

Cavell and Rawls on the Conversation of Justice: Moral versus Political Perfectionism

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Introduction

A primary concern of Stanley Cavell's Carus Lectures is to respond to the question posed in the first sentence of the Introduction: "Is Moral Perfectionism inherently elitist?"¹ By elitist, he means undemocratic. While there are senses in which he would not want to deny that Moral Perfectionism is elitist, and while he admits that there are perfectionisms that do not require democracy, neither of these are Cavell's concern. Rather, he wants to show that his preferred version of perfectionism, variously named Moral, Emersonian and Nietzschean perfectionism,

is a perfectionism that happily consents to democracy, and whose criticism it is the honor of democracy not only to tolerate but to honor, called for by the democratic aspiration.²

In other words, Cavell's response to the charge of elitism is to argue that his preferred perfectionism is necessary for the maintenance of a truly democratic society. His argument proceeds partly by way of critical engagement with John Rawls's *A Theory of Justice*, a work that he admires in part for the manner in which this book establishes a systematic framework for the criticism of constitutional democracy from within.³ His disagreement with Rawls is a product of Cavell's own commitment to such criticism of democracy, as he says:

1. Cavell, *Conditions Handsome and Unhandsome: The Constitution of Emersonian Perfectionism* (Chicago: The University of Chicago Press, 1990), 1.

2. *Ibid.*

3. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

My direct quarrel with *A Theory of Justice* concerns its implied dismissal of what I am calling Emersonian Perfectionism as inherently undemocratic, or elitist, whereas I find Emerson's vision of perfectionism to be essential to the criticism of democracy from within.⁴

In fact this argument with *A Theory of Justice* has much of the character of a staged confrontation with an opponent of straw. On the one hand, Rawls's dismissal of perfectionism is directed at a principle of distributive justice that differs substantially from the Emersonian or Nietzschean moral perfectionism defended by Cavell. On the other hand, Cavell argues with a conception of constitutional democracy that Rawls had already abandoned by the time these lectures were delivered. Cavell explains in the Preface to these lectures, published in 1988 some three years after Rawls's "Justice as Fairness: Political not Metaphysical" and one year after his "On the Idea of an Overlapping Consensus," that he came late to Rawls's work in his philosophical education and that he does not take into account anything published after *A Theory of Justice*.⁵ Whatever the merits of his justification for not having considered any of Rawls's later work subsequent to *A Theory of Justice*, this limitation calls for a further, no less artificial confrontation between Cavell's views of the relationship between perfectionism and democracy and the relationship outlined in Rawls's account of political liberalism. After outlining Cavell's disagreements with *A Theory of Justice*, I will argue that there is an explicit political perfectionism in Rawls's political liberalism that, in some respects, parallels Cavell's moral perfectionism. At the same time, political liberalism's conception of democratic society as encompassing a diversity of comprehensive moral points of view casts doubt on Cavell's claim that perfectionism is necessary for democracy.

Cavell's perfectionism and Rawls's *A Theory of Justice*

Let us begin with Cavell's understanding of perfectionism and its supposed dismissal by Rawls. It will come as no surprise to readers of Cavell and Wittgenstein that he

4. Cavell, *Conditions*, 3.

5. *Ibid.*, xiv. Rawls's "Justice as Fairness: Political not Metaphysical" appeared *Philosophy and Public Affairs* 14 (1985): 223-51, while "On the Idea of an Overlapping Consensus" appeared in *Oxford Journal for Legal Studies* 7 (1987): 1-25. Together, these articles outlined key elements of Rawls's political liberalism.

does not offer a definition of perfectionism, where this would entail “a complete list of necessary and sufficient conditions for using the term.”⁶ Instead, he offers an open-ended characterization of perfectionism as developed in philosophical works as diverse as those of Plato, Aristotle, Kant, Mill, Emerson, Nietzsche, Heidegger and Wittgenstein, as well as in literary works by Kleist, Ibsen, Matthew Arnold, Oscar Wilde and George Bernard Shaw. As he understands it, perfectionism is not so much a particular conception of the moral life as it is “a dimension” of the moral life that involves a concern with “the state of one’s soul” and that places particular weight on “the possibility or necessity of the transforming of oneself and of one’s society.”⁷ On this view, being a moral person must be understood to involve a capacity for self-criticism and self-transformation. Cavell’s Emersonian perfectionism involves a conception of the person as always complete but also oriented towards his or her “next” state of being. In this sense, it is a self that is always oriented towards an “unattained but attainable self” and the capacity for self-criticism that is an important part of being a moral person may be redescribed as “the capacity to consecrate the attained to the unattained self.”⁸ Importantly, the character of this unattained self is a function of the self that seeks it:

I do not read Emerson as saying [...] that there is one unattained/ attainable self we repetitively never arrive at, but rather that “having” “a” self is a process of moving to, and from nexts. It is, using a romantic term, the “work” of (Emerson’s) writing to present nextness, a city of words to participate in.⁹

From Emerson and from Nietzsche Cavell takes the idea that embracing this kind of perfectionism and dedicating ourselves to the next self requires that we become ashamed of our present selves, or that in some sense we come to hate our present selves.¹⁰ One of the dangers associated with such moral aspiration to a higher or bet-

6. Cavell, *Conditions*, 4.

7. *Ibid.*, 2.

