

**THE ESTRANGED SELF**  
**ALIENATION, PERSONHOOD AND POLITICS IN JOHN RAWLS**

by

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**B.A., University of British Columbia, 2004**

**A THESIS SUBMITTED IN PARTIAL FULFILMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF ARTS**

in

**The Faculty of Graduate Studies**

**(Political Science)**

**UNIVERSITY OF BRITISH COLUMBIA**

**March 2006**

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## ABSTRACT

This paper argues that John Rawls presents two conflicting notions of the self in his theory of justice, one political, the other metaphysical. Though Rawls claims that his theory of justice utilizes and protects his political notion of the self, his work in fact relies upon the metaphysical persona. Rawls's political conception of the self articulates a socially, historically and civically grounded view of the person and, as I argue, is a productive notion of personhood for political theory. In contrast, his metaphysical entity bears no resemblance to concrete human selves, and is therefore a highly problematic element of his work. Standing critiques of Rawls have located the metaphysical or unencumbered notion of the self in his works, and have presented challenging arguments against it. However, Rawls's political conception of the self remains largely unexamined by his critics. The lack of attention given to his political self is due, as I argue, to Rawls's inability to support or develop this persona within his own project. I suggest that the conceptual frameworks Rawls utilizes to build his theory of justice, namely the original position, the overlapping consensus, and public reason, effectively strip down his political conception of the self and replace it with an abstract entity. My analysis employs Karl Marx's notion of alienation and his socio-historical approach to politics. I use Marx's conception of alienation to identify what happens to political selves within Rawls's project. Further, I identify similarities between Marx's view of humanity and Rawls's political self concerning their political implications, and questions of class and social justice. In essence, I argue that Rawls's theory of justice opposes his valuable but submerged theory of the person; his approach to obtaining a just society violates the political selves that he claims to defend. However, while his theory of justice cannot be sustained for these reasons, Rawls's theory of the self should be recovered and its relevance to discourses of justice re-assessed. As a critique of Rawls's failure to support his theory of the self, this paper, I hope, may be an initial step towards such a recovery.

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## 1 INTRODUCTION

Four decades after its publication, the presence of John Rawls's *A Theory of Justice* can still be felt in contemporary discourses of justice and democracy. Published in 1971, Rawls's seminal work was thought to have effectively re-invigorated political philosophy in our time.<sup>1</sup> It restored to the fore of political debate an interest in the idea of persons as autonomous moral selves, and in the principles of a just society.<sup>2</sup> The depth and expanse of Rawls's work has provided his contemporaries and later generations of political theorists with ample material to work with. From liberal philosophy to debates over economic justice, gender and the family, civil disobedience or a patient's right to die, Rawls's theory of justice has been invoked in relation to a number of issues and has provided a fruitful source of analysis.

The aim of *Theory*, and of Rawls's later works, is to advocate a political conception of justice as fairness. The primary focus of justice, for Rawls, is the "basic structure of society", referring to the ways in which "major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation."<sup>3</sup> The basic structure is itself governed by fundamental principles of justice, which Rawls argues must be chosen by rational persons under conditions which are fair. According to Rawls, fair conditions can be established in an initial situation of equality termed the "original position", in which parties are equally represented as moral persons.<sup>4</sup> In this position, the equal status of moral persons is secured by a veil of ignorance, which seeks to model conditions of equal

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<sup>1</sup> Peter Laslett, ed., *Philosophy, Politics and Society*, (New Haven: Yale University Press, 1979), 1.

<sup>2</sup> Jürgen Habermas, "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *Journal of Philosophy* 92, no. 3 (1995): 109.

Martha Nussbaum, "The Enduring Significance of John Rawls," in the University of Chicago Law School's *The Chronicle of Higher Education*, July 20, 2001, <http://www.law.uchicago.edu/news/nussbaum-rawls.html> (accessed Feb 12, 2003).

<sup>3</sup> John Rawls, *A Theory of Justice*, [TJ] rev ed., (Cambridge: Harvard University Press, 2003), 6.

<sup>4</sup> *Ibid.*, 104.

rationality, freedom and ignorance of particular situations.<sup>5</sup> The veil is meant to eliminate the particular knowledge of one's society, oneself and of others that can lead to arbitrary or prejudicial reasoning.<sup>6</sup> These restrictions, Rawls believes, are reasonable impositions upon arguments for principles of justice if we want the outcomes of such exchanges to be legitimate. Thus, Rawls's conception of justice as fairness derives its authority from his assertion that its principles are chosen in an initial situation that is fair.<sup>7</sup> In this position, Rawls suggests that two principles of justice are chosen: the first guarantees equal basic liberties while the second advocates the distribution of inequalities to the benefit of all, particularly the least advantaged.<sup>8</sup> *Theory* thus lays out the basic framework for Rawls's argument, outlining how fair principles of justice can best be chosen, and what the content of such principles would be. It is primarily a work of legal and political philosophy that is both highly abstract and idealized in nature.<sup>9</sup>

Rawls's later works, particularly *Political Liberalism*, aim to carry on and expand the project begun in *Theory* by addressing the political realities of modern societies. In particular, *Political Liberalism* takes into account what Rawls calls the fact of pluralism, which refers to the different comprehensive religious, moral and philosophical doctrines people adhere to within contemporary democracies. This work discusses how such societies can continue to uphold the principles of justice formulated in *Theory*, and how they may address common political questions from different and often divergent positions.<sup>10</sup> In trying to both expand and substantiate his work in *Theory*, Rawls's *Political Liberalism* aims to answer the question: how can diverse peoples with differing interests and beliefs live together and affirm a

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<sup>5</sup> Ibid., 11, 102-129.

<sup>6</sup> Ibid., 104.

<sup>7</sup> Ibid., 11.

<sup>8</sup> Ibid., 53.

<sup>9</sup> John Rawls, *Political Liberalism*, [PL] (New York: Columbia University Press, 1993), xv, xvi.

<sup>10</sup> Ibid., xvi-xvii.

political conception of justice as fairness?<sup>11</sup> In response, Rawls suggests that an overlapping consensus of reasonable comprehensive doctrines regarding the principles of justice can work to stabilize societies, while the use of public reason in deliberative processes can help guide how we speak to one another about political questions.<sup>12</sup>

My critique focuses upon an analysis of Rawls's theory of the self, and its positioning within his overall project. This theory, which Rawls calls the "political" idea of personhood, suggests that individuals possess two moral powers.<sup>13</sup> The first power refers to a person's sense of justice, referring to their capacity to take into account the goods of others when addressing political questions.<sup>14</sup> The second power involves a person's ability to form a conception of the good, a conception which indicates what her/his life-plans are.<sup>15</sup> My analysis of these powers, and the moral selves that they constitute, involves an examination of the deliberative and representative elements of Rawls's work – elements which can be shown to be essential to his theory of the person. While Rawls is not formally a theorist of deliberative or representative democracy, his works certainly touch upon both issues in important ways. The underlying effect of Rawls's arguments in *Theory* is to suggest that a basic structure of society governed by justice as fairness will be the best representation of the goods citizens seek to achieve in modern democratic societies. The original position presents an idealized sphere in which persons can exchange arguments for conceptions of justice under conditions that are fair. *Theory* puts forth this position as a legitimate device through which to obtain just principles, because its conditions help to ensure the

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<sup>11</sup> Ibid., xvii.

<sup>12</sup> Ibid., 59-62, 134, 220.

<sup>13</sup> John Rawls, *Justice as Fairness*, [JAF] (Cambridge: Harvard University Press, 2001), 19.

<sup>14</sup> Ibid., 18-19.

<sup>15</sup> Ibid., 19-23.

representation of parties as free and equal moral selves.<sup>16</sup> *Political Liberalism* in turn tries to defend justice as fairness within the political context of existing (and non-idealized) pluralist societies. Here Rawls tries to explicate how different citizens can effectively deliberate on relevant political issues without endangering their society's stability, or abandoning the principles of justice as fairness. The overlapping consensus and public reason are thought to be legitimately fair and representative of citizens insofar as the conditions they impose upon actual political deliberations are fair, and also secure the status of persons as free and equal moral selves. Thus, Rawls does invoke deliberative and representative politics. This engagement is in part necessitated by Rawls's interest in promoting justice as fairness as a politics which derives from his account of moral persons. His account describes the attributes which citizens in a democracy are thought to possess, and which democratic societies are meant to help protect and develop.

Rawls's conception of persons is therefore the point of departure for his theory of justice. The legitimacy of his theory rests upon the degree to which moral selves are in fact represented, and their powers enabled, throughout the execution and conclusion of his engagement with justice. It is upon this point that my critique of Rawls's theory will rest. I will argue that the concepts through which Rawls derives and maintains justice as fairness, specifically the original position, the overlapping consensus and his idea of public reason, are critically flawed because they do not adequately support his theory of the self. This critique extends also to the principles of justice which are the foundation of justice as fairness. Rather than incorporating and serving Rawls's theory of the person, these processes and principles replace this rich conception of the person and thus citizen with a metaphysical idea of the self. This self shares none of the characteristics that Rawls's moral selves

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<sup>16</sup> Ibid., 17, 104, 122.

possess, yet it is this abstract persona that Rawls's theory of justice builds upon and in fact creates. Notably, many critics of Rawls have identified and critiqued this metaphysical actor and have challenged Rawlsian theory on these grounds. However, this paper departs from such criticisms by suggesting that while Rawls's theory ultimately builds upon the premise of a metaphysical persona, there is another, more defensible conception of the self to be found in his thought, that is, Rawls's conception of moral selves. In other words, Rawls's works contain two conflicting notions of personhood, a conflict which undermines the coherence of his project. Rawls's metaphysical self has been rendered illegitimate by his critics because of its abstract and dehistoricized nature. Importantly, his political conception of moral selves escapes these problems. A retrieval of this moral person reveals her/him to be socially, historically and politically grounded, and therefore provides a far more productive account of personhood for discourses of justice and democracy. This conception of the self is, however, lost within Rawls's own project and has not been fully examined either by Rawls or by his critics. This paper therefore aims to develop and refine this conception of the self out of and against his theory of justice.

To develop Rawls's theory of moral selves I employ both a Marxist view of the self and Marx's concept of alienation. Marx's historically and socially situated view of humanity, a view which informs his notion of alienation, provides a useful framework within which to examine Rawls's political self for several reasons. A development of the Rawlsian self shows her/him to be a political and intellectual labourer, who reflects elements of Marx's view of humanity. Both views of the self are rooted in socio-historical experience and awareness, and both deploy a critical view of inequality and social justice. I bring out this latter connection in my critique of Rawls's principles of justice, and the liberal scheme of equal formal liberties and state welfare which they organize. Such parallels show the Rawlsian self



to be something quite distinct from the metaphysical entity that Rawls's critics have isolated in his works. These parallels are also significant given Rawls's status as a pre-eminent liberal thinker. Due to the labouring capacities of the Rawlsian self, Marx's concept of alienation is a useful way of identifying what happens to moral selves in Rawls's just society. Applied to Rawls, I use alienation to describe the estrangement of moral persons from their social, political and individual capacities. Persons are alienated from the attributes that, according to Rawls's theory of the self, make them moral beings and define their status as free and equal persons in political society. Marx's theory of alienation enables me to specify how those elements of the Rawlsian self are undermined and alienated through Rawls's project.

In essence this paper maintains that Rawls's theory of justice opposes his valuable but submerged theory of the person; his approach to obtaining a just society violates the moral selves that such a society is meant to defend. Consequently, Rawlsian justice, and the basic structure it organizes, cannot claim to be legitimately representative of citizens in democratic societies. However, while his theory of justice cannot be sustained for these reasons, Rawls's theory of the self is one which should be recovered and its relevance to discourses of justice re-assessed. As this paper focuses upon a critique of Rawls's failure to support his theory of the self, I hope it may be an initial step towards such a recovery.

The next chapter outlines some existing critiques of Rawls's metaphysical self, particularly as they relate to the deliberative and representative components of his work. It also introduces Rawls's theory of the person. The third chapter provides a critique of the original position, the overlapping consensus and public reason, outlining the ways in which Rawls's moral persona is alienated. Chapter four extends this critique to Rawls's principles of justice, and aims to show that, as with the processes that produce and maintain them, they

fail to accommodate the goods of moral selves. Having presented this critique, I suggest some of the potential applications of Rawls's theory of the self in the concluding chapter.

## **2 THE METAPHYSICAL SELF, ITS CRITICS, AND RAWLS'S THEORY OF THE SELF**

Before assessing Rawls's moral self and how it drops out of his theory of justice, it is worth reviewing standing critiques of the metaphysical self in Rawls's works. While I am concerned to locate and identify the Rawlsian self as something independent of the metaphysical entity these criticisms describe, my critique of Rawls's theory of justice and its alienation of moral selves certainly acknowledges, and in some ways derives from, these critical analyses. This chapter is therefore primarily introductory. It first outlines existing arguments against the metaphysical character operating in Rawls's works. Following this, I describe Rawls's political conception of moral selves, a conception that I argue Rawls fails to support or develop within his project. It is this theory of the self which I hope to recover from Rawls's work, and to expand upon throughout the rest of this paper.

### **2.1 Critics of the Self and Political Deliberation in Rawlsian Theory**

Critics of Rawls's metaphysical self have shown this entity to be the result of the conditions Rawls imposes upon informational access and discursive exchanges between persons within his theory of justice. They have been especially interested in the deliberation between parties in the original position, and have often focussed upon this situation when discussing Rawls's abstract persona. While Rawls does not overtly aim to offer a deliberative theory through the original position, he certainly assumes that discursive exchanges occur here.<sup>17</sup> He suggests, for example, that we can imagine this position as one in which "parties

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<sup>17</sup> Rawls, TJ, 119, 120.

are required to communicate with each other through a referee...[who] forbids the attempt to form coalitions," and mediates the terms of exchange.<sup>18</sup> Thus, the original position is offered as a medium for controlled discursive exchange between persons. Rawls also suggests that the veil of ignorance, acting as a type of referee, ensures that "contractees" cannot tailor principles to their advantage since they do not know what their interests are.<sup>19</sup> His reference to parties as contractees suggests that there must be some form of intersubjective exchange in the original position, between persons who try to reach an *agreement* over principles of justice. Rawls values the original position as a medium for exchange because he believes that it will produce a conception of justice that is both universally held and ahistorical.<sup>20</sup> Because the veil prevents parties from making arguments which convey interests that are arbitrary or prejudicial towards others, Rawls suggests that this position should enable any person, at any time, to "simulate the deliberations" of parties in *Theory* and obtain the *same* result.<sup>21</sup> As he argues, since "the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments," therefore the "the veil...makes possible a unanimous choice of a particular conception of justice."<sup>22</sup> Thus, the extension of the veil over parties' knowledge of personal and social specifics, such as class, race or generation, allow us to "view the agreement in the original position from the standpoint of one person selected at random."<sup>23</sup> In essence, the original position is created to ensure that deliberation between parties reaches a unanimous agreement on the principles of justice. This agreement exists independently of the experiences, contexts and information that Rawls views as irrelevant to

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<sup>18</sup> Ibid., 120.

<sup>19</sup> Ibid., 121.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., 119.

<sup>22</sup> Ibid., 120, 121.

<sup>23</sup> Ibid.

conceptions of justice. The veil is used to idealize exchanges between parties by removing the complex personal and social material which normally help to define and inform persons.

Rawls's idealization of deliberation between parties in this way is quite problematic. His effort to secure an idealized exchange requires him to produce and rely upon a metaphysical entity. As his critics point out, the restrictive conditions Rawls imposes upon information and arguments within the original position have the effect of reducing multiple, historically embedded discursive parties to a single archetypal self. Though Rawls views this reduction as an indicator of unanimity, his critics have shown that it is in fact an indication of the illegitimate conditions the original position imposes upon parties who enter into it. In "The Generalized and the Concrete Other," Seyla Benhabib argues that the veil of ignorance replaces the plurality of perspectives which accompany concrete selves with a single perspective about justice that can only come from a generalized notion of the self.<sup>24</sup> A generalized notion of the self has no independent interests, ideas, or experiences – it has no character, and thus can offer no judgements or interpretations *particular* to itself. A concrete self, on the other hand, is composed of those differential elements of personhood, and is thus capable of representing to others her/his particular interests, needs, perspectives and so on. It is only through knowledge of plural, concrete selves that 'the other' comes into existence. However, as Jurgen Habermas has noted, Rawls "imposes a common perspective on parties...and thereby neutralizes the multiplicity of interpretive perspectives from the outset."<sup>25</sup> That neutralization in turn prevents any legitimate agreement (or disagreement) between concrete selves from taking place, producing instead the calculated determination of a generalized, highly abstract entity. Benhabib argues that this generalized persona is

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<sup>24</sup> Seyla Benhabib, "The Generalized and the Concrete Other," in Situating the Self, ed. Seyla Benhabib, (UK: Polity Press, 1992), 162.

<sup>25</sup> Habermas, 117.

incapable of engaging in the sorts of deliberative activities that Rawls requires of persons in the original position. Rawls, she notes, wants individuals "to put [themselves] imaginatively in the place of the other, but under conditions of the veil of ignorance the *other as different from the self* disappears."<sup>26</sup> Thus, the exchange between parties Rawls assumes will take place in fact cannot occur. Influenced by Habermasian discourse ethics, feminists like Benhabib and Marilyn Friedman have noted that Rawls relies upon an

abstract reasoner [to] derive conclusions from the thought of that single mind [and therefore he] neglect[s] possibilities for political insight available only in interpersonal dialogue where people can explain to one another their experiences and their diverse viewpoints.<sup>27</sup>

Following this line of argument, Benhabib has suggested the exclusion of the other from the original position effectively rules out any discursive potential within this sphere.<sup>28</sup> Without others, there can be no differences between parties in the original position, and no critical discussion can take place.

Additionally, Habermas has noted that the discursive narrowness of the original position extends to Rawls's overlapping consensus.<sup>29</sup> Rawls specifies that the most divisive issues which arise in pluralist societies should be excluded from the political agenda.<sup>30</sup> The veil of ignorance which is employed in the original position is in some ways extended over the political deliberations of society. Our capacity to speak about important issues is limited to the extent that we may not access discourses about issues which cannot be resolved by the principles chosen in the original position. Apparently, the restrictions on information imposed by the veil effectively prevent persons from choosing principles of justice that can

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<sup>26</sup> Benhabib, 161. Italics Benhabib's.

