

The Inextricable Weed:
Rawls and the Problem of Endemic Faction

by

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Author's Declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

Abstract

John Rawls, over the course of his career, sought to construct a framework by which a liberal society could be envisioned in its ideal form which then, taken as a model, may illuminate a sure path for reform. His argument developed through three major works, *A Theory of Justice*, *Political Liberalism*, and *Justice as Fairness: A Restatement* contended with a plethora of objections and liberal alternatives ranging from Kantian deontology to the utilitarianism of John Stuart Mill. Yet, there is a notable omission, namely, the problem of faction. This oversight is in all probability due to the relative dearth of interest within philosophy since Rawls's time. In recent years, however, there has been an increased interest in topics relating to faction within political science, sociology, and social psychology¹ and as such, a philosophical treatment is well overdue. By conducting an analysis of the Rawlsian project with special attention to the political theory of David Hume and its emphasis on the importance of faction, it will be shown that when subjected to factional pressures, the integrity of the Rawlsian society is compromised. The definition of faction is itself contentious as many of the relevant authors offer their own bespoke definitions and exclusions which invariably influence their treatment of the subject. As my analysis hews fairly close to Hume, my definition of faction is derived from his work. A faction is a group bound together by a common identity which is understood as politically salient by the group members. factional members recognize a shared group interest and actively pursue the advancement of their group. Although factions are often organized, it is not strictly necessary as suggested by Will Rogers's famous quip, "I am not a member of any *organized* party — I am a

¹ This renewed interest is especially apparent in the American context where there have been recent studies of polarization and tribalism e.g. *The Hidden Tribes Project* (Hawkins, at el. 2018) and several New York Times bestselling books on the subject by prominent scholars and journalists such as *Tribe* (Junger 2016), *Just Babies* (Bloom 2013) and *The Righteous Mind* (Haidt 2012).

Democrat” (O’Brien 1935, 162). Not all groups are necessarily factional in character; for instance, the apolitical are excluded from factional membership given their political passivity.

I will begin with a survey of some of the relevant political theorists who have developed a theoretical understanding of faction. The principal authors here considered are Aristotle who represents an early attempt to provide a systematic account of the relation between sect and politics, David Hume whose theoretic account of faction will be principally referred to, and finally, Hume’s American counterparts, particularly James Madison who refined and applied Hume’s theory in the construction of the American constitutional regime. In section two Rawls’s theory as presented in *Political Liberalism* and *Justice as Fairness* will be considered in depth with special attention given to his account of reasonable pluralism. In the final section, I shall provide a critical examination of the Rawlsian conception of reasonable pluralism, with the intent to illustrate that it is overly narrow and thereby excludes from Rawls’s politics potential allies of liberalism. Furthermore, I will endeavour to show the fundamental fragility that arises from an assumption of the inherent attractiveness of liberalism by considering its contingent and factional character. Although my principal concern is to illustrate this factional account and the difficulties it presents to Rawls, I shall also provide in the final section a preliminary account of what is minimally required for the success of a liberal political project namely, a policy of maximum inclusiveness such that both egalitarian and non-egalitarian liberals may recognize themselves as sharing a faction and which places this engorged liberal faction in opposition with its illiberal counterparts.

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I would also like to thank Ellie Witzke for incalculable assistance for many years and to my father Christopher Brown and my mother Jennifer Bockus-Brown for their ongoing support as I continue to pursue my academic studies.

Dedication

I would like to dedicate this work to the memory of my late grandfather, Crandall Bockus, who incepted in me a love for literature, history, and philosophy.

Quote

For he who'd make his fellow-creatures wise

Should always gild the philosophic pill! (William Schwenck Gilbert)

Table of Contents

Author's Declaration.....	ii
Abstract	iii
Acknowledgements	v
Dedication.....	vi
Quote	vii
Section 1	1
Section 2.....	22
Section 3	34
References	47

SECTION 1

The first section will begin with several broad strands of the topic of faction being considered and a cursory survey of some of the principal authors. Aristotle's conception of regime and its relation to the class structure of society will be explored as an early foray into factional analysis. Additionally, David Hume will be considered as the principal architect of the style of factional analysis that will later be applied critically to Rawls. The role of factions within political theory will be explicated with special attention given to its close connection to the study of history by political theorists, as well as the use of historical cases to motivate reasoning on the nature of political relationships both within the historical context and abstractly. A brief consideration will be conducted of the influence of factional analysis in matters of practical politics principally evidenced by Hume's influence on James Madison. The practical importance of factional analysis will be demonstrated by reference to the structure of the American regime and the philosophical defenses provided to justify it.

For Aristotle the constitution of a city state reflects the nature of its governing body both in descriptive terms of what class is represented in the government but also in ethical determinations of the government's orientation. Aristotle identifies six kinds of constitutions that may govern a city state. These constitutional regimes may be further subdivided into their correct forms and their deviant types. Kingship is defined as the virtuous rule by the one and is considered the most divine form of government with tyranny as its deviant form which correspondingly is the worst kind of regime. Aristocracy is the virtuous rule of the few with Oligarchy being its corrupted form. Polity is the third correct form of government which involves the rule by a middle class, has as its deviant form democracy which means ruled by the

many, and is considered the least corrupt form of a deviant constitution (1279a-1280a). A polity's middle class incorporates elements of both the democratic and the oligarchic forms, and as such, may be considered a mixed constitutional regime (1293b32). The middle class plays a fundamental role in the preserving of a polity's constitution as they are best situated to rule virtuously given their middling status. The rich and the poor having extreme disparities of wealth and power are prone to similarly extreme vices. The rich will be arrogant and appetitious and the poor will be petty and malicious (1295b4). A city that is dominated by either class will find itself governed according to that class interest. As such in an oligarchy, the rich oppress the poor and, in a democracy, the poor oppress the rich (1296a29). The middle-class, in contrast, is inclined towards moderation owing to its moderate means and relative equality. A polity is stable insofar as its politics are dominated by the middle-class or short of this, the middle-class shares power with the rich or the poor and by its influence moderates the excesses of either class (Clayton 2024).

Faction is the answer to the question of what causes constitutional change by Aristotle's account. Constitutions come about by the agreement of those who form them on what constitutes justice which means in this context proportional equality.² Faction is the result of disagreement as to the character of this equality. "For democracy arose from those who are equal in some respect thinking themselves to be unqualifiedly equal . . . Oligarchy, on the other hand, arose from those who are unequal in some respect taking themselves to be wholly unequal" (1301a28-32). When the constitution is seen to be insufficient in its support of one such principle-- for

² Aristotle, in the *Nicomachean Ethics*, distinguished proportional equality from numerical equality. Whereas numerical equality is achieved by treating individuals identically and regardless of merit, proportional equality consists in the treating of persons according to their desert.

instance, democracy or oligarchy--the aggrieved part starts a faction in order to change the constitution, as for example when a democracy becomes an oligarchy or vice versa. Aristotle's analysis is chiefly concerned with well delineated classes organized around economic and political power. To the extent that ideology factors into the analysis, it is due to the self-serving appraisals common to democrats and oligarchs, namely, that their belief in their own fitness to rule is greater than their manifest moral quality. Those who are equal desire to be treated as equals and those who are unequal desire to be treated according to their superiority. As such, "Faction is everywhere due to inequality" (1301b26). While both oligarchies and democracies are fundamentally unstable given their tendency to promote faction, democracy is the more stable of the two. This is due to the particular tendencies of their respective faction formation. In a democracy, there are two factions of concern, the poor who govern and the rich who are oppressed by the government. In an oligarchy, there are three factions that may cause disorder. The rich who control the government, the poor who are oppressed, and a third faction of dissident oligarchs who undermine the government so as to turn it more directly to their personal benefit (1302a).