8. *Ibid.*, 8, 49.

9. *Ibid.*, 12.

10. *Ibid.*, 16. Deleuze and Guattari similarly point to the feeling of shame as “one of philosophy’s most powerful motifs.” Invoking the shame of being human that Primo Levi identifies in relation to the Nazi camps, they suggest that we also experience such shame “before the meanness and vulgarity of existence that haunts democracies, before the propagation of these modes of existence and of

ter state of oneself and the world is that it will fail and lead to cynicism, or worse. For Cavell, Emersonian perfectionism provides means to withstand such cynicism and protect us from despairing the possibility of achieving the good of which we are capable:

If there is a perfectionism not only compatible with democracy but necessary to it, it lies not in excusing democracy for its inevitable failures, or looking to rise above them, but in teaching how to respond to those failures, and to one's compromise by them, otherwise than by excuse or withdrawal.¹¹

It is at this point that Cavell's conception of perfectionism engages with the limitations of Rawls' criticism of democracy from within in *A Theory of Justice*. He takes it that Rawls addresses the aim of teaching citizens how to respond to the inevitable failure of actual democracies to live up to their ideals by suggesting that a life lived in accordance with the principles of justice as fairness is a life that is "above reproach."¹² Cavell takes issue with this response, suggesting that looking for a life that is above reproach is not enough to contain the sense of compromise that results from the failure of the societies to which we consent to live up to their ideals. Something else is required, namely the idea of and the commitment to "the cultivation of a new mode of human being" that he finds in Emersonian perfectionism.¹³ To that extent that this perfectionism provides resources to deal with the sense of compromise produced by the inevitable shortcomings of our actual democracies, Cavell argues that it is not only compatible with democracy but also essential to it.

At the same time, he is impelled to respond to Rawls' dismissal of perfectionism in *A Theory of Justice*, even though Rawls understands perfectionism in a different way to Emerson and Nietzsche. For Rawls, perfectionism is taken to be a teleological principle of distribution, namely one that distributes the benefits and obligations of political society in order to realize a form or forms of human excellence. Such a principle, he says, comes in two versions. In its moderate version, per-

thought-for-the-market, and before the values, ideals, and opinions of our time." — *What is Philosophy?* (New York: Columbia University Press, 1994), 107-108.

11. Cavell, *Conditions*, 18.

12. Rawls, *Theory of Justice*, 422.

13. Cavell, *Conditions*, 25.

fectionism is one principle among others supposed to govern the distribution of benefits and obligations of social cooperation and to arrange institutions “so as to maximize the achievement of human excellence, in art, science, and culture.”¹⁴ This version of perfectionism is contradicted by Emerson’s and Nietzsche’s disdain for the cultural institutions, or institutionalized culture, of the day. As Cavell puts it: “The distribution of nothing of high culture as it is now institutionalized is to be maximized in Emersonian Perfectionism, which is in that sense not a teleological theory at all.”¹⁵

In its extreme version, the perfectionism dismissed by Rawls is not just one principle among others but the sole principle governing the institutions and obligations of society. Rawls illustrates this version by reference to a passage from Nietzsche’s third *Untimely Meditation*, “Schopenhauer as Educator”:

Mankind must work continually to produce individual great human beings – this and nothing else is the *task* [...]. For the question is this: how can your life, the individual life, retain the highest value, the deepest significance? [...] Only by your living for the good of the rarest and most valuable specimens [exemplars].¹⁶

Cavell points out that the German word translated as “specimens” in the passage cited by Rawls is *Exemplare*, which implies an altogether different phenomenon: not samples of a particular class or genus but rather signs or indicators of something for those for whom it serves as an exemplar. This sense accords with the way in which Nietzsche goes on to characterize the life of culture, namely as a life lived “for the good of the one living it.”¹⁷ Such a life is in a sense exclusive and therefore elitist but not inherently unjust or requiring an unjust share of primary goods. Nietzsche goes on to characterize the good of a cultured life as one marked by dissatisfaction with what one is and an aspiration to something “higher and more human,” where this does not refer to some other individual or class of individuals but rather to a future

14. Rawls, *Theory of Justice*, 325.

15. Cavell, *Conditions*, 48.

16. Rawls, *Theory of Justice*, 325, n.51. Cf. Friedrich Nietzsche, *Untimely Meditations*, trans. R. J. Hollingdale (Cambridge: Cambridge University Press, 1983), 161-162.

