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IN DEFENSE OF RAWLSIAN CONSTRUCTIVISM

by

WILLIAM S. ALLEN

Under the Direction of Andrew Altman

ABSTRACT

George Klosko attempts to solve a problem put forth by Rawls, namely how to create a persisting, just and stable liberal democracy in light of pluralism. He believes Rawls has failed at this task through the employment of political constructivism. Klosko claims that since Rawls does not utilize actual views within the existing public to form principles of justice, his method would fail to reach an overlapping consensus. As an alternative, Klosko proposes the method of convergence, which utilizes actual societal views to find overlapping concepts that inform the principles of justice. My argument is that Klosko misconstrues the method and aims of political constructivism. Klosko seems to incorrectly believe that stability is primary to establishing a liberal democracy, whereas it is secondary to the achievement of justice. Because of this error, Klosko's method of convergence potentially has the consequence of creating a society which is stable but unjust.

INDEX WORDS: Rawls, Political Liberalism, Political constructivism, Klosko, Pluralism, Original position, Principles of justice, Overlapping consensus, Method of convergence

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1. INTRODUCTION

In this thesis I present a response to George Klosko's criticisms of Rawlsian constructivism as found in *Political Liberalism*. Klosko perceives Rawls' project as presenting a political theory that results in a stable liberal democracy based on principles that the public would deem acceptable. Klosko argues that Rawls' constructivism fails to generate such principles. His criticism relies on the claim that to establish and maintain a pluralistic democracy, political principles must stem from a convergence of all views within the populace (nonpolitical as well as political). Rawls' method of construction excludes the use of nonpolitical views, and thus Klosko claims that Rawls' method fails to generate principles reflective of actual ideas within the public. This failure would result in a lack of socio-political stability, and thus Rawls' goal would not be attained. I argue that Klosko misconstrues Rawlsian constructivism and the goal of Rawls' project in addition to relying too heavily on ad populum arguments. Furthermore, Klosko's alternative method, which he believes rectifies Rawls' errors, is faulty in that it allows the sacrifice of just principles for the sake of stability.

The thesis is divided into three sections. The first provides a summary of Rawls' project and his political constructivism. This section focuses on how Rawls generates his principles of justice. The second section presents Klosko's criticisms of Rawls' method and explains the method of convergence, which Klosko provides as an alternative to constructivism. In the final section, I address Klosko's claims, provide a defense for Rawlsian constructivism and critique the method of convergence. Additionally, I provide an argument for why Rawls' method is preferable to Klosko's.

2. RAWLS' POLITICAL LIBERALISM AND CONSTRUCTIVISM

The project Rawls undertakes is to solve a fundamental problem of liberal democratic societies, which Rawls formulates as: "How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines" (Rawls 1993, 4). Inherent in this problem is the issue concerning what sort of organizing political principles would be acceptable to all reasonable citizens in a liberal democracy.

At the heart of this problem is the fact of reasonable pluralism as a permanent feature of democratic societies with free institutions. In any liberal democracy, there will exist a number of conflicting reasonable views about what has value and how we ought to live. These can be referred to as moral conceptions of the good. Rawls calls such views comprehensive when they are articulated in a system. A conception of the good is fully comprehensive when all values and virtues are entailed in one system and partially comprehensive when only some values and virtues are addressed. Rawls claims that many religious and philosophical doctrines are fully comprehensive views, but also are general views in that they cover a wide range of moral subjects. Rawls summarizes these distinctions in the following:

> The distinction between political conceptions of justice and other moral conceptions is a matter of scope; that is, the range of subjects to which a conception applies, and the wider content a wider range requires. A conception is said to be general when it applies to a wide range of subjects (in the limit to all subjects); it is comprehensive when it includes conceptions of what is of value in human life, as well as ideals of personal virtue and character, that are to inform much of our nonpolitical conduct (in the limit our life as a

> whole). There is a tendency for religious and philosophical conceptions to be general and fully comprehensive. (Rawls 1993, 175)

Different comprehensive conceptions of the good (hereafter referred to as comprehensive views) will have different conceptions of what justice require. To solve the problem of how it is possible for there to be a just and stable society of free and equal citizens, given reasonable pluralism (which includes various reasonable comprehensive views), Rawls proposes political liberalism and the idea of a political conception of justice.

Opposed to comprehensive views, a political conception of justice focuses only on political society and its institutions rather than the whole of life. Nonpolitical values are not addressed, although they may correspond with political conceptions of justice. Since a political conception of justice is a moral conception, there will be some overlap with reasonable comprehensive views that address claims of justice for example. The point Rawls stresses is that although a political conception of justice may be justifiable within reasonable comprehensive views it is not derived from them. Rawls states:

> While we want a political conception to have a justification by reference to one or more comprehensive doctrines, it is neither presented as, nor is derived from, such a doctrine applied to the basic structure of society, as if this structure were simply another subject to which that doctrine applied. (Rawls 1993, 12)

Additionally, because of reasonable pluralism, parties possessing the responsibility of forming a democratic society must recognize what Rawls terms “the burdens of judgment.” Given reasonable pluralism there will be reasonable disagreements among reasonable people

about the answers to political, ethical and metaphysical questions. The burdens of judgment refer to accounting for the sources of such disagreements. "The idea of reasonable disagreement involves an account of the sources, or causes, of disagreement between reasonable persons so defined. These sources I refer to as the burdens of judgment" (Rawls 1993, 55).

According to Rawls the sources of reasonable disagreement concerning political matters (which is he particular concern) are found in the limitations of human reason and judgment. People, Rawls explains, employ rationality and reason to varying degrees. People are rational in that as individuals with personal interests and ends in life, any particular agent will strive to achieve their interests and ends. Problems arise concerning whether one has made the correct judgment in attempting to assess and achieve ones ends.

People are reasonable, in opposition to being rational, in that individuals recognize that to achieve ends within society at large, other agents have interests and ends they seek that may conflict with one's own. In light of conflicting views, the reasonable person recognizes that in order to achieve their end, they must appeal to others in a manner which respects the variety of views. In advocating one's own view, the reasonable person recognizes that they must justify their position such that everyone will find it acceptable. In addition, the reasonable person will make propositions such that he/she would abide by it given that others would. Rawls explains this in the following:

> Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as

> reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose. (Rawls 1993, 49)

Rawls continues from this quote to state that being reasonable is incorporated in the idea of participating in a liberal democratic society in that reasonable citizens value cooperation and reciprocity. Due to the burdens of judgment it is important that parties responsible for the formation of a democratic society are aware of the limitations of their own judgment, and adhere to liberal values in light of conflicting reasonable views.

Despite being separate concepts, Rawls sees reason and rationality as being complementary. For example, when a person recognizes in the case of achieving political justice that it is in the person's best interest to cooperate and allow an equal voice to other citizens, rationality and reason complement each other. Generally, Rawls argues that in the case of political justice, individuals are rational in that they have their own conception of justice they wish to advocate. But the employment of a conception of justice is not a solitary affair, and thus if one wants others to adopt all or some one's views they must be reasonable in the sense being able to justify one's stance to others and allow criticism. Rawls explains this in the following:

> As with complementary ideas, neither the reasonable nor the rational can stand without the other. Merely reasonable agents would have no ends of their own they wanted to advance by fair cooperation; merely rational agents lack a sense of justice and fail to recognize the independent validity of the claims of others. (Rawls 1993, 52)

Contrastingly, unreasonable people are merely rational. Unreasonable people will strive to promote their own particular interests and fundamentally reject the value of cooperation. They only propose or seem to honor such a concept as a guise for their own ends.