For Aristotle the principal cause of political instability in a regime is faction and therefore the principal role of a well-functioning regime is to retard the growth of factions within the city. While some regime types are more naturally stable and resistant to sectarianism, all types of regimes may govern themselves prudently and avoid revolution. Moderation is Aristotle's answer to faction (1324b30). In a polity, moderation is naturally derived from the regime's moderate constitution. In a democracy or oligarchy moderation is achieved by the ruling party's forbearance towards the ruled party. Within a moderate democracy or moderate oligarchy, the government reins in its natural tendency for excess and thereby reigns with justice and

beneficence. What is ultimately required to preserve deviant constitutions are men of virtue to be invested with the government power. While a virtuous democrat or oligarch may be inferior to the virtuous aristocrat or middle class for their virtue is relative to their regime, their moderating influence is a necessary condition for regime survival (1309a33). The production of such men requires a system of education that inculcates a moderate spirit appropriate to the particular regime (1310a13). A democratic education would still teach the love of freedom, but also the importance of virtue so that a democratic education would consist in an admixture of freedom and virtue. Likewise, an oligarchic education would still preserve love of oligarchy but would moderate this love with virtue.

Aristotle understands faction narrowly as a feature of socio-economic class and as such, a democratic faction corresponds to the poor and an oligarchic faction is equivalent to the rich. The Grecian word for faction, *stasis* also means civil war and consequently has only negative connotations for Aristotle and his contemporaries (Miller 2022). Faction is a feature particular to deviant regimes and therefore a faction free city may be found where the regime is virtuously enfranchised as is the case with polity, aristocracy, and monarchy. While it is in principle possible to provide a city with polity, the correct form of government, in practice, democracy is the likelier outcome. The role of the statesman then is to take as given the regime he inherits which very probably will be a democracy or oligarchy and moderate its factional impulses so as to forestall its civic ruination and make it more closely resemble its ideal counterpart (1309b18). Aristotle's focus on the socio-economic dimension of faction is not without merit.³ It, however, faces several challenges and potential shortcomings when applied outside of the context of

³ Marx also closely associates ideology with class in his analysis of the political struggle between factions, although while Aristotle was chiefly concerned with the conservative project of stabilizing the regime against revolutionary fervor, Marx intended his analysis to motivate radical conflagrations.

Grecian antiquity. To this end, David Hume's political philosophy will provide the theoretical scaffolding for the main analysis. Hume, like Aristotle, views politics as a contest between factions and he similarly recognizes the importance of socio-economic class in such analyses. Hume, however, maintains a broader account of factional differences. This account builds off the earlier work of Machiavelli (Landis 2019, 210) by incorporating an ideological aspect to faction that is severed from class interest.

Hume begins his discussion of parties⁴ by separating them into two categories: personal and real. A personal sect is bound by the natural affection that arises when people consort together for any common purpose. The instigating purpose may be wholly arbitrary or substantive and may over time lose its substantive quality and become arbitrary. "Nothing is more usual than to see parties, which have begun upon a real difference, continue even after that difference is lost" (Hume 1987, 58). While a common purpose produces fellow feeling in a faction newly formed, opposition engenders animosity and antagonism. This principle is best explicated in the purely arbitrary distinctions between sports teams and their corresponding spectators. There exists no substantive distinction between the Hammers and the Red Devils football clubs. In spite of this, the spectators of these soccer teams associate themselves amongst their peers and develop bitter rivalries against opponent teams and their enthusiasts. A personal party possesses durability by virtue of posterity's penchant for inheriting its predecessors' prejudices. Hume maintains that personal parties are more typical of small republics and states as exemplified by Hume's gloss of Italian city states "When men are once enlisted on opposite sides, they contract an affection to the persons with whom they are united, and an animosity against their antagonists: And these passions they often transmit to their posterity" (*Ibid*). It is important

⁴ Faction as it is used in this paper is synonymous with party, sect, clique, etc.

to note that parties are seldom purely of one form or another. Even in cases where there remain real distinctions at the base of a party, personal attachment may develop.

The second form that parties may take according to Hume is that of real distinctions. Whereas within a personal party, the binding force is merely the natural affection that corresponds to fellowship. Within a ‘real’ faction there are tangible differences that separate populations. Hume further subdivides real parties into three kinds, parties of interest, parties of principle, and parties of affection. A sect predicated on interest is according to Hume, “The most reasonable, and the most excusable” (*Ibid*, 59). These factions are the most reasonable insofar as it is understandable that they form and they are excusable insofar as they are irradicable. Parties of interest invariably form wherever there exist different classes of people with asymmetric political capacities. Under these circumstances an interested sect tends to marshal its political power to acquire material gains, as is seen when the government is successfully lobbied to favour certain industries or firms over others. Given the baseness of such sects it is often the desire of high-minded individuals that society be expunged of them. To this proposition, Hume posits that it would require, “Great skill in a legislator to prevent such parties; and many philosophers are of opinion, that this secret, like the *grand elixir*, or *perpetual motion*, may amuse men in theory, but can never possibly be reduced to practice” (*Ibid*). Even despotic governments cannot avoid the formation of faction despite their tendency to use every instrument of oppression available to them. Under such regimes, factions become hidden but no less potent and very probably more pernicious as the stronger cliques may with impunity terrorize the weaker factions.

The capacity and proclivity of factions to establish themselves in positions of power and authority facilitates the self-aggrandizement of its members and often contributes to severe repression for factional opponents. An historical case illustrating this feature of interested parties

and sectional repression is the British governments analysis considering the cause of the rebellions of 1836. At the heart of this tumult was a perfidious dual oligarchy in the provinces; the Family Compact in Upper Canada and the Château Clique in Lower Canada, maintained a domineering control that stifled innovation, commerce, and political development. Both groups comprised in formal networks of well-connected individuals who advanced aristocratic interests in pre confederation Canada and maintained their influence through a nondemocratically accountable system of appointments which were often inherited. Lord Durham's report diagnosed the origin of these parties in the government dynamic of the provinces.

[A Governor of Lower Canada's] position compelled him to seek the support of some party against the assembly; and his feelings and his necessities thus combined to induce him to bestow his patronage and to shape his measures to promote the interests of the party on which he obliged to lean. Thus, every successive year consolidated and enlarged the strength of the ruling party. Fortified by family connexion, and the common interest felt by all who held, and all who desired, subordinate offices, that party was thus erected into a solid and permanent power, controlled by no responsibility, subject to no serious change, exercising over the whole government of the Province an authority utterly independent of the people and its representatives. (Durham 1912, 78)

A similar allegation was applied to the Family Compact in Upper Canada and as such the remedy suggested in the report was the collapse of the two territories into a united province governed under the principle of responsible government. Despite initial resistance to the report, especially amongst those with Toryist sympathies, in time Durham's recommendations were heeded and the petty tyrannies of the Family Compact and the Château Clique were supplanted by reform-minded civil servants like Louis Hippolyte Lafontaine and Robert Baldwin. It is not the case that Durham's reforms led to the political exile or ban of the former members of these sects, rather, they reconstituted themselves in order to remain viable in the more pluralistic politics of post reform Canada. The Conservative Party of Canada formed during this process and achieved political success by transitioning from High Toryism to a Red Tory policy. This development

underscores the importance of liberal democratic political culture in achieving the moral purpose, identified by President Bush, “To make kinder the face of the Nation and gentler the face of the world” (1989). Although the Canadian experience suggests the possibility of relatively peaceful reforms of factional systems this history should be understood in reference to the political economy of 19th Century Canada with its high degree of influence from both Whigs in Britain and republicans in America.