<sup>27</sup> Martha Nussbaum, "Rawls and Feminism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman, (Cambridge: Cambridge University Press, 2003), 495.

<sup>28</sup> Benhabib, 161.

<sup>29</sup> Habermas, 131.

<sup>30</sup> Rawls, PL, 157.

appropriately deal with the complexities of modern pluralist societies. How, for example, can his conception of justice as fairness address controversial and sometimes irreconcilable differences between persons on issues like same-sex marriage or abortion, given that this conception is produced in a virtual vacuum that excludes such controversies? It is not clear how a critical discussion of such issues, or of experiences relating to disability, gender, sexual orientation, etc., can be fully accommodated within Rawls's just society. These criticisms suggest that Rawls's theory cannot sustain an environment in which persons can debate to determine legitimate principles of justice; productive exchange between distinct, historical individuals is precluded.

Offering a communitarian perspective, Michael Sandel discusses Rawls's generalized, disembodied self as something he attributes broadly to contemporary liberalism.<sup>31</sup> Sandel calls this personality the "unencumbered self", arguing that it is prominently articulated in Rawls. He argues that Rawls, particularly through the original position, presupposes

a certain picture of the person, of the way we must be if we are beings for whom justice is the first virtue. This is the picture of the unencumbered self, a self understood as prior to and independent of purposes and ends.<sup>32</sup>

For Rawls, our identity as autonomous, self-determining beings is antecedent to our social contexts or interests.<sup>33</sup> We are constituted as individuals in advance of any desires, relations, beliefs and plans which we have or may develop over a lifetime, what Sandel calls our "constitutive ends."<sup>34</sup> Rawls, he argues, believes that it is not our choices but rather our capacity to choose which defines us as free and independent agents.<sup>35</sup> Sandel is concerned with the traditional liberal assertion that individuals can be thought of as antecedent to

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<sup>31</sup> Michael Sandel, "The Procedural Republic and the Unencumbered Self," *Political Theory* 12, no. 1 February (1984): 82.

<sup>32</sup> Ibid., 86.

<sup>33</sup> Rawls, TJ, 560.

<sup>34</sup> Sandel, 86.

<sup>35</sup> Ibid.

community and social roles, particularly in situations where questions of justice are at stake.<sup>36</sup> This concern in some ways overlap with Benhabib's, insofar as both authors are challenging the exclusion of human experiences and relations from the original position.

Rawls has tried to dismiss such criticisms by suggesting that the original position is not intended to "explain human conduct," but only to represent persons equally as moral selves.<sup>37</sup> Accordingly, Rawls may argue that the original position does not take a view of persons as prior to their constitutive ends, but simply describes their common identity as free citizens. However, Susan Bickford has pointed out that precisely because "the constraints of the original position...delineate the shape and content of our basic social institutions...", the nature of persons in the original position must "reflect something important about the kinds of social and political creatures we are."<sup>38</sup> Feminists like Eva Kittay and Susan Okin have noted, for example, that the exclusion of constitutive relations and ends removes issues of gender equality, disability or care, particularly as they relate to the family, from discourses of justice.<sup>39</sup> The unencumbered self, as someone devoid of ends and needs, can have no understanding of the nature of care, or the impact of particular disabilities on the independence of certain members of society. In line with Bickford, Kittay argues that "the issue of care for dependents cannot be left for resolution at the legislative stage, since it affects the design of basic social institutions."<sup>40</sup> If persons are *unencumbered* within the original position, how can Rawls effectively produce a conception of justice within it that represents and supports *encumbered* selves? The constraints of the veil,

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<sup>36</sup> Ibid., 87.

<sup>37</sup> Rawls, TJ, 104.

<sup>38</sup> Susan Bickford, Listening, Conflict, and Citizenship: The Dissonance of Democracy, (New York: Cornell University Press, 1996), 8.

<sup>39</sup> Nussbaum, "Rawls and Feminism," 512.

<sup>40</sup> Ibid., 514.



therefore, do say something about the type of person Rawls's just society serves, and moreover, about the type of person it excludes.

Sandel also finds that this unencumbered self presents an unresolved contradiction within Rawls, particularly in relation to the difference principle. The difference principle, which Rawls argues parties in the original position will agree to uphold, stipulates that inequalities in wealth or circumstance can be tolerated only if they benefit the least advantaged individuals in society.<sup>41</sup> This is Rawls's attempt to defend a robust distributional apparatus for the welfare state. However, as Sandel notes, the difference principle is also a principle of sharing, insofar as we are to assume that the least advantaged deserve to share in or benefit from whatever superior abilities, status or resources which are enjoyed by those who are better off.<sup>42</sup> As such, "it must presuppose some prior moral tie among those whose assets it would deploy and those whose efforts it would enlist in a common endeavour."<sup>43</sup> In other words, the difference principle presupposes precisely those moral ties and social obligations which the unencumbered self cannot have, and which the conditions of the original position preclude from deliberations about justice.

Alan Bloom has similarly argued that Rawls's theory fails to provide a convincing argument as to why we should accept the decisions formed in the original position. He argues that, while Rawls suggests that the original position is an evolution of the "state of nature" in contract theory, traditional contract theorists like Rousseau or Hobbes offered a conception of "man" according to which they developed a theory of society and social obligation.<sup>44</sup> Rawls's original position, in contrast, features nothing which "corresponds to

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<sup>41</sup> Rawls, TJ, 53.

<sup>42</sup> Sandel, 89.

<sup>43</sup> Ibid.

<sup>44</sup> Alan Bloom, "Justice: John Rawls vs. The Tradition of Political Philosophy" in Giants and Dwarfs: Essays 1960-1990, (New York: Simon and Schuster, 1990), 322.

any man's real experience," thus he cannot claim to provide a legitimately representative theory of the self.<sup>45</sup> For Bloom, Rawls's failure to account for the ways in which the realities and complexities of social life constitute us as individuals leaves a significant chink in his theory of justice. How can we, he asks, accept justice as fairness, the principles of which have been developed by that "cramped little risk-fearing man in the original position... whose horizons have been so confined that the great dangers in the great decisions are no longer visible to him."<sup>46</sup> Bloom rightly notes that our status as free and equal persons is bound to freedom of mind, a freedom which "consists in the consciousness of the fundamental alternatives."<sup>47</sup> Rawls's abstract self reasons by way of ignorance of those alternatives, and in that sense cannot be truly free. It is an account of the self which fails to mirror real persons in any significant way.

Rawls's motivation for removing persons to the original position stems largely from a desire to ensure that parties take a critical view of the different reasons and justifications which may arise in deliberations about justice. In other words, he wants them to think and act as public persons, persons whose self-interest complements rather than erodes the public good.<sup>48</sup> However, as Sandel convincingly states, the capacity to think reflectively about one's interests and the nature of one's society cannot be divorced from an awareness of one's socio-historical reality:

Though I am able to reflect on my history and in this sense to distance myself from it...the distance is always precarious and provisional, the point of reflection never finally secured outside the history itself...denied the expansive self understandings that could shape a common life, the liberal self is left to lurch between detachment on the one hand, and entanglement on the other...<sup>49</sup>

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<sup>45</sup> Ibid., 323.

<sup>46</sup> Ibid., 338.

<sup>47</sup> Ibid., 345.

<sup>48</sup> Rawls, TJ, 123-129.

<sup>49</sup> Sandel, 91.

Rawls's intent was to ensure that persons think as public citizens as well as private individuals in deliberations about justice. He wants a conception of justice which balances the public good with the goods of private persons by requiring parties to take an interest in maintaining social cooperation without subjectively or prejudicially sacrificing the goods of particular persons or groups. However, the extent to which Rawls goes to secure that reflective distance for individuals erodes the ties that bind persons to their public and private worlds, ties which Rawls inevitably must call upon to validate his conception of justice.

## **2.2 Rawls's Political Conception of the Self**

Though critics have had much to say about the metaphysical self as it is found in Rawls's works, these criticisms do not appear to address this entity as something distinct from Rawls's theory of moral selves. Rawls calls this conception the "political" idea of personhood, termed so because it is defined to reflect contemporary democratic norms and interests, rather than according to abstract doctrines of the self.<sup>50</sup> Thus, Rawls does grasp the distinction between such abstract and concrete doctrines of the self but, as I will later argue, abandons this distinction in his approach to questions of political justice. That Rawls identifies his political conception of the self as something that derives from the observed norms and behaviours of democratic citizens is important. It indicates, contrary to Bloom's assertion, that Rawls presents a theory of personhood which identifies capacities and attributes that he views as innate or essential to the democratic individual. What he does not do is develop that conception of the person and fold it into his theory of justice.

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<sup>50</sup> Rawls, JAF, 19.

This conception of the person, which Rawls first articulates in *A Theory of Justice*, opposes in every way the metaphysical persona critics have found within his project, and avoids the limitations associated with that entity. An articulation and elaboration of the Rawlsian political self shows it to be constituted through lived experience and labouring. The Rawlsian self, as we shall see, derives her/his freedom from deliberative and reflective labour within her/his social world. Rawls defines persons as morally autonomous beings, insisting that conceptions of justice and the basic structure of society that they organize should equally recognize and protect all individuals as moral persons.<sup>51</sup> According to Rawls, persons possess two moral powers which, taken together, provide “the necessary and sufficient condition for being counted a full and equal member of society in questions of political justice.”<sup>52</sup> These powers describe how persons consciously labour as free and productive agents in society.

The first moral power involves a sense of justice, which refers to a person’s capacity to “understand, to apply, and to act from...the principles of political justice that specify the fair terms of social cooperation.”<sup>53</sup> It outlines how persons labour to identify, accept and follow publicly agreed upon principles of justice, with the understanding that other individuals and society’s major institutions aim to do the same.<sup>54</sup> Joshua Cohen notes that this sense of justice is fundamental to the status of persons as free and equal:

we regard one another as equals in part because we regard one another as having the capacity to assess the justice of the society: to make reasonable judgements about the rights we should have and about fair distribution of benefits and burdens.<sup>55</sup>

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<sup>51</sup> Rawls, TJ, 442.

<sup>52</sup> Rawls, PL, 302.

<sup>53</sup> Rawls, JAF, 18-19.

<sup>54</sup> Rawls, TJ, 397

<sup>55</sup> Joshua Cohen, “For a Democratic Society”, in *The Cambridge Companion to Rawls*, ed. Samuel Freeman, (Cambridge: Cambridge University Press, 2003), 109.

Having a sense of justice thus denotes a person's capacity to consider questions of political justice, and respect the capacity of others to do the same. It describes a person's willingness to deal with others on fair terms, for the purposes of maintaining a mutually beneficial, cooperative social order.<sup>56</sup> Thus, this power requires persons to be able to engage political questions, including questions of justice, by taking into account the views and positions of others in addition to one's own. A sense of justice indicates, as Rawls argues, "a settled disposition to adopt and to want to act from the moral point of view insofar at least as the principles of justice define it."<sup>57</sup> The first moral power therefore reflects an understanding of persons as social beings. In this regard, Rawls's conception of the self shares a common perspective with Marxian personhood, insofar as both identify the natural social capacity of persons. Through the activation of this power persons produce themselves as "human communal beings."<sup>58</sup> It involves not only a recognition of publicly accepted principles in discourses of justice, but, in determining and following those principles, a commitment to respect the interests of others, a commitment which stems from the desire to preserve the social community.

The second power specifies a person's ability to determine what her or his plan of life is, and what elements are necessary to the execution of that plan. Through this power, moral persons are able to

have, to revise, and rationally to pursue a conception of the good...which specifies a person's conception of what is of value in human life...The elements of such a conception are normally set within, and interpreted by, certain comprehensive religious, philosophical, or moral doctrines...<sup>59</sup>

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<sup>56</sup> Rawls, JAF, 19.

<sup>57</sup> Rawls, TJ, 430.

<sup>58</sup> Karl Marx, Critique of Hegel's Philosophy of Right, ed. Joseph O'Malley, (Cambridge: Cambridge University Press, 1970), xliii. (Introduction by O'Malley).

<sup>59</sup> Rawls, JAF, 19-23.

It involves one's reflective engagement with oneself, within one's social world, through which one can consciously identify, articulate and pursue what constitutes the good life. This power reflects what Marx called the "conscious life activity" of man as a species-being. It is through the exercise of the second moral power that moral persons gain ownership over their life activity, and make that activity the "object of [their] will and of [their] consciousness."<sup>60</sup> This process of determining one's good through reflective labour is what Rawls calls deliberative rationality:

[I]t is the plan that would be decided upon as the outcome of careful reflection in which the agent reviewed, in the light of all relevant facts, what it would be like to carry out these plans and thereby ascertained the course of action that would best realize his more fundamental desires.<sup>61</sup>

This power, in other words, reflects the conscious labouring of persons to produce for themselves the life they would choose as free beings. Through this conscious life activity, moral persons exist as free and productive agents in society. Rawls also suggests that persons' second moral power is supplemented by a capacity to see themselves as self-authenticating sources of valid claims. This requires that persons "regard themselves as being entitled to make claims on their institutions so as to advance their conception of the good."<sup>62</sup> Being recognized as such enables persons not only to pursue their conceptions of the good by making institutions responsive to their interests, it also supports the knowledge that they have a right to do so. Moreover, being a source of valid claims requires that one be situated in an environment which is socially and politically free. As Marx noted, persons require such freedom if their productive capacities are to be enabled.<sup>63</sup> A person can produce universally only "when he is free from physical need and only truly produces in

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<sup>60</sup> Karl Marx, "Economic and Philosophic Manuscripts," [EPM] in Karl Marx & Friedrich Engels: Collected Works [CW] Volume 3, (New York: International Publishers, 1975), 276.

<sup>61</sup> Rawls, TJ, 366.

<sup>62</sup> Rawls, JAF, 23.

<sup>63</sup> Marx, EPM, 276.

freedom therefrom.”<sup>64</sup> Freedom from physical need can be extended to include not only the freedom of body from hunger or poverty, but also the freedom of mind from social or political tyranny. In such cases where such freedoms are limited, the capacity of persons to view themselves as sources of valid claims erodes. When individuals are unable to labour creatively to produce objects, whether they be material goods or conscious life-plans and goals, they are not free. Only in just political and social contexts may persons actively pursue their goods and make claims on their own behalf.

Of course, Rawls notes that such plans or claims cannot contradict the principles and rules given by a public conception of justice.<sup>65</sup> In limiting the scope of individual conceptions of the good, this caveat ensures that persons’ deliberative rationality involves a critical awareness of publicly accepted principles of justice. A person’s self-reflective reason, while aimed at determining what their ‘good’ or final ends are, must also account for the good of others, insofar as their ends should be informed by a shared interest in maintaining the social community. The first and second moral powers therefore are to operate with reference to each other. The joint operation of these powers, however, says something deeper about how the individuality of the Rawlsian self feeds her/his communal nature, something that Rawls does not identify and which is lost in Rawls’s project. Marx’s view of selfhood provides an interesting point of reference here. He suggests that when an individual lives the species-life of true human beings, he will affirm both himself and society’s others.<sup>66</sup> According to this view, it is in the

individual expression of my life [that] I would have directly created your expression of your life...and therefore in my individual activity I would have

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<sup>64</sup> Ibid.

<sup>65</sup> Rawls, TJ, 347. A discussion of what conceptions of the good are considered to be reasonably in line with the public conceptions of justice will come later in this chapter, in our examination of the overlapping consensus.

<sup>66</sup> Marx, “Comments on James Mill,” in CW Volume 3, 227.

directly *confirmed* and *realized* my true nature, my human nature, my *communal nature*.<sup>67</sup>

For Marx, it is in my ability to live and labour consciously as a unique and productive being that allows me to see and respect that ability in others. In this way, as he says, I not only express myself as a productive being, I reflect that capacity in you, and this reflection confirms me as a communal being. As Rawlsian selves, the second moral power locates within us our capacity to produce for ourselves ends and to exist as sources of valid claims and the first power allows us to see those capacities in others. The ways in which I express myself as a moral being therefore mirrors your capacity to do the same. Thus the Rawlsian self exists *simultaneously* as a unique individual and a social being. Moreover, the operation of the moral powers indicates that these identities constantly interact and inform each other in social and political life.

The moral powers constitute persons as political and intellectual labourers. Through intellectual engagement with personal and social issues, Rawls's moral selves labour discursively and reflectively to produce themselves as free and equal persons, and to resolve political questions which concern that status. Thus, for Rawlsian persons, the exercise of the moral powers not only constitutes them as free and equal persons, it defines their productive capacities as social and political beings. Rawls intends the two powers to describe how persons behave rationally within society, both in relation to others and in relation to their own life pursuits. He is careful to note that these powers are not taken from metaphysical doctrines of the self.<sup>68</sup> Rather his account of the moral powers is "worked up from the way citizens are regarded in the public political culture of a democratic society, in its basic political texts...and [in] the more enduring writing of all kinds that bear on a society's

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<sup>67</sup> Ibid., 228.

<sup>68</sup> Rawls, JAF, 19.



political philosophy.”<sup>69</sup> This conception of the self gives an account of personhood that accurately portrays how we tend to think about free and equal persons. Any conception of personhood would fall short if, for example, it did not allow for persons to determine and pursue their own plan of life. Such conceptions will also need to offer a sense of the self in relation to others. In democratic societies especially, we require a description of why and by what means individuals maintain a cooperative social order. Arguably, the Rawlsian self does just this.

However, Rawls’s political self, while intended to *describe* the values which are considered to constitute free and equal persons, is also *prescriptive*. While the Rawlsian self may be appropriately descriptive of existing democratic norms, the degree to which persons can develop and exercise their moral powers, as noted, requires a relative degree of social and political freedom and justice. Somewhat akin to Marx, Rawls is therefore concerned with how the allocation of political and material resources and powers impacts the moral capacities of individuals, and in turn their position as free and equal persons. Rawls argues that the moral powers of persons require support from society’s major institutions. In a sense, the basic structure must do what Rawls intends the original position to do: to represent persons as free and equal moral selves, and to ensure that the restrictions imposed upon persons in society preserve that status. For this reason, he is interested in deriving fundamental principles of justice which determine the nature of society’s basic structure, and in the subsequent maintenance of those principles within existing society. In society, Rawls maintains, persons’ moral powers and the forms of rationality and social engagement they require rely upon access to what he calls primary social goods. These are basic rights, liberties and the material resources which enable individuals to live as free and equal persons.