Those with unreasonable comprehensive views will ignore the burdens of judgment and the value of cooperation and tolerance. They will make absolute claims for the veracity of their position, and possibly repress conflicting views. Rawls claims that such views must be regulated so that they do not undermine the essentials of democratic society:

> Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Political liberalism also supposes that a reasonable comprehensive doctrine does not reject the essentials of a democratic regime. Of course, a society may also contain unreasonable and irrational, and even mad, comprehensive doctrines. In their case the problem is to contain them so that they do not undermine the unity and justice of society. (Rawls 1993, xvi)

Rawls is not proposing that those with unreasonable doctrines should be oppressed and denied rights as democratic citizens. Essential to liberal society is a sense of justice and willingness to cooperate with other citizens. If a doctrine arises that seeks to undermine these features or constitutional rights they should be rejected because they are unjust and unjustifiable from the basis of public reason.

Public reason according to Rawls reflects the role of citizens in a liberal democracy to make political decisions for the greater good of society in terms of its basic political structure and institutions (these are referred to as constitutional essentials). The idea of public reason is

meant to contrast with nonpublic conceptions of the good for society, which rely on personal or associational views. Rawls explains: “Public reason is characteristic of democratic people: it is the reason of its citizens... The subject of their reason is the good of the public: what the political conception of justice requires of society’s basic structure of institutions, and of the purposes and ends they are to serve” (Rawls 1993, 213).

For Rawls those views that run counter to public reason ideally would not and should not gain ground in general society. This is not due to enforcement by the state, but because in light of public scrutiny, citizens would reject such claims democratically. Rawls states that citizens and their representatives have a duty to address and refute such views through democratic means (e.g. voting). Rawls implies this in the following:

> The ideal of citizenship imposes a moral, not a legal, duty -the duty of civility- to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason... Some might say that the limits of public reason apply only in official forums an so only to legislators, say, when they speak on the floor of parliament, or to the executive and the judiciary in their public acts and decisions... It [democracy] implies further an equal share in the coercive political power that citizens exercise over one another by voting and in other ways. (Rawls 1993, 217-18)

In order to derive reasonable principles of justice, the method Rawls proposes is in the form of political constructivism. Political constructivism begins with the claim that there are fundamental ideas that serve as a starting point for democratic society. According to Rawls, the fundamental ideas are ideas implicit in the public political culture of a liberal democracy (i.e. fundamental ideas stem from traditional liberal political texts and institutions). Rawls explains:

> The third feature of a political conception of justice is that its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society. This public culture comprises the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge. (Rawls 1993, 13-4)

These fundamental ideas are: 1. Democratic society is a fair system of cooperation and 2. Citizens possess two moral powers: a sense of justice and a rational conception of the good. Utilizing these fundamental ideas, a procedure can be devised for the purpose of constructing just guiding principles for a democratic society.

Rawls makes it clear that the fundamental ideas themselves are not constructed by his process, but serve as a starting point: "To conclude: not every thing, then, is constructed; we must have some material, as it were, from which to begin. In a more literal sense, only the substantive principles specifying content of political right and justice are constructed. The procedure itself is simply laid out using as starting points the basic conceptions of society and person, the principles of practical reason, and the public role of a political conception of justice" (Rawls 1993, 104).

Rawls' reference to the conceptions of society and person reflects the second fundamental idea of citizens possessing two moral powers. The constructivist use of practical reason entails that it is used in a manner such that the procedure stems from the process of reasoning itself rather than external doctrines or philosophies. Through the reasoning process, a

procedure is devised based upon the problem at hand (in Rawls' case, reasonable pluralism.) As Rawls states:

> The procedure of construction is based essentially on practical reason and not on theoretical reason [which entails doctrines and philosophies]... practical reason is concerned with the production of objects according to a conception of those objects- for example, the conception of a just constitutional regime taken as the aim of political endeavor- while theoretical reason is concerned with the knowledge of given objects. (Rawls 1993, 93)

> The political constructivist regards a judgment as correct because it issues from the reasonable and rational procedure of construction when correctly formulated and correctly followed. (Rawls 1993, 96)

Finally, the public role of a political conception of justice refers to the requirement that the fundamental ideas are reflective of the basic concepts in the public political culture of a liberal democratic society.

Given the conditions of fairness and the use of practical reason, the procedure adopted is purely political, i.e., it is not informed by any comprehensive doctrines (which are relegated to the nonpolitical realm)[1]. Thus the political conception of justice that results from Rawls' constructivist methodology is said to be a "freestanding view": "Political liberalism, then, aims for a political conception of justice as a freestanding view. It offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself" (Rawls 1993, 10).

[1] As stated previously, the resulting conception of justice may be in congruence with reasonable comprehensive doctrines although they are not used as sources.

In addition, because comprehensive doctrines are excluded from the procedure and the only claim is that the principles are reasonable, the principles are not said to be either true or false. As explained by Rawls:

> Further, political liberalism, rather than referring to its political conception of justice as true, refers to it as reasonable instead. This is not merely a verbal matter but does two things. First, it indicates the more limited point of view of the political conception as articulating political and not all values, while providing at the same time a public basis of justification. Second, it indicates that the principles and ideals of the political conception are based on principles of practical reason in union with conceptions of society and person, themselves conceptions of practical reason. (Rawls 1993, xx)

> Political constructivism specifies an idea of the reasonable and applies this idea to various subjects: conceptions and principles, judgments and grounds, persons and institutions... It does not use (or deny) the concept of truth; nor does it question that concept, nor could it say that the concept of truth and its idea of the reasonable are the same. Rather, within itself the political conception does without the concept of truth. (Rawls 1993, 94)

Rawls believes that by making claims of truth or falsity, one is advocating a system of belief (a comprehensive view), which can be countered by other systems of beliefs. This, of course, is part of the problem Rawls wishes to solve. In contrast, if the principles are reasonable such that most citizens would adopt them, despite differences among comprehensive views, then such a conflict should not arise.

In reference to those systems that do rely on comprehensive views to form political conceptions, Rawls claims that they are “political in the wrong way” (Rawls 1993, 39). He gives

examples such as the case of a political system that adopts principles based on an average among comprehensive views or the scenario of a modus vivendi where conflicting groups agree to principles in a stalemate situation for the sake of peace. Both scenarios are unstable in that if power between the different groups should shift in the future, the principles agreed upon are subject to change.

As a result of the constructivist procedure, the principles chosen should be such that reasonable citizens, upon reflection, deem them just and worth abiding by. Rawls claims that public justification is reached when there has been achieved a "reflective equilibrium" such that the principles chosen are the most reasonable for a democratic society. Once reflective equilibrium is reached, we then have evidence that the procedure reflects the basic conceptions of society and person, and the principles of practical reason. Rawls explains reflective equilibrium and is consequence in the following:

> Here the test is that of reflective equilibrium: how well the view as a whole articulates our more firm considered convictions of political justice, at all levels of generality, after due examination, once all adjustments and revisions that seem compelling have been made. A conception of justice that meets this criterion is the conception that, so far as we can now ascertain, is the one most reasonable for us.... (Rawls 1993, 28)

> Once reflective equilibrium is reached…the constructivist will say that the procedure of construction now correctly models the principles of practical reason in union with the appropriate conceptions of society and person. In so doing it represents the order of values most suited to a democratic regime. (Rawls 1993, 96)

In addition, if citizens have endorsed the principles of justice under Rawls' method, they have weighed the principles against their deepest convictions. Thus, there has been achieved an "overlapping consensus" where reasonable citizens have found the principles of justice embedded in their comprehensive views and/or reconciled any conflicts between the principles and their comprehensive views. Rawls believes the principles are capable of being deemed acceptable among the various comprehensive views, because they are a reflection of independent political ideas essential to a liberal democracy (fundamental ideas). Because of this, reasonable citizens are able to accept them on their political merit such that they outweigh any conflict with values within reasonable comprehensive views. By assessing the principles against their deepest convictions, a reasonable citizen would find that they could not reject the principles as grounds for a liberal democracy.