Hume’s comment on factions within despotisms, may best be explicated with reference to the Soviet Union and its explicit policy on factionalism. Whereas the Soviet Union in its early days allowed a degree of debate and platform pluralism between the various socialist parties, following the Kronstadt Rebellion, engaging in factionalism was seen as akin to treacherous sabotage of the revolution. In 1921, at the end of 10th party congress, “Lenin took the floor again, and spoke in support of a resolution ‘on party unity.’ It required immediate disillusion of groups supporting separate platforms on pain of expulsion from the party . . . In other words, the archfactionalist Lenin now wanted to end all factions (besides his own)” (Kotkin 2014, 389). Despite this ban, faction remained an evident feature of Soviet politics most saliently identified in the coinage of the Trotsky and Stalin factions within the party. Throughout the history of the Soviet Union the allegation of factionalism was utilized to suppress dissent from the party line and opposition from within the Politburo against the personal dictatorship. The Soviet system represents an extreme case of the principle of factional repression. The considerable degree of coercive force used on dissenters and alleged saboteurs may partially be explained by the ideological idiosyncrasies of the Bolsheviks as well as the particular temperaments of the Soviet leaders.

The second form of real party derives from principle. These parties represent ideological discordance in a community and according to Hume illustrate some of the most absurd and foolish inclinations in human affairs. By Hume's account, the eagerness of persons to argue in favour of principles which they hold with certitude, "However frivolous it may appear, seems to have been the origin of all religious wars and divisions" (Hume 1987, 61). While the tendency that informs these credal feuds is endemic to human nature, great conflagrations such as the wars of religion in Europe in the preceding centuries before Hume, are particular to modern societies and to their principled sects. Hume believes that a sharp division exists between the qualities of the ancient pagan religions and the modern Christian religion vis-à-vis the problem of faction. According to Hume, ancient religions originated from the collection of folktales, superstitions and general ignorance of uncouth peoples and as such lacked intellectual rigor or conformity. The Christian religion in contrast, was nursed on the milk of Greek philosophy and as such was highly systemized and consequently demarcated into orthodoxies and heresies with terrible results for social peace. Hume concludes this history of the parties of principle with the following observation. "Sects of philosophy, in the ancient world, were more zealous than parties of religion; but in modern times, parties of religion are more furious and enraged than the most cruel factions that ever arose from interest and ambition" (*Ibid*, 63). Within contemporary politics the parties of principle that are most consequential are general ideologies that are usually situated somewhere along the left-right political spectrum.

The final kind of party Hume considers are of affection. Such parties are classified as real and as such should not be confused with the previously considered personal kind of party. Parties of affection, "Are founded on the different attachments of men towards particular families and persons, whom they desire to rule over them" (*ibid*). This inclination is dynastic in character and

the key example of such a party are the Jacobites of Hume's native Scotland who were always prominent in Hume's thinking (Skjönsberg 2021, 118). Hume's considered view of this category is characteristically critical. He describes such parties as being, "often very violent" (Hume 1987, 63) either predicated on a good natured or ill-natured attachment to a person of great majesty. Whereas in a personal party, the relationship between the faction leader and his subordinates is built on their mutual society; within a party of affection, the relationship is pseudo-social and imaginary. Hume's description and criticism of these factions shares much in common with the concept of a cult of personality particularly as used in a context of democratic politics. In the American context presidential cults of personality may be seen as a direct analogue to a party of affection. George Washington enjoyed widespread affection from his countrymen on the occasion of his military victory in the Revolutionary War. At this time, there was a movement to coronate Washington King of America, an outcome anticipated by King George. However, Washington demurred and ultimately retired from politics (Wasserman 2020). Identifying these parties of affection into contemporary politics is arguably more treacherous by virtue of the polemical inclination to accuse one's opponent of Caesarism. Notwithstanding this concern, presidents Trump, Obama and Clinton, to varying degrees maintained the cult of personality amongst their supporters (Williamson 2020). Understood in terms of Humean affection, most presidential coalitions incorporate this principle either at the time of their presidency or in panegyric recollections of it. In this way one might also include Kennedy and Regan as particularly potent examples of affection.

It bears repeating that the kinds of parties identified by Hume are seldom purely of one form. Generally, a faction will combine elements of several or even in some cases all of the various types and sub types. For example, most real parties include personal sentiment between

its members. Similarly, a party of principle and the pursuit of its goal may also advance the material interests of its members and especially in large coalitions, the different sub factions may themselves be differentiated by principle, interest and affection. The FDR coalition being one of the largest modern American political coalitions included support by Northern Liberals, Southern Segregationists, Communists, business interests, Republicans, not to mention people for whom the line, “Franklin Roosevelt’s looks give me a thrill” (Garland 1941) applies. Another form of mixed factions can be seen where the relationship of individuals to the same factions varies based upon their position in it. In Hume’s castigation of religious factions, he identifies them as the source of “A spirit of persecution which has ever since been the poison of human society, and the source of the most inveterate factions in every government. Such divisions, therefore, on the part of the people, may justly be esteemed factions of *principle*; but, on the part of the priests, who are the prime movers, they are really factions of *interest*” (Hume 1987, 62). A contemporary example of such a distinction would arguably concern the difference between small dollar donors for political campaigns and the representatives who rely on said donations (Beckwith 2024). Likewise, to Hume’s example, an individual who writes a cheque payable to the Committee Against Socialism at Home also known as cash, is properly understood as having a principled concern regarding the spread of socialism. However, a politician who relies on these donations may merely be motivated by personal interest and not a principled objection of socialism or rather what is labelled socialist for political purposes.

Hume developed a theory of faction that is both general and widely applicable while also drawing on his formidable study of the particular historical contingencies that lead to the party controversies of his own time. Hume ultimately determined that factionalism is an inevitable feature of human society regardless of the regime type or the quality of the citizenry. While

earlier writers had recognized faction as a feature, often cancerous, of society, Hume innovated the study by outlining a typology of faction which severed party interest from a close identity with class interest. In this way a Humean party may comprise elements of both the rich and the poor united together by a common cause. As parties of interest strive for material gain merely, they are relatively excusable and may be more easily managed by the regime. In contrast, a party from principle being motivated by an unbending conviction in the righteousness of their ideas is disastrous for the political community and represents the likeliest proximate cause of civil war. In practice, parties are seldom purely of one kind.

Within the American tradition of republicanism and constitutionalism, James Madison is regarded as an American Solon. His primacy is largely the result of two works, the American Constitution of 1789 and the Federalist Papers both of which he was a principal author. The American tradition itself is a cultural heir of the British Commonwealth tradition and as such maintains many assumptions and practices of the prior system. Madison, himself, was an avid reader of leading British philosophers, historians, and legal scholars. Of these, Hume was considered an authority without equal. Madison very probably was introduced to Hume early in his formal education at Montpelier or at the latest during his time at the College of New Jersey under the tutelage of John Witherspoon, who recommended Hume to his students (Spencer 2002, 875). While Hume contributed to the theoretical understanding of faction in a society and through his History of England provided case studies of both the excesses of faction as well as the possibility for moderate parties, Madison himself, contributed the practical mechanism by which a society may design party formation and direct a nation's factional inclination towards

the positive good, of preserving negative liberty.⁵ Madison along with the delegates of the Constitutional Convention in Philadelphia composed and then ratified a system by which a large, diverse and often cantankerous republic may unite under a single supreme law that both facilitates the energetic exercise of necessary federal action while simultaneously preserving the liberty of the states and citizens. Madison was a student at a distance of Hume's factional enquiries and as such, learned from Hume the inevitability and present danger of faction to a society. Madison's own work at the Constitutional Convention and through the Federalist Papers, provides an example of a philosophically motivated program of practical policies aimed at ameliorating the worst factional impulses in society which may even suggest a positive role for parties in republican politics.