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<sup>69</sup> Ibid.

Justice as fairness should, therefore, complement his political conception of the person with a conception of justice that best allocates "fundamental rights, duties and....advantages from social cooperation."<sup>70</sup> Amongst these primary goods, Rawls identifies a person's sense of self-respect as perhaps the most important good society's institutions should protect.<sup>71</sup> As he says, self-respect indicates

a person's sense of his own value, his secure conviction that his...plan of life is worth carrying out...[it] implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions.<sup>72</sup>

He argues that self-respect is a necessary condition for individuals to feel that they can pursue their plan of life, and to feel their own worth as moral persons. Rawls suggests that all rational persons are presumed to want these primary social goods, goods which the basic structure should allocate fairly.<sup>73</sup> This conception of the self reflects Rawls's interest in the quality of life in democratic societies. His attempt to protect the moral powers of persons through a just distribution of these goods is ultimately aimed at positing a conception of justice which leaves no one behind. As I argue in the next chapter, however, these interests and his own political persona are not supported within his project.

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<sup>70</sup> Rawls, TJ, 6. A critical discussion of these principles will be taken up in the third chapter.

<sup>71</sup> Ibid., 348, 386.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid., 54.

### 3 ALIENATION OF RAWLS'S POLITICAL CONCEPTION OF THE SELF

Though standing criticisms of Rawls have identified and examined the metaphysical self operating within his project, Rawls's political conception of moral selves remains largely overlooked by his critics. The lack of attention given to his political conception of persons, however, is not surprising when we see that Rawls's own work fails to develop or even accommodate his theory of personhood. As many of Rawls's critics have already taken up discussions of the problematic nature of his metaphysical self, I do not propose to reiterate this analysis. While I will certainly draw upon those discussions, my critique focuses more intently upon Rawls's lesser examined political self as someone distinct from the abstract persona in his theory, but who is lost and replaced by the metaphysical self. This chapter will contend with the issue of origin and impact: how are moral selves alienated by Rawls's theory to produce the metaphysical entity? And how does this alienation impact upon his theory of justice as fairness? The following sections will critically assess the original position, the overlapping consensus and public reason, identifying the conditions for alienation within them. These sections will address whether Rawls's theory allows for persons to contribute to deliberations on justice and political questions in the ways that Rawls's political actor is meant to.

In line with existing criticisms, I believe that Rawls's project involves a problematically abstract actor. However, my concern here is to show how his project contradicts his conception of moral selves, a conception upon which the coherence and legitimacy of his theory of justice rests. This critique is developed through the deployment of Karl Marx's historically and socially grounded approach to politics and society, and of his notion of alienation as outlined in the *Economic and Philosophic Manuscripts*. I have already

suggested some parallels between Marxian personhood and the Rawlsian self in the previous chapter, parallels which make Marx an appropriate lens through which to examine the Rawlsian self and its exclusion from Rawls's project. Just as Marx views persons as social and historical beings, the Rawlsian person herself/himself is also such a social and historical being. The moral powers, as I aim to show, cannot be developed or exercised unless persons are situated within their social, political and civic realities. These contexts provide the informational and material resources that are necessary for persons to activate their productive moral capacities. I argue that Rawls's inability to support his conception of moral selves is a result of the abstracted and dehistoricized nature of his theory of justice. His attempt to determine a conception of justice fails to view persons in a socio-historical context, a failure which conflicts with the needs of the Rawlsian self.

Drawing on the parallels between Marxian and Rawlsian personhood, I use Marx's notion of alienation to describe what happens to moral selves in Rawls's ahistorical theory of justice. Marx's account of alienation relates to the labouring capacities of individuals. His notion of human species-being identifies labour as the central activity through which man's nature is fulfilled. Alienation occurs when man becomes estranged from his capacity to labour. Marx sees labour as the means through which we interact with the natural world and engage with others. It is through labour that man "duplicates himself not only, as in consciousness, intellectually, but also actively, in reality, and therefore sees himself in a world he has created."<sup>74</sup> Thus, alienation occurs when the production and re-production of society is appropriated from persons, and set against them as something unrelated to their labouring capacities. He identifies capitalist systems as the modern expression of alienation and, in the *Economic and Philosophic Manuscripts*, describes how alienation proceeds under this particular

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<sup>74</sup> Marx, EPM, 277.

mode of production. According to Marx, the alienation of workers from their labour occurs in four ways. First, the worker is alienated from the product of labour, and second, from the process of or act of production, both of which have been appropriated from his control. Third, his estrangement from his own labour activity, which Marx views as central to human fulfillment, leads to the worker's alienation from his own nature. Finally, man's social function, which is linked to his capacity to labour, is lost. Thus man is alienated from man.<sup>75</sup>

Like the Marxian person, the Rawlsian self is a labouring individual. The Rawlsian person is deeply bound to intellectual and political labouring. The moral powers are exercised when persons engage each other and themselves in a critical reflection about questions of political justice, both from an individual and a civic standpoint. As described in the previous chapter, these powers express persons' conscious life activity, their efforts to produce themselves as free persons in their socio-political world. The Rawlsian self is someone who labours both as a social being with an interest in her/his political community, and as a unique individual who produces particular objects and ends. Marx's concept of alienation can therefore appropriately describe how the labouring of moral persons, through the exercise of their moral capacities, is undermined within Rawls's theory of justice. In deploying Marx's notion of alienation as a critique of Rawls, I do not intend to interpret Rawls as a bourgeois theorist. I do not therefore engage the concept of alienation specifically in relation to the worker in capitalist societies. Though Marx does discuss alienation in those terms, this concept can properly be applied beyond a capitalist context to discuss alternate means by which persons are estranged from their labouring capacities, and from the products and processes which employ those capacities. As I will argue, Rawls's theory of justice achieves the alienation of moral persons through a dehistoricized and

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<sup>75</sup> Ibid., 270-279.

abstract approach to questions of political justice. He tears persons from the contexts and experiences that define them, and in so doing estranges them from their productive capacities as moral persons. Within Rawls's project, I take the product of labour to be the principles of justice that he aims to obtain from the original position. The process or act of production in this case is equivalent to the discursive exchanges which persons are to engage in, to both form and maintain a conception of justice based upon those principles. Further, the concept of the self, both in relation to others and in relation to oneself, is here defined by the moral powers and their supporting elements, as outlined in chapter two. This chapter indicates the ways in which Rawls's theory alienates, and thus cannot support, his political conception of the self, therefore undermining the soundness of his overall argument.

### 3.1 Original Position

Rawls offers the original position as a means by which we can represent the goods of free and equal moral persons, and through which we can obtain principles which best support them through a just distribution of rights, privileges and social advantages.<sup>76</sup> In *Political Liberalism*, he suggests that this position is particularly useful for pluralist societies, because it creates conditions under which persons can communicate without being biased by their differences.<sup>77</sup> The purpose of the conditions imposed by the veil "is to represent equality between human beings as moral persons, as creatures having a conception of the good and a sense of justice."<sup>78</sup> Rawls asserts that the original position is the best "device of representation" of moral selves for two reasons. First, the veil helps to implement fair

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<sup>76</sup> Rawls, TJ, 122.

<sup>77</sup> Rawls, PL, 26-27.

<sup>78</sup> Rawls, TJ, 17.

conditions under which parties are represented as free and equal moral persons. A second and related reason is that *because* the veil represents persons equally as moral selves, we would accept the informational restrictions it imposes upon discussions about justice.<sup>79</sup> The justification of the original position therefore relies on the extent to which its restrictions are in fact fair and can equally secure the status of parties as moral persons.<sup>80</sup> Importantly, the original position is not an actual historical state or a “primitive condition of culture”, but is rather a “purely hypothetical situation characterized so as to lead to a certain conception of justice.”<sup>81</sup> Rawls intends the original position to be a thought experiment which illustrates how individuals can come to determine principles of justice which are fair for all. Nevertheless, he argues that at any time individuals can enter into this initial situation, and simulate the deliberations of the parties given in *Theory*, if they accept the procedural restrictions which constitute it.<sup>82</sup>

Though Rawls does not intend to describe the original position as a deliberative sphere per se, his assumption that some type of deliberative exchange can occur here is important.<sup>83</sup> Rawls’s political actor, by virtue of her or his moral powers, is endowed with the capacity to deliberate rationally and reflectively, a capacity necessary for the determination of principles of justice which are to condition society. Rawls relies upon these capacities to legitimate the exchange he assumes will take place between parties in the original position. Yet he is not concerned with a description of what deliberation between moral persons will look like so much as he is interested in defining the environment in which exchange takes place. He wants to ensure that deliberation between parties occurs within a

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<sup>79</sup> Ibid., 16, 17.

<sup>80</sup> Ibid., 17, 104, 122.

<sup>81</sup> Ibid., 11.

<sup>82</sup> Ibid., 17, 120.

<sup>83</sup> Ibid., 119, 120.

highly equitable context, one which prevents persons from making arguments based upon the inequities of "social and natural contingencies."<sup>84</sup> In Rawls's view, the original position is such a context; the restrictions of the veil are supposed to force arguments to reflect the equal status of persons as moral selves. However, the conditions of the original position are proposed without reference to a prior development of the moral selves this position is intended to assist. Rawls fails to consider the relationship between his conception of the self and deliberative exchanges, a consideration which should have conditioned and informed his attempt to develop an equitable discursive environment. This failure to do so leads him to create a context in which moral selves lose their capacity to labour discursively, and with it, their ability to engage political questions effectively.

The substantive effect of Rawls's original position is to strip parties of their identity as moral persons. Because the veil eliminates all particular knowledge of oneself and others, the original position takes the unique interests and attributes of persons, and the socio-historical context in which they live, to be morally and politically irrelevant to the determination of a conception of justice.<sup>85</sup> Yet, had Rawls developed his account of the moral person prior to his design of the original position, he would have found that it is those unique characteristics and contextual situations which constitute the elements of experience, perspective and relational understanding that his conception of moral persons relies upon. In societies marked by the fact of pluralism, as Rawls calls it, it is precisely those elements that must be counted in deliberations of justice if they are to be legitimately representative of citizens. That Rawls fails to include these constitutive experiences and ends indicates his project's inability to offer a viable political theory. Consequently, it is improbable that this situation can represent people who enter into it as moral persons.

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<sup>84</sup> Ibid., 17.

<sup>85</sup> Benhabib, 162; Sandel, 82, 86.



As Marx has argued, an effective theoretical engagement with politics and society must be able to ground a critical philosophical inquiry in praxis, in existing conditions and circumstances.<sup>86</sup> Without such a grounding, theoretical investigations of the nature of society, justice or democracy can only exist in the imagination of the philosopher. Political theories which absolve themselves of social and political realities have no means by which to assess the actualities of political existence, and to obtain from that assessment an understanding of what a better society looks like, and how we ought to proceed to get there. In the "Eighteenth Brumaire" Marx observes that

men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past.<sup>87</sup>

While Marx identifies and looks to human agency, he understands that that agency is constrained by socio-historical structures which describe political actualities and define the scope of what we can and should do. It is this complexity of the human experience, that tense and at times ambiguous relationship between being able to act upon the world and being acted upon or even constituted by that world, that Rawls's project flattens and diminishes. If the aim of theory is to produce a critical perspective of or alternative to existing society, such a critique cannot be wholly independent of present lived reality. Rawls's original position, however, fails to link praxis to theory, but still asks us to accept the abstract reasoning and outcomes within it. By removing parties to this ahistorical position, placing them behind a veil of ignorance, Rawls effectively alienates parties to the original position from their moral powers, ultimately producing a type of actor that can only exist outside of reality. This alienation, following Marx's conception, occurs in four parts:

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<sup>86</sup> Marx, "Critique of Hegel," xxii. (Introduction by O'Malley)

<sup>87</sup> Karl Marx, "The Eighteenth Brumaire of Louis Bonaparte," CW Volume 11 (1979), 99.

alienation from self, from others, from the product of labour and from the process of production.

The alienation of persons from their own selves relates, in Rawls's theory, to the second moral power, the power to produce, revise and pursue a conception of the good. Such conceptions draw upon the experiences, desires and beliefs we develop in particular social, historical and political contexts. Our ability to produce these unique and complex conceptions helps constitute us as free individuals and as encumbered selves. Rawls maintains that while persons in the original position are to possess and be guided by their second moral power, knowledge of their specific plan of life, which derives from their conception of the good, will be excluded by the veil of ignorance.<sup>88</sup> As Rawls says, persons "know that they have some rational plan of life, [but] they do not know the details of this plan, the particular ends and interests which it is calculated to promote."<sup>89</sup> Instead, their conception of the good will be limited to having knowledge of the primary social goods – goods which rational persons will desire in order to promote their plan of life, whatever it may be.<sup>90</sup> It is only this 'thin' understanding of their good, a desire for primary goods, that parties to the original position have to inform their deliberations over justice.

The substitution of a 'thin' notion of the good for the second moral power has two negative implications for the nature of exchange between parties in the original position. First, it is not clear that individuals will be able to, as Rawls assumes, contribute arguments which promote principles that develop and protect the details of their life plans in existing society.<sup>91</sup> He believes that the original position will enable parties to think reflexively about their perceptions of justice and "yield principles which match [their] *considered judgements*...of

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<sup>88</sup> Rawls, TJ, 123.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid., 125.

<sup>91</sup> Ibid., 123-130.

justice.”<sup>92</sup> Even though parties are deprived of knowledge of the particular ends they would produce, their awareness of primary social goods should allow them to critically consider alternative conceptions of justice in a way that would promote those ends, whatever they may be.<sup>93</sup> However, Rawls defines considered judgements as those “in which our moral capacities are most likely to be displayed without distortion.”<sup>94</sup> They are judgements given under conditions which are favourable to the exercise of our moral powers. Yet the original position requires that our second moral power be distorted; it imposes conditions that limit the extent to which we can develop and know our conceptions of the good through reflective labour. Rawls replaces the full interests of persons with a narrow interest in primary goods. He denies persons awareness of their experiences and needs, things which inform their second moral power. The exclusion of such self-awareness alienates persons from their capacity to produce a conception of the good, and without that capacity, persons have no means by which to interpret and situate those goods within the context of their lives. Thus, their ability to determine principles which properly allocate and prioritize these goods suffers. We can use the example of care in relation to women’s work to support this argument. Martha Nussbaum notes that issues relating to care and dependence are central “to feminism because women traditionally provide the bulk of care for dependents...”<sup>95</sup> Critiquing Rawls, Eva Kittay has suggested that it is his conception of *moral persons* which fails to account for these issues:

[his] account of the primary goods...as an account of the needs of citizens who are characterized by the two moral powers and by the capacity to be “fully cooperating,” has no place for the need of many real people for the kinds of care we give to people who are not independent...his account of

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<sup>92</sup> Ibid., 18. Italics added.

<sup>93</sup> Ibid., 123.

<sup>94</sup> Ibid., 42.

<sup>95</sup> Nussbaum, “Rawls and Feminism,” 512.

being a self-authenticating source of valid claims fails to make a place for any freedom...enjoyed by someone who is not independent in that sense.<sup>96</sup>

Kittay's assessment is partially valid, insofar as she is right to suggest that a thin account of primary goods does not allow persons to consider how issues like care and dependence impact the identification and allocation of such goods. Goods like rights, resources and self-respect are not determined with reference to their impact on dependents and care-givers, but rather to the wholly independent entity within the original position. Consequently, parties cannot address in a significant way what it means to care for or to depend upon others, and how primary goods like self-respect, rights or material resources impact either dependents or care-givers. Thus, though Rawls insists otherwise, a thin conception of the good cannot possibly provide persons with the "relevant facts" they need to determine and articulate what they "fundamentally desire."<sup>97</sup>

While Kittay is right to note that issues like that of care are not supported within the original position, I disagree with her assertion that this exclusion is the result of Rawls's notion of moral selves. Kittay's critique does not distinguish between Rawls's theory of the self and his theory of justice, a distinction which, I have been arguing, is called for. The exclusion of care is not a result of Rawls's conception of the self as someone in possession of the moral powers who is also a source of valid claims, nor need the moral powers be the privilege only of 'fully cooperating' persons in the sense Kittay implies. Rather, the exclusion of important socio-political issues, like care and dependence, are the result of the conceptual frameworks, like the original position, which Rawls uses to engage a discussion of justice. At the outset, Rawls's original position strips moral persons of the unique and personal details of their plan of life. In so doing, he alienates parties from their second

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<sup>96</sup> Ibid. See also Eva Kittay, "Human Dependency and Rawlsian Equality," in *Feminists Rethink the Self*, ed. Diana Meyers (Colorado: Westview, 1997), 219-266.

<sup>97</sup> Nussbaum, "Rawls and Feminism," 366.

moral power. The estrangement of persons from this capacity also removes from them the ability to form considered judgements of justice, and thereby to ensure that principles chosen have legitimately taken their needs and interests into account. For example, one's awareness of being a parent may alter how one conceives of the good, by including in that conception and in one's considered judgements about justice, one's role as care-giver. Alternately, for adult individuals who require care, it is conceivable that their need for care will influence their conceptions of the good life. Moreover, understanding of these needs can help shift how we think of 'fully cooperating' persons to include the need for care as a legitimate claim. As such, I do not hold with Kittay that the status of moral selves as sources of valid claims is the privilege of unencumbered wholly independent persons. Dependent persons may be equally capable of exercising their second moral power and of being self-authenticating sources of valid claims, even where such claims reflect their dependency upon others. Thus, 'fully cooperating' need not refer to the unencumbered and unattached self, but can rather accommodate a view of persons whose plan of life involves their reliance in some way upon the support of others. The moral powers certainly sustain such an accommodation. An assessment of Rawls's theory of the self shows it to withstand the criticisms theorists like Kittay have presented, and moreover, suggests that the Rawlsian self should be viewed separately from his theory of justice.

