or not.” But why doesn’t the same argument rule out the corresponding reply to the question “How would you like to be prevented from doing something you want to do?”—namely, the reply “That depends on what it is, and why I want to do it”?

I believe this reply is not in general ruled out, because the judgments appealed to in following it up need not be pure personal beliefs, but may claim the kind of objectivity and admit the kind of public justification which allows them to be used in political argument. Of course sometimes they will turn out to be inadmissibly private or parochial, but they need not be: it can be argued that the satisfaction of some desires is valueless or harmful, by public and objective standards. The resistance to preference-satisfaction as a public measure of value can be objective in a way in which the resistance to religious liberty cannot be.

IX

Even if some form of liberal impartiality can be defended in this way, it has to contend with the persistence of those personal convictions which it excludes from political argument, or admits only under strict constraints. This is a general problem in ethics: the impersonal standpoint does not make personal motives go away, and in restricting their operation it may put itself under great strain.

It is difficult to decide how much weight the liberal version of impartiality can bear when it comes into conflict not only with purely personal interests but with the impartial application of more particular values that cannot be generally acknowledged. From an impersonal standpoint, how strongly is my commitment to religious toleration prepared to resist the value of health, when applied to the case of a Christian Scientist? And how strongly can the impersonal value of not being prevented from practicing one’s religion resist the less impartial but still impersonal interest of a Catholic in the salvation of souls?

In such cases, the condition of public justification reverses the relative importance possessed by different values in the private domain. To a believer, salvation is more important than liberty, yet in political justification he may not appeal to the importance of salvation to justify the restriction of liberty, because liberty is a publicly admissible value and salvation is not.

One might ask whether the standard of liberal impartiality itself meets

the condition of impersonal justifiability necessary for admission to the public domain. I believe that it does, because it is defensible, and attackable, by arguments of the right type, some of which I have tried to formulate. And I would add that its claim to objective status is not undermined by the fact that some people may not accept it because they reject the requirement of impersonal justifiability itself. Even those who accept the requirement may disagree about how it is to be applied, but that is another matter.

Liberalism is a demanding doctrine. Still, it is qualified somewhat by a division of the moral territory. Its relatively stringent impartiality applies only to uniform and involuntary social and political institutions. One might ask why. Why doesn't the same standard apply to the justification of all action that has an effect, even indirectly, on the interests of others? Part of the answer, already referred to above, is that when we force people to serve an end that they cannot share, and that we cannot justify to them in objective terms, it is a particularly serious violation of the Kantian requirement that we treat humanity not merely as a means, but also as an end. The justification of coercion must meet especially stringent standards.

The other answer I would give is that we have here an instance of the moral division of labor between society and the individual, corresponding to the division of standpoints in each of us.²⁰ We literally externalize the demands of the impersonal standpoint by placing in the hands of social and political institutions the task of enforcing the most general claims for assistance and restraint of our fellow human beings. Subject to our contribution to the support of those institutions, this ideally should leave us free to lead our individual lives in obedience to more personal attachments, commitments, and crotchets. It would be for most of us intolerably intrusive to have to live by a morality that required us to justify everything we did, insofar as it affected others, in terms that could be defended from an impersonal standpoint.

The liberal restriction on what kind of thing we may appeal to does not apply to the justification of action generally. It leaves individuals free to regulate their own personal lives (and to a lesser extent, though this is a problematic intermediate case, the lives of their children) according

20. See T. Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986), pp. 188, 206–7.

to their full personal conceptions of how life should be lived. And it also, importantly, leaves them free to refer to their own conceptions in determining how they will benefit others or help them avoid harm or misfortune, so far as this goes beyond what is morally or legally obligatory.

Most importantly of all, this extends to the domain of political activity which in a democracy is left open to the pursuit by individuals of their goals and interests—the large range of legislative and communal issues that are put under the control of the preferences of the majority, or of coalitions among minorities. In these cases it is not that we give the authority of the impersonal standpoint to the point of view of the winning side. Rather, on a certain range of questions, we regard the balancing of all sorts of personal preferences or opinions against one another as impersonally acceptable.

Liberalism certainly does not require us to run our lives, even our lives as political beings, on radically impartial principles. But it does require that the imposed framework within which we pursue our more individual values and subject ourselves to the possibility of control by the values of others be in a strong sense impartially justifiable. That means it must bear up under substantial moral and motivational strain.

The real issue is not just relative strength but relative priority. Liberal impartiality is not in competition with more specific values as one conception of the good among others. If it were, it would be unintelligible, for it would have to advocate impartiality between itself and alternative conceptions, and that would generate a meaningless regress of higher-order standpoints in search of common ground between liberalism and more sectarian views. But liberalism does not require its adherents to step outside liberalism itself to compromise with antiliberal positions. It purports to provide a maximally impartial standard of right which has priority over more specialized conceptions in determining what may be imposed on us by our fellow humans, and vice versa. (This is not just the familiar doctrine of the priority of the right over the good, since some of the specialized views that are subordinated by liberalism may themselves be conceptions of right.)

The real problems with the position arise in its interpretation, not from the fact that it is controversial. It must distinguish two types of grounds for belief, neither of which shows that those who reject the belief are necessarily unreasonable, but one of which justifies the exercise of po-

litical power and the other not—and it must explain why the distinction has this consequence, and how it is to be applied. Of course liberal impartiality claims for itself an authority that will not in fact be universally accepted, and therefore the justifications it offers for resisting the imposition of more particular values in certain cases will not secure actual universal agreement. But since it is a substantive moral position, that is not surprising.