The Constitution of the United States establishes three branches of government, each with its own prerogatives and limitations. Article One establishes the Congress and invests in it the power of the purse, the ability to legislate on any matter not proscribed by the Constitution and the duty to oversee the other two branches and if need impeach and remove the members thereof. Article Two establishes the Presidency and executive officers subordinate to the President. The President is tasked with executing the law both statutory and constitutional as well as seeing to the national defense in his role as head of state and commander-in-chief of the armed forces. Article Three establishes the Judiciary which is tasked with interpreting the constitution and statues passed by congress in particular cases where grievances are litigated by plaintiffs. This constitutional structure provides each branch of government with a carefully specified function that they may execute without interference from the other branches. Although

⁵ By negative liberty, I am, of course, implying Issiah Berlin's conception of negative liberty as a narrowly construed freedom from outside coercion which is offered in contrast to positive liberty which is understood as a broad freedom from want (Courtland, Gaus, Schmidtz 2022).

modern rhetoric and legal interpretation supposes coequality between the branches, the constitutional design reflects a clear hierarchy of power with congress at the apex and the court at the nadir (Siemers 2018, 48-51). Due to this distribution of power, the American constitutional system is organized to largely stifle Congress so as to prevent its self-aggrandizement and the tyranny that may follow from an unconstrained legislature.

Congress, being the most powerful and therefore dangerous branch, required the greatest degree of care in structuring its organs to guard against the tyranny of the majority or factional domination. Unlike the other two branches, the legislative function is divided between two separate houses, the lower House of Representatives and the upper Senate. The lower house often colloquially called congress comprises the Aristotelian political principle of democracy. It is the most responsive part of the government by virtue of its two-year term and by its allotment by population. While the lower house may not seem representative today by virtue of its average district size of several hundred thousand people per representative, it is important to note that until the early 20th century the size of congress would increase so as to accommodate population growth and preserve the representative function. Contemporary Washington is not without policy reformers who advocate for a return to the representation by population model (Goldberg 2009; The New York Times Editorial Board 2018). The upper house or Senate represents the interests of the states in Washington and corresponds to the aristocratic principle as delineated by Aristotle. Senate representation is equally allotted between the states regardless of population which when combined with the lower house ensures that any legislation that passes must have the support of the majority of the population as well as the majority or supermajority of the states. Senators were up until the 17th amendment's passage appointed by their respective state legislature and would serve in six-year terms.

In a series of 85 essays James Madison along with Alexander Hamilton and John Jay collectively argued for the adoption of the constitution. The Federalist Papers provided an account of both the practical efficacy of this constitutional arrangement as well as its philosophical foundations. Federalist 10 begins with the declaration that, “Among the numerous advantages promised by a well-constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of faction” (Madison 1787). Madison first discusses the potential consequences of unconstrained factionalism in government namely, political instability and injustice. Faction causes instability as it inculcates systems of preferential treatment for ingroup members and oppression for factional opponents. Under such systems the repressed parts of the population will in time muster the necessary resolve and martial strength to overthrow the system in open rebellion. By injustice, Madison is referring not to factional oppression but rather to the government’s fitness in achieving its proper end. To this effect, the view of a hypothetical virtuous and considerate citizen is considered. Such persons are chiefly interested in the preservation of liberty both public and private, political stability and that government measures are enacted according to principles of justice and the rights of the minority party as opposed to the overbearing majority (Epstein 1984, 62). An individual chiefly concerned with virtuous government is not necessarily partial to popular government. A government predicated on aristocracy or hereditary monarchy may be more desirable on the grounds of their evident stability and supposed resistance to faction. Madison will counter this concern and attempt to illustrate why his system ought to be preferred as containing the best remedies for factionalism.

Madison, drawing heavily from Hume, defines faction as “A number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common

impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community” (Madison 1787). As Madison is building off of Hume, the considerations Hume made of parties of principle and interest are applicable to Madison’s own use. Madison’s discussion, however, does not consider personal parties nor parties of affection as kinds of parties that must be guarded against. This reflects the different contexts of United States and Great Britain, namely that the United States is a large and diverse republic and therefore not acutely susceptible to a personal party and to the extent that there are monarchist elements within the country, the Revolutionary War has fundamentally removed the salience of affection in American politics at least as far as the Founding Fathers were concerned. Madison further develops the concept of a party of principle by noting the importance of motivating passion to enflame opinion into a political force (Epstein 1984, 71). Madison, like Hume, considers faction an inevitable corollary to republican government as air is to fire and as such, “it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life because it imparts to fire its destructive agency” (Madison 1787). Unlike Hume, Madison’s text implies that faction may not be inevitable in all regime types and in particular a despotism may, with a sufficient application of coercion, remove faction from its politics.

Madison’s constitution provides a framework for diluting the toxic effects of faction in civil society. The constitution should not be confused with an automatic cure that works its way through the system independent of other factors. No matter how well-crafted the law is, a thoroughly illiberal population always has the choice of disregarding it. As such, the concern was always present as to the fitness of the people to republicanism. John Adams, although a political opponent of Madison, reflected a common concern for the people’s propriety, “We have no

Government armed with Power capable of contending with human Passions unbridled by morality and Religion. Avarice, Ambition, Revenge or Galantry, would break the strongest Cords of our Constitution as a Whale goes through a Net. Our Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other” (Adams 1798). If the population is sufficiently cultivated in its liberal sensibilities, then the prospect for Caesarism to establish itself within the government is provisionally curtailed. Even in a case where there is a nominal majority in favour of the establishment of tyranny, so long as they are subject to shame at their failure to properly embody the constitutional spirit, the system endures. The importance of propriety is well attested in the example of FDR’s attempt to pack the Supreme Court with functionaries more amenable to his unconstitutional policies. Roosevelt had just previously won a landslide electoral victory with 98% of the electoral college; yet despite this, the project failed as Roosevelt’s own party revolted against him (Patenaude 2019). Roosevelt’s rebuke was the result of a republican cultural attitude deeply ingrained in the civil society. Success in politics required affirmations of one’s loyalty to the constitution and many law makers themselves being products of this culture maintained an authentic stubborn attachment to the Madisonian system.