The erosion of the second moral power, and subsequently of any meaningful deliberation, leads us to the second consequence of Rawls's 'thin' theory of the good. As we have seen parties to the original position cannot exercise their second moral power, and thus cannot produce considered judgements. How then, do they determine principles of justice? They are left with no alternative but to accept, a priori, an interest in primary social goods, an interest which is predetermined, not through the critical, reflective labour embodied by

the second power, but by the conditions of the original position itself. In other words, the conditions of alienation imposed by the veil effectively predetermines the scope, content and outcome of deliberations within the original position, independently of moral persons. Thus, the original position initiates the alienation of parties from themselves with the removal of the self-knowledge required by the second power. It completes this alienation by replacing the deliberative rationality of free and equal persons with a set of judgements predestined by its own conditions. This estrangement of persons from their second power ultimately robs them of what Marx referred to as conscious life activity. Recall that it is through the exercise of their second power that persons are able to consciously produce for themselves a life that they would choose as free persons. Without that capacity, parties within the original position are no longer the owners of their own life activity; they cannot produce ends and desires which are the objects of their will and consciousness. Thus, they cannot produce principles that legitimately derive from free and equal persons. Without knowledge of their notion of the good and the critical reflective capacities employed by and for that notion, the original position cannot be defended as device which represents parties as moral persons.

This position further undermines Rawls's political conception of the person through its alienation of selves from others. The relation between selves and others is described by Rawls's first moral power of persons, the power to have a sense of justice which allows one to act as a "human communal being."<sup>98</sup> As noted, the veil is intended to condition the original position so that parties are "represented equally as moral persons."<sup>99</sup> Because persons have no sense of their life plans they have no understanding of how others fit into their schemes of life. Just as the original position eliminates self-knowledge, it eliminates

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<sup>98</sup> Marx, "Critique of Hegel," viiii. (Introduction by O'Malley).

<sup>99</sup> Rawls, TJ, 104.

knowledge of others for the purpose of preventing discriminatory outcomes. In this way parties will be "mutually disinterested" in one another, insofar as they have no understanding of their social bonds, interests or experiences.<sup>100</sup> The veil, in other words, produces the ideal unencumbered self.<sup>101</sup> As noted, theorists like Benhabib and Habermas argue that Rawls's veil of ignorance replaces the plurality of perspectives which characterize real persons with a single perspective about justice that comes from an abstract notion of the self.<sup>102</sup> For them, the primary problem with this single perspective is that it is an illegitimate way to engage questions of political justice. While this critique is valid, I suggest that what is most important about the replacement of multiple parties is that it occurs in opposition to the Rawlsian self. In particular, the removal of multiple perspectives precludes persons from exercising their sense of justice in relation to others. Interestingly, Rawls argues that the conditions of the veil assist persons in taking a moral point of view with respect to the interests of others. Indeed, Rawls's description of the first moral power requires that we exercise a sense of moral reciprocity, so that we can recognize the moral worth of others and choose principles that reflect this.<sup>103</sup> According to Rawls, the original position will help enhance persons' interest in social cooperation:

the combination of mutual disinterest and the veil of ignorance achieves much the same purpose as benevolence. For this combination of conditions forces each person in the original position to take the good of others into account.<sup>104</sup>

He maintains that these conditions will support persons' sense of justice in the original position, by enabling them to consider principles which are publicly acceptable and mutually beneficial. However, under the conditions imposed by the veil, Rawls's original position

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<sup>100</sup> Ibid., 123-128.

<sup>101</sup> Sandel, 86-87.

<sup>102</sup> Benhabib, 162.

<sup>103</sup> Rawls, TJ, 397.

<sup>104</sup> Ibid, 128-129.

effectively removes the other from moral and political consideration.<sup>105</sup> Thus, the public as such disappears, and with it goes the forum within which persons may engage in discussions of what benefits society and its members. The exclusion of knowledge about the interests of others, and the social bonds between persons, necessarily results in the alienation of persons from their first moral power, and consequently, from each other. Rawls's claim that the original position can promote a sense of benevolence appears false. It is not clear how parties can develop principles which reflect a moral point of view with respect to others, given that they have no different and distinct perspectives to consider.<sup>106</sup> The first moral power reflects the social character of the individual, as someone who recognizes her or his social community and acts with regard to the interests of others in order to preserve that social framework. However, the estrangement of moral selves, which began with the alienation of the second moral power, extends over their capacities as social beings in possession of a sense of justice.

As Marx argued, the estrangement of "man...is realized and expressed only in the relationship in which a man stands to other men."<sup>107</sup> When parties in the original position are stripped of their self-awareness, they are stripped also of knowledge of the constitutive bonds which tie them to others. Moreover, they are stripped of the capacity to see themselves in others, as human persons who, though individually unique and complex, share an identity as productive moral selves. Thus, while the Rawlsian person exists as a social and historical being, Rawls forcibly removes them of that nature in the original position. This inconsistency leaves parties in the original position detached and indifferent, and incapable of social empathy, providing the foundations for the contradiction Sandel finds between

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<sup>105</sup> Benhabib, 160-162; Nussbaum, "Rawls and Feminism," 495.

<sup>106</sup> Habermas, 117.

<sup>107</sup> Marx, EPM, 277.



Rawls's unencumbered self and the social requirements of the difference principle.<sup>108</sup>

Without an awareness of their social context and associations, parties do not have the necessary information and sensitivity needed to exercise a sense of justice in relation to others.

The effect of the original position is to estrange persons from their moral powers. The extent to which the principles are representative of moral persons is limited by the exclusion of selves and others from the conditions which produce those principles. Consequently, Rawls's theory further alienates persons by dissolving their relation to the product of their labour. In applying Marx's notion of alienation to Rawls's theory, we have suggested that the products of labour are the principles of justice obtained in the original position. The alienation of persons from the principles of justice occurs primarily because parties have no substantive connection to the principles Rawls claims they will choose. The conditions of ignorance imposed upon the parties suggest that conceptions of justice can exist outside of, and even in opposition to, social realities. To alienate persons from themselves and from others, by removing the socio-historical context in which they develop and live in order to obtain a representative theory of justice is a contradiction in terms. Justice itself is a contextually influenced concept. As theorists like Marx or Nietzsche have shown us, how we come to think about particular questions, like justice, rights and liberties is informed by our history, our material realities, our personal experiences and accepted social beliefs or ideas. According to Rawls's theory of the self, this is information we obtain and learn to interpret through our moral powers. This is not to say that notions of justice cannot involve absolute or universal categories of right and wrong. Murder, for example, will likely always be regarded as a wrong. However, the reaction to and understanding of this

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<sup>108</sup> Sandel, 89-94.

crime in different societies certainly varies. Methods of punishment and treatment of criminals varies as do views of the causes and prevention of crimes like murder. Such variations have complicated how people think of justice in these cases.

Rawls's interest in keeping persons ignorant of themselves, others, and their socio-historical contexts is aimed at preventing discriminatory outcomes. However, his attempt to simplify deliberative exchanges by eliminating knowledge prevents persons from obtaining principles that are properly representative. He suggests, for example, that "from the standpoint of persons similarly situated in an initial situation which is fair, the principles of explicit racist doctrines are not only unjust. They are irrational."<sup>109</sup> Certainly, preventing racist claims from influencing discourses on justice is imperative. However, in excluding socio-historical awareness, Rawls also limits the degree to which persons understand how to correct and prevent racist practices in a given society. To take an American example, how can parties without knowledge of America's racialized history accurately discuss and determine distributive rights and needs in relation to race? Additionally, the American experience with issues of race and racism is different from racialized experiences in other contexts. For example, the roots of South African apartheid, the Caste system in India or the Rwandan genocide are different and so too are the specific experiences and outcomes within these contexts. The specificities of these contexts, however, would not be fully accommodated by Rawls's generic response to racism as irrational. The same argument can be applied to gender, ethnic and religious minorities.

Our discussion of the moral powers show that the Rawlsian self exists and operates only within a social and political context, a context which is itself conditioned by historical circumstances. Through the original position, Rawls denies us awareness of our social and

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<sup>109</sup> Rawls, TJ, 129.

historical roots. Yet moral selves cannot flourish without that awareness. Principles chosen under conditions which do not encounter lived realities, therefore, do not derive from moral persons. Rather they evolve out of the “cramped little risk-fearing” thing which Rawls’s alienation of moral selves produces.<sup>110</sup> The instant Rawls cuts the ties between persons and their realities, he hands over the right of citizens to determine a conception of justice to the metaphysical self the original position creates. Rawls thus alienates moral persons from their civic responsibility, and from any deep connection to the fundamental principles of justice which condition society.

The progression of alienation in Rawls’s original position is complete with the alienation of persons from the deliberative process altogether. The original position effectively circumvents the deliberative capacities of moral persons in a misguided though well-intentioned effort to ensure the universal applicability and legitimacy of principles of justice. The preservation of knowledge of the primary goods seems to be the only awareness persons are allowed to maintain. We have noted that this awareness stems not from a conscious or critical deliberation, but is presupposed by the conditions Rawls imposes. While Rawls admittedly takes the basic structure and the distribution of these goods to be the primary subject of justice, such a focus offers no immediate problem, until it is removed from a social context to the original position. Here, Rawls is able to determine what moral persons will believe to be essential to justice without engaging moral persons at all. He is able to forget the nature of his political actor, excluding the exercise of her/his moral powers. Having removed persons’ sense of self, and their social character, Rawls cannot represent the outcome of this position as the conscious determination of moral persons. Rawls’s political conception of persons suggests that their capacities to engage in critical

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<sup>110</sup> Bloom, 338.

reflections about themselves, their regard for others and about the good of their society are elemental parts of how we think of free and equal citizens. However, it is these capacities that he eliminates outright by way of the original position. Thus, Rawls's theory makes no use of the conscious deliberative labour of moral persons, and, in effect, makes the determinative process of obtaining principles of justice something completely independent of them.

Importantly, Habermas has noted an inconsistency between Rawls's conception of moral persons and the actor within the original position:

Citizens are assumed to be moral persons who possess a sense of justice and the capacity for their own conception of the good...but in the cases of the parties in the original position these reasonable characteristics of moral persons are replaced by the constraints of [this position] ...<sup>111</sup>

Consequently, Habermas continues, "Rawls cannot consistently stand by the decision that "fully autonomous citizens are to be represented by parties who lack this autonomy."<sup>112</sup>

However, my critique extends Habermas's argument to suggest that Rawls in fact creates two fundamentally contradictory personas, one political, the other metaphysical. Therefore, not only do parties to the original position lack the *full* autonomy of moral selves, as Habermas notes, these abstract entities are *entirely* at odds with the Rawlsian self. The alienation of the moral selves within the original position is especially important given Rawls's belief that this position is a fair device of representation. He presumes that parties to the original position will be treated as free and equal moral persons, in their possession of the moral powers, and that, therefore, we would accept the conditions imposed upon persons within this position. However, his theory fails on both accounts. The conditions of the original position cause the alienation of parties from themselves and others, or from

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<sup>111</sup> Habermas, 112.

<sup>112</sup> Ibid.

their second and first moral powers respectively. Thus, they are not in fact treated as free and equal persons, because they lack the capacity to exercise these moral powers in any significant way. Persons are capable of neither conscious life-activity, through their second power, nor can they exhibit a social interest in others through a sense of justice. Further, these conditions alienate parties from what should have been the product of their deliberative labour, and finally from the deliberative process itself. As such, Rawls cannot expect us to accept the conditions of this position as fair or legitimate. His argument has thus far failed to employ his own conception of the person in the determination of principles of justice, a failure which fundamentally undermines his theory of justice.

### 3.2 Overlapping Consensus

Rawls's later works, namely *Political Liberalism* and *Justice as Fairness*, begin to address the impact of pluralism on democratic societies.<sup>113</sup> The issue of how a political conception of justice as fairness could be supported in societies marked by widely differing comprehensive religious, moral and philosophical doctrines was one which, as his critics noted and as Rawls himself admits, was not fully developed in *Theory*.<sup>114</sup> The overlapping consensus is offered by Rawls as an account of how justice as fairness would achieve stability in existing pluralist societies.<sup>115</sup> Thus, this consensus is not intended to be a hypothetical construct as was the original position, but rather describes Rawls's attempt to put into practice the conception of justice he gives in *A Theory of Justice*.<sup>116</sup>

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<sup>113</sup> Rawls, JAF, 187.

<sup>114</sup> Rawls, PL, Introduction.

<sup>115</sup> Ibid., xxx.

<sup>116</sup> John Rawls, "The Domain of the Political and the Overlapping Consensus," [Political and Overlapping Consensus] *New York University Law Review* 64, no. 2 (1989): 223-55, 245-246; ft. 27.

In such a consensus, persons can affirm justice as fairness from within "different and opposing comprehensive doctrines, and so...for different reasons."<sup>117</sup> Rawls assumes that persons can hold both a political conception of justice and particular comprehensive doctrines, and leaves it to them to determine in "what way their shared political conception is related to their more comprehensive views."<sup>118</sup> The overlapping consensus models how persons with different comprehensive doctrines can come to accept public political norms, without requiring those norms to impose their particular doctrines on others. As such, it is interested in the preservation of pluralism through the protection of political values that do not demand the affirmation of one particular comprehensive doctrine over another. Instead, this consensus relies upon values that would support a principle of toleration that protects the right of persons to hold different doctrines.

For Rawls, a consensus based on his political conception of justice as fairness is possible primarily because the principles of justice chosen in the original position do not privilege any particular beliefs or values, as such particularities were blocked by the veil.<sup>119</sup> The neutrality that justice as fairness exhibits towards different comprehensive doctrines allows for it to become the legitimate basis of an overlapping consensus. Rawls qualifies this by suggesting that only reasonable comprehensive doctrines will, or can be expected to, endorse justice as fairness and further, it is only reasonable doctrines that can be tolerated within democratic societies.<sup>120</sup> Reasonable doctrines are those which would not use the state's coercive power to impose their comprehensive beliefs upon others, which adhere to

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<sup>117</sup> Rawls, JAF, 32.

<sup>118</sup> Ibid., 187.

<sup>119</sup> Rawls, PL, 12.

<sup>120</sup> Ibid., xvi, 59-63.

the essentials of a democratic regime and which use the guidelines of public reason to make arguments in political society.<sup>121</sup>

Importantly, Rawls argues that though the public justification of justice as fairness (embodied by an overlapping consensus) relies upon the cooperation of reasonable comprehensive doctrines, those doctrines are not invoked within the discourses that produce and maintain this public consensus.<sup>122</sup> As he says, "the express content of these doctrines have no normative role in public justification."<sup>123</sup> Rather citizens will "take into account and give some weight to only the fact – the existence – of the reasonable overlapping consensus itself."<sup>124</sup> Public political discourses, therefore, should not make reference to particular comprehensive views or beliefs; they should instead invoke reasons and arguments that refer to the existence of an overlapping consensus – and the political values such a consensus is based upon. For example, discourses against abortion should not appeal to the tenets of one's religious faith, but should refer to publicly accepted political norms when discussing the preservation of life and the rights of the foetus. In precluding persons from drawing upon the content of particular comprehensive doctrines in public discourses, Rawls is, presumably, trying to prevent persons from making arguments that a pluralistic public cannot reasonably be expected to accept.

The overlapping consensus appears to take over the representative function of the original position. This consensus must now do what the original position was supposed to have done, that is, to equally represent individuals as moral selves. Thus, the consensus must be based upon political deliberations which are fair, which protect the moral powers of persons, and in turn their status as free and equal citizens. Only in that way can such a

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<sup>121</sup> Ibid. Public reason will be discussed later in this section.

<sup>122</sup> John Rawls, "Political Liberalism: Reply to Habermas," *Journal of Philosophy* 92, no. 3 (1995): 144.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

consensus be regarded as legitimately representative of the goods of moral persons. If Rawls wishes the consensus to appeal to existing society and avoid the pitfalls we found in the original position, however, it must be removed from the abstractness and ahistorical nature of that position. The consensus must reflect the capacity of real citizens (rather than metaphysical parties) to freely engage in public discussions, as well as impose different criteria for public deliberations. Such criteria should promote rather than impede the capacity of citizens to exercise and develop their moral powers and therefore support their status as free and equal persons. In order to do so, it must also ground itself in social and historical experiences. However, the consensus, chiefly through its exclusion of particular doctrines from public discourses, fails to make these necessary distinctions between itself and the original position and shares much of the abstraction we find there. Moreover, the conditions of alienation which undermine Rawls's political actor in the original position continue to unfold in the consensus, and once again Rawls's political conception of the person is ousted from his own argument.

Rawls suggests that the fact of pluralism necessarily requires that certain limits be placed upon the scope and content of public political debates. Key amongst these limits is that the most divisive issues that stem from differing comprehensive doctrines, which can "undermine the bases of social cooperation" that produce consensus, must be removed from the political agenda.<sup>125</sup> The reason for this exclusion, as noted, is to encourage arguments which appeal to publicly accepted values, rather than privately held beliefs. While such arguments should be certainly encouraged, particularly within pluralist societies, the outright exclusion of discourses which express particular beliefs in public discussions poses a significant obstacle to the development of moral selves. The barring of such expressions

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<sup>125</sup> Ibid., 157.



undervalues the need for persons to express their particular values, beliefs etc., in order to exercise and fulfill their capacities as moral selves.

The exclusion of difficult issues from the political agenda is what Habermas has referred to as Rawls's "method of avoidance," an attempt to create a remarkably neutral or stable freestanding theory by bypassing controversial ideas and questions.<sup>126</sup> This avoidance can be explained by referring back to the original position, where the principles of justice were chosen. The conditions of ignorance imposed upon parties to that position, as I have argued, undermine the extent to which the principles chosen could appropriately claim to represent or support the needs of real persons. It is unlikely that such principles could address the complexities of modern pluralist societies given that they were chosen under conditions devoid of such complexities. Thus, justice as fairness, and a consensus which relies upon it, could not reflect the goods of moral persons. As Habermas notes, "only when the theoretical design is completed can the fact of pluralism be brought into play, and the abstractions of the original position revoked."<sup>127</sup> Rawls intends the overlapping consensus to procure in a substantive sense the support of political society for justice as fairness. This would fulfill his claim that the adoption of justice as fairness relies upon a two stage process. The first, completed in the original position, requires parties to choose fundamental principles of justice. The second occurs in existing society, and subjects these principles to the test of public scrutiny.<sup>128</sup> However, because the deliberations in the original position were so impoverished, Rawls cannot assume that truly open and critical debates in existing society will support the outcome of the first stage. He therefore extends the method of avoidance used in the original position, constituted there by the veil, to existing political

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<sup>126</sup> Habermas, 131.

<sup>127</sup> Ibid., 121.

<sup>128</sup> Rawls, "Political and Overlapping Consensus," 245-246. See also Habermas, 121.

society through the narrow construct of the overlapping consensus. In doing so, Rawls re-creates the conditions of alienation which first appear in the original position, this time subjecting real, historical citizens to the erosion of their moral powers, and of their status as free and equal persons.