> One aim, as I have said, is to specify the political domain and its conception of justice in such a way that its institutions can gain the support of an overlapping consensus. In this case, citizens themselves, within the exercise of their liberty of thought and conscience, and looking to their comprehensive doctrines, view the political conception as derived from, or congruent with, or at least not in conflict with, their other values. (Rawls 1993, 10-1)

Finally, we can say that since we have achieved public acceptance (among a reasonable public) of the principles in the form of an overlapping consensus, we have achieved stability. "Given a political society with such a reasonable consensus, political liberalism says that as citizens of this society we have achieved the deepest and most reasonable basis of social unity available to us as citizens of a modern democratic society" (Rawls 1995, 146). Such a unity, as

described by Rawls, achieves stability for the right reasons because: 1. The principles of justice are reasonable 2. The principles are endorsed by an overlapping consensus and 3. Given the principles of justice, any public discussion concerning constitutional matters of justice will have a reasonable basis (Rawls 1995, 147).

Specifically, the constructivist procedure Rawls advocates is found in his conception of the "original position." Based on the fundamental ideas, the use of practical reason and other characteristics discussed, the original position is designed as the key element of a thought experiment in which various groups of citizens viewed as free and equal members of society are represented by hypothetical agents. These agents choose the principles of political justice for a liberal democratic society viewed as a fair system of cooperation over time. Accounting for reasonable pluralism, Rawls describes the original position in the following way:

> As a device of representation the idea of the original position serves as a means of public reflection and self-clarification. It helps us work out what we now think, once we are able to take a clear and uncluttered view of what justice requires when society is conceived as a scheme of cooperation between free and equal citizens from one generation to the next. (Rawls 1993, 26)

Due to the requirements of the constructivist procedure the agents in the original position possess certain features that prevent them from being biased or uncooperative. Each member is equally situated in the original position and must be cooperative. Each member is a rational agent who will act in the best interest of those they represent, under the restrictions of the original position. But each member recognizes the burdens of judgment and will not promote or force unreasonable positions. Furthermore, each member is unaware of the "background

culture" of the groups they represent. This refers to information such as their group's comprehensive views, social position, etc. The agents are also unaware of their groups' physical and intellectual endowments. The parties only have knowledge of basic human psychology, human nature, and the operations of a democratic political system. Again, such restrictions are necessary to exclude information that could jeopardize the equality of agents in the original position. Without these restrictions unfair bargaining advantages may arise and the original position would fail to generate reasonable principles of justice. The totality of these restrictions placed on the agents is termed as the "veil of ignorance." Rawls describes the veil of ignorance as follows:

> The parties are not allowed to know the social position of those they represent, or the particular comprehensive doctrine of the person each represents. The same idea is extended to information about people's race and ethic group, sex and gender, and their various native endowments such as strength and intelligence, all within the normal range. We express these limits on information figuratively by saying the parties are behind a veil of ignorance. (Rawls 1993, 24)

The specific principles Rawls believes are the outcome of his procedure guarantees for all citizens equal basic rights and liberties, and fair equality of opportunity. The procedure also generates the "difference principle" (Rawls 1993, 5). The difference principle refers to Rawls' idea that economic and social inequality ought to be arranged so that the least advantaged have better prospects than under any alternative arrangement.

Constructing the principles of justice is only the first stage in developing a liberal democracy. The second stage involves creating a constitution based on the principles.

Thereafter the principles are applied to the various legal and political institutions. In each successive stage after the original position, the veil of ignorance is incrementally lifted until the final stage where the principles and the resulting political system are subject to public scrutiny by reasonable citizens.

If an overlapping consensus is not reached and/or at some point the implementation of the principles of justice are deemed unacceptable, Rawls states that an error may be found in the implementation of the principles. In fact, he suggests that the principles of justice may need to be amended or changed. In this case, it can be said that the principles are not reflective of the fundamental ideas or a correct result from the constructivist process.

> What if it turns out that the principles of justice as fairness cannot gain the support of reasonable doctrines, so that the case for stability fails? Justice as fairness as we have stated it is then in difficulty. We should have to see whether acceptable changes in the principles of justice would achieve stability; or indeed whether stability could obtain from any democratic conception. (Rawls 1993, 65)

In sum, the error does not stem from the constructivist method but somewhere in its implementation. Rawls is cognizant (as shown in the previous quote) that it may be the case that, in application, no principles of justice based on the ideals of liberal democracy can achieve an overlapping consensus. Rawls is optimistic, though, that an overlapping consensus is achievable in our society because he surmises that the majority of comprehensive views are reasonable. He expresses this optimism in the following quote concerning religion:

> Here I shall suppose- perhaps too optimistically- that, except for certain kinds of fundamentalism, all the main historical religions admit of such an account [capable of

> embedding fundamental ideas] and thus may be seen as reasonable comprehensive doctrines. (Rawls 1993, 170)

But, despite Rawls' cautious optimism, Klosko argues in the next section that Rawls' method is impractical and incapable of achieving an overlapping consensus.

3. KLOSKO'S CRITIQUE AND THE METHOD OF CONVERGENCE

Klosko's critique of Rawls focuses specifically on *Political Liberalism* and its constructivism. This is first evident in the title of his article "Political Constructivism in Rawls' Political Liberalism." His attack is aimed at Rawls' method of arriving at the principles of justice rather than the principles themselves. His main conclusion is that, if Rawls' aim is to solve the problem of pluralism in existing liberal societies, then there is a better way. As an alternative, Klosko proposes the method of convergence, which would permit the use of comprehensive views in the original position.

> Setting aside the question of whether Rawls's method supports his principles, I argue that he does not adequately defend reliance on this particular method rather than alternatives. If the goal of Rawls' "political philosophy" is to derive principles that are able to overcome liberal pluralism, then another and simpler method should be employed. The "method of convergence" would develop liberal principles directly from the convergence of comprehensive views in existing societies, and so give rise to quite different moral principles. (Klosko 635)

Klosko aims at Rawls' selection of only two "intuitive ideas," (Klosko's term for the fundamental ideas) claiming that there could be additional intuitive ideas or different ones that are more reflective of liberal society. Second, Klosko criticizes the constructivist procedure as a "freestanding view;" in particular, he objects to the fact that the original position excludes existing comprehensive views found in actual liberal democracies. Klosko claims that such exclusion as unnecessary and counterproductive. Comprehensive views can be used in the

original position (given certain stipulations) in a way that maintains equality and fairness, and the use of such views will lead to a set of principles that are uncontroversial and more conducive to stability than principles derived through the Rawlsian procedure.

The Limitations of Rawls' Two Fundamental Ideas

In the following, Klosko questions the two fundamental ideas (democracy as a fair system of cooperation and citizens possessing two moral powers) that serve as the basis of Rawls' procedure:

> If a central aim of political liberalism is to address each group according to ideas to which it subscribes, then it is difficult to understand why Rawls believes in selecting from people's overall moral views two- and only two- intuitive [i.e. fundamental] ideas from which to generate principles…. (Klosko 640)
>
> Rawls never presents evidence to support the claim that people agree on the intuitive ideas though disagreeing about substantive principles of justice. (Klosko 640)

Klosko provides an example that suggests that certain groups would not agree with the second fundamental idea, i.e., that people have a conception of the good, which is revisable. The idea of moral revisability may be rejected as unacceptable by fundamentalist religious groups who believe that all aspects of morality are dictated by God and thus immutable. Klosko states:

> We can refer to the ability to revise one's conception of the good as "moral revisability." Once again, it is striking that Rawls never explores liberal public culture in detail to demonstrate the centrality of this conception of the person. It is especially important that

> he do so, because religious conservatives do not place at the center of their view of the person the ability to revise and change one's conception of the good…. (Klosko 641)
>
> The problem, however, is the likelihood that views Rawls would classify as fundamentalism, that is, different forms of religious conservatism, are adhered to by about 20% of the U.S. population. Moreover, as Leif Wenar points out, Rawls's conception of the person would be rejected by adherents of many nonreligious comprehensive views, such as followers of Bentham, Hume, and Hobbes (Wenar 1995, 50)." (Klosko 641)

Klosko concludes that Rawls' fundamental ideas do not reflect actual ideas in society.