A virtuous citizenry being necessary to protect the republic against the privations of faction, the effect of faction on the people’s morality induces a double danger. The first danger is to subordination of liberal principles to the elevation of factional interests. Even for those who hold a nominal attachment to the principles of liberalism and republican government, the sectarian temptation provides the occasion for sin. The revolutionary generation were themselves not immune to such temptations. Within ten years of adopting the Constitution, the US government under President John Adams passed the Alien and Sedition Acts of 1798 which

criminalized criticism of the contemporary Federalist administration. The law's passage was motivated by fears of French hegemonic aspirations and by the startling success of Napoleonic imperial expansion. The domestic context was no less fraught. The governing Federalist party became increasingly concerned that the Jeffersonians represented a dangerous fifth column that would support the French invasion and the establishment of a puppet republic. This era represents a high-water mark of partisan antagonism surpassed only by the mid 19th century's increasingly fratricidal conflict. Following the French navy's crushing defeat at the hands of Lord Nelson, the Federalists were completely discredited; Jefferson won the next election, pardoned those convicted under the Alien and Sedition Act and then allowed it to expire (Wood 2018). The second danger concerns the effect sects may have on the people who belong to them. In his *History of England*, Hume diagnosed this very proclivity, "Faction is so productive of vices of all kinds: For, besides that it inflames all the passions, it tends much to remove those great restraints, honour and shame; when men find, that no iniquity can lose them the applause of their own party, and no innocence secure them against the calumnies of the opposite" (Hume 1983). A politics defined chiefly by polarization and party animus is highly susceptible to this second danger. When Preston Brooks, a pro-slavery Democrat, viciously attacked Charles Sumner, an abolitionist Republican, in the Senate with a cane, the response from his party was acclaim. Brooks resisted expulsion from Congress, won a special election in his district that he himself arranged and would carry the seat in the next general election though he would not serve due to his death at the age of 37 (Senate). Beyond the facilitating of bad actors and the erosion of the political norms that maintain a society's decency and etiquette polarization as Hume observes, leads to the morally upright being treated by their opponents as though they were

moral monstrosities. One such example of this tactic concerns the 22nd and 24th president of the United States, Grover Cleveland.

Cleveland was a Buffalo attorney who in the course of three years became the president of the United States. Cleveland's success was principally the result of his sterling reputation for honesty, hard work, and high principle during an era defined by rampant corruption and self-dealing. Grover the Good, as he was popularly nicknamed, was not without scandal. During the 1884 election, an allegation was made that Cleveland had years prior fathered an illegitimate child with Mary Halprin. "When Cleveland's friend Charles Goodyear inquired as to how the party should handle the matter, the candidate responded not with a strategy but with a principle: 'Whatever you do, tell the truth.'" (Senik 2022, 91). Notwithstanding that Cleveland was mum on the subject of what precisely was the truth in the matter, his contrition, especially when contrasted with his opponent's equivocations in a similar yet less serious scandal targeting the Republican ticket, resulted in Cleveland suffering little political harm from the affair. The failure of the initial allegation prompted Cleveland's partisan opponents to manufacture an affidavit attributed to Halprin alleging that Cleveland had raped her. These later allegations were similarly unsuccessful, "Maria Halpin herself denounced the accusations as a lie within days. . . . The woman whose abuse had been understood just days before as the example par excellence of the rage and sin that coursed through Cleveland's veins noted simply, 'I have no fault whatever to find in Mr. Cleveland....'" (Senik 2022, 108). The tendency in partisan politics for salacious attacks on candidates, often predicated on exaggerated details and occasionally fabricated outright, is a common feature of democratic politics.

An important role within the practice of Madisonian liberalism is the aggressive use of constitutional law to protect the civil liberties of the population. The American tradition of civil

libertarianism extends to the early republic and the debates regarding the extent of the constitution's application. Civil libertarians have historically advocated for a maximum interpretation and consequently have aligned themselves with the various civil rights movements throughout American history. The support of said moments is notable in that the civil libertarians were often outside the mainstream of acceptable political opinion due to their tendency to support thoroughly unpopular speech. One famous historical case of this principle in practice concerned the Skokie affair of 1977. The American National Socialist Party wished to march on Skokie, Illinois to hold a demonstration of white power. They were denied by city council and consequently sued on first amendment grounds. The American Civil Liberties Union supported the right to protest, and the Supreme Court ultimately agreed. The strength of this principle was such that even if one agrees when John Belushi says, "I hate Illinois nazis" (Landis 1980) their rights as Americans are equally protected under the first amendment. While the decision to support the Skokie nazis is no less controversial today than it was then, the history of civil libertarian support of unpopular speech often aligns their advocacy in historical controversies with what is today considered orthodox opinion in polite society. This transition is readily apparent in the history of black civil rights and the differing attitudes of American society in the early 20th century when contrasted with current attitudes or the imprisonment of Eugene Debs along with scores of socialists, pacifists, trade unionists, anarchists, and others during the first red scare. The Harding administration would with alacrity release those imprisoned during the First World War by the Wilson administration. Harding's vice president and shortly thereafter successor, Calvin Coolidge articulated the civil libertarian point of view, "One with the law is a majority" (1920).

Madison's primary contribution to the study of faction and political theory is his modification of Hume's system for the purpose of rendering it actionable in the service of constructing a new regime. Much like Friar Lawrence whose alchemy enabled him to turn poisons into medicines and vice versa, "Virtue itself turns vice, being misapplied / And vice sometime by action dignified" (Shakespeare, 2.3.22 & 23) Madison's constitution transfigures faction allegedly from a source of internecine squabbling into a strong pillar of stability. This is achieved through the distribution and dilution of power throughout the many branches and levels of government, the staggering of elections and not least of all, the cultivation of a liberal culture. The structure of American constitutional law has historically yielded the advancement and protection of liberty when it has been followed and in instances where the popular culture has conflicted with this liberal constitutional culture the law's text has provided legitimation for the civil libertarian point of view.

It bears noting that the use of historical examples within this paper are meant chiefly to illustrate a philosophical principle and not to elucidate their historical significance. This mode of analysis follows Hume's historically saturated method as well as the larger genre of the use of history by political theorists. The historical accuracy of such examples is not of paramount importance for the purpose of philosophical investigations (Mounk 13). That is not to say that such examples are mendacious, merely it is to clarify their role. The historical cases presented within this paper should not be taken as a comprehensive, complete or accurate account of sufficient quality for the purpose of an academic historical study.

SECTION 2

In this section the theories of John Rawls will be examined with special emphasis on the Rawlsian concept of reasonableness and its relation to the democratic regime he envisions. Rawls's account of the *modus vivendi* and its eventual evolution into an overlapping consensus will be considered at length. This discussion, will then turn to an examination of comprehensive doctrines considering the compatibility of various kinds of doctrines within a just liberal society. As a pluralist, Rawls will maintain that a variety of variant liberalisms are possible, and his outline of public reason as the mediating principle will be considered. The distinction between the wide and narrow use of public reason will be discussed and finally Rawls's preferred theory of justice, namely, Justice as Fairness, will be examined and elucidated.

John Rawls developed a theory of liberal constitutionalism that constitutes a framework to achieve a practicable utopia. Such a society would be broadly pluralistic and necessarily democratic. The difficulty for Rawls arises out of the competing sets of comprehensive doctrines representing religious, philosophical, and ethical diversity in democratic society. Rawls outlines three basic facts that constitute the society he is concerned with. The first fact concerns reasonable pluralism. In order for a conception of justice to be successful in preserving the stability of the regime it must gain the support of the citizens who align themselves with these differing doctrines. There ultimately must be a broad overlapping consensus between the comprehensive doctrines as to what constitutes a just society. The second fact concerns the inevitability of the use of coercive force to preserve a single governing comprehensive doctrine in a regime. The fact of oppression, as Rawls terms it, may seem self-evident in the context of fanatical religious or secular totalitarian regimes but must also be understood as being applicable to more seemingly beneficent doctrines such as a Kantian liberalism (Rawls 1996, 37). The third

fact concerns the requirement that for a liberal democratic regime to endure it must maintain the support of a, “Substantial majority of its politically active citizens” (ibid., 38). These facts taken together suggest that political stability within a liberal democratic regime is best achieved by way of a narrow public conception of justice that is broadly shared by reasonable citizens of many different varieties.