17. Cavell, *Conditions, Conditions*, 51.

state of the self concerned.¹⁸ The point of the passage cited above is therefore not that there is some other or class of others for whom one should live but rather some future state of the self that is dissatisfied with itself: “not ‘there is a genius such that every self is to live for it’ but ‘for each self there is a genius.’”¹⁹ In short, the passage from Nietzsche’s “Schopenhauer as Educator” cited by Rawls, like the passages from Emerson that Cavell associates with it, does not advocate a life lived for other, higher beings and therefore an inegalitarian distribution of the benefits and burdens of a shared political life. Rather, it recommends a commitment to self-transformation in pursuit of a higher state or form of the self.²⁰

Rawls takes Nietzschean perfectionism to imply that the vast majority of ordinary citizens should live for the benefit of a separate class of great human beings. Cavell agrees that this would be an antidemocratic principle but then raises the question: what does give value and significance to individual lives in a democracy? Certainly not living for the majority, and not even living for or in the service of existing cultural values. His response appeals to the idea that in a liberal democracy individuals are free to choose (within limits) what it is that gives value and significance to their lives. Rawls always held the view that citizens of a democratic society must be supposed to have a capacity to acquire, to revise and to pursue a conception of the good, where this includes “a conception of what is valuable in human life.”²¹ In his later work, he draws an explicit distinction between the moral identity of persons, which is closely related to their conception of the good, and the political identity of persons, which persists across changes in their moral identity. He notes that individual conceptions of the good can and do change more or less radically, sometimes to the point that “we are likely to say that we are no longer the same person.”²² Changes of this kind in a person’s moral identity imply the freedom to be critical of the prevail-

18. Nietzsche, *Untimely Meditations*, 162.

19. Cavell, *Conditions*, 52,

20. Cavell’s individualistic reading of Nietzsche’s perfectionism is disputed by those who take him to be primarily concerned with the improvement of humanity as a whole. For example, Vanessa Lemm argues that “It is only by consecrating oneself to humanity rather than to any given society that one can, according to Nietzsche, augment the value and deepen the significance of one’s individual life” — “Is Nietzsche a Perfectionist?: Rawls, Cavell and the Politics of Culture in Nietzsche’s ‘Schopenhauer as Educator,’” *The Journal of Nietzsche Studies* 34 (2007): 15. Herbert Siemans similarly argues that what is at stake for Nietzsche “is not a few individuals but, in fact, the future of humankind” — “Nietzsche’s Critique of Democracy (1870-1886),” *Journal of Nietzsche Studies* 38 (2009): 30.

21. Rawls, *Political Liberalism*, expanded edn. (New York: Columbia University Press, 2005), 19.

22. *Ibid.*, 31.

ing values of one's culture and one's time. Emerson and Nietzsche both took a strong stand against the prevailing culture of their time. Cavell comments that

Only within the possibility of democracy is one committed to *living* with, or against, such culture. This may well produce personal tastes and private choices that are, let us say, exclusive, even esoteric. Then my question is whether this exclusiveness might be not just tolerated but treasured by the friends of democracy.²³

Perfectionism and Democracy according to Cavell

Up to this point, Cavell's argument with the Rawls of *A Theory of Justice* amounts to pointing out that the perfectionism dismissed is not the Emerson-Nietzsche conception of perfectionism, and that there is nothing about the latter that makes it intolerable to "the life of justice in a constitutional democracy."²⁴ He later considers the objection that Rawls's focus is on social institutions and that his principles of justice are addressed to the basic structure of society rather than to personal conversation between individuals. As a result, it might be argued, the concerns of Nietzsche and Emerson are not those of Rawls. Cavell agrees but also disagrees in saying "This is important, but it does not seem to me enough to say."²⁵ The more that needs to be said is summed up in his claim that Emersonian perfectionism is not merely consistent with "the life of justice in a constitutional democracy but essential to that life."²⁶ He argues that *A Theory of Justice* acknowledges the role of an ongoing conversation of justice in a democratic society and that Emersonian perfectionism is a matter of public importance because of the role it plays in this conversation. In order to reconstruct his argument for the public importance of perfectionism, we need to take into account three further elements of his reading of Rawls: the conversation of justice, utopianism and the role of consent.

23. Cavell, *Conditions*, 50.

24. *Ibid.*, 56.

25. *Ibid.*, 102.

26. *Ibid.*, 56.

First, in response to the suggestion that Rawls is concerned only with the basic structure of society and not the personal conversations that take place between individual citizens (or between citizens and themselves), Cavell notes that there is frequent recourse to something that he calls a conversation of justice running through the text of *A Theory of Justice*. By this he means not just a consideration of principles of justice, but a way of embedding those principles in an implicit or imagined conversation between citizens about the justice or injustice of particular institutions, states of affairs or ways of behaving towards one another. This conversation is given explicit form in the introductory chapter where Rawls presents the principles that would be accepted in the original position as enabling citizens to say to one another that they are cooperating as free and equal parties in relations to one another that are fair.²⁷

Second, he notes the implicit utopianism of Rawls' theory: "*A Theory of Justice* is a contribution to the theory of constitutional democracy considered as a Utopia."²⁸ Rawls's theory of justice is utopian by virtue of its reliance on the hypothetical original position to ask what principles of justice would be accepted by rational (and reasonable) citizens in an ideal society. It is important to note that this question is not posed in relation to the societies in which we actually live, societies marked by the effects of colonization, slavery and patriarchy as well as by inequalities in the distribution of wealth and access to equality of opportunity. Because this procedure gives us an ideal theory of justice in relation to which actually existing societies will inevitably fall short, Cavell concludes that it implies that citizens inevitably will be disappointed in actual democratic societies. His criticism of Rawls is that a complete version of his Utopianism should allow a role for perfectionism of the Emersonian – Nietzschean kind: "the full Utopia must give a place to perfectionism in a way Rawls seems not leave open."²⁹ The suggestion that Rawls allows no place for Emersonian perfectionism is odd in view of the compelling demonstration above that the perfectionism dismissed by Rawls is not the one that Cavell defends. In the absence of further argument to show the incompatibility between Rawls's conception of liberal democratic society and Emersonian perfectionism, how can it be said that Rawls does not allow space for it?