Klosko recognizes that Rawls places a high premium on "reasonable comprehensive doctrines," and therefore Rawls may discount the incongruence between his ideas and the doctrine of a religious fundamentalist. Rawls would merely say that such groups are unreasonable. But considering the fact that these groups represent a sizeable demographic, it is unwarranted to exclude them in light of the goal of reaching an overlapping consensus and achieving stability. If Rawls wishes to fulfill his aim, he must recognize that intuitive ideas must be reflective of actual society and its existing comprehensive views.

> Rawls argues that he is justified in excluding unreasonable doctrines from consideration because his theory is intended to produce an overlapping consensus of reasonable doctrines. For the sake of argument, we can grant that the views of religious conservatives are not reasonable in Rawls's sense. There are, however, obvious disadvantages to excluding such groups. A central purpose of the overlapping consensus is to promote social stability.... (Klosko 641)

> Choice of intuitive ideas is limited by the circumstances of public culture. In order to fulfill their function, the particular ideas on which Rawls focuses must actually be basic features of public culture, common to its different comprehensive views. (Klosko 640)

In the end, Klosko claims that Rawls is oblivious to the actual ideas in American culture, and therefore his method is incapable of establishing stability. Klosko's critique here, of course, serves as justification for his method of convergence, which allows the unrestricted use of comprehensive views to determine fundamental ideas.

Criticisms of a Freestanding View

In response to Rawls' claim that his method is a freestanding view, Klosko questions why he excludes knowledge of comprehensive views in the first stage (the original position) and allows it only at the second stage (formation of a constitution). Klosko provides three reasons, in response to objections, to support his claim that knowledge of comprehensive views can be utilized in the first stage without compromising the integrity of the original position or affecting the deliberation of citizens:

1. One can allow knowledge of comprehensive views in the first stage and maintain its integrity by adding the stipulation that agents in the original position are unaware of which comprehensive view those they represent hold.

2. The first and second stages in actuality rely on comprehensive views as a basis, so the explicit use of such views in the original position is not problematic.

3. Public justification entails that citizens are not coerced by comprehensive views in their deliberations. But the allowance of comprehensive views in the first stage does not have

> a coercive effect in the latter stage of justification. So an argument from the standpoint of public justification is not viable.

Concerning Klosko's first argument, he recognizes that Rawls' primary objection to using comprehensive views in the original position is that it may provide unfair bargaining advantages to some members, thus making the process political in the wrong way. The merit of the original position is that it secures a fair and equal relation among the members such that it fosters cooperation and ensures the selection of the most reasonable principles of justice.

In response, Klosko counters that, if Rawls is worried about the integrity of the original position, the veil of ignorance can be modified such that it allows general knowledge of comprehensive views in society, with the restriction that agents in the original position are unaware of which one their group holds. In this scenario, Rawls' problem of integrity has been solved and valuable information concerning the public's actual views is allowed.

> A modified veil of ignorance can allow knowledge of the range of comprehensive views present in a given society while still excluding which one a given person holds. In deriving liberal principles from the area of overlap between comprehensive views through the method of convergence, representative individuals should work impartially and not be influenced by the particular comprehensive views to which they happen to subscribe. (Klosko 642)

Klosko's second argument claims that the two stages of construction are both actually informed by comprehensive views, so use of such views should be explicit in the original position. They are used explicitly in the constitutional stage, but appear in the original position in the form of fundamental ideas. Klosko explains that the fundamental ideas of a liberal

democracy have their origin in public culture (which seems to entail for Klosko political and nonpolitical culture) and thus comprehensive views are utilized. Furthermore the principles of justice are meant to practically apply to existing political society, so the allowance of such views would only aid in achieving such a goal. Klosko explains:

> Derivation of the principles in the first stage is not ex nihilo. Intuitive ideas rooted in the public culture, of course, play an essential role in their construction. Rawls does not explain why, if construction of the principles is inherently tainted by exposure to comprehensive views, intuitive ideas drawn form existing comprehensive views are admissible but beyond this point not allowed. Excluding other, possibly relevant aspects of comprehensive views is also counterintuitive because of the practical aims of political constructivism. Principles derived in the first stage are not intended solely to be as just as possible; they must also fit with society's comprehensive views. (Klosko 643)

In the last argument, Klosko addresses the possible objection that the allowance of comprehensive views in the first stage may influence the final stage of public justification. The claim here is that knowledge of comprehensive views in the original position adversely affects citizens' deliberation, and thus a reflective equilibrium[2] cannot be reached. A possible example would be a case where the principles of justice are derived from a modus vivendi and citizens are inclined to accept them to ensure peace, rather than seriously weighing them against their deep convictions. Another possible scenario is where the principles reflect a power advantage for a particular group and citizens are compelled to accept the principles because it benefits their social position or fear the consequences of rejecting them.

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[2] Note that, as stated earlier, a reflective equilibrium refers to the deliberation process of citizens weighing a proposed conception of justice against their deepest convictions of political justice.

Klosko's response is that the allowance of comprehensive views in the original position does not have any coercive power on individual citizens decision-making. Whatever principles are derived from the first stage are subject to unimpeded public scrutiny later because of the modified veil of ignorance. The consequences of the first stage being "tainted" are eliminated and so the public justification stage will proceed as Rawls intends. The mere fact that the public is aware that comprehensive views were utilized in the construction process should not have any bearing, if there does not exist a dominant group imposing a comprehensive view. Klosko writes:

> Part of what he (Rawls) means by public justification is that in a liberal society, coercive public power should not be used in ways that citizens cannot affirm. Yet, this entails that *justification* of the use of power not be rooted in a particular comprehensive view. It does not require that *construction* of the relevant principles be fully independent of conflicting comprehensive views as long as principles constructed by working from different existing comprehensive views can be justified to each citizen in his or her own terms, on the basis of his or her own comprehensive view. (Klosko 643)

By arguing that the fundamental ideas of a construction procedure are derived from comprehensive views, and do not affect reflective equilibrium, Klosko begins to establish a justification for his method of convergence.

The Method of Convergence

Amidst Klosko's discussion of the shortcomings of Rawls' constructivism, he simultaneously advocates the method of convergence as an alternative, which compensates for Rawls' errors. The method of convergence utilizes knowledge of comprehensive views at the

start for the purpose of finding an overlap between existing comprehensive views, which then can be used to derive principles of justice. The principles created will be the best principles reflective of the best ideas in an existing liberal democracy.

Because the method of convergence utilizes comprehensive views in the first stage, Klosko states that what he proposes is essentially a reversal of Rawls' first two stages. In Klosko's first stage, agents in the original position have the job of discovering the overlap of views within society in both the political and nonpolitical realms. Opposed to Rawls' original position, the agents do not assess the overlapping concepts. Once the overlapping concepts are discovered in the first stage, politicians at the second stage (the constitutional stage) use such information as a source for deliberating, arguing and creating the best guiding principles for a liberal democracy. This process is in opposition to Rawls, who in the first stage claims to have generated the best principles and then seeks public agreement in the stages thereafter. In Klosko's method, public agreement is addressed in the first stage through finding the overlapping ideas among all views in society. Since the method of convergence accounts for the presumed errors of Rawlsian constructivism, it entails the modified veil of ignorance, flexibility in the nature of fundamental ideas, and the capability of achieving stability without being political in the wrong way. That is Klosko's view, at any rate.