Rawls contends that an overlapping consensus involves a shared moral account that unites reasonable citizens and as such is quite different from a *modus vivendi* arrangement. A *modus vivendi* is arrived at when it is in the interest of two parties, typically states, to maintain an agreement that, “represents an equilibrium point” where it is, “not advantageous for either side to violate it” (ibid., 147). Crucially, such an analysis is merely strategic and a change in the political calculus will lead to different behaviour. The overlapping consensus that Rawls articulates is both broader and more firmly entrenched within the civic culture of his prospective liberal society. What distinguishes Rawls’ consensus from a *modus vivendi* is a normative buy-in by the populus that stretches across the different reasonable comprehensive doctrines. As such it “is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests” (ibid.). The major advantage that an overlapping consensus has in contrast to a *modus vivendi* is the increased stability that accrues to the social compact by virtue of the buy in by the relevant parties. For an overlapping consensus to successfully integrate itself into a diverse society, it must be possible for citizens to formulate their own reasons to support the political conception of justice from their own comprehensive doctrine. As will be seen in section three a Rawlsian may argue that an overlapping consensus is sufficient to remedy the sectarian tendencies Hume identifies, however,

this defense will be shown to be inadequate given Rawls's framing of acceptable reasonable comprehensive doctrines.

While the political conception of justice is to be understood as compatible with various comprehensive doctrines that exist in society, this complementary nature is not absolute. Certain comprehensive doctrines are incompatible with a well-regulated and politically just society as is readily seen in the case of racial supremacist ideologies or legal slavery. Such doctrines simply cannot coexist with any liberal constitutional regime without compromising its integrity. Some comprehensive doctrines that are not necessarily incompatible in of themselves with the liberal regime will nonetheless not find fertile ground for their promulgation in liberal society. Rawls suggests that certain religious factions may find themselves hard pressed to survive without state coercion to maintain themselves (ibid., 196-197). Certain insular religious communities may conceivably find themselves nominally compatible with the liberal society insofar as they lack any political impetus to bend the broader society to their own comprehensive doctrine and yet find their doctrine disadvantaged by the implementation of nominally neutral rules. The right to exit may of itself lead to an exodus from highly restrictive religious orders or else the requirement that all citizens have access to modern medicine, education, and welfare may undermine the cultural integrity of an insular minority.

Rawls envisions a large constellation of valid interpretations of the political conception of justice. The outer limits of acceptable disagreement concern the value of three fundamental ideas to a liberal public political culture, namely, that citizens are free, equal and fairly treated by society. As long as these principles are accepted, the particular interpretation of each term may vary. As Rawls explicates,

The content of such a conception is given by three main features: first, a specification of certain basic rights, liberties and opportunities . . . second, an assignment of special priority to those rights, liberties, and opportunities . . . and third, measures assuring to all citizens adequate all-purpose means to make effective use of their liberties and opportunities. These elements can be understood in different ways, so that there are many variant liberalisms. (ibid., 6)

An example of shared ends and disparate means is the correlation between one's partisan affiliation and the degree to which one contributes to charities in the United States. A 2018 study found that, “The more Republican a county is, the more its residents report charitable contributions... this finding fell within the broad political tendencies of traditional Republicans who favor less government intervention and more donations from the private sector to make up for the lack of government assistance” (Sullivan 2018). The study’s author hypothesized that the discrepancy between the republican and democratic counties may be explained as a difference in preference for how to achieve the shared goal of the fair distribution of resources throughout society. Namely, whereas democrats prefer to raise taxes and redistribute through government power, traditional republicans prefer a less onerous tax burden so that they may freely support private charity.

Rawls maintains that beyond the security provided by the public conception of justice, a liberal society’s capacity to distinguish between nonpublic and public reason in the regulation of public policy debate, recognizing only the latter's legitimacy, provides the public sphere with the tools necessary for the maintenance of a liberal society. Public reason extends the principle of reciprocity and civility into public debate demanding that citizens use only those arguments that can be reasonably deduced as politically compelling regardless of the particular comprehensive doctrine that one’s interlocutor holds. By limiting political debate to public reason, the Rawlsian society enforces a high public standard of evidence and reasoning which consists in elementary standards of scientific inquiry, logical argumentation, widely available facts and figures, and

common sense. Public reason also incorporates an idea of the good by necessity, however, the applicability of such an idea must be demarcated by the requirement of publicity. Citizens are constrained to the use of public reason most forcefully in two particular circumstances, the exercise of political power and the regulation of the fundamental political questions. In the former case this dictum most prominently features in the conduct of those who hold public office such as representatives, judges, governors, trustees, etc. This Rawlsian principle altogether mirrors the personal slogan of President Grover Cleveland, “a public office is a public trust” (Senik 2022, 8). In the latter case, public reason plays a pivotal role determining political rights in the extent of permissible discrimination, in property ownership, employment practices, and the treatment of religious minorities (Wenar 2021).

Rawls distinguishes between a narrow and wide form of public reasoning. While the narrow form requires arguers to abstract away their comprehensive doctrines, the wide form is more permissive. Citizens who hold a reasonable comprehensive doctrine are not forbidden from employing arguments predicated on their doctrine provided that they fulfill the proviso. The proviso stipulates that any such argument must be translatable to an argument predicated purely on a political conception of justice. This translatability renders these arguments with the feature that they may produce agreement between differing comprehensive doctrines. An example of this may be drawn from the diverse opposition to pornography in the United States following its legalization in 1968. The two chief ideological opponents of the pornographic industry that were the social conservative movement which stylized itself the moral majority as well as the radical feminist movement. While their reasoning differed and despite the general antagonism that each group maintained for each other on other issues, they shared a common end, namely, the protection of women against what they viewed as an inherently degrading activity (Burke 2023).

The process of making one's comprehensive argument amenable to the public conception of justice will ideally include the restatement of the principle in terms of pure public reason. The social conservative comprehensive doctrine maintains a belief that all sexual behaviour conducted outside the institution of sanctified marriage (as well as some behaviour within the institution) is necessarily morally degrading and as such should be opposed. This principle, when translated to public reason, would not refer to brimstone but rather the need to protect the dignity of persons as well as the imperative to shield vulnerable populations from exploitation. This same conclusion may be arrived at from the radical feminist comprehensive doctrine although its starting principles differ. For feminists, like Andrea Dworkin, pornography perpetuates the pernicious propagation of the patriarchal subordination of women in society (Burke 2023).

At the foundation of Rawls's system is an account of liberal legitimation. The non-associational character of public life involuntarily binds the citizen to the constitutional law. As government power is inherently coercive given the state's monopoly on violence, it is imperative that the system's constitution closely controls the exercise of such power to avoid the tyranny of a government backed comprehensive doctrine. Liberal legitimacy is achieved 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" (Rawls 1996, 137). The principle of reciprocity, the deferment to public reason, and the acceptance of public values, which are to be understood as values that one may reasonably expect to be accepted across reasonable comprehensive doctrines, as the only acceptable regulators of public life, ensures that the liberal society will not be subject to frequent revolutions or other products of social discord. Public reason is most keenly observed in the adjudication of the most fundamental and basic law, namely the

constitution. Rawls maintains that within a constitutional regime with an independent judiciary, “public reason is the reason of its supreme court” (ibid., 231). The high court protects the liberties of citizens by putting a stopper in the transient majoritarian political process. Rawls is adamant that this tendency of the court to confound the political desires of majorities is not antidemocratic. Where the court interprets statutes as contradicting the basic law the court indeed is antimajoritarian. However, when the court is successful in reasonably determining the higher law, it is properly understood as being democratic. The court, by limiting itself to public reason as its sole source of reasoning, must necessarily foreclose arguments predicated on comprehensive doctrines or private moralities. Their decisions should be easily accepted by all reasonable citizens as valid even if their own interpretation of the law differs. The constitution under this scheme should not be understood as the law as determined by the supreme court but rather as an extended system that incorporates the other branches of government that may either through the amendment process or the activity of a broad political majority, mandate the extent of the court's interpretation.

While Rawls’s vision of an ideally liberal regime is sufficiently broad to allow for different and competing conceptions of justice as the bases for organizing society, Rawls maintains a not altogether disinterested preference for his own bespoke theory of justice, namely, justice as fairness. This account of justice is broadly egalitarian accepting as a basic premise that citizens do not deserve preferential status for morally arbitrary features such as whether they are born into wealth, are naturally gifted, or whether they are a part of a preferred racial group. Justice as Fairness posits two atomic principles. The first principle holds that each citizen, “Has an equal claim to a fully adequate scheme of equal basic rights and liberties” (ibid., 5). The second principle maintains that “Social and economic inequalities are to satisfy two conditions:

first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society” (ibid., 6). The first principle concerns the allotment of basic rights and liberties and the second concerns the two conditions under which social and economic inequalities are acceptable, namely, the fair equality of opportunity and the difference principle. These principles are presented in the order of their priority, the first taking precedence over the second and equality of opportunity being prior to the difference principle. This theory’s applicability to liberal society is undergirded by the principle of publicity. In the society Rawls envisions, the principles of justice that are operationalized are readily accessible to all citizens and all citizens may without the aid of esoteric interpretive schemes deduce that the basic structure of their society is just (Rawls 1999, 115). The Rawlsian society must generally be peopled by citizens who are free, equal, reasonable and rational. While this requirement may seem onerous, Rawls is reasonably confident that a society with the correct institutional and cultural foundation will cultivate in each generation precisely these traits. The citizens possessing freedom and equality are preconditions for their participation in public life. Freedom ensures that they be not relegated to an inferior position of servitude and by virtue of being equal, citizens may regardless of their particular talents, contribute to social cooperation. As the citizenry will be reasonable they will act according to a well-developed sense of justice and finally as rational agents, they will pursue the acquisition of primary goods in society (Wenar 2021).

In order to illustrate the attractiveness of his theory, Rawls proposes the original position thought experiment. In the original position a body of citizens elect the principles of justice that will govern the prospective society they will find themselves in. These electors have all identifiable features abstracted away so that when the principles are agreed upon, they have no

knowledge as to how they personally will be affected. Those behind the veil of ignorance do not know the race, colour or creed of any of the citizens nor are they privy to the distribution of wealth, natural talents, social position, and so forth. The parties operating from the original position begin their negotiation by agreeing to the principles of justice that will organize their society. To this end, Rawls considers how justice as fairness would compare against utilitarianism and unsurprisingly comes to the conclusion that his system is patently more attractive. The principle of average utility would suggest a social structure that guarantees the highest average utility distributed amongst the citizenry. In this case the rights and liberties of some citizens, it logically follows, might be sacrificed as, “The needs of the many outweigh the needs of the few” (Meyer 1982). Under such a system, a weak minority may find itself abused for the sake of increasing average utility as for example when a small religious or ethnic minority is forced into categories of work that are economically valuable but are socially undesirable. In this case, operating from the original position would favour justice as fairness given the possibility that once the veil of ignorance is lifting one finds that they were representing the minority party. Beyond this obvious advantage, Rawls further asserts that his principle would foster a greater cooperative spirit in the political community by securing justice for all citizens and by limiting the tendency for divisive utilitarian arguments for partisan policies (Rawls 1999, 437). Rawls then proceeds to compare the difference principle with its utilitarian counterpart the principle of restricted utility. Under this modified principle, the average highest utility is pursued with the additional restriction of a mandated universal basic income. Whereas the difference principle mandates that the wealthy may pursue further wealth insofar as this increase contributes to the welfare of the meanest citizen and thereby contributes to social harmony

restricted utility having no such requirement fosters class envy and political apathy as the poor have little share in the general welfare.

Following the adoption of the preferred principles, Rawls then goes on to consider the question of stability and the issue of institutions. Justice as fairness easily passes the stability test as citizens are naturally inclined to support a system that enables their self-fulfillment in line with their own personal doctrine and given the economy's reciprocal nature, rich and poor alike will be filled with fellow feeling. Confident in his prospective regime's social stability, Rawls then considers the economic policy wherein he advises the principle of just savings which outlines how much capital each generation is responsible to save for posterity's sake. This differs somewhat from the American tradition which prompted Herbert Hoover to once satirically remark, "Blessed are the young for they shall inherit the national debt" (Wolla 2019). The principle of just savings need not involve infinite economic growth, rather, when society reaches an acceptable level of comfort a policy of steady state, zero growth, may be preferred. Following the establishment of these basic principles, Rawls proceeds through a four-stage process of institutional formation where a veil of ignorance is gradually lifted revealing the full picture of society. The first stage corresponds to the acceptance of justice as fairness and just savings as organizing principles. The second stage concerns the drafting of a constitution where the society's political culture and economic development are factored into this general scheme. The third stage introduces legislation that further operationalizes these basic principles in the regulation of civic life and finally the fourth stage reveals all relevant information so that the parties that had been in the original position may now act as judges and administrators applying the constitution and legislative framework to particular cases and controversies.

The shape and structure of Rawls's imagined political economy is well developed and despite the admission that much of the working out of the system will be contingent on the facts on the ground, Rawls understands his society as conforming to a fairly narrow range of acceptable parameters. In matters of elections, media access and the conduct of other intermediary institutions necessary for democracy, Rawls maintains that it is absolutely essential that concentrations of money do not equal increased influence for the democratic process. To this end, he advocates for limitations on campaign contributions, public funding for elections, and mandated equal access to media (Rawls 1997, 772). In matters of economic regulation, the precise rules that govern tax policy, employment, education, and welfare must be strictly conjoined with the objective of achieving equality of opportunity and the difference principle. These dictums in practice would very probably translate to progressive taxation schemes, affirmative action for the underprivileged in employment and without doubt would require publicly funded universal healthcare and a universal basic income. Beyond these basic policy requirements Rawls's account of justice as fairness similarly places limits on the acceptable types of liberal democratic society. A welfarist state is rejected out of hand as it accepts the existence of a wealthy class that plays a central role in the society's economic management and politics thereby sacrificing the fair value of political liberties by relegating other citizens to a second-class status. As a relatively unmolested upper class is taken to be incompatible with the difference principle, not to mention fair value of political liberties and fair equality of opportunity, a *laissez-faire* market economy is even less acceptable than the welfare state and it goes without saying, any regime that is decidedly illiberal such as a socialist command economy, is right out. In contrast to these excluded forms of economic association, Rawls considers two systems that he claims are favoured by justice as fairness. A property-owning democracy, as

Rawls describes it, consists in the means of production, capital, and education being distributed widely over the population and as a model closely resembles the old Jeffersonian ideal of yeoman's democracy. In addition to this mode, a social-democratic political economy may also be employed as it would place the productive firms under the governance of the workers.

SECTION 3

In the final section, the theories of Rawls will be considered in the light of a factional analysis. This consideration will begin with Rawlsian reasonableness and will compare Rawls's definition with several common use counterparts and then evaluate how these differing conceptions intersect with a society subject to the problem of endemic faction. Rawls's insistence on placing egalitarianism as a basic feature of his model liberalism will be contrasted with non-egalitarian liberal sects illustrating a further weakness of Rawls's system in the context of factional competition. The importance of competitiveness will be suggested by a consideration of liberalism as a faction and liberalism's success, to this point, as highly contingent. Finally, in the light of these difficulties the Rawlsian account's probable longevity as a workable model for social organization will be scrutinized.

Within Rawls's preferred political conception of justice, he advocates for a fairly narrow range of acceptable political economies. A society governed under justice-as-fairness, would by necessity be either a social democracy or yeomen's republic. The overriding concern motivating both regimes is a thoroughgoing egalitarianism and according to Rawls, would represent the best fit for political liberalism. Rawls argues that if such a regime were established, it would, by the light of its own attractiveness, that is to reasonable citizens, be perfectly stable against reform - which would in any case serve only to deform it - and would provide the opportunity for the cultivation of the civic virtues most conducive for the best society. Rawls's regime would also require a spate of left-liberal economic and social policies including an egalitarian mandate to discriminate⁶ against the rich especially in regard to their participation in politics. This follows

⁶ Discrimination is meant here in an entirely descriptive manner and should not be taken to suggest an endorsement or condemnation of any particular economic or social policy.

from Rawls's concern of "The curse of money" (Rawls 1997, 772) which he considers a grave threat to democracy. In order to alleviate this concern Rawls would restrict the degree to which wealthy citizens are able to levy their property in support of preferred political candidates, policies, and parties.

Rawls confidently declares his society being evidently just and well-formed will naturally procure the assent of the great majority of citizens regardless of their private comprehensive doctrines. For Rawls the conception of a reasonable citizen is largely bound up with his notion that the culture, civil society and most notably, political attitudes of his society will be basically liberal. This follows from Rawls's definition of reasonableness; "Citizens are reasonable when, viewing one another as free and equal ... they are prepared to offer one another fair terms of cooperation . . . and when they agree to act on those terms, even at the cost of their own interests in particular situations" (Rawls 1997, 770). The connection between Rawlsian reasonableness and the ordinary use of liberalism is immediately suggested by Robert Frost's witticism, "A liberal is a man too broadminded to take his own side in a quarrel" (Summer 2017). Rawls believes that reasonableness is broader than comprehensive liberalism and is therefore accessible to non-liberal doctrines. Given that much of Political Liberalism's argumentative integrity is contingent on distinguishing between a comprehensive liberalism (which is subject to the fact of oppression) and the basic structures of society which rely on reasonableness alone, the charge that Rawlsian reasonableness itself is the result of or at least requires liberalism is injurious to the project.

In its common usage reasonableness may be understood as a close synonym for commonsensical or agreeable and as such it is highly contextual in its usage. What is considered reasonable varies according to the context as well as time and place of the discussion. For

instance, the English folk song *As I Roved Out* demonstrates the appropriate response an 18th century mother would have when finding her daughter attempting to have immoral relations with a soldier:

She caught her by the hair of the head
And down to the room she brought her
And with the butt of a hazel twig
She was the well-beat daughter (1962).

As reasonable as this would have seemed to the original audience, if attempted today, would likely lead to one's arrest. If a reasonableness standard is to stand outside of parochial expectations, then it must be reasonable insofar as it is agreeable to reason. A reasonable person so construed would possess ready arguments for policies preferred and may even be willing to change doctrine if confronted with a sufficiently powerful argument. There need be no assumptions of liberalism in such a conception as seen for instance in the conversion of large parts of the tsarist intelligentsia to socialism. In Rawlsian terms, this form of reasonableness would be closely connected to the comprehensive doctrines that citizens hold and many citizens who quite reasonably (that is, in the ordinary sense) came to their beliefs would be classified as unreasonable according to Rawls's use of the term. This follows from the role of public reason in Rawls's system as a constraining factor that all reasonable citizens must follow. Yet an individual who is identified as reasonable in a non-Rawlsian sense would not accept as necessary this public reason requirement.

Reasonableness as a normative standard has some pedigree in English common-law where all decisions are to be made by a reasonable person. This 'reasonable man standard' is not without criticism for the unreasonable demands it makes.

The Reasonable Man is always thinking of others; prudence is his guide, . . . He is one who invariably looks where he is going, and . . . who never from one year's end to another makes an excessive demand upon his wife, his neighbours, his servants, his ox, or his ass; who in the way of business looks only for that narrow margin of profit which twelve men such as himself would reckon to be 'fair', . . . who uses nothing except in moderation, and even while he flogs his child is meditating only on the golden mean. Devoid, in short, of any human weakness, with not one single saving vice, sans prejudice, procrastination, ill-nature, avarice, and absence of mind, as careful for his own safety as he is for that of others, this excellent but odious character stands like a monument in our Courts of Justice. (Herbert 1993, 3-4)

This account of reasonableness is perhaps closer to Rawls's use but ultimately it is still unsatisfactory given its status as a legal fiction. The courts may still function even without reasonable persons to administer them. However, it is doubtful whether any system may long survive that requires an unrealizable ideal as a precondition of its coming into being.

Reasonableness may be understood as a common characteristic when not defined proscriptively. Given its inherent attractiveness, the quality of reasonableness has often been seized upon for its rhetorical value as for instance in the case of the Albigensians who called themselves the good Christians and the Reasonabilists who took their name so that those who criticize their claim that the giant lizard god, Zorp, will imminently annihilate all human existence would necessarily be unreasonable (Parks and Recreation, Season 4 Episode 6). Needless to say, the humour of this situation stems from the abject unreasonableness of the Reasonabilists. The malleability of the concept of reasonableness presents an additional difficulty in its use as a criterion. The majority of persons who might reasonably be characterized as reasonable, are incompatible with the Rawlsian sense of the term for they exhibit either a common sense or accept a worldview that is incompatible with the Rawls's idea of equitable treatment. Rawls's definition of reasonableness is tailored to the sensibilities of egalitarian liberals at the expense of non-egalitarian liberals who are somewhat excluded from democratic deliberation and non-liberals who are outright ostracized. Reasonableness understood in its

ordinary use would include some liberals of both egalitarian and non-egalitarian kind as well as a subsection of non-liberals. The attractiveness of the ordinary sense of reasonableness when compared against Rawls's definition is gleaned by the simple observation that there are far more people included in it. When considered globally, there are simply far fewer egalitarian liberals in the world than the combination of non-egalitarian liberals and non-liberals. This minoritarian status for egalitarian liberals is further heightened when considered across time. This incompatibility stems from Rawls's conflation of reasonableness and liberalism which itself is the result of his supreme confidence that liberalism and a liberal scheme of society is most attractive and as such, would naturally be elected. Rawls incorporates liberal assumptions that colour political liberalism's scheme even at the most basic levels. The centrality of reasonableness is featured prominently in Rawls's original position where a disembodied rational spirit untethered to considerations of class, colour and creed, consequently, chooses a model liberal society.

The proscriptive nature of Rawls's understanding of reasonableness cuts against the practicability of his system. By interjecting a morally and ideologically laden concept of reasonableness, Rawls simultaneously places on his citizens the burden of assimilating their own comprehensive doctrines into a liberal scheme while he also limits the range of acceptable ideological outlooks to the extent that all non-liberal viewpoints are by necessity excluded as well as some doctrines well within the liberal tradition. Whereas a less onerous account of a liberal society would allow politics and even the constitutional scheme to be influenced by reasonable (in the ordinary sense) accounts of justice and morality, Rawls insists that to be reasonable and therefore worth considering one must imbibe egalitarianism and treat one's fellow citizens as though there