Like the original position, the overlapping consensus alienates persons from each other by corrupting the first moral power of citizens. Recall that the first moral power describes persons' sense of justice towards others in engagements with political questions. That willingness to take the standpoint of another is what Rawls calls a "settled disposition to take the moral point of view" in recognizing the equal moral worth of others.<sup>129</sup> The first power defines persons as intellectual and political labourers, as individuals whose social nature enables them to take interest in the public good when engaging political questions. In the original position, this power is supposed to help parties determine the most fair and representative principles of justice. Applied to the overlapping consensus, having a sense of justice indicates one's capacity to take the goods of others into account when raising and resolving political questions. However, the restrictive discursive conditions which support Rawls's consensus deprive persons of this moral power, maintaining the alienation of selves from others found in the original position.

Notably, while the original position produces highly generalized notions of the self (in opposition to moral selves), the overlapping consensus alienates persons from their sense of justice by cementing narrowly defined or particularized perceptions of persons. In particular, the consensus prevents persons or groups from representing themselves fully in political deliberations, a move that can help produce or maintain misinformed or essentialized ideas of them. The dangers of essentialism have been well-documented both

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<sup>129</sup> Rawls, TJ, 430.

by proponents and critics of the politics of identity. In mass pluralist societies, it is often the case that perceptions of others are based on limited knowledge, false preconceptions and stereotypical images.<sup>130</sup> When there does not exist any adequate forum for people to exchange knowledge about themselves as concrete individuals, these essentialized notions of the other tend to remain intact. Indeed, deliberations which limit expression of differences in the hopes of producing a stable overlapping consensus can become quite harmful to particular individuals and groups in society. Pluralist societies, in particular, should be wary of representative structures or processes which claim to be stable and effective because they push difficult issues out of political discourses.

Edward Said's work in *Orientalism* provides a useful illustration of the problems associated with constricting discourse. Notably, Said may well support Rawls's interest in producing an overlapping consensus which uses, not particularized values, but publicly accepted norms for its foundation. This interest, as I noted earlier, is valid and is particularly important for pluralist societies. However, when concerning moral selves, that interest has to be sensitive to the impact excluding expressions of personal values and experiences will have on persons' moral capacities. On this issue, Said's discussion of cultural others can be used to critique Rawls's overlapping consensus. Said finds that discourses which represent cultural others without engaging those others in a discussion about their own perception of themselves and their differences have the effect of essentializing how the other is viewed. Pointing to Orientalist discourses, he suggests that the Arab has become an essentialized subject in the West. The Arab mind is, according to Orientalist representations, devious, sadistic and treacherous; the Arab is seen only as part of a collective, rather than as an

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<sup>130</sup> Iris Marion Young, *Inclusion and Democracy*, (New York: Oxford University Press, 2000), 74.

individual; the Arab is both incompetent and dangerous.<sup>131</sup> Such discourses therefore prohibit persons defined as "Arab" from expressing themselves independently, as unique individuals. Consequently, these discourses prevent non-Arab persons from being able to consider the narratives of Arab individuals. Thus, Orientalist discourses destroy the first moral power of persons, by corrupting the information available about the Arab other. There can be no significant exercise of moral reciprocity if the authority to define oneself to others is appropriated.

Chandra Mohanty has similarly observed the dangers of essentialized discourses as a product of Western feminism. In *Under Western Eyes*, Mohanty argues that Western feminism has effectively produced an image of the third world woman which is taken to represent all women in third world societies. Western feminists, she maintains, have assumed "that all third world women have similar problems and needs. Thus they must have similar interests and goals."<sup>132</sup> Like the Orientalist discourses, Western feminist discourses that fail to engage women in third world societies cannot support the first moral power of persons. Such discourses inhibit the moral capacity of persons to act as members of a human community, as individuals whose shared status as moral beings allows them to recognize the right of persons to express their unique experiences and goods. They instead create and reinforce barriers of perception between persons, or between and within communities. Mohanty's criticism, like Said's, can easily be applied to deliberative constructs like the overlapping consensus, particularly in relation to essentialized groups within a society. Groups defined by ethnicity, religion, gender, sexual orientation etc. can become subject to the perceptions of social majorities or dominant minorities, and thus lose their

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<sup>131</sup> Edward Said, *Orientalism*, (New York: Vintage Books, 1994), 285-286.

<sup>132</sup> Chandra Mohanty, "Under Western Eyes," in *Third World Women and the Politics of Feminism*, ed. Chandra Mohanty, Ann Russo and Lourdes Torres, (Indiana: Indiana University Press, 1991), 63.

capacity to represent their own identities to society. By rejecting divisive issues, the overlapping consensus fails to engage individuals on questions of difference. Insofar as such issues are not engaged, there exists no critical means by which particular essentialized conceptions about society's others can be challenged and broken down. Alienation, as Marx noted, is especially perverse in its division of human from human, in its degradation of persons as social beings.<sup>133</sup> It is precisely this degradation which Rawls's consensus achieves through its alienation of persons' sense of justice.

By removing difficult issues from the political agenda, Rawls's consensus also prevents the politicization of contentious issues important to persons' social and moral welfare. This in turn alienates persons from their second moral power, their capacity to have a conception of the good, particularly because the consensus undermines their status as self-authenticating sources of valid claims. Deprived of that status, citizens may not regard "themselves as being entitled to make claims on their institutions so as to advance their conception of the good."<sup>134</sup> However, in his account of the overlapping consensus Rawls seems to forget that most of the important political questions we deal with are politicized through public deliberations – and many of these issues are highly controversial.<sup>135</sup> Such questions have been invoked by individuals who have borne a particular burden by society's policies or perceptions with regard to those issues, and they should not only voice their concerns, but also demand a public debate about them. Debates over same-sex marriages, economic/welfare policies and abortion are deeply divisive, but are necessary to legitimate the representative processes of democratic societies. While the outcome of such debates may not please all individuals, the deliberative exchange which constitutes them is required if

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<sup>133</sup> Marx, EPM, 277-278.

<sup>134</sup> Rawls, JAF, 23.

<sup>135</sup> Young, 26-35.

representative processes can claim to have legitimately engaged with the citizens they stand for.<sup>136</sup> It is often through the discursive vigilance of citizens that important issues, otherwise ignored by political officials, are brought to the fore of public interest. The civil rights movement in America, feminist movements, and other grassroots movements have succeeded, to a degree, in obtaining recognition for their causes and political changes based on their demands in part by giving individuals a voice in the public forum. As Habermas notes, "it is a long road, involving the dogged efforts at staging public 'actions' before such initially 'private' matters even begin to acquire the status of recognized political issues."<sup>137</sup> In limiting the range of topics open to public debate, the overlapping consensus effectively limits the freedom of individuals to encourage and engage in discourses on any subject. These limits necessarily impede the possibility for persons to seek and obtain political solutions to problems that affect them. Without that possibility, how can Rawls expect persons to confidently articulate and pursue their conceptions of the good, given by their second moral power?

Reflecting elements of Marxian personhood, this second power is deeply bound to the ability of persons to view their lives as their own, as something built with their labour, their conscious choices and efforts. This labouring to produce for oneself a life which reflects one's ends and goods flourishes only in an environment which regards persons as socially and politically free beings – as sources of valid claims. If, however, persons are precluded from seeking political answers to issues that affect their goods or ends, how can they regard themselves as sources of valid claims? Though Rawls devises the consensus as something which represents what citizens have in common, that sense of commonality is

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<sup>136</sup> Jürgen Habermas, *Between Facts and Norms*, (Cambridge: MIT Press, 1998), 382-384. Moreover, such discourses should never be closed, for citizens should always be free to make further appeals to their society on issues that are important to them. Civil disobedience has often been defended on this principle.

<sup>137</sup> *Ibid.*, 314.

illegitimately derived. What is left between persons once the consensus has undermined their moral capacities? The political identity of citizens is no longer constituted by their productive moral powers, but rather by the conception of justice as fairness obtained within the original position. This conception of justice, as we have seen, does not involve or reflect moral persons and thus cannot legitimately provide the grounds for consensus between such persons. Because it develops only out of limited discourses the overlapping consensus estranges moral selves and is left with the poorly derived outcome of the original position. Rawls's consensus therefore fails to absolve itself of the problems associated with the original position, instead drawing upon and continuing the conditions of alienation found there.

Notably, Rawls has often involved himself in debates over controversial issues. For example, in relation to same-sex marriage, he has argued that denying persons the right to marry for reasons of sexual orientation undermines their civil rights as democratic citizens.<sup>138</sup> His engagement with such issues, not surprisingly, appeals to the principles of a democratic society – and thus does not draw upon particular beliefs or values. However, persons who feel that their very identity is at issue when debates over same-sex marriage arise may need to express themselves in a more subjective manner. Being permitted to speak publicly about their personal experiences and values may very well be necessary for them to feel that the significance of their individual or social identities is recognized in political society. Though we certainly want to encourage persons to appeal to accepted political norms, we should also make room in the initial stages of controversial discourses for persons to publicly express who they are and how their identities, their life-plans, are affected by particular policies or views. Allowing persons to express their conceptions of the good, and to make claims based

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<sup>138</sup> John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997): 780.

on those conceptions is required of social institutions if persons' second moral power is to be protected and potentially enhanced. However, bringing these different conceptions out requires that discursive publics be open to speaking about all issues; there can be no a priori limit on what can be put on the political agenda. The debate over same-sex marriage, which Rawls entered into, would have begun through the expression of extremely controversial interests, beliefs and desires to society. That initial expression is necessary in order for such issues to begin to garner political currency in public debates, and to be identified with questions of justice and civil rights. If discourse is closed to issues on the basis of their contentiousness or divisiveness, the representative legitimacy of political policies and social outcomes disappears, and the moral autonomy of persons is made irrelevant.

### **3.3 Public Reason**

Rawls proposes that citizens who engage in political debates must use the principles of public reason to guide their arguments. He posits public reason as a solution to the question of how pluralist societies can address important political questions from different and often divergent views, and establish an overlapping consensus over a political conception of justice.<sup>139</sup> Public reason effectively points to the idea that, at some point, persons should be able to address political questions in a way that is publicly reasonable and understandable. As with the overlapping consensus, therefore, Rawls's idea of public reason is interested in promoting political discourses which appeal to the public political values of a democratic society. However, while the tenets of public reason are certainly useful for politics in pluralist societies, use of public reason should not be regarded as the only means

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<sup>139</sup> Rawls, PL, xvi-xvii.



by which persons can engage in public discourses. In particular, Rawls's notion of public reason does not adequately address how alternate forms of speech and expression may be central to a person's ability to confidently present their concerns and engage in political discourses, and to feel connected to both the processes and outcomes of such discourses. That public reason does not accommodate such a discussion raises questions about its ability to represent and enable moral selves.

According to Rawls, the ideal of democratic citizenship requires that citizens are willing to listen to each other.<sup>140</sup> This willingness to listen is predicated upon the assumption that those who engage in public discussions on political issues do so in a way that utilizes and appeals to public reason.<sup>141</sup> Rawls suggests that reason becomes public in three ways:

As the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is ... given by the ideals and principles expressed by society's political conception of justice.<sup>142</sup>

For Rawls, public reason and political conceptions of justice go hand in hand, and he is interested in promoting justice as fairness as such a reasonable conception. Thus, in Rawls's theory the original process of agreement which results in his conception of justice involve also a "companion agreement on the guidelines for public inquiry."<sup>143</sup> He suggests that parties to the original position must adopt criteria for public reason in order to apply and satisfy the principles of justice, and choose policies which fulfill them in existing social conditions.<sup>144</sup> To do so, Rawls allows parties knowledge of "general beliefs and forms of reasoning found in common sense and the methods and conclusions of science when not

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<sup>140</sup> Ibid., 217.

<sup>141</sup> Ibid., 215.

<sup>142</sup> Ibid., 213.

<sup>143</sup> Rawls, JAF, 89.

<sup>144</sup> Ibid. Rawls, PL, 225.

controversial.”<sup>145</sup> The veil is partially lifted to include this kind of general knowledge, but continues to conceal the particularities and controversies of comprehensive beliefs. Since it still, therefore, prevents persons from making prejudicial proposals, Rawls no doubt views the original position as a legitimate forum in which an idea of public reason can be produced. However, even with the partial lifting of the veil, with parties remaining unaware of their particular ends and full social contexts, their ability to see how standards of reasoning will impact persons in pluralist societies is suspect.<sup>146</sup> This becomes clear when we examine Rawls’s idea of public reason applied to public political deliberation.

Rawls first relates public reason to the “public political forum,” which he divides into three discursive spheres: the discourse of judges, of executive and legislative officials and finally of candidates for public office.<sup>147</sup> Accordingly, Rawls defines public reason as that which involves the “concept of judgement, principles of inference and rules of evidence ... and include[s] standards of correctness and criteria of justification,” standards we tend to associate with political office and especially with the legal discourse of the courts.<sup>148</sup> His association of public reason with these offices and roles is significant when we see how he extends the application of public reason to the political deliberations of ordinary citizens. According to Rawls, the legitimacy of civic deliberations, and of the opinions of the majority, hinges upon the capacity of citizens to “think of themselves *as if* they were legislators and ask themselves what statutes, supported by what reasons ... they would think it most reasonable to enact.”<sup>149</sup> Public reason is thus meant to make citizens think in an ideal, objective way

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<sup>145</sup> Rawls, JAF, 89-90.

<sup>146</sup> Habermas, “Remarks on John Rawls,” 121.

<sup>147</sup> Rawls, “The Idea of Public Reason,” 767.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid., 769.

when they engage in political deliberations in a public forum.<sup>150</sup> There is an apparent link between the reasoning of political representatives and judges and that of citizens who are not government officials. This linkage is problematic because it assumes all citizens can, or want to, speak as if they were trained officials. It requires persons to translate their expressions into a putatively objective and ideal language. That requirement effectively completes the conditions of alienation we find in the overlapping consensus, by disassociating certain persons from their relation to the processes and products of political deliberation in society.

The alienation of moral persons from deliberative processes results from the discursive requirements public reason imposes upon speech and expression in public political forums. One way in which it does this is through the privileging of argument, as conceived by Rawls, in political discourses over other forms of communication. For Rawls, public reasoning aims at public justification, that is “to ascertain evidence and facts open to public view, in order to reach conclusions...about political institutions.”<sup>151</sup> Public reason, he says, relates to the arguments we address to others; such arguments proceed from the “premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept.”<sup>152</sup> Thus, Rawls’s idea of public reason privileges argument as the primary form for political communication between citizens and between citizens and their representatives.<sup>153</sup> To this end, the exercise of persons’ sense of justice in public

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<sup>150</sup> Rawls, PL, 215.

<sup>151</sup> Rawls, “The Idea of Public Reason,” 786.

<sup>152</sup> Ibid.

<sup>153</sup> Rawls briefly discusses forms of expression like “declaration,” through which persons express their particular doctrines or views and “conjecture,” through which persons try to explain the beliefs of others and show how they can still accept a political conception of justice with those beliefs. However, neither of these forms of expression are part of public reason, thus, for Rawls they are not legitimate modes through which to address others in *political* discussions. Additionally, Rawls is interested with these forms of expression only insofar as they can be used to defend or uphold a political conception of justice. As such, he views the aim of such expressions to be to convince persons of your (or others’) capacity to accept a conception of justice like justice as fairness. Rawls’s discussion of these expressions does not, therefore, address the problem of the differend. Ibid.

discourses, or of their status as sources of valid claims is supported only if they are capable of presenting arguments through public reason.

Iris Marion Young has presented a strong case against this privileging of argument, however, suggesting that argument can prevent persons from properly expressing their views and needs to political society. She notes that concepts of argument often involve the capacity to speak articulately, a capacity which is usually associated with high levels of education.<sup>154</sup> Though Rawls notes that education is essential to the deliberative capacity of citizens and to democratic efficacy generally, he does not seem to develop the implications of his idea of public reason for persons who have not been educated in the ways of reasoning and expression given by argument. For example, his attempts to show the broad applicability of public reason in controversial cases like that of school prayer and slavery in America not only privilege argument, they focus on the arguments between political officials.<sup>155</sup> To illustrate the use of public reason in debates over school prayer, he cites the arguments presented by Patrick Henry and James Madison.<sup>156</sup> With reference to slavery, Rawls discusses the use of public reason in the Lincoln-Douglas debates, just prior to the civil war.<sup>157</sup> Where in these examples are the discursive capacities of ordinary citizens represented? Though we may all wish to reason and speak with Madisonian flare, or with the clarity of Lincoln, Rawls's assertion that citizens can act like ideal legislators is hardly reflective of all real persons.

Young also notes that privileging argument can sometimes require persons to speak dispassionately, as disembodied from their particular feelings or experiences.<sup>158</sup> In requiring

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<sup>154</sup> Young, 38.

<sup>155</sup> Rawls, "The Idea of Public Reason," 794-795, 802.

<sup>156</sup> Ibid., 794-795.

<sup>157</sup> Ibid., 802.

<sup>158</sup> Young, 39.

persons to translate their particular beliefs and needs into language conditioned by public reason, Rawls does effectively ask them to become disembodied and dispassionate. Public reason can therefore prevent certain individuals from making their case effectively to political society, and this is especially troublesome in situations where a particular harm or injustice has been experienced. Jean-Francois Lyotard has referred to this silencing of certain persons and groups as the problem of the differend:

A case of differend between two parties takes place where the 'regulation' of the conflict that opposes them is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom.<sup>159</sup>

Certain persons may not be able to articulate their experiences in the idiom of public reason, and may rely upon expressions which are not generally shared. This can fundamentally alter how persons are able to present their views, and in cases of the differend, can effectively silence persons. June Jordan's essay "Nobody Mean More to Me Than You and the Future Life of Willie Jordan", illustrates this problem. Jordan describes the linguistic dilemma presented to students studying the art of Black English. After the unarmed brother of an African-American student in the class was shot eight times by police, the students wanted to write letters of protest to the police department and media. The debate, as Jordan describes, was whether or not to write the letters in Black English or Standard English. The class eventually voted to use Black English, in order "to express themselves with integrity," even though they felt certain that their decision had "doomed their message."<sup>160</sup> Susan Bickford has examined this case, and noted that it underscores the fact that "communicating politically is not just a matter of speaking in the right voice so that we will be heard (that

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<sup>159</sup> Cited in Young, 37. See: Jean-Francois Lyotard, The Differend: Phrases in Dispute, (Minneapolis: University of Minnesota Press, 1988), 9.