Additionally, the method selects principles of justice that are "uncontroversial or as uncontroversial as possible." (Klosko 638) Klosko sees this attribute as necessary to foster an overlapping consensus. Therefore, he claims that in the first stage all major conceptions of society must be taken into consideration, despite the possibility that such conceptions may be deemed unreasonable under Rawls' definition. Klosko believes, though, that such an allowance

actually is in accord with Rawls' task of achieving stability. He quotes Rawls: "'We do not put forward more of our comprehensive view than we think needed or useful for the political aim of consensus' (Rawls 1993, 153)" (Klosko 638).

Concerning the seemingly problematic nature of allowing comprehensive views that are grossly unreasonable, Klosko does not explicitly address the issue. In his criticism of Rawls, though, he provides a definition of reasonable views. He believes Rawls' criteria for being reasonable is too narrow and if stability is a goal, then a wider definition is needed.

> Rawls apparently prefers a somewhat narrower popular consensus, as is evident in his insistence that the overlapping consensus be between "reasonable" views. I will not explore different ways in which the variables in regard to consensus could play out, though we should note that Rawls defines "reasonable" quite narrowly and so may well exclude many inhabitants of liberal societies from the necessary consensus…. Given the task of "political" philosophy, I believe it is preferable to construe "reasonable" more broadly. The only people who are not "reasonable" are those whose comprehensive views would prevent them from coexisting peacefully with other members of society.[3] (Klosko 637)

Furthermore, Klosko believes that there is agreement in liberal societies among conflicting viewpoints in the form of a constitutional consensus. Borrowing the idea of a constitutional consensus from Kurt Baier, Klosko writes that it is a "general agreement on 'procedures for making and interpreting law and, where that agreement is insufficiently deep to end disagreement, on the selection of persons whose adjudication is accepted as authoritative'"

[3] Note that this is in contrast to Rawls conception of "reasonable views," which in the case of political conceptions it entails that such views do not reject constitutional essentials, values cooperation with other groups and requires that any proposals are presented in a manner which is justifiable to others.

(Klosko 639). In this definition, the idea of a constitutional consensus seems to reflect the rules and functions of legal and political institutions locally and nationally.

Klosko believes that this form of consensus currently exists in liberal democratic societies, and that it works. The fact that it works is proven by the durability of liberal political systems after World War II and statistical evidence showing public support. Klosko describes survey data displaying wide public support for the American political system:

> A series of national surveys indicate strong support for the American political system, for the decision-making mechanisms in the United States… The results are striking, Congress was approved or strongly approved by 88% of respondents, the Supreme Court by 94%, and the Presidency by 96% (Hibbing and Theiss-Morse 1995, 44-5)... 'Do you feel you should support our system of government?' The responses were 80% positive, 11% neither positive nor negative, and 9% negative; only 2% were strongly negative (Hunter and Bowman 1996, Table 12D). (Klosko 639-40)

From this evidence, Klosko concludes that there is an obvious overlap of views within society at large (including comprehensive views) and that this is precisely what the method of convergence would incorporate. He explains:

> The method of convergence would focus on this [overlap], identifying it as an area of constitutional consensus, despite wide differences among citizens' comprehensive views. Once the relevant areas of agreement are identified in the first stage of this modified process of construction, one can argue in the second for different versions of specific principles it supports. (Klosko 640)

Klosko states that a constitutional consensus incorporates many of the merits of an overlapping consensus and that even Rawls is in agreement with this point. As a political system,

a constitutional consensus promotes stability, and fosters tolerance, respect and reciprocity. All of these are attributes of Rawls' overlapping consensus.

The only point of disagreement Rawls raises, according to Klosko, is that a constitutional consensus is not substantive in the sense of entailing fundamental ideas that serve as an underlying guide to decisions of political justice. A constitutional consensus merely establishes procedures concerning how to handle legal matters. A constitutional consensus, for instance, would not incorporate the difference principle, which reflects economic justice. Citizens' rights would be subject to change depending on the political climate and power shifts among groups. Lastly, because a constitutional consensus does not contain a conception of the person and society, it "lacks moral depth." Klosko summarizes the Rawlsian objection in the following:

> Overlapping consensus [i.e. Rawlsian consensus] encompasses a wider range of principles, basically more secure views of substantive rights, and more developed principles of economic distribution. Its superior depth lies in the fact that participants trace their views back to fundamental intuitive ideas rooted in political culture... (Klosko 644) Constitutional consensus falls short in not addressing questions of economic distribution… [It] also has a weaker conception of rights, the content of which is unacceptably subject to "the shifting circumstances" of political bargaining. Rawls also objects to the means through which the constitutional consensus is derived. Its precepts do not stem from shared ideas of the person and the nature of society but are "accepted simply as principles" and so lack moral depth. (Klosko 639)

Klosko responds to these claims referencing his critique of Rawls' fundamental ideas and a freestanding view, in addition to aspects of the method of convergence. Concerning the criticism that a constitutional consensus does not include principles of distribution, Klosko

responds that such principles may be desirable, but the difference principle has little support in actual society. He supports this claim through reference to statistical data: "Empirical data provide little support for the difference principle. As David Miller (1992, 578) writes in a recent survey of empirical studies of attitudes about distributive justice, to the extent that people were seen to hold common views on the subject, they were not supportive of the difference principle." (Klosko 644) The problem of power shifts is solved through the modified veil of ignorance. The principles created will not favor one group over another and the possibility of modus vivendi is neutralized. Furthermore Klosko raises the point that constitutional consensus has proven itself by the stability of post-WWII liberal democracies.

Lastly in response to the claim that a constitutional consensus does not entail a conception of person and society and therefore lacks moral depth, Klosko retorts that Rawls has not proven that employing moral principles as a political basis is any more effective than other means. Klosko refers to the possibility that the use of religion or nationalism may be just as effective in achieving stability. Furthermore, Klosko states that Rawls has not proven that the conception of person and society provided is a conception held in existing society.

> Rawls does not provide evidence for his crucial claim that the motivating force of moral principles with particular content is greater than that of other factors. Even if we concede that the factor he notes plays a role in influencing behavior, he does not address the question of how this factor interacts with others that also influence conduct, such as self-interested religion, and national identification. In order for stability in his sense to be a central consideration in the representative individuals' deliberations, it must play a significant role in stimulating cooperative behavior, but this Rawls has not shown. (Klosko 645)

Despite the absence of morally grounding ideas, Klosko adds that a constitutional consensus entails morally relevant features such as the right to free speech, the right to vote etc. It also fosters cooperation, fairness and reasonableness, features that are reflective of Rawls' political liberalism.

In the end, Klosko claims that even if it is conceded that Rawls' method of construction produces an overlapping consensus, he has not proven that his method is the only or the best solution to the problem of reasonable pluralism. Due to the fact that the method of convergence uses comprehensive views in the formative stages, Klosko believes that his method is better at achieving stability as well as producing principles that are normatively robust. He concludes by stating that even if the production of normatively robust principles takes precedence over stability, there does not seem to be justification for Rawls' narrow conception of fundamental ideas or for excluding comprehensive views from the first stage of construction.