27. Cavell, *Conditions*, 106. See Rawls, *Theory of Justice*, 13.

28. Cavell, *Conditions*, 102.

29. *Ibid.*

Third, he suggests, following Rawls, that perfectionism calls for a life, including a political life, that one consents to with one's own voice. Similarly, *A Theory of Justice* imagines a society, or at least the basic structure of a society, governed in accordance with principles of justice to which members of the society would give their consent. The scene of consent is furnished by Rawls' conception of the original position. Cavell points out that this is a highly abstract version of the social contract envisaged by Hobbes, Locke and Rousseau. He then asks how this higher level of abstraction affects "the traditional role (or myth) of the social contract in establishing my society, my bond with my society, call it my identification with it?"³⁰ By way of answer, he canvasses the idea that one might separate consent to "the principles on which society is based" from consent to society itself, but only in order to reject this possibility. Consent, he argues, cannot be proportioned or divided in this way:

I cannot keep consent focused on the successes or graces of society; it reaches into every corner of society's failure or ugliness. Between a society approaching strict compliance with the principles of justice and one approaching causes of civil disobedience, there is the ground on which existent constitutional democracies circumscribe everyday lives. We know what the original position has prepared us for, what the lifted veil has disclosed: the scene of our lives. The public circumstances in which I live, in which I participate, and from which I profit, are ones I consent to. They are ones with an uncertain measure of injustice, of inequalities of liberty and of goods that are not minimal, of delays in reform that are not inevitable. Consent to society is neither unrestricted nor restricted; its content is part of the conversation of justice.³¹

By saying that consent to society is neither unrestricted nor restricted and that its content is part of the conversation of justice, I take Cavell to be suggesting that one cannot consent to principles of justice independently of consenting, or not, to the society in which these are imperfectly realized. On the one hand, in the absence of consent and therefore commitment to the society, why would we care whether or not it was just? On the other hand, since consent can be for-

30. Cavell, *Conditions*, 107.

31. *Ibid.*, 108.

feited or withdrawn if society falls too far short of the principles of justice, those principles cannot be too far removed from existing institutions. If the principles were those of an unrealistically utopian society, one that stood in no recognizable relation to the society we inhabit or one towards which we could see no plausible path, then what would be the force of agreeing to them? As Cavell says, “how would the principles carry the revolutionary potential of consent, or consent forfeited, if I did not at the same time give my consent to society?”³² The deeper purpose of this argument is to challenge the suggestion that one can distinguish sharply the conversation about the principles of justice that Rawls assigns to the hypothetical original position and the ongoing conversation about matters of basic justice that is characteristic of the political life of democratic society. Or to put the matter another way, Cavell may be taken to argue that the distinction between ideal and non-ideal theory is more complicated than we might at first suppose.

On the basis of these three ideas — conversation of justice, utopianism, consent — we can reconstruct the outlines of Cavell’s case for saying that his perfectionism is not merely consistent with democratic social life but essential to it. Cavell summarizes the reasons that perfectionism is essential in suggesting that, for Emerson, perfectionism is

part of the training for democracy. Not the part that must internalize the principles of justice and practice the role of the democratic citizen — that is clearly required, so obviously that the Emersonian may take offense at the idea that this aspect of things is even difficult [...]. I understand the training and character and friendship Emerson requires for democracy as preparation to withstand not its rigors but its failures, character to keep the democratic hope alive in the face of disappointment with it.³³

He points out that in *A Theory of Justice* Rawls notes that existing constitutions are bound to fall short of what is just and that, importantly, “the measure of departure

32. Cavell, *Conditions*, 107.

33. *Ibid.*, 56.

from the ideal is left importantly to intuition.”³⁴ Cavell takes this to mean that it is a matter for individual citizens to judge the distance separating actual from (ideally) just society. He takes the inescapable condition of our encountering such distance and being disappointed by the actual democracies in which we live to be a matter of “our being compromised by the democratic demand for consent” so that “the individual meant to be created and preserved by democracy is apt to be undone by it.”³⁵ In the light of his conception of moral perfectionism, it is not clear that being undone is something to be regretted or avoided. Indeed, it is in relation to this condition of disappointment, of being compromised, that perfectionism plays an essential role in a democratic political life.