<sup>160</sup> Cited in Bickford, 128. See Also June Jordan, On Call, (Boston: South End Press, 1985), 135-136.

voice may not express who we publicly are trying to be).<sup>161</sup> In the case of the students, they felt that there was “no voice in which they could speak that would both communicate themselves, and communicate to the others they wanted to address.”<sup>162</sup> Thus, changing one’s self-representative discourse to adhere to dominant operative premises can have the effect of shifting, in a fundamental way, both how you speak about yourself and the content of your speech. These students were therefore faced with the option of expressing themselves as politically unique and autonomous individuals, or translating this expression into the dominant political idiom in order to be heard. Such a choice is what Rawls’s public reason presents persons with. Put another way, if subaltern or marginalized groups are required to represent their political arguments to the public in the discursive frameworks set by the dominant group, their capacity to represent themselves in a specific and unique way is eroded. Thus, their access to deliberative processes is limited if they cannot take part in public arguments and in such cases, the status of persons as free and equal moral selves is necessarily undermined.

The estrangement of persons from deliberative processes and their products in political society through the privileging of argument is furthered through Rawls’s articulation of public and private spheres of life. As he argues, public reason relates to the public political culture, and it is distinct from the type of discourse that occurs in the associations of civil society and private relations, what Rawls calls “background culture.”<sup>163</sup> Nussbaum has argued that Rawls, unlike Habermasians, prefers to avoid discussion of discourses which occur in the background culture as he views such discourses to be within the domain of private persons, and outside of the demands of public reason. In contrast, on matters

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<sup>161</sup> Bickford, 128.

<sup>162</sup> Ibid.

<sup>163</sup> Rawls, PL, 220.

relating to constitutional essentials or basic justice, public reason must be utilized in order to make discussions appropriately objective and accessible.<sup>164</sup> However, it is often within what Rawls calls the background culture that issues of constitutional essentials or basic justice are first experienced. What happens to us as "private" persons significantly affects our political perspectives and interests. Rawls attempts to accommodate this by suggesting that public reason can be interpreted widely so that persons may present reasons they regard as the basis for particular political values or policies, reasons which are rooted in their own background cultures.<sup>165</sup> However, he still requires that references to particular comprehensive beliefs be presented through the norms of speech and reasoning given by public reason.<sup>166</sup> Rawls therefore maintains a divide between public and private spheres, insofar as he requires persons to translate their beliefs and private experiences into the language of public argument. The consequence, intended or not, is to move many forms of the expression of particular issues outside of the political public, and to severely constrain certain persons' access to deliberative political forums.

Political debates relating to the division of labour within the family, sexuality and sexual freedom, family planning or the impact of religious traditions on women have their roots in the experiences of persons and in the initial voicing of those experiences within the background culture.<sup>167</sup> However, the dictates of public reason would require these expressions to be altered, perhaps significantly, in order to be politically recognized. To speak or write in Black English would never be a feasible option, even for persons who can express their identities and struggles fully only through the use of that idiom. What then happens to discourses which rely upon such idioms, upon subjective experiences, or to

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<sup>164</sup> Nussbaum, "Feminism and Rawls," 495. See also Rawls, PL, 383; Rawls, "The Idea of Public Reason," 768.

<sup>165</sup> Rawls, JAF, 90. Rawls, PL, 247.

<sup>166</sup> Rawls, JAF, 90.

<sup>167</sup> Benhabib, 155.

political claims which stem from deeply personal interests or needs that are not initially publicly recognized or understood? If we cannot voice certain harms or needs, that have relevance to questions of basic justice in ways that do not immediately appeal to publicly recognized rules of 'inference, evidence or standards of correctness', the domain of the political is carved outside of, and in some cases in opposition to the lived experiences and deliberative capacities of certain individuals.

Still, Rawls maintains that he does not regard the political and non-political spheres as entirely separate spaces, but suggests only that there exists a non-political space (background culture) which need not be subject to public reason and politics generally. For example, Rawls suggests that while the division of labour within the family should ideally be equalized, the state cannot forcibly ensure this where such divisions are not forcibly upheld.<sup>168</sup> These cases fall outside of the political domain. For him, it is perfectly reasonable to distinguish between persons as citizens, and as private individuals whose activities occur within a non-public space. Thus, family members need not speak to each other through the language of public reason, because in this association they are private persons. They must invoke that language when engaging discussions of political questions publicly, as citizens. However, as I have argued, Rawls's public reason precludes persons from politicizing issues first raised within the private arena, and this preclusion does constitute an invasion of personal autonomy. If persons' are prevented from raising personal experiences and interests within political society, both their personal and political freedoms are undermined.

Moreover, their civic and individual identities are forcibly divorced. Rawls's attempt to validate a double identity for persons, as citizens and as private persons, is therefore

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<sup>168</sup> Cases in which persons are forced against their will to perform certain tasks, or to take up the bulk of household labour are of course not included. Rawls maintains the liberal view that the state cannot invade spheres of private autonomy, except in situations where individual rights are being violated. Rawls, "Idea of Public Reason," 792.



troublesome. More significantly, this division hurts moral selves. In "On the Jewish Question" Marx views the separation of political and civil society as positive insofar as that separation secured for persons, regardless of their particular religion, a shared political identity. This for him describes the political emancipation of persons in modern society. However, political emancipation is, for Marx, "the reduction of man, on the one hand, to a member of civil society, to an egoistic independent individual and, on the other hand, to a citizen...."<sup>169</sup> Therefore he argues that the freedom achieved through the separation of public from private is only a *partial* emancipation. In Marx's view, the opposition between man as a private being and man as citizen undermines the social nature of man as a species-being.<sup>170</sup> We can extend Marx's concern to Rawls's conception of moral selves in relation to public reason.

For the Rawlsian self, it is one's capacity to form a sense of justice which defines one's social nature. In cases where public reason prevents persons from articulating particular views, because they cannot be voiced in the "right" language, persons' sense of justice is certainly impaired. What we know of particular individuals or groups will be limited, and thus the ways in which we engage and respond to them will also be limited. Like the overlapping consensus, public reason works to restrict the information available in public deliberations, and therefore limits the extent to which individuals can take the moral point of view towards others, thereby exhibiting their social nature. The opposition between public and private spheres of interest also weakens the individual's capacity to view their world as something which reflects their contributions, their productive activities. As Marx argues, it is through our productive capacity to labour that we are able to duplicate ourselves, and to see ourselves in a world we have helped to create. Recall that for the Rawlsian self,

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<sup>169</sup> Marx, "On the Jewish Question," CW Volume 3, 168.

<sup>170</sup> Marx, "Critique of Hegel," xlv-xlv. (Introduction by O'Malley); Marx, "On the Jewish Question," 168.

this particular capacity is defined by the second moral power, the power to produce and pursue one's conception of the good. Where, however, those conceptions, and the claims we make on their behalf, cannot be expressed or pursued unless significantly transformed by public reason, that capacity is degraded. Thus, the opposition of political and private identities which we find in Rawls's idea of public reason does not support the moral powers of the Rawlsian self.

For Marx, the full emancipation of persons is obtained only when the private and public identities of persons no longer constitute "opposed spheres of interest."<sup>171</sup> As long as they exist as separate spheres, persons do not live a species-life. Marx, of course, saw the source of that separation in private property. Whether or not we agree with that conclusion, my use of Marx's argument here is intended to highlight the consequence of splitting persons into two parts, one public the other private. The Rawlsian self requires a fluid interaction between public and private life, a fluidity that should be ensured by making the division between political and civil society essentially contested. Rawls however, fails to address the problems posed by that divide to his conception of moral selves, and instead rationalizes it through public reason. It is Marx rather than Rawls who offers a more consistent account of identity. This is not to say that there is no value in distinguishing between private and public spheres, particularly where fundamental issues of privacy and the policing powers of the state are concerned. This distinction, for example, proved important when cases involving access to birth-control and abortion rights came before the American Supreme Court.<sup>172</sup> However, such distinctions must be provisional and contested. As Chantal Mouffe argues, "we cannot say: here end my duties as a citizen and begins my freedom as an individual. Those two identities exist in a permanent tension that can never

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<sup>171</sup> Marx, "Critique of Hegel," xlv. (Introduction by O'Malley).

<sup>172</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Roe v. Wade*, 410 U.S. 113 (1973).

be reconciled.”<sup>173</sup> It is the provisional nature of public/private distinctions that Rawls’s idea of public reason fails to accommodate. In preventing certain “background” experiences or “comprehensive” values and needs from being voiced, public reason articulates a divide between our identities as citizens and as private individuals. This divide can estrange certain persons not only from deliberative processes, but from their moral capacities as well.

Discourse which excludes particularities and sets apart the public and private realms produce an impoverished and undemocratic politics. On the other hand, discourses which welcome the expression of particularity, and work to relate public and private worlds, are more likely to reflect the politics of a just society. The requirements of public reason serve an impoverished rather than a just politics. They effectively mute the experiences and needs of certain persons in pluralist societies. Consequently, persons’ relation to the outcomes of political deliberations, and to the deliberative activity itself is disrupted. Discourses conditioned by public reason will be exclusive because they force persons to translate their experiences and interests to conform with dominant discursive premises. Persons who are forced to alter their dialogue in this way have no substantive relation to either discursive processes which lead to an overlapping consensus, or to the policies and opinions which result from them. Thus, through the overlapping consensus and public reason, persons are placed in the same position as parties to the original position. Their moral powers are effectively dismantled, and their capacity to contribute to public debates and decisions is reduced.

Though the overlapping consensus and public reason are meant to deal with substantive political questions and the activity of real citizens, Rawls maintains in them the level of abstraction he employs in the original position. Citizens are expected to refrain from

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<sup>173</sup> Chantal Mouffe, *The Return of the Political*, (London: Verso, 1993), 72.

introducing controversial questions, even if such questions are intimately tied to their sense of self and of their life plan. Their capacity to engage others as moral equals is challenged by Rawls's unwillingness to engage questions of difference. Thus, Rawls implies that persons are morally equal only insofar as they are the same. Individuals are also expected to speak and reason with each other in a highly idealized and uniform manner. The deliberative process and its outcomes therefore can only represent and respond to the interests of persons who look like ideal legislators, not moral persons. It then seems illogical to expect that moral persons would adhere to the basic social structure, and to the principles which condition them, given that these individuals have been excluded from the discourses which inform and maintain them.

#### 4 THE PRINCIPLES OF JUSTICE AND THE RAWLSIAN SELF

The preceding chapters have suggested that Rawls's attempts to determine and stabilize principles of justice are critically flawed. In addition to standing critiques of Rawls's metaphysical self, I have argued that this self is the product of the restrictions Rawls imposes upon persons and their capacities for deliberative and reflective labour in the original position, the overlapping consensus and through public reason. I contend that these conditions effectively alienate Rawls's political conception of moral persons, a persona which is socially, civically and politically embedded, unlike the unencumbered self whom we find operationalized in his theory. The alienation of Rawls's political self through the removal of her/his moral powers necessarily casts a shadow upon his project, namely the two fundamental principles of justice which are the foundation of justice as fairness. Rawls lays out these principles in *A Theory of Justice* as follows: First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage and (b) attached to positions and offices open to all.<sup>174</sup> These principles are to be ordered lexically, with the first principle taking priority over the second.<sup>175</sup>

The first principle is often referred to as the liberty principle, as it specifies the basic rights and freedoms that contemporary liberal democracies afford their citizens. Protected under this principle are the political liberties: the right to vote and hold office; freedom of speech and assembly; liberty of conscience; freedom of the person "which includes freedom from psychological oppression and physical assault"; the right to hold personal property and

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<sup>174</sup> Rawls, TJ, 53.

<sup>175</sup> Ibid., 157, 179, 220.

freedom from arbitrary arrest and seizure as given by the rule of law.<sup>176</sup> Importantly, Rawls makes a distinction between liberty and the worth of liberty, where the former is formally given by equal citizenship, the latter relates to the lived experiences of the political liberties by particular persons or groups.<sup>177</sup> This distinction is represented in the lexical ordering of the two principles, also referred to as the priority rule.

The second principle is known as the difference principle, and of the two, has garnered far more attention. It applies to the “distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility.”<sup>178</sup> Thus, “while the distribution of wealth and income need not be equal, it must be to everyone’s advantage and... positions of authority and responsibility must be accessible to all.”<sup>179</sup> The difference principle supports the distributional apparatus of the welfare state and its regulation of the free-market, thus critics on both the left and right of the political spectrum have had much to say about its use and value. Libertarians like Robert Nozick, for example, have summarily rejected the difference principle on the grounds that social welfare, if it can only be obtained by re-distributing material resources, violates individual liberty.<sup>180</sup> Critics on the left have maintained that in tolerating inequalities the difference principle undermines justice.<sup>181</sup> Additionally, others have pointed out that Rawls considerably narrows the scope of what counts towards determining who is well off by focussing solely on income and wealth. As Nussbaum points out, persons may be financially secure, but may “lack the social bases of self-respect,” in other ways.<sup>182</sup> For example, the difference principle fails to address

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<sup>176</sup> Ibid., 53.

<sup>177</sup> Ibid., 179.

<sup>178</sup> Ibid., 53.

<sup>179</sup> Ibid.

<sup>180</sup> Robert Nozick, “Distributive Justice” in *Communitarianism and Individualism*, ed. Shlomo Avineri and Avner de-Shalit, (Oxford: Oxford University Press, 1992), 137.

<sup>181</sup> Nussbaum, “The Enduring Significance of John Rawls,” 3.

<sup>182</sup> Ibid., 3-4.

issues like recognition, identity or care, issues which may fundamentally impact how moral persons are advantaged or disadvantaged in society. This latter criticism of the difference principle is quite significant, and certainly relates to the prior exclusion of such issues in Rawls's theory.<sup>183</sup> While such criticisms are valid, in the interest of brevity this paper will accept the intended scope of the difference principle as a principle of just material distribution within liberal market democracies.

The key question this chapter addresses is whether or not Rawls's principles, apart from his approach to obtaining and maintaining them, can support his political conception of moral persons. I argue that they in fact cannot. This critique focuses upon the distinction between liberty and the worth of liberty, which is embodied in Rawls's priority rule. In particular, I contend that Rawls's failure to connect formal and substantive liberties undermines his capacity to fully address the impact of economic inequities upon moral persons. The priority rule therefore conflicts with the requirements of political justice and his account of persons as free and equal moral selves. At first, this problem may seem easily resolvable, one need only remove the priority rule. However, this rule is an important element of the two principles, particularly the difference principle. The priority rule is as much a justification of the difference principle as it is a protection of the liberty principle. In specifying the priority of the first principle, Rawls argues that the provision of equal formal liberty by the constitutional essentials of a state is paramount. As long as there is a legal provision of liberty for all, we can accept that economic inequity will differentially structure the access to and experience of political liberties for certain persons.<sup>184</sup> Thus, what is of primary concern is not whether persons can afford the financial burdens of running for

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<sup>183</sup> The exclusion of issues of care, for example, was discussed in relation to the original position in the previous chapter. Additionally, questions about recognition and identity were raised in relation to the overlapping consensus.

<sup>184</sup> Rawls, TJ, 179.

public office, but rather whether such offices are legally open to them. This acceptance is, according to Rawls, supported by the difference principle. Rawls assumes the second principle will help to compensate for the lesser worth of liberty experienced by underprivileged persons by requiring inequalities to benefit them in some way. It is important to note, that the difference principle is interested only in alleviating conditions of poverty through just distribution, it is not aimed at challenging or re-structuring the economic system which produces inequality. In order for us to accept this principle's limited distributive aims, Rawls must ask us to distinguish between legal and lived political liberties, and to view the latter as secondary to the former. Only in this way does the difference principle's limited interest in softening (rather than eliminating) inequality seem reasonable. In other words, Rawls requires us to accept his priority rule in order to legitimate the difference principle. The priority rule supplies the theoretical justification for the difference principle, as it sets up the important distinction between liberty and the worth of liberty, a distinction which is then embodied in the difference principle's toleration of economic inequalities within liberal market democracies. As such, it is this rule which the following sections will attempt to discredit, thereby challenging the basis of Rawls's two principles. This critique will highlight the ways in which the priority rule fails to accommodate the moral powers of persons, and thus continues to alienate Rawls's political persona. I will outline this critique by looking first at the general impact of economic inequalities on the worth of political liberties. The following sections will address more specifically how this impact affects first the principle of social responsibility given by the first moral power, and second, a person's conception of the good given by the second moral power.

The basic political liberties guaranteed by the first principle include the right to vote, hold office, freedom of speech, assembly, thought and freedom of the person. These rights



are the requisite elements of a liberal democracy, and the equal provision of such rights is necessary to maintain the status of citizens as free and equal persons. These rights cannot be restricted for lesser interests, no matter how utilitarian they may be. Rawls specifies, for example, that the basic liberties cannot be restricted for "greater social and economic advantage."<sup>185</sup> Importantly, the right to own certain kinds of property, like the means of production, or the freedom of contract given under the doctrine of laissez-faire are not basic rights, and therefore are not protected by the priority rule.<sup>186</sup> The exclusion of such rights from the first principle, presumably, supports the distributive function of the difference principle by allowing the institutions of the basic structure to re-organize certain properties as may be necessary to promote social welfare. It is important to note that Rawls is very concerned with the implications economic inequalities have for the efficacy of democratic regimes. He notes, for example, that the liberties protected by the principle of participation, referring broadly to the political liberties,

lose much of their value whenever those who have greater private means are permitted to use their advantage to control the course of public debate. For eventually these inequalities will enable those better situated to exercise larger influence over the development of legislation.<sup>187</sup>

Rawls further notes that,

historically one of the main defects of constitutional governments has been the failure to insure the fair value of political liberty. The necessary steps have not been taken, indeed, they never seem to have been seriously entertained.<sup>188</sup>

According to Rawls, such steps should include making political parties independent of private economic interests, and ensuring that property and wealth be widely distributed and

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<sup>185</sup> Ibid., 220, 54.

<sup>186</sup> Ibid., 54.

<sup>187</sup> Ibid., 198.

