Comments on Panel, "Religion and Liberal Theory: Contemporary and Historical Perspectives"

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Andrew Murphy and I agreed to divide our duties, he responding to the papers on Locke, I to the "contemporary perspectives." I apologize for not being able to deliver these remarks in person and will try not to abuse the privilege of absence by saying things on paper I would not be ready to defend in person. Should you wish a rejoinder, "Google" will quickly show how I can be caught.

I never thought I'd feel nostalgic about John Rawls's once-magisterial tome, *A Theory of Justice* – I mean the lime-green original, not the cucumber-cool revision – and yet, in comparison to the desiccated idea of "public reason" to which he seems later to have reduced his theory, the 1971 version had all the exuberance of youth. On the epistemological side, the veiled "original position" foresaw the mysterious character of objectivity – soon after deconstructed for the world at large – while the notion of "reflective equilibrium" captured something genuine about honest scientific work. On the side of moral conclusions, the "difference principle," which at the time seemed only to defend expansion of the welfare state, proved supple enough to foretell the grudging reconciliation of liberalism with its free-market roots in the following decades, while the "Aristotelian principle" at once recognized the value of excellence in all its forms in ways that today even conservatives are afraid to voice and beautifully described the charm of cultivated society, through which we can participate in those talents we don't have leisure to perfect in ourselves by appreciating their perfection in others. There was a chapter in the book, or at least a section, where it seemed each of Rawls' notable friends on the Harvard faculty got his say, and then, in the book's final sentence, even a hint of

transcendence. Political philosophy, for a moment, was curious, copious, and, in a humble way, almost proud. After this – was it a flood or a drought?

Both papers I have been asked to comment upon are critical of Rawls's theory, and both make cogent points. More specifically, both show in Rawls something inadequately civic or political, and both seem confident that something better will come of actual – or at least idealized – political debate than of Rawls's philosophizing. I will make a few points about each paper in turn, then will conclude with a few words in defense of *constitutional* democracy, which is what Rawls himself meant to defend.

I liked the way David Peritz began his paper [1], distinguishing the two causes of change in political theory – new insight, and changed circumstances – and finding most political theory today responding to the latter, in particular to the "unrivalled" worldwide consensus in favor of constitutional democracy and human rights on the one hand, or to the paradoxically coincident perception of diversity and complexity (he writes, "deep diversity" and "extreme complexity") on the other. He is not the first to notice the paradox – is globalization making the world more uniform, or making our society more divided? – but it is good that he notices the question, and he clearly considers the latter the dominant trend. I couldn't follow whether the change counts as new insight or new circumstance, to go back to his initial distinction, or whether he thinks, reflexively, the one leads to the other, as I suspect he might. Reflexivity, or the interrelatedness of social theorizing and social fact, is at any rate an axiom of his discourse, at least when he is going after Rawls.

Rawls's theory, of course, is designed precisely to update Enlightenment universalism and its concepts – equality, natural rights, the social contract – for a

pluralistic world, and Rawls aims to split the difference: About a "thin theory" of the good we can all agree, because there are certain basic goods everybody wants whatever else he wants, and then we can agree to disagree about what used to be called the higher things and Rawls admits are the more comprehensive ones. The problem is that comprehensive accounts of the good entail accounts of the primary goods that often discount them or even ask that they be sacrificed for a greater end: Everybody needs food, but most religions fast, and if eating can be private, fasting is usually public. Peritz makes an analogous point but in a different way: He charges Rawls with allowing only "doctrinal diversity," while true or "deep" diversity is cultural. If Peritz's point is to say that in cultures thought is embodied and comes to form the whole person, or rather, whole communities of persons, since thought is shared, I think I agree. If his point is to indicate unbreachable difference that is mysteriously implanted in bodies, inaccessible to shared understanding and impervious to even the subtlest action of thought over time, I disagree as a matter of principle – though readily acknowledge the practical fact, and think it proves that the world as we know it will always see war.