Cavell’s immediate response to this threat to the integrity of the democratic citizen proceeds via his discussion of Ibsen’s *A Doll’s House*, which he takes to exemplify the difficulty of explaining or justifying to others the sense of injustice that individuals may come to experience in otherwise liberal and democratic societies. The difficulty relates to the absence of a language of rights and duties adequate to express the perceived injustice in a particular case. The absence of such a language makes it difficult for the case to be assessed in relation to existing principles of justice. On Cavell’s view, “the inevitable distance from ideal compliance is not to be accommodated to by imagining an argument of right and wrong that cannot be won and should not be lost.”³⁶ Rather, situations such as the one in which Ibsen’s Nora finds herself are better accommodated by the terms of Emersonian or Moral perfectionism. It is a matter of citizens’ coming to experience the impersonal shame to which Emerson and Nietzsche draw attention. This is shame at the realization that our social practices do not live up to our ideals, leading to the conclusion that “change is called for and to be striven for, beginning with myself” even though at the same time we consent to the way things are and are compromised by this consent.³⁷ Cavell contrasts this complex experience of shame, compromise and aspiration to change with Rawls’s moral vision of a life lived beyond reproach. The restricted point of view of the citizen who aspires to a life lived beyond reproach is inadequate to the demands of justice, which require the kind of commitment to change, both at a personal and a social level, that is ex-

34. Rawls, *Theory of Justice*, 246, 360.

35. Cavell, *Conditions*, 57.

36. *Ibid.*, 110.

37. *Ibid.*, 112.

pressed in Cavell's perfectionism. If we imagine a democratic society to be one in which the conversation of justice is ongoing, in which we accept that there may be injustices that we are not currently able to recognize, then something like perfectionism is a necessary component of the moral constitution of citizens.

Perfectionism helps to keep the conversation of justice going in two ways: firstly, by its commitment to the idea of the cultivation of a new mode of being human, where this is not supposed to be something that "comes later than justice but that it is essential in pursuing the justice of sharing one another's fate without reducing that fate, as it were to mitigation [of the burdens of undeserved inequality]."³⁸ Cavell contrasts his approach to the inevitable disappointments of actually existing democracy to Rawls's idea that the citizen of a well-ordered democracy should aim to live a life that is "above reproach." He denies that looking for a life beyond reproach is sufficient to contain the sense of compromise that is produced by living in a less than just society and suggests that perfectionism, as he understands it, offers a way of dealing with this sense of compromise by keeping alive the democratic hope in the face of disappointment. Secondly, he argues that the conversation over the degree of justice in a society that inevitably falls short of the ideal must take place but also must not be resolved, "because disagreement, and separateness of position, is to be allowed its satisfactions, reached and expressed in particular ways."³⁹ In this sense, the task of responsibility for or towards justice implies a commitment to responsiveness that is exemplified the perfectionism that Cavell seeks to defend.

Democracy and political perfectionism in the later Rawls

In Rawls's later work the idea and the ideal of public reason comes to occupy the central place in his conception of a well-ordered democratic society, at the expense of the argument from the original position.⁴⁰ In this sense, the conversation of justice plays an even more important role in his thought. The idea of public reason specifies the

38. Cavell, *Conditions*, 25.

39. *Ibid.*, 25.

40. In a letter to his editor at Columbia University Press written shortly after Cavell's Carus lectures were delivered (April and July 1988), Rawls describes "The Idea of Public Reason Revisited" as his best statement of his conceptions of public reason and political liberalism — *Political Liberalism*, 438.

manner in which citizens should defend their political views on constitutional matters and in addressing fundamental questions of justice such as those involving the basic structure of society. In their public deliberation, citizens in a well-ordered and pluralist society must respect a duty of civility and offer reasons to one another in terms that all can reasonably be expected to endorse. This implies relatively stringent restrictions on the kinds of reasons that citizens can put forward in arguing their case, namely reasons couched in terms of one or other of the available political conceptions of justice. The ideal of public reason is satisfied

whenever judges, legislators, chief executives, and other government officials, as well as candidates for public office, act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable. In this way, they fulfil what I shall call their duty of civility to one another and to other citizens.⁴¹

Commentators such as Anthony Laden take this to show that Rawls is less concerned to elaborate a philosophical theory of justice to be handed down to citizens as a template against which to judge existing institutions and policies than to outline the kinds of reasons in support of particular principles of justice or particular applications of those principle that might be offered to “fellow reasonable citizens, taken not as stripped-down rational choosers but in all their diversity and complexity.”⁴² Rawls suggests that this idea of public reason “specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government’s relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood.”⁴³

The idea of public reason at the heart of Rawls’s later political philosophy specifies how the conversation of justice among citizens is to be conducted. However, this does not constrain the many forms of conversation among citizens that may take place as part of the background culture, and on the basis of particular moral views.

41. Rawls, *Political Liberalism*, 444.

42. Anthony Laden, “The House That Jack Built: Thirty Years of Reading Rawls,” *Ethics* 113 (2003): 386.

43. *Ibid.*, 441-442.