<sup>188</sup> Ibid.

government monies provided to ensure free public discussion.<sup>189</sup> However, Rawls's ability to address adequately the relation between political freedom and economic inequity is constrained by his insistence on the priority rule. In differentiating between liberty and the worth of liberty, Rawls maintains the historical defect of liberal democracy, namely the unwillingness to secure substantive rather than de jure liberties for all. Though political liberties are guaranteed equally for all under the law, as Rawls notes, the value of such liberties is lost if their exercise can be manipulated by those with greater private means. As has become apparent in functioning liberal democracies, the United States an oft-cited example, socioeconomic status often translates into political power, and this necessarily undermines persons' status as free and equal citizens.

The experience of African Americans, for example, has not reflected the achievement of formal freedoms following the civil war and even the civil rights movement.<sup>190</sup> Rather, there exists in America today a large underclass of black Americans - a result, many argue, of the limited socioeconomic assistance given in conjunction with formal political freedoms. As historian Eric Foner has suggested, liberal democracies like the United States have made a conscious distinction between formal political liberties and socioeconomic liberties, the consequences of which continue to evoke criticism.<sup>191</sup> The most influential players or social organizations in politics tend to be those with what C.B.

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<sup>189</sup> Ibid.

<sup>190</sup> Following the initial achievements of the Civil Rights movement, including the Civil Rights and Voting Rights Acts, Martin Luther King's focus began to shift from issues of formal legal freedom to those of poverty and economic inequality. King's speeches increasingly took issue with the great disparities in wealth and income that separated white Americans from black Americans. Towards the end of his life, King argued that without economic freedom, "the plant of freedom has grown only a bud and not yet a flower." Martin Luther King, "Where do We Go from Here?" Report Delivered to the 11<sup>th</sup> Convention of the Southern Christian Leadership Conference, August 1967. The Martin Luther King Jr., Research and Education Institute [http://www.stanford.edu/group/King/publications/speeches/Where\\_do\\_we\\_go\\_from\\_here.html](http://www.stanford.edu/group/King/publications/speeches/Where_do_we_go_from_here.html) (accessed January 3, 2006).

<sup>191</sup> Eric Foner, "The Meaning of Freedom in the Age of Emancipation," *Journal of American History* 81, September (1994): 460.

Macpherson calls political purchasing power.<sup>192</sup> A high level of purchasing power requires that one possess political commodities like time, knowledge and a capacity to participate, all of which are directly related to the level of capital one has available.<sup>193</sup> The unequal distribution of wealth in a market economy can determine the level of purchasing power possessed by different individuals or groups in society. Thus, political influence is quite easily placed in the hands of those who are best situated in the economy, and political power becomes a class-based privilege.

The impact of such inequalities on the worth of political liberties cannot be underestimated. Indeed, for those whose value of such liberties is undermined by poor economic status, the very worth and legitimacy of democracy can come into question. This is apparent in newer democratic regimes, particularly those in which power and poverty has historically been substantially polarized. South Africa, whose apartheid regime collapsed over a decade ago, illustrates the consequences of a *de jure* approach to political liberties. Though the anti-apartheid movement in South Africa was justly rewarded with the fall of the regime, and the extension of legal rights and freedoms to black South Africans, the degree to which they have realized those liberties is disheartening. In *A History of Inequality in South Africa*, Sampie Terreblanche notes that post-apartheid South Africa has simply compounded race-based with class-based inequalities.<sup>194</sup> Under apartheid, being black corresponded with being poor; wealth was the privilege of the white Afrikaner community. The difference between racially constituted classes of the Apartheid era and those of the new democratic South Africa is that so long as all persons are free and equal under the law, divisions of class are regarded as a legitimate consequence of a free market economy. Since black South

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<sup>192</sup> C.B. Macpherson, *The Life and Times of Liberal Democracy*, (Oxford: Oxford University Press, 1977), 87.

<sup>193</sup> Ibid.

<sup>194</sup> Bryan Rostron, "Somewhere over the Rainbow," *New Statesman* 133, no. 4702 (2004): 17.

Africans have come out of a historical disadvantage, socially, economically and politically, they enter into a free-market economy (much like that of African Americans in the United States) from a disadvantaged position. In fact, between 1995 and 2000, while the average income of Afrikaner households increased by 15%, the average for black households decreased by 19%.<sup>195</sup> Though a proportion of black South Africans have entered into the middle class, Terreblanche argues that they still comprise the bulk of the working class, and the entirety of a large and growing underclass whom he notes remain "voiceless [and] pathetically powerless."<sup>196</sup> The inequitable division of wealth in market societies has a direct impact on the distribution of political power and influence. In the face of de jure equality, the socioeconomic conditions present in South Africa have maintained a de facto segregation of black South Africans, and a necessarily weak access to political power and democratic liberties. Heather Deegan has noted that democracy in South Africa today does not reflect the type of democratic rights and freedoms many in the anti-apartheid movement were fighting for. While legal equality and the right to vote were certainly fundamental issues, those fighting against apartheid saw the denial of "basic necessities, such as jobs, houses...clean water...and so on," to be a denial of democracy.<sup>197</sup> Deegan notes that this recognition of practical issues during the anti-apartheid movement continues to inform people's notions of democratic political rights. Thus, the continuing socioeconomic inequality faced by black South Africans is having a detrimental impact on the value of democratic institutions and processes.<sup>198</sup> Indeed, by 2001, an estimated 4.5 million voters

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<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Heather Deegan, "A Critical Examination of the Democratic Transition in South Africa," *Commonwealth and Comparative Politics* 40, no. 1 (2002): 50.

<sup>198</sup> Ibid.

had still not registered to vote.<sup>199</sup> There has been a noticeable decline in youth voting from 1996 onward, surprising given that the South African youth were actively involved in both the anti-apartheid movement and the constitution writing campaign in 1996.<sup>200</sup> While this level may be comparably good, in relation to the voter turnout and youth involvement in many other countries, including the United States, Deegan rightly notes that what is most alarming about these figures is that South Africa's universal suffrage was achieved only a decade ago. Under a system which provides no substantive backing to formal rights and freedoms, the value of democracy and democratic processes is tarnished. Indeed, as Robert Dahl asks,

if income, wealth, and economic position are...political resources, and if they are distributed unequally, then how can citizens be political equals? And if citizens cannot be political equals, how is democracy to exist?<sup>201</sup>

It is this question which Rawls's principles cannot escape, but what they ultimately fail to resolve.

Anne Phillips has noted that a fundamental critique of western liberal democracy is its "failure to deliver the promise of political equality."<sup>202</sup> Rawls's principles remain loyal to the western liberal democratic model. A de jure understanding of the basic political liberties protected by Rawls's first principle cannot accommodate a serious discussion of the de facto worth and exercise of those liberties. What the priority rule and the difference principle achieves is little more than the status quo of modern liberal market societies, in which a tolerance of de facto inequality exists at the expense of a truly critical engagement with the issues of class and justice. Marx has argued that distributive mechanisms like the difference

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<sup>199</sup> Ibid., 56.

<sup>200</sup> Ibid.

<sup>201</sup> Robert Dahl, *Democracy and Its Critics*, (New Haven: Yale University Press, 1989), 326.

<sup>202</sup> Anne Phillips, "Must Feminists Give up on Liberal Democracy," *Political Studies* 40, no. 5 (1992): 68-69. See Also, Dani Rodrik, *Has Globalization Gone Too Far?* (Washington: Institute of International Economics, 1997), 69.

principle are always a "consequence of the distribution of the conditions of production themselves...[which] is a feature of the mode of production itself."<sup>203</sup> Thus, any form of distribution will reflect and maintain the economic system in which it is produced. Consequently, in societies marked by notable divisions between classes, principles of fair distribution may work to alleviate the conditions of the poor *without* altering the system of production and exchange which produces poverty. Rawls's principles of justice are no different. Through the priority rule, he produces a system of "fair" distribution which is itself conditioned by the existing economic structure of modern liberal market democracies. The priority rule allows him to legitimate the difference principle's tolerance of inequality. Even while the difference principle may work to soften economic inequities, it does not critically challenge the structures which produce those inequities. Thus its aims remain consistent with a liberal market economy. Rawls claims that his principles and the priority rule which organizes them, will meet the end of social justice by maximizing "the worth to the least advantaged of the complete scheme of equal liberty shared by all."<sup>204</sup> However, what Rawls achieves is not a maximum, but minimum standard of social justice – for his principles aim not for the full emancipation of persons from poverty and its challenges to political liberty and equality, but rather for a partial freedom under the law. Such an understanding implies that the worth of liberty, though relevant to democratic efficacy, remains secondary and outside of the realm of immediate legal and political import. The inability of persons because of financial status to take part in political offices, organizations and lobby groups, or from having their positions and claims equally weighted by political leaders or institutions speaks to the deficit of the priority rule. The primacy of the political

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<sup>203</sup> Karl Marx, "Critique of the Gotha Program," in CW Volume 24 (1989), 322.

<sup>204</sup> Rawls, TJ, 179.

liberties is a superficial provision at best if those liberties, and the moral persons which they help to protect, cannot be realized without financial backing.

My criticism of Rawls's priority rule derives in part from Marx's account of political vs. human emancipation. He argues that the former is the aim of liberal societies, while the latter cannot be accommodated within such societies because it requires a critical reformation of private property. Human emancipation, for Marx, is the only condition that allows the species-character of persons to be truly released and exercised. For this reason, he views capitalist societies as antithetical to the freedom and full development of the productive capacities, of the very nature of human beings. In the remaining sections of this chapter, I aim to show that the existence of economic inequalities pose similar obstacles to the development of the Rawlsian self. The basic political liberties are essential not only to the efficacy of democratic regimes, but also for the protection and development of moral persons. The capacity for persons to have a sense of justice and to pursue a conception of the good is tied to the degree to which they can access their political liberties. Thus, when differences in income and wealth prevent the political liberties from being effectively exercised a corresponding threat exists to moral persons, and this relationship is something Rawls's principles do not fully account for.

A theory of the person which includes the first moral power is well equipped to support the presupposition of a moral tie between persons – a civic bond which can accommodate an interest in the welfare of others. Thus, unlike Rawls's unencumbered self, his theory of the moral self assumes and promotes an interest in social obligation.<sup>205</sup> Rawls claims that the difference principle also rests upon an idea of fraternity, insofar as it specifies a social interest in ensuring that the least-well off can still benefit from the advantages

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<sup>205</sup> Sandel, 89.

obtained by those better-situated.<sup>206</sup> Importantly, Sandel's criticism suggests that Rawls's difference principle cannot presuppose such fraternity or community – given that it was chosen by unencumbered selves who are deprived of such sentiments in the original position.<sup>207</sup> My previous discussions of alienation in the original position certainly supports Sandel's argument. As noted in Chapter three, the original position estranges moral persons from each other and, consequently, the potential for persons to exercise or call upon their social nature to determine principles of justice is removed. Thus, it seems that both the difference principle and the priority rule can be rejected on account of their theoretical foundations. However, this argument can be further grounded by briefly looking at the ways in which the distinction between liberty and the worth of liberty given by the priority rule, destroy the foundations for social responsibility given by first moral power.

In order to exercise social responsibility in relation to issues of social and economic inequality, through persons' sense of justice, they must be able to access the different life histories of others. However, without adequate political purchasing power the capacity of persons to thematize their experiences with relative poverty in political discussions about justice is necessarily impaired. This has two related consequences for the social capacity of moral persons. First, the public becomes veiled from particular narratives when underprivileged persons are prevented from expressing their needs. As a result, a person's sense of justice in relation to underprivileged persons is harmed. In addition, disadvantaged persons are left to rely upon the capacity of those in power, and of those better situated to consider their needs and interests. The impact of pushing the "worth of liberty" to a secondary position thus has particularly perverse consequences for the social character of both privileged and underprivileged persons. Iris Young's criticisms of the American

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<sup>206</sup> Rawls, TJ, 90.

<sup>207</sup> Sandel, 89.



welfare reform debate of 1992 illustrates both problems. Young notes that the welfare debates failed to engage lower income families and single mothers in the deliberations.<sup>208</sup> She suggests that such exclusions undermined the legitimacy of those debates, because they failed to consult persons most affected by them. Without being invited into the debate, such persons often have no alternative means by which to gain entry into political discourses which affect them. Rawls would likely argue that such exclusions are problematic, and should be corrected. However, where such exclusions are the de facto result of economic inequity and the inability of persons to involve themselves, and are not legally maintained, his priority rule can do nothing. The impact of inequalities in wealth upon the right of free speech and assembly are particularly illustrative of this issue. Where wealthier individuals and groups in market societies have greater access to and often control over mass media outlets, educational resources etc., a differential access to free speech is created, as well as a differential weighting of the influence and power of one's speech. For persons without such private means, the worth of free speech is certainly lessened. Similarly, the right of persons who share particular experiences, say low income single mothers or ethnic minorities, to organize as a political group and present their views is also impeded. Thus, the ability of these individuals to express, in their own right, the experience of being poor vanishes. It is therefore unlikely that the political elites or experts involved in these debates had adequate understanding of the concerns and experiences lower income persons would have voiced had they been engaged in the discussions. Without access to the life histories of less advantaged persons, society's political elites and wealthy citizens are effectively estranged from such persons, and cannot therefore engage an informed sense of justice towards them.

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<sup>208</sup> Young, 72.

The difficulty which ensues when the decision-makers and those who are better-off are shielded from the narratives of society's underprivileged citizens, is that these citizens are left without a way to have their concerns heard. Rawls might suggest to us that, even where persons do not have the private means necessary to engage in public political debates, the difference principle will ensure that any inequalities left standing by social policies etc. will obtain some advantage for those worse off. However, even if the difference principle ensures that income inequalities will obtain at least some benefit for the least advantaged, the likelihood that disadvantaged persons will themselves be able to review or challenge those benefits is small. For example, the exclusion of persons from the American welfare debates can be justified by the difference principle if the outcome of those debates in any way benefits the least-well off. A twenty-five dollar increase in monthly welfare cheques, though it may not be the response low income groups want, is still a benefit according to the difference principle. Rawls's difference principle justifies situations in which those who are worse off have no choice but to accept the outcomes of public debates which did not involve them. Moreover, the exclusion of these individuals forces them to rely upon the capacity of privileged persons to exercise a sense of justice towards them. It is often political elites, experts and strong lobby groups who decide matters relevant to lower income persons and groups, decisions such individuals do not have the means to partake in. If however, as discussed above, privileged persons are deprived of that capacity, because disadvantaged persons have not the opportunity to present their interests and experiences to the public, that reliance is futile. In the case of welfare reform, for example, low income African-American mothers did not have the means to articulate their concerns or needs to the public. What then will inform political representatives, experts, or upper-middle class white women and men as they develop and exercise their sense of justice in relation to these women and

questions of welfare reform? Rawls's priority rule therefore displaces the social nature of privileged persons just as it increases the dependence of underprivileged persons upon the sense of communal responsibility felt by those better situated. To have a sense of justice is essential for persons to regard each other as free and equal.<sup>209</sup> That regard, however, is undermined when the imbalance of class and status obscures what we know of others and what they are able to tell us of themselves. The exclusion of such information because of economic inequality, and the corresponding reduction in persons' sense of justice, will deprive political deliberations of depth and accuracy with respect to the goods of persons. The worth of liberty must be of primary concern in these situations, for when a lesser worth impacts the outcome of political processes, the system of complete liberties defined by equal citizenship itself comes under fire.<sup>210</sup> In cases where the distinction between liberty and the worth of liberty permits this deprivation, the aims of justice are subverted.

Rawls's priority rule also fails to support the development of persons' conceptions of the good and the sense of self that conception involves.<sup>211</sup> The first principle's guarantee of freedom of the person is particularly at issue here. Recall that Rawls includes both freedom from psychological and physical harm in his definition of freedom of the person.<sup>212</sup> He also argues that such freedom relates directly to persons' capacity to devise their own life-plan. Freedom of the person requires that citizens be able to,

conceive of themselves as beings who can revise and alter their final ends and who give first priority to preserving their liberty in these matters...their original allegiance and continued devotion to these ends are to be formed and affirmed under conditions that are free.<sup>213</sup>

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<sup>209</sup> Cohen, 86-138, 109. See also Rawls, TJ, 430.

<sup>210</sup> This contradicts Rawls's attempt to distinguish between a system of equal liberties under the law, and persons' access to or exercise of those liberties. Rawls, TJ, 179.

<sup>211</sup> Rawls, TJ, 348, 386; Rawls, JAF, 23.

<sup>212</sup> Rawls, TJ, 53.

<sup>213</sup> Ibid., 131-132.

Such ends, of course, cannot contradict the principles and rules given by a public conception of justice. More particularly, they cannot involve the harm of others. Ibid., 347.

We can conclude, then, that things which impede a person's capacity to choose their ends under conditions that are free constitute a psychological harm and can in some cases constitute a physical harm. For example, where a person's conception of the good involves life-saving or altering medical treatment or physical therapy to promote a better standard of living, obstacles to their obtainment of such treatments constitutes a physical harm under freedom of the person. Where such obstacles exist, a person's pursuit of their conception of the good is corrupted and with it, their capacity to see themselves as sources of valid claims. According to Rawls, the two principles secure "a social form that maintains [free] conditions" under which to pursue ends, and thus parties in the original position will tend to prefer these principles over others.<sup>214</sup> However, the effects of the priority rule on the realization of political liberties by those economically worse-off can challenge persons' second moral power, and therefore Rawls's principles do not secure the conditions required for freedom of the person. For example, even while the difference principle specifies that positions of authority and responsibility be open to all, if persons are prevented from seeking such positions by financial constraints, their conception of the good as it relates to work and social duties cannot be fulfilled. Rawls himself asserts that persons who are prevented from entering certain offices are "debarred from experiencing the realization of the self which comes from a skilful and devoted exercise of social duties."<sup>215</sup> Though Rawls apparently acknowledges the importance that obtaining work or involving oneself in social offices may have, his priority rule does not. Poverty can prevent persons from obtaining the education, time, or whatever resources may be necessary to pursue particular opportunities. Yet, in refusing to take full issue with the inequities of class, Rawls's principles prevent the very realization of self that his theory of the person is meant to ensure. Indeed, his priority

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<sup>214</sup> Ibid., 132.