4. ANALYSIS OF KLOSKO AND A DEFENSE OF RAWLSIAN CONSTRUCTIVISM

Klosko through the method of convergence claims to have a better solution to solving the problem of pluralism than Rawls. The main criticism that is argued in this thesis is that Klosko rejects Rawls' original project of solving "reasonable" pluralism and in doing so he places emphasis on stability to the detriment of justice. Klosko claims that his method takes into account the normativity of the principles selected, but his negative and positive arguments focus heavily on stability. He has not shown that the use of comprehensive views would guarantee liberal principles. Klosko states that his paper does not address specific ways in which normatively robust principles are secured.

> The alternative method I propose begins with an attempt to find areas of agreement between existing comprehensive views. Once such an area is identified, we would proceed to derive principles with the most robust possible normative content. Throughout this paper, I will concentrate on the first of these tasks, leaving aside complex issues concerning argument in the second. (Klosko 638)

But despite his admission of excluding a discussion of how to derive normatively robust principles, this does not free him from criticism nor does the admission help to justify the claims he makes against Rawls. His separation of the issue of stability from the moral weight of the principles only reveals his confusion concerning Rawls' method and goal. In order to solve the problem of liberal democracy a method requires both of these issues to be addressed simultaneously.

Rawls recognizes that in creating a liberal democracy the solution is not solely establishing principles that garner wide public consensus, but, given pluralism, to create a political system that can persist based on liberal principles of justice. Under Klosko's method, the possibility arises that a democratic society can be formed which achieves stability but rejects liberal ideas of justice.

Defense of the Fundamental Ideas and a Freestanding View

Klosko attempts to attack Rawls' fundamental ideas by claiming that they are not reflective of the actual views held in society. Klosko's first mistake is that he misinterprets Rawls' source for the fundamental ideas. Klosko believes that the two fundamental ideas are based solely on Rawls' own ideals of a liberal society. Rawls' relies on political ideas derived from traditional texts and institutions embodying liberal principles as a source, not ideas of his own making. Secondly, Klosko mistakenly equates political and nonpolitical ideas. This is evident in his use of the term "public culture" which seems to entail both. For example: "Choice of intuitive ideas is limited by the circumstances of public culture. In order to fulfill their function, the particular ideas on which Rawls focuses must actually be basic features of public culture, common to its different comprehensive views" (Klosko 640). This error seems to stem from his claim that the fundamental ideas are in fact partly derived from comprehensive views and thus comprehensive views should be directly utilized throughout the construction process.

Rawls is clear that comprehensive views are relegated to the realm of nonpublic, nonpolitical beliefs, whereas the fundamental ideas are public and political. Even the moral

features of the fundamental ideas, such as equality and fairness, have their root in liberal political values. Rawls distinguishes the political domain from nonpolitical domains in which comprehensive views appear in the following:

> Taking the political as a distinctive domain, let us say that a political conception formulating its basic characteristic values is a freestanding view. This means two things: first, that it is framed to apply in the first instance to the basic structure of society alone; and second, that it formulates the characteristic political values without drawing on, or mentioning, independent nonpolitical values. A political conception does not deny that there are other values applying to the associational, the familial, and the personal; nor does it say that political values are entirely separate from, or unrelated to, those values. (Rawls 2003, 182-83)

So even though the comprehensive view of a religion (an association) may be similar or related to political conceptions, it is not the source as Klosko purports. The content of political ideas, for Rawls, stems from traditional liberal texts and institutions, which are independent of any particular philosophy or religious doctrine. To reiterate a previous quote:

> The third feature of a political conception of justice is that its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society. This public culture comprises the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge. (Rawls 1993, 13-4)

Klosko's misunderstanding of the fundamental ideas is also found in his use of the term "intuitive ideas" instead of fundamental ideas. The use of the term alludes to an earlier concept

used by Rawls in which one could arguably claim that fundamental ideas stem from general views or the psychology of democratic citizens. The idea is that that one who is born into a liberal democracy becomes aware of liberal ideas and adopts them as their own.

In Rawls' early work he does use the term "intuitive ideas" and Klosko may have a case for such a psychological interpretation. But by the time of *Political Liberalism* Rawls has discarded the term and any psychological connotations of the fundamental ideas. This is particularly important in that Klosko clearly states that his criticism aims at *Political Liberalism* and thus reference to earlier material seems irrelevant.

Klosko gives the impression that political and comprehensive views are synonymous or at least that they are equally important in creating a political system. Rawls, on the other hand, correctly recognizes the difference between the two perspectives, but does not overlook the role of comprehensive views. He is aware that people have political and nonpolitical views, which may come into conflict. This is part of the problem of reasonable pluralism, but Rawls has a solution that relies on the idea of an overlapping consensus. For reasonable people, political values will trump nonpolitical values due to recognition of the burdens of judgment and adherence to liberal ideas such as fairness and cooperation, which are indicative of being a part of liberal society. Rawls elaborates on his view as follows:

> Citizens usually have both political and nonpolitical aims and commitments. They affirm the values of political justice and want to see them embodied in political institutions and social policies. They also work for the other values in nonpublic life and for the ends of the associations to which they belong. These two aspects of their moral identity citizens must adjust and reconcile. It can happen that in their personal affairs, or in the internal

> life of associations, citizens may regard their final ends and attachments very differently from the way the political conception supposes. (Rawls 1993, 30)

> Given the existence of a reasonably well-ordered constitutional regime [Rawls idea of a fully reasonable democratic society,] two points are central to political liberalism. First, questions about constitutional essentials and matters of basic justice are so far as possible to be settled by appeal to political values alone. Second, again with respect to those same fundamental questions, the political values expressed by its principles and ideals normally have sufficient weight to override all other values that may come in conflict with them. (Rawls 1993, 138)

Rawls believes that reasonable liberal people know fundamentally what is required of them to partake in a liberal society and will attempt to reconcile their political and nonpolitical views. Thus, if the principles of justice are reasonable in that they reflect liberal ideals, citizens hopefully will find such principles in their comprehensive views, and resolve any conflicts. A disagreement between the two views may still exist, but for the sake of the political task the nonpolitical view will defer to the political viewpoint. Thus, Rawls writes that:

> Citizens embed their shared political conception in their reasonable comprehensive doctrines. Then we hope that citizens will judge (by their comprehensive view) that political values are normally (though not always) ordered prior to, or outweigh, whatever nonpolitical values may conflict with them. (Rawls 1995, 147)

Therefore Klosko's example involving religious fundamentalists who disagree with Rawls' concept of moral revisability seems to be off the mark. If we consider these individuals to be reasonable participants in a democratic society, they would be able to resolve any conflict

between their fundamentalism and the demands of a liberal political order. Rawls provides a similar example involving Quakers:

> So Quakers, being pacifists, refuse to engage in war, yet they also support a constitutional regime and accept the legitimacy of majority or other plurality rule. While they refuse to serve in a war that a democratic people may reasonably decide to wage, they will still affirm democratic institutions and the basic values they represent. They do not think that the possibility of a people's voting to go to war is a sufficient reason for opposing democratic government. (Rawls 1995, 148)

Concerning the statistics Klosko provides as empirical proof that Americans do not agree with Rawls' fundamental ideas, they are irrelevant in light of Rawls' actual political source for the fundamental ideas. Again, Rawls relies on traditional liberal ideas inherent in liberal democracies and not the ideas of the general public. Aside from the error of misinterpreting Rawls, such a tactic can be criticized as being an ad populum argument. Public agreement or disagreement with a claim does not validate it or establish its veracity. Logical analysis of a claim's premises lends support to its soundness or strength. In addition, the public is capable of supporting stances that are logically questionable, impractical or unjust. So reliance on public opinion is a fallacious and ineffective tactic.