Cavell's manner of speaking about the identification of citizens with their society as a matter of voice and moral integrity does not acknowledge the unavoidable diversity of comprehensive moral views in democratic societies or the manner in which this imposes the need to distinguish the political conversation of justice, carried out in the terms of public reason, from the many conversations that take place between representatives of different comprehensive moral views. The identification of citizens of a democratic and pluralist society with the basic structure of that society will not imply agreement with or even acceptance of all aspects of the society: consent may well be confined to the principles of justice and their implementation in a constitution and laws relating to questions of basic justice. It may not extend to the beliefs and social practices of particular social or religious communities. To that extent, consent to the "society" as opposed to consent to the basic structure may well be confined or proportioned in precisely the way that Cavell does not allow.

An obvious and significant difference between Cavell's approach to the conversation of justice and that of the later Rawls is that Rawls conceives of it as a political conversation whereas Cavell conceives of it as a moral conversation. This is apparent in his description of *A Theory of Justice* at the outset as the book that has, more than any other in the two decades prior to these lectures, "established the horizon of moral philosophy for the Anglo-American version or tradition of philosophy (at least)."⁴⁴ It is apparent in his discussion of a passage from Mill's *On Liberty* that he quotes at the end of the first lecture on "Aversive Thinking."⁴⁵ He reads this passage as Mill's statement of moral perfectionism, alongside those already found in Emerson and Nietzsche. It concludes with a question that asks the reader whether they would un-

44. Cavell, *Conditions*, 3.

45. "In our times, from the highest class of society down to the lowest every one lives as under the eye of a hostile and dreaded censorship. Not only in what concerns others, but in what concerns only themselves, the individual, or the family, do not ask themselves — what do I prefer? or, what would suit my character and disposition? or, what would allow the best and highest in me to have fair play, and enable it to grow and thrive? They ask themselves, what is suitable to my position? what is usually done by persons of my station and pecuniary circumstances? or (worse still) what is usually done by persons of a station and circumstances superior to mine? I do not mean that they choose what is customary, in preference to what suits their own inclination. It does not occur to them to have any inclination, except for what is customary. Thus the mind itself is bowed to the yoke: even in what people do for pleasure, conformity is the first thing thought of; they like in crowds; they exercise choice only among things commonly done: peculiarity of taste, eccentricity of conduct, are shunned equally with crimes: until by dint of not following their own nature, they have no nature to follow: their human capacities are withered and starved: they become incapable of any strong wishes or native pleasures, and are generally without either opinions or feelings of home growth, or properly their own. Now is this, or is it not, the desirable condition of human nature?" — *ibid.*, 62-63.

der any circumstances desire the life lived under the conditions of social conformity as Mill describes them. This is, Cavell suggests, “Perfectionism’s question, its reading of the cry of freedom, for a life of one’s own, that one consents to with one’s own voice.”⁴⁶ The implication that he draws from Mill’s posing of this question is that individual citizens must each give their answers to this question before they can properly know what it is to which they give their consent. Finally, Cavell’s moral conception of the conversation of justice is apparent in the final lecture in his use of Ibsen’s *A Doll’s House*, which he describes at one point as representative of “the state and aspiration of the moral life.”⁴⁷ His discussion of the play is intended to answer questions about the conversation of justice within a democratic and (sufficiently) just form of social life, where it is assumed that these are moral questions.

Throughout these lectures, Cavell treats the political community as a moral community and the relation of individuals to the society in which they live as a moral relationship. By contrast, the later Rawls’s conception of a well-ordered society does not envisage this as a moral community or as presupposing agreement on any particular comprehensive moral point of view or way of life. Rather, the point of departure for political liberalism is the fact of “conflicting and even incommensurable religious, philosophical and moral doctrines.”⁴⁸ The public justification of a conception of justice is possible because of an overlapping consensus achieved on the basis of diverse religious, philosophical and moral views. Overlapping consensus does not mean agreement on particular principles that are already implicit in the diverse comprehensive views present in a given society, nor does it mean compromise between these views. Rather, it refers to the kind of publicly endorsed consensus that occurs when reasonable members of a political society affirm a particular conception of justice that they can each justify in the terms of their respective comprehensive views, and when they are aware that others do likewise. Rawls suggests that only the achievement of such a consensus justifies the legitimate exercise of coercive political power. Achieving such a consensus provides citizens with “the deepest and most reasonable basis of social unity available to us as members of a modern democratic society.”⁴⁹ This is political unity rather than the unity of a moral community.

46. Cavell, *Conditions*, 63.

47. *Ibid.*, 111.

48. Rawls, *Political Liberalism*, 133.

49. *Ibid.*, 391.

What then becomes of Cavell's argument for the necessity of Emersonian perfectionism under the conditions of just political community as described by Rawls's political liberalism? Moral perfectionism may well be consistent with the conditions of democratic political community especially when we take into account Cavell's description of it as not so much a competing theory of the moral life but rather a dimension of the moral life that concerns the state of one's soul. However, to the extent that Rawls imagines consensus on liberal conceptions of justice to be possible for citizens with divergent moral points of view, it is difficult to see how moral perfectionism can be "essential" for democratic life. There is no reason to assume that those committed to fixed and unchanging conceptions of self will be excluded from the possibility of consensus. As we noted above, Rawls relies on a political conception of persons that supposes them to have a capacity for a sense of justice and a capacity to form, revise and pursue a conception of the good. However, a capacity to revise one's conception of the good and to transform oneself does not require that it be exercised and it is not a requirement of the democratic consensus that it should be.