<sup>215</sup> Ibid., 73.

rule, in disregarding the impacts of income and wealth on the “constraints definitive of liberty”<sup>216</sup> justifies the degradation of the second moral power. It is unfortunate that Rawls recognizes the injustices which disparities in income and wealth can create, but remains unwilling to breach the gap between legal liberty and lived liberty. A further consequence of inhibiting persons’ capacity to produce and pursue their ends effectively, because of a lack of private means, is that their sense of self-respect may itself become damaged. Given that Rawls qualifies self-respect as amongst the most important primary goods, because it impacts how one views oneself, one’s ends and one’s capacity to make valid claims, depriving someone of their sense of self-worth is significant. Yet, where political power is required to have those ends and claims met, or at the very least heard, how does Rawls expect his principles to protect persons’ sense of self? This is especially important when one considers that it is a basic liberty itself which is contravened when persons are unable to secure for themselves a realizable conception of the good, and the sense of self which such a conception helps develop. In other words, when economic disparities reduce the worth of liberty for some, so that a person’s sense of self cannot be supported, that disparity in effect constitutes a psychological harm. Freedom of the person, if we accept Rawls’s principles, then exists primarily for those who can afford it. While the basic liberties of the first principle are certainly fundamental, the organization and reasoning behind Rawls’s principles does not adequately guard them. If differences in the worth of liberty allow some persons’ conceptions of the good, and subsequently their sense of self-worth, to be corrupted, Rawls cannot consistently justify his priority rule, nor can he stand by the principles that rule administers. His own theory of the person simply does not support them.

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<sup>216</sup> Ibid., 179.

This chapter critiqued, by way of his priority rule, Rawls's principles of justice. I have argued that the distinction between formal and substantive liberty leaves his principles unable to accommodate the moral powers of persons, and thus the status of individuals as free and equal citizens. Rawls's principles, and more particularly their organization, can deprive certain persons' of their sense of justice, and of their conceptions of the good. This supports my earlier discussion of the limits of Rawls's conceptual framework, by suggesting that principles which are chosen and supported under conditions which alienate the moral character of persons cannot legitimately provide for the goods of persons. Taken together, I have attempted to argue that Rawls's approach to questions of political justice and principles he produces fails to involve his own political conception of moral persons. This failure in turn challenges the theoretical strength of his overall project.

## 5 RECOVERING THE RAWLSIAN SELF

Rawls's work has been interpreted and critiqued from varying political and philosophical perspectives. These critiques have taken different issues or motivations to be primary when addressing the main message of his theory. Some have seen Rawls's writings to be a critique of utilitarianism, others a theory of distribution reaffirming the principles of the New Deal.<sup>217</sup> This paper focuses on Rawls's theory of the person as the central and significant element of his work.<sup>218</sup> It is upon this conception of the self that the representative legitimacy of his theory rests. By focussing on the Rawlsian self I have aimed to show that Rawls's own theory of justice creates the conditions for its failure. His proposals for engaging and dealing with questions of justice cannot accommodate his own theory of the person. For Rawls the original position, the overlapping consensus and public reason are meant to represent persons as free and equal citizens, and so are representative of the goods of moral persons. Further, he claims that the conditions for deliberation imposed by these concepts would be acceptable to moral persons, and thus both the processes and outcomes of such deliberations are legitimate.<sup>219</sup> However, I have argued that Rawls's political conception of moral persons is not well-served by his theory of justice, and is in fact necessarily supplanted by the highly abstract personality challenged by his critics.

The conditions of alienation we find in the original position, the overlapping consensus and in public reason, help to strip persons of their moral characteristics, of the very attributes Rawls's theory of the person wants to protect and develop. His approach to determining and stabilizing principles of justice forces the alienation of self and other, and

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<sup>217</sup> Nussbaum, "Significance of John Rawls."

<sup>218</sup> Habermas has also suggested that Rawls's theory ultimately rests upon his concept of the person. Habermas, "Remarks on Rawls," 120.

<sup>219</sup> Rawls, JAF, 17, 22, 104.

the alienation of persons from their relation to both the deliberative process and the product of deliberative labour. Indeed, a review of the product of labour in the original position, Rawls's famous principles of justice, shows them to be inconsistent with the requirements of the Rawlsian self. As with the procedures that produce and maintain them, the principles of justice cannot reach the standards set by Rawls's own conception of persons. Rawls's theory seems to engage questions of justice and determine solutions without the involvement of moral persons. Justice as fairness cannot therefore claim to represent persons as free and equal moral selves, nor can it claim to invoke fair conditions for deliberation. The discrepancy between the political persona Rawls wants to serve and defend and the metaphysical persona he utilizes undermines the theoretical soundness of his overall project.

While this paper has critiqued Rawls's theory of justice on many counts, it endorses his political conception of the person intact. Indeed, it is a conception which I believe may be one of Rawls's most significant contributions. In the second chapter, I suggest that Rawls's political persona overlaps with Marxian notions of personhood. Like Marxian persons, the Rawlsian self is embedded in historical and social realities, and acts as a productive social and political agent within those realities. That this self is socially, politically and historically grounded supports Rawls's assertion that his notion of the moral person derives from what we tend to accept as the conditions for and entitlements of equal citizenship.<sup>220</sup> The moral powers describe the attributes that citizens should possess and be enabled to exercise if and when society regards persons as free and equal. The first power in a sense incorporates what is called the "liberty of the ancients," a republican interest in persons as citizens, as public individuals with a civic interest in promoting a cooperative

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<sup>220</sup> Ibid., 19.



political public.<sup>221</sup> As argued, the first power reflects what Marx saw as man's capacity to produce himself as a communal being. Having a sense of justice therefore indicates one's ability to act with reference to the larger community, and to regard others as being equally entitled to consider questions of political justice and have their claims heard. The second power reflects what is called the "liberty of the moderns," a liberal interest in the freedom of the individual.<sup>222</sup> To be able to devise and pursue a conception of the good freely is required if persons are confidently to regard themselves as free persons, as individuals whose goods and ends are recognized, enabled and protected by their society. It is this power which describes the productive capacities of persons: their ability to produce ends and to see themselves in a world to which they have contributed. Taken together, these powers describe persons both as individuals with unique ends, and as members of a larger political community, thus fusing the ancient and modern liberties.<sup>223</sup> They define the competencies that persons must possess in order to express themselves as social and political beings, and to be able to labour discursively and reflectively for that expression. Rawls's *descriptive* theory of the person is also *transformative*, insofar as it suggests that moral persons should be helped to develop their capacities to the fullest. Such a development requires not only an equitable division of rights, advantages and duties by society's basic structure but demands also, as I have argued, that politics be framed within existing circumstances and conditions. Our capacities as moral selves are identified and encouraged only when the study and practice of

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<sup>221</sup> Jürgen Habermas, "Three Normative Models of Democracy," in Democracy and Difference: Contesting the Boundaries of the Political, ed. Seyla Benhabib, (Princeton: Princeton University Press, 1996), 21-30: 21-23.

<sup>222</sup> Ibid. See also Habermas, "Remarks on Rawls," 127.

<sup>223</sup> Habermas notes that Rawls subscribes to the intuition that both liberties can be derived from the same route, that is from moral and political autonomy. However, he argues that Rawls's theory fails to follow that intuition, and instead prioritizes liberal rights. I would tend to agree with this assertion, insofar as Rawls's theory is concerned, he does not present an adequate accounting of how persons are enabled to behave as civically minded citizens – primarily because his theory relies upon a unitary metaphysical self. However, while I cannot present a full analysis here, I would suggest that Rawls's political theory of the person does provide such an accounting. As I note above, the moral powers in particular are an indication of this. Habermas, "Remarks on Rawls," 128-129.

politics endeavours to perceive the realities of the human condition, with all its terrors, joys and complexities, and aims to confront those realities, to change them, and to make our time in the world more humane. This is the end of politics from the perspective of the Rawlsian self, and it is only through such a politics that a legitimate theory of justice can be obtained.

My aim in this paper is to present a case against Rawls's theory of justice on account of its alienation of his conception of moral selves. This critique, as I have noted, leaves Rawls's idea of moral persons intact and also, I hope, builds upon and animates the productive qualities of the Rawlsian self. Since the Rawlsian self has not actually been utilized by Rawls in his theory of justice, its recovery raises a number of questions about where and how this theory of the self can be used. While I cannot accommodate an adequately in depth analysis of such potential opportunities here, I would like to conclude by briefly suggesting some applications for Rawls's theory of the person to political discourses that concern the politics of identity, deliberative democratic politics, and issues of class and economic justice.

Theorists of identity have suggested that universal or difference-blind politics often flattens or obscures the experience of inequality felt by certain minorities, because it fails to recognize the differential needs and interests of particular groups and communities.<sup>224</sup> Young has argued that the universal politics preferred by liberal theorists like Rawls privileges some individuals and groups while rendering the experiences and viewpoints of others invisible.<sup>225</sup> Where the experience of women are concerned, for example, such politics has left out "an entire domain of human activity, namely nurture, reproduction, love

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<sup>224</sup> Will Kymlicka & Wayne Norman, "Citizenship in Cultural Diverse Societies," in Citizenship in Diverse Societies, ed. Will Kymlicka & Wayne Norman, (New York: Oxford University Press, 2000), 33.

<sup>225</sup> Iris Marion Young, Justice and the Politics of Difference, (Princeton: Princeton University Press, 1990) 59.

and care, which becomes the woman's lot... from moral and political considerations...,” and have instead privileged the experience of men who have in modern Western history been less involved in such tasks.<sup>226</sup> What is necessary to prevent such exclusions is a politics which can enable persons to represent themselves as particular individuals or members of historical groups, and to have that representation counted in social and political discourses. I believe that Rawls's conception of moral selves may be a useful means by which to obtain such a politics. The moral self defines and deploys both the identity of the individual as a unique being, and the identity of the group, community and/or society within which the individual is situated. As such, moral persons cannot be split into private and political beings, a split that identity theorists and feminist scholars continue to locate and challenge in liberal projects like that of Rawls. The fluid identity of the Rawlsian self, as an individual and social being, allows for the continuous interplay between social and political worlds, and thus does not insulate the public political society from the expression of particular interests or experiences. As I have argued, the experience of persons with care, disability, cultural essentialism, poverty etc. are set into relief by Rawls's theory of moral selves. Where the expression of those experiences are flattened, as they were in Rawls's own project, the Rawlsian self collapses. This self may therefore, serve as a litmus test for the efficacy of political theories where issues of identity and recognition are raised.

My development of Rawls's theory of the self also highlights the deliberative capacities of persons as a requisite element of their identity as moral selves. Consequently, it is not surprising to suggest that the Rawlsian self can be applied to and can illuminate the practice of deliberative democratic politics. Discursive models of democracy value the direct interaction of citizens in the public, political processes of society. Such models suggest that

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<sup>226</sup> Benhabib, 155.

since it is through discursive activity that citizens can publicly express their interests, perspectives and values, and can also be changed and educated by the expressions of others, representative institutions and processes must be tied to discourse if they can appropriately claim to represent citizens.<sup>227</sup> This link between the deliberation of citizens and the legitimacy of representative processes is one which I call upon throughout my critique of Rawls's project. His theory of justice effectively alienates persons from their deliberative capacities, and thus can claim no right to represent either the goods of citizens, or the ends of justice. The moral powers describe the Rawlsian self as someone who labours discursively and reflectively to produce herself/himself as a free and equal person. Having a sense of justice describes the intersubjective relationships and exchanges between selves and others, exchanges which are supplemented by persons able to express their particular ends or goods and to make claims in support of them. This conception views the communicative and expressive capacities of persons as central to their social and political identity and activity as free persons. Thus, it is a conception of the self which could prove productive for existing and future models of deliberative politics.

For example, while the communicative focus of the Rawlsian self shares similarities with Habermas's view of the self in his theory of discourse ethics, it may also supplement the Habermasian view in important ways. Both theories signify the medium of language as a legitimate means through which persons in democratic societies engage each other, and which they should utilize to address or resolve important political questions. However, Habermas's discourse ethics is more narrowly conceived in terms of forms of expression than the Rawlsian self would be. For Habermas, discourse is a form of communication

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<sup>227</sup> Young, *Inclusion and Democracy*, 124.

invested in testing the validity claims of certain assertions, recommendations or warnings.<sup>228</sup> Discourse for him describes a specific intent to “communicate meaning and reach understanding.”<sup>229</sup> As Young has argued, however, it is arbitrary “to separate speech acts whose function is solely to communicate meaning and reach understanding from speech acts that serve a strategic goal of the speaker by producing specific effects on the listener.”<sup>230</sup> Moreover, as we saw in Rawls’s privileging of argument, such distinctions can work to exclude certain persons from political discourses by privileging forms of expression that do not convey what they wish to say, or how they wish or need to say it. The experience of the class studying Black English was an illustration of this. Certainly those students were interested in making the police *understand* their experience; the communication of that experience and of their identities, however, was conditioned by the idiom of Black English, an idiom that may not achieve the goal of public understanding given by Habermasian discourse. The Rawlsian self, in contrast, is not limited to certain modes of speech. Rather, this conception of the self would view such limitations as contrary to the moral identity of persons when they prevent persons from voicing claims or expressing ends because they cannot be framed in dominant discursive premises. To be fair, Habermas’s discourse ethics is aimed at inclusion, and his interest in discourse as speech aimed at reaching understanding is practical insofar as he is concerned to enable the medium of “talk”, rather than that of money or power, to influence and condition politics. Moreover, participants engaged in political discourses should be able to communicate with an interest in understanding and being understood. However, persons may first need to voice their needs or concerns publicly in a specific way in order to feel that their individuality, their very identity is

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<sup>228</sup> Mark Warren, “The self in discursive democracy,” in The Cambridge Companion to Habermas, ed. Stephan K. White, (New York: Cambridge University Press, 1995), 167-200: 170.

<sup>229</sup> Young, Inclusion and Democracy, 66.

<sup>230</sup> Ibid.

recognized and valued within society. That prior recognition may often be required for persons, particularly marginalized individuals or groups, to feel that they have been “confirmed” by the larger society, and thus to feel that they have a stake in enabling others to better understand them. I view Habermas’s theory of deliberative politics to be quite compelling and suggest only that his conception of the self as a discursive agent could be supplemented by the Rawlsian self. Invoking the Rawlsian self within Habermas’s theory may assist the latter to integrate a more varied sense of communication and thus incorporate the different ways in which persons need to express themselves *before* they can engage the form of discourse Habermas has in mind.

A further application of the Rawlsian self may be found in critical discourses of class and social justice. I introduced this theme in the previous chapter with reference to the two principles. How would Rawls’s theory of the person alter discussions about justice within liberal market societies? In chapter three, Rawls’s political persona was shown to be unable to support his principles and, more particularly, their differentiation between liberty and the worth of liberty. His conception of moral persons requires a far more substantive approach to questions of justice and issues of liberty and equality than Rawls’s theory of justice provides. Indeed, the moral powers, because they are undermined where economic inequities persist in limiting the worth of liberty, seem to require a far more critical survey of economic justice within contemporary liberal democracy. If we are to condition political discourses which concern issues of economic justice with this conception of the person, therefore, the opportunity to develop an acutely critical perspective of the market seems imminent. We can invoke Habermas’s conception of the public sphere to illustrate this point. The Habermasian public sphere is defined as a “a highly complex network that branches out into a multitude of overlapping international, national, regional, local and

subcultural arenas.”<sup>231</sup> It is within this sphere that persons communicate political experiences, discuss problems and produce public opinions. Importantly, Habermas wants his public sphere to be distinct from the state and the economy.<sup>232</sup> For him, just or legitimate democratic procedures will ensure that forms of power, like administrative or economic power, do not control communicative action and political opinion/will formation in the public sphere. In other words, the greater political purchasing power of political elites, experts, and elite economic interests should not be able to control deliberative exchanges.<sup>233</sup> This operational distinction also reflects Habermas’s particular interest in enabling citizens to gain a critical perspective on economic systems, an interest which derives in part from his concern over the increasing intrusion of the economy into political and private life.<sup>234</sup> While such an aim is certainly important, it is not clear that Habermas can in fact provide the procedures which insulate the public sphere from economic or administrative power. If that is the case, how are citizens to gain that critical perspective? I would suggest that we approach this issue by looking to the Rawlsian self. While we may not be able to create procedures that remove economic power from public discourse, we may be able to condition such spaces with a particular sense of the self in democratic societies. If communicative interactions within the public sphere take on a Rawlsian conception of the self, and have accessible to them knowledge of the realities of social life and the experiences of persons within society, persons’ perceptions of issues like class and economic justice might alter in significant ways. A de jure approach to political liberties would not suffice if such discourses included the experiences of underprivileged persons,

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<sup>231</sup> Habermas, *Facts and Norms*, 373.

<sup>232</sup> Jürgen Habermas, “The Public Sphere,” in *Jürgen Habermas on Society and Politics, A Reader*, ed. Steven Seidman, (Boston: Beacon Press, 1989), 234.

<sup>233</sup> *Ibid.*, 235-236.

<sup>234</sup> *Ibid.*, 234. See also: Jürgen Habermas, “The Uncoupling of System and Lifeworld,” in *On Society and Politics*, 188-228.

whose political liberties are undermined by economic status. Moreover, adding the relevant interests and experiences of such persons with issues like welfare reform, national health care, child support, education or housing to political deliberations would help expand such discourses beyond the control of political elites and experts.

The question of how to make democracy a more legitimate, more just system of governance is one that most, if not all, political theorists are concerned with. This question certainly informs the works of John Rawls, whose theories have made an exceptional contribution to political philosophy. While I have presented a case against the legitimacy of Rawls's theory of justice in relation to his theory of the self, this critique should not diminish the significance of his work. The scope and depth of Rawls's theory have made his works relevant to numerous areas of political theory. His work has been interpreted, critiqued and defended by liberals, libertarians, communitarians, feminists and deliberative democratic scholars. Thus, the importance of his work cannot be underestimated. Moreover, Rawls's project is a noble one. While his theory does involve problematic assumptions, he was ultimately concerned with the quality of justice in democratic societies. His interest was to make democracy safe for its citizens, and to posit a conception of justice that leaves no one behind. As such, Rawls's works continue to provide a worthy and challenging standard for contemporary theories of democracy to uphold. As Martha Nussbaum has said, "even in moving away from Rawls, we are fully engaged with him. Surely that is a sign of his enduring significance."<sup>235</sup> In providing a critique of his project, this paper has aimed not to discredit his work, but rather to raise from it some key questions about how we should engage questions of justice, and of how we can revive elements of his work for future study.

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<sup>235</sup> Nussbaum, "Significance of John Rawls," 5.



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