Peritz thinks that deep diversity calls for and can be assuaged by what he calls "cooperative democracy," an idea presented at such a level of abstraction that I could not tell whether he meant to refer to neighborhood organizing, state or national affairs, global political movements, or even the old republic of letters. I take it "cooperative democracy" is a process of consensus-building and is open-ended if not quite universal. What it means in practice, though, one is left to guess, and my guess is that it does not have much room for taking votes and letting majorities win, much less for communities that seek, independently, to go it alone. Like "democratic deliberation," one wonders

how far it really tolerates those it finds "uncooperative." I don't object to political theorists who undertake "to see, not differently, but further than the parties; and while they are occupied with the next day, [want] to ponder the future" [2], but without attention to actual political institutions and actual partisan debates, one wonders whether the distinction will be preserved between political theory and partisan platform. To his credit, I think, this was a distinction that Rawls at least acknowledged, if he did not always maintain. [3]

Dwight Allman also looks favorably at the critique of Rawls offered by the theorists of "deliberative democracy." Perhaps it would be more accurate to say that he agrees that the critique of Rawls notices the right things, but maybe not for the right reasons, and he turns to Socrates for those. Let me make a few specific points, then conclude. First, I agree with Allman's statement on p. 2 that "the Rawlsian practice of political philosophy looks to be something like the converse of the Socratic" and would suggest he develop this. Rawls's theory of justice is a defense of the private given in public; Socrates' theory of justice (I mean, Plato's *Republic*) appears as a defense of the public given in private. Is the soul a public or a private thing? Socrates seems to think the former, insofar as the parts of the city correspond to the parts of the soul, but Rawls, in replacing soul with self, makes it private. Since Allman brought up the question of Christianity , at least by his title, let me ask which, public or private, is the Christian soul? Second, I think (contra p. 5) that "Rawls' philosophical labor to segregate liberal theory from the 'comprehensive' matter of the best life" is "unique" only if Thomas Hobbes does not count as the founder of liberalism. Maybe one can ask whether Rawls is a Hobbesian first, and then fight out the good old fight about liberalism and Hobbes.

Third, I am inclined to agree with the suggestion that Amy Gutmann and Dennis Thompson are critiquing Rawls from within a Rawlsian frame. On the matter of biography, Gutmann's first book was an elaboration of Rawls's theory, and her second was its application to "democratic education," that is, a justification of Deweyite secularism in the public schools. To my mind, "democratic deliberation" is another name for "public reason," and it means to achieve the same end: censorship by professors of what political men and women actually want to say when they talk about their interests and aspirations, not to mention their injuries and resentments. Rawls conceded too much, I think, when he wrote that justice as fairness is "political rather than metaphysical," and he gave up much of what was most attractive about his original theory. Yes, the logic of "reflective equilibrium" is closer to politics than to metaphysics, but perhaps every political theory is for the most part, even those unafraid of metaphysical support. As for professorial censorship, it usually diminishes rather than enhances genuine political debate, and if we had to wait on the professors for political action, the world would grind to a halt or surrender to the fanatics; in practice, the lawyers and judges seize "public reason," and they can act. Rawls supposed that his ideas were based on wide consensus, and perhaps as he was formulating them, they were; in retrospect, his theory itself, if not consensually accepted, has for a generation served as a common point of reference. A lighthouse is not a harbor, but it is also useful in a storm.

To my mind, rather than "cooperative democracy" or "deliberative democracy" or "public reason" we need to rediscover *constitutional* democracy. This means accepting formal political processes which the parties take turns using and modifying to their advantage, checked by the recognition that every instrument they use now against

their opponents can be used against them in return; it means holding on to fundamental ideals, anchored in tradition but allowed to grow as reason develops. Above all, it means recognizing that politics involves choice, constitutionally structured so it becomes deliberate and constitutionally separated so it must be cooperative. Constitutional government does not insure perfect justice, but it is and can be a cause of actual, if limited, common good.

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Endnotes

1. David Peritz, "Doctrinal and Deep Diversity in Liberal Political Philosophy," prepared for this panel; contact the author at dperitz@slc.edu
2. Alexis de Tocqueville, *Democracy in America*, tr. Mansfield & Winthrop (Chicago: University of Chicago Press, 2000), p. 15.
3. See Clifford Orwin and James R. Stoner, Jr., "Neoconstitutionalism? Rawls, Dworkin, and Nozick," in Allan Bloom, ed., *Confronting the Constitution* (Washington, DC: AEI Press, 1990), pp. 438-52.
4. Dwight Allman, "Resurrecting the Soul: Contemporary Democratic Theory & Reconstructing the Public Square," prepared for this meeting.