Rawls' understanding of reasonable social unity as political rather than moral has further consequences for the way in which we should understand his conception of a sufficiently just and democratic society, and the nature of the conversation of justice that takes place in such a society. Consider Cavell's suggestion that Rawls's achievement is to give us a means by which "the justice of justice can be assessed."⁵⁰ It is true that Rawls always conceived of his conception of justice as a standard against which the justice of existing institutions could be measured. However, the suggestion that he provides a means by which the justice of justice can be assessed is misleading if it is taken to imply that the argument from the original position gives us a fixed and ahistorical template against which the justice of existing institutions can be assessed. In his "Reply to Habermas," Rawls notes that all societies are more or less unjust and agrees with Habermas that the idea of a just society "is a project to be carried out."⁵¹ Recourse to the idea of a hypothetical original position is a device that enables citizens to determine acceptable principles of justice and, on that basis, work out what would be a just constitution under reasonably favourable conditions. If as is generally the case it turns out that a just constitution cannot be fully realized under

50. Cavell, *Conditions*, 25.

51. Rawls, *Political Liberalism*, 398.

actual historical and political conditions, the theory of justice “sets up the aim of long-term political reform.”⁵²

The disappointment to which Cavell argues perfectionism provides a response will still be present, at least for some citizens. However, political liberalism provides other resources in order to address this disappointment, not all of which require the particular conception of the moral self associated with Emersonian perfectionism. One of these concerns the scope of the conversation of justice. The idea of a just constitution as an ideal to be worked towards is of course compatible with an a-historical conception of the nature of justice. Against this, I suggest, for the later Rawls, the very standard against which the justice of society is to be measured is itself part of the ongoing conversation of justice. He is explicit that the original position is a “device of representation” that serves as “a means of public reflection and self-clarification.”⁵³ It is open to the present not only because, as Cavell suggests, it permits individual citizens to ask whether the present society, with all its deficiencies in relation to the ideal, is nevertheless worth its burdens, as compared with the burdens that would be encountered in a state of nature, but also because it allows them to ask what principles of justice they would *now* be prepared to accept, subject to the constraints of the veil of ignorance. Moreover, it enables that question to be posed at any point in the history of the society concerned. The political conception of justice in a given society, Rawls insists, “is always subject to being checked by our reflective considered judgments.”⁵⁴ Citizens are autonomous when they live under a constitution that accords with principles of justice they would choose. When the constitution or laws passed under it are seen to be unjust in particular ways, “citizens with reason strive to become more autonomous by doing what, in their historical and social circumstances, can be reasonably and rationally seen to advance their full autonomy.”⁵⁵ In the same way that, as Cavell notes, for Kant acting not merely in accordance with the moral law but out of respect for that law is “an unreachable ideal relation to be striven for in relation to the moral law,” so is the achievement of a just political regime an ideal and an ongoing task.⁵⁶ In other words, the later Rawls agrees with Cavell that the conver-

52. Ibid.

53. Rawls, *Political Liberalism*, 26.

54. Ibid., 399

55. Ibid., 402.

56. Cavell, *Conditions*, 62.

sation of justice is ongoing, not simply because there is an ideal not yet attained but because the ideal itself is perpetually subject to revision. The conversation of justice bears on the principles of justice as much as their realization in the actual societies to which we consent.

Defenders of Cavell frequently fail to appreciate the significance of Rawls's distinction between the moral and the political dimensions of our social life. For example, Stephen Mulhall explains Cavell's criticism of Rawls by reference to his earlier differences with the understanding of moral life that he takes to inform Rawls's 1955 essay "Two Concepts of Rules."⁵⁷ He argues that Rawls's image of morality and moral institutions such as promising as rule governed practices relies on a faulty analogy with other rule governed social practices such as games. Rawls seems to assume, he argues, that every action by a player conforms to a rule of the game, when in reality rules of the game merely provide a framework for permissible actions that should rather be governed by the purpose or strategic imperatives of the game in question. By the same token, efforts to justify not keeping a particular promise are not necessarily an abandonment of the promising game but rather an indication of the fact that morality in general involves the giving and testing of reasons for acting in a particular way, where the rules themselves are not immune from question. Whatever the merits of this way of seeing moral behaviour in general, Mulhall seems not to notice that his alternative reading of the function of game rules corresponds closely to the image of the political sphere of society in Rawls's political liberalism. Given the unavoidable plurality of ways in which individuals live their lives, the political values and principles set out in a political conception of justice provide a framework within which stability and respect for the basic rights of all citizens can be assured even though irresolvable differences remain on many issues of public policy. Rawls's conception of public reason as a mode of argumentation bounded by the values and principles of a political conception of justice is intended to establish the possibility that the conversation of justice can continue without threatening the conditions of stable and civil democratic political society. There is no reason to assume, nor does Rawls claim, that the principles of justice themselves cannot under certain conditions become the object of critical discussion. As he notes in his "Reply to Habermas," there is no reason

57. Stephen Mulhall, "Promising, Consent, and Citizenship: Rawls and Cavell on Morality and Politics," *Political Theory* 25:2 (1997): 171-192.

to suppose that citizens in a democratic society cannot “reignite the radical democratic embers of the original position.”⁵⁸

One way in which this can occur involves the relationship between the realization of justice and legitimacy. Political liberalism offers a clear criterion of legitimate government, namely when political power

is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.⁵⁹

This principle links the legitimacy of political power closely to the requirements of a well-ordered society: a society is “well-ordered” when it is effectively regulated by a publicly justified conception (or conceptions) of justice. Rawls agrees that legitimacy and justice are different concepts but denies that there can be a conception of procedural legitimacy that is independent of substantive questions. Democratic decisions are legitimate if they are enacted in accordance with legitimate democratic procedures. These procedures may not be just, but they must be “sufficiently just in view of the circumstances and social conditions”: even though neither procedures nor the laws which result need be acceptable “by a strict standard of justice,” they cannot be “too gravely unjust.”⁶⁰ At some point, the injustice of the political constitution or the injustice of the outcomes of a legitimate democratic procedure will corrupt the legitimacy of the regime. But at what point? Is the persistence of a constitution that makes no mention of the indigenous inhabitants of a country established by colonization, and in the adoption of which no indigenous citizens were consulted, sufficiently unjust to undermine legitimacy? Rawls does not provide criteria by which we might answer such questions. However, he does provide reasons for thinking that such questions should also be considered part of the conversation of justice.

In *Justice as Fairness: A Restatement*, Rawls is explicit about the utopian dimension of his political liberalism. He identifies a number of purposes served by political philosophy. One of these is the “realistically utopian” task of “probing the limits

58. Rawls, *Political Liberalism*, 400.

59. *Ibid.*, 137, 393.

60. *Ibid.*, 428,

of practicable political possibility.”⁶¹ It is because “our hope for the future of our society rests on the belief that the social world allows at least a decent political order” that political liberalism asks what a just and democratic society would be like, given the “circumstances of justice” that obtain in the actual historical world in which we live, and also what it would be like “under reasonably favorable but still possible historical conditions.”⁶² This task implies dissatisfaction with the present and openness to future possibilities that make political liberalism a form of political perfectionism that parallels Cavell’s moral perfectionism. Rawls also recognizes that there is a question about how we determine what are in fact the conditions of our social world and therefore what might be the limits of the practicable. He notes that these are not simply given by the actual since we can and do change existing social and political institutions, but chooses not to pursue this “deep question.”⁶³ His comments imply that the twin questions of the limits of our social world and the limits of practicable change should be considered part of the conversation of justice. It is in part because this twofold question about the limits of practicable political possibility is deep that the conversation of justice is open-ended and ongoing.

In his last writings, Rawls explicitly acknowledges that public reason is an historical phenomenon. The content of public reason is given by the family of publicly acceptable conceptions of justice that can be objects of overlapping consensus in a given society at a given time. This content will reflect the settled convictions of members of the society as well as the background culture that sustains efforts to systematize and theorize such judgments and that provides conceptions of the nature and business of government. It provides the discursive frameworks within which citizens and public officials can argue in ways that are not beholden to their particular moral, philosophical or religious views and that each can reasonably expect that others could endorse. At any given moment, what can properly be said within the sphere of public reason will be constrained by the norms of the prevailing family of reasonable conceptions of justice. Rawls notes that political conceptions of justice may be revised as a result of their interactions with one another and as a result of the emergence of new groups and different political problems, and that new variations may be proposed

61. Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Belknap Press, 2001), 4.

62. *Ibid.*

63. *Ibid.*, 5.

from time to time just as older ones may no longer be represented: “It is important that this be so, otherwise the claims of groups or interests arising from social change might be repressed and fail to gain their appropriate political voice.”⁶⁴ These points are reiterated in the Introduction to the paperback edition of *Political Liberalism*, where he notes that the principles, ideals and standards of argument that make up the content of public reason are those of “a family of reasonable political conceptions of justice *and this family changes over time*.”⁶⁵ Changes may result from the debates between different reasonable conceptions of justice but also from social changes and the emergence of views raising new questions about issues such as ethnicity, gender and race. In short, “The content of public reason is not fixed, any more than it is defined by any one reasonable political conception.”⁶⁶ A range of comprehensive moral views with a commitment to something like Emersonian perfectionism may well contribute to changes in the content of public reason over time. For some citizens this might be a welcome feature of a democratic political culture, but for others it might not be welcome. Perfectionism may take unreasonable as well as reasonable forms. The duty of civility that, according to Rawls, reasonable citizens owe to one another raises questions about the place of perfectionism in a democratic political culture that are not answered by Cavell’s insistence that it is necessary.

64. Rawls, *Political Liberalism*, 452. It follows that, as he points out in n.30 at the bottom of this page, Waldron’s criticism of political liberalism as not allowing new and changing conceptions of political justice is “incorrect.”

65. *Ibid.*, li (emphasis added).

66. *Ibid.*