Another issue of contention is Klosko's criticism that Rawls places too high a premium on the reasonableness of comprehensive views. Klosko is correct that comprehensive views play a significant role in achieving an overlapping consensus, but he places too much emphasis on this particular stage. For the sake of stability he seems to minimize the task of producing principles that are normatively robust. Rawls' task is not only to show how stability and

legitimacy are possible, but, also, to give an account of justice for reasonable democratic citizens. In fact, constructing just principles is arguably his primary goal and stability is secondary. In his constructivist process, he aims first to produce principles reflective of the fundamental liberal ideas and then hopes optimistically that the majority of persons in actual society hold comprehensive views that are reasonable and would endorse such principles. Rawls' cautious optimism is shown in the following:

> A political conception is at best but a guiding framework of deliberation and reflection which helps us reach political agreement or at least the constitutional essentials and the basic questions of justice.... (Rawls 1993, 156)

> Views that would suppress altogether the basic rights and liberties affirmed in the political conception, or suppress them in part, say its liberty of conscience, may indeed exist, as there will always be such views. But they may not be strong enough to undermine the substantive justice of the regime. That is the hope; there can be no guarantee.... (Rawls 1993, 65)

> Here I shall suppose- perhaps too optimistically- that, except for certain kinds of fundamentalism, all the main historical religions admit of such an account (capable of embedding fundamental ideas) and thus may be seen as reasonable comprehensive doctrines. (Rawls 1993, 170)

Furthermore Rawls believes the requirement of reason is not some impractical ideal as Klosko suggests, but it is merely reflective of what it is to be part of a liberal democracy. Thus the premium he places on it is not of his own device but again a result of the constructivist process. Participating citizens in a liberal society are reasonable.

> Observe that here being reasonable is not an epistemological idea. Rather, it is part of a political ideal of democratic citizenship that includes the idea of public reason. The content of this ideal includes what free and equal citizens as reasonable can require of each other with respect to their reasonable comprehensive views. (Rawls 1993, 62)

Klosko has his own conception of what constitutes a reasonable view, and through analysis of his definition we can see that it is problematic when put into practice. In opposition to Rawls' definition he states: "Given the task of "political" philosophy, I believe it is preferable to construe 'reasonable' more broadly [than Rawls does.] The only people who are not 'reasonable' are those whose comprehensive views would prevent them from coexisting peacefully with other members of society" (Klosko 637).

Klosko believes that Rawls' definition is too narrow, but Klosko's definition is too broad. For example, under Klosko's definition, if we were to consider a democratic society that oppressed a segment of its citizens and the oppressed group were to engage in civil disobedience or promoted revolution, they would be considered unreasonable because they are causing discord in society, despite the fact that their actions might be just. Here we assume that the majority's comprehensive view rejects the idea that the minority group should coexist equally with the majority group in peace. Of course it can be argued that the oppressing group is unreasonable under Klosko's definition, but the point is that a coercively imposed order can establish peaceful coexistence regardless of justice or injustice.

Continuing his criticism of Rawls, Klosko presents an argument against the exclusion of comprehensive views in the original position. He claims that the veil of ignorance can be modified in a way such that Rawls' fear of the original position being compromised is alleviated.

By restricting in the original position the agents' knowledge of their groups' comprehensive views, the process avoids being political in the wrong way in terms of constructing the principles and affecting citizens' deliberative process. Hence comprehensive views can be used throughout the political formation process, avoiding the errors of constructivism even creating better principles of justice.

As stated earlier, initially it seems that Klosko's method is capable of achieving stability but possibly at a price. In the next section it will be shown that the method of convergence in its use of comprehensive views is capable of producing unjust principles. If this is the case then the achievement of stability becomes moot.

Critique of the Method of Convergence and Conclusion

The primary critique against the method of convergence is that it de-emphasizes the use of reason in evaluating comprehensive views, for the sake of choosing political principles that will garner public consensus. Given this fact Klosko's method allows the selection of principles that are unjust or normatively deficient. If we were to employ Klosko's method of convergence in 19th century America or a contemporary emerging democracy where groups without political power are oppressed, these would serve as clear examples. In a society, for example, where the idea of women's rights is nonexistent, held by a negligible minority or a group that does not possess substantial power, such ideas would not be introduced into the original position. Their exclusion would be due to the fact that they would not be recognized as part of a substantial

comprehensive view or, if introduced, they would not be of any importance because such ideas would not overlap with other established views.

Klosko may counter that because individuals in the original position are equal, rational, cooperative and unaware of their own comprehensive views that it would be in each agent's interest to avoid including unjust overlapping ideas because those they represent may be the victims of injustice. In addition, he may respond that at the constitutional level, politicians would choose the best principles and thus exclude any that are obviously unjust.

In response to the claim that agents in the original position would only include overlapping ideas that are consistent with their groups' self-interest, this would violate the conditions and purpose of Klosko's amended original position. In Rawls' original position he stipulates that agents make evaluations and choose the principles of justice. In Klosko's amended original position, agents do not make any normative claims concerning the overlapping ideas they discover, they merely report their findings. The evaluation of such ideas is left to politicians at the constitutional stage who then use such information to create the principles of justice. Again, the reason why Klosko excludes evaluation in the original position is to ensure that the overlapping ideas are reflective of actual ideas held in society. So the exclusion of overlapping ideas that are unjust or unfavorable is not possible within Klosko's original position.

In response to the claim that it is the duty of the politician to choose just principles at the constitutional level, it should be noted that the justice or injustice of institutions, historically, has been relative to particular time periods and societies. In addition, we must consider that at the constitutional level, politicians are not fully restricted by the veil of ignorance. Klosko does not indicate how much of the veil of ignorance is lifted at this stage, or if it exists at all. In either

case, the possibility arises that among the overlapping ideas available, the politicians may consider a principle oppressing a group of citizens as best and just for democratic society. Another possible scenario is where the group of overlapping ideas are not explicitly unjust, but there are not any that would exclude certain unjust acts.

One way Klosko may try to avoid this problem is to reiterate that his method focuses on existing contemporary democracies. This doesn't solve the problem though, given that societies change. If a society as described earlier were to exist in a future America and the method of convergence were employed, the same set of problems would arise. Even in a contemporary context his method might result in the oppression of certain groups, such as homosexuals. The issue arises as well concerning contemporary emerging democracies that have widely held comprehensive views with unjust principles.

One of the attributes of Rawls' theory is that his principles are meant to be generational. It is not applicable only to existing societies, but to future generations of liberal peoples and applicable to past modern democratic societies (modern in the sense of democratic societies established since the inception of the United States). An illustration of this concept can be found in Rawls discussion of a just savings principle:

> The correct principle, then, is one the members of any generation (and so all generations) would adopt as the principle they would want preceding generations to have followed, no matter how far back in time. Since no generation knows its place among the generations, this implies that all later generations, including the present one, are to follow it. In this way we arrive at a savings principle that grounds our duties to other generations: it supports legitimate complaints against our predecessors and legitimate expectations about our successors. (Rawls 2003, 160)

An additional error committed by Klosko is that he believes stability must be based on the "best" principles rather than the most reasonable. This mistake leads Klosko to believe that the fundamental ideas and principles of justice are Rawls' own favored normative ideas rather than a part of constructivist procedure. As stated previously, Rawls is clear that the fundamental ideas stem from the most basic ideas of liberal political culture and are not informed by his or any other normative theory. He is clear that the goal is not to seek the best principles, but those that are reasonable and based on liberal ideas. This point again supports the claim that Klosko's method is not necessarily normatively sound, for the "best" principles to achieve stability may be those that run counter to liberal ideas.

Klosko, by claiming that the principles created should be as uncontroversial as possible, presents another misinterpretation of Rawls. His interpretation of a quote from *Political Liberalism* serves as an example. Again the quote is: "We do not put forward more of our comprehensive view than we think needed or useful for the political aim of consensus" (Rawls 1993, 153). This quote does not seem to support Klosko's claim that the principles chosen should be uncontroversial but more so that in arriving at an overlapping consensus, comprehensive views are utilized in citizens' deliberative process only by considering such views at their most fundamental level. In fact this quote seems to add support to the claim that the specific content of comprehensive views is not important, but what underlies these views is what is important for consensus.

Probably the most egregious error Klosko makes is found in his use of a constitutional consensus as evidence of the effectiveness of the method of convergence. Klosko's discussion

of a constitutional consensus is at worst, irrelevant, and at best, a flawed attempt at criticizing the idea of an overlapping consensus. Klosko introduces the idea of a constitutional consensus to prove that among existing comprehensive views there can be agreement on some ideas. But again, it is seems that Klosko erroneously places political ideas and nonpolitical ideas in the same category. He seems to believe that a constitutional consensus displays some sort of agreement among comprehensive views in that there is a general agreement concerning the constitution and its resulting institutions. This reflects a general belief that agreement on political concepts necessitates a congruence of nonpolitical concepts because the political stems from the nonpolitical fundamentally. As discussed earlier though, it seems Rawls is quite correct in stating that liberal democratic people have a political self and a nonpolitical self. Although the two are not mutually exclusive in deliberating about political issues, if the person is reasonable, the political self will have more import on political matters.

Nowhere in Klosko's argument does he directly explain how comprehensive views are involved in reaching a constitutional consensus. The statistics he provides as evidence merely shows agreement from the perspective of any individual who believes in democratic concepts such as the people having power over government, a division of government etc. In the end if we were to grant that Klosko sincerely believes a constitutional consensus reflects an agreement among comprehensive views then he makes a category mistake. A less charitable interpretation would be that this argument is a red herring.

If we were to consider a constitutional consensus as relevant in displaying an agreement between comprehensive views, then such an argument can still be criticized. Klosko is correct that a constitutional consensus is similar to what exists in contemporary America and that many

of its attributes Rawls would endorse. But if we take into consideration our general argument that a system, which is not grounded in fundamental liberal principles, allows the possibility of injustice, then establishing a society on a constitutional consensus alone opens the door to similar criticism.

Before addressing the theoretical feasibility of Klosko's claim it should be stated that the statistical evidence he provides showing American citizens' support for a constitutional consensus over an overlapping consensus is merely an ad populum appeal. Aside from the fact that the public is capable of supporting an unjust political system, in general, most citizens would not possess sufficient knowledge of Rawls' political theory to make an informed judgment. Thus any sort of simple poll would seem to be fallacious. We can add here as well that Klosko's claim that a constitutional consensus has proven its stability since World War II is a case of biased sampling or a hasty generalization. In light of history, sixty years or so is too small a time period to make universal claims about the effectiveness of a political theory.

In response to Klosko's criticism that Rawls' conception of a person (being reasonable and cooperative) is not necessarily reflective of actual society or better than other conceptions, again Klosko erroneously focuses on the "best" way to achieve stability rather than whether the principles are just and reflective of a liberal society. If we were to grant that there exists a constitutional consensus that contains certain rights, and, in principle, fosters cooperation in contemporary America, Rawls' criticism that such a consensus would not necessarily guarantee such attributes would hold.

Because there are not any grounding principles that the public is forced to assess within their comprehensive views, one can easily agree with the properties of a constitutional consensus

but yet in practice ignore aspects of it or interpret it in a way that allows injustice. Rawls is correct that a constitutional consensus alone does not have enough normative strength to force people to deeply weigh political values against their nonpolitical values. Klosko suspects that Rawls considers a constitutional consensus as merely a modus vivendi and, although Rawls does not directly make such a claim, in his discussion of a constitutional consensus, such a conclusion seems to be accurate. Rawls asks, "How might a constitutional consensus come about? Suppose that at a certain time, because of various historical events and contingencies, certain liberal principles of justice are accepted as a mere modus vivendi, and are incorporated into existing political institutions" (Rawls 1993, 159).

We can use American history to show how a constitutional consensus might allow injustice. The concepts of freedom and equality were instilled into the constitution and political institutions thereafter. These concepts have always theoretically been considered defining features of American democratic culture. Particularly, if we view a constitutional consensus as a modus vivendi, we can postulate how politicians and common citizens regarded these concepts as flexible in application. We know historically that during the forming of the Constitution and the unification of the states there were disputes concerning the extent of state political power, the issue of slavery etc. Certain compromises were made to ensure unity among the states for the purpose of establishing an independent nation. We could argue that this event was an example of a modus vivendi, which eventually culminated in the American Civil War. In addition to the issue of slavery, we know that the Civil War was the result of a loss of political power among the southern states, and, in fear of being politically "oppressed" by the northern states the original compromise was broken. If we are take such events as plausible evidence, this seems to concur

with Rawls' claim that the problem of a constitutional consensus is that it does not possess a grounding moral force that compels politicians and citizens to personally weigh and abide by the principles they have selected. In relation to the political decision making process of a constitutional consensus, Rawls states:

> A constitutional consensus at the level of principles viewed apart from any underlying conception of society and citizen- each group having its own reasons- is a consensus taken literally. It lacks the conceptual resources to guide how the constitution should be amended and interpreted.... (Rawls 1993, 165)

> For unless a democratic people is sufficiently unified and cohesive, it will not enact the legislation necessary to cover the remaining constitutional essentials and basic matters of justice, and conflict will arise about these. (Rawls 1993, 166)

In the end, despite criticisms of Klosko's method, it must be asked whether, despite its flaws, is it better than Rawls' method in terms of establishing and maintaining a liberal democracy? This of course entails that we consider whether such a political system is not only stable but also just in light of conflicting viewpoints. It also seems to entail an assessment of the role of stability and justice in terms of achieving the goal.

For Rawls the ultimate goal is to reach a fully reasonable democratic society, which he defines as a "well-ordered society." From his perspective justice and stability are both necessary components. Briefly Rawls defines a well-ordered society as, "a society effectively regulated by a public political conception of justice" (Rawls 1993, 35). In response to any utopian interpretations of such a concept he states, "a well-ordered democratic society meets a necessary (but certainly not sufficient) condition of realism and stability" (Rawls 1993, 38). But Rawls

gives the sense as well that this ideal democracy hinges on a certain type of stability, one that is based on justice to sustain it.

Stability and justice are therefore not mutually exclusive but related in the sense that stability in a liberal democracy is dependent on just principles. This is why Rawls is concerned first with developing principles that are just. Once such principles are available, if they are reasonable, they will promote stability among reasonable citizens. Here we refer to Rawls requirement that, for there to be an overlapping consensus, there must be a reflective equilibrium where citizens weigh the principles against their deepest convictions (including comprehensive views). A major part of this deliberation is on whether the political principles are just for liberal democratic citizens. Klosko seems to overlook the importance of justice, and the necessary role it plays in arriving at an overlapping consensus and establishing a lasting adherence to the principles. Although both stability and justice are necessary components to creating an ideal liberal society, justice seems to be the more important of the two. Ideally, for Rawls at least, it seems justice is of more importance intrinsically even though extrinsically it serves to establish stability.

In conclusion, the claim here is not that Klosko's method necessitates an unjust political system, but that it does not give the idea of justice the fundamental role that Rawls' theory does. Concerning the claim that Klosko's method is more liable to achieve stability, it is questionable because, historically, periods of instability seem necessary in order to move closer to the fulfillment of liberal democratic ideas. Even if such a view is optimistic, it would seem better to share Rawls' commitment to making sure principles are just and reflective of reasonable

democratic citizens, rather than allowing the possibility of compromises that jeopardize the application of the best ideas found in liberal democratic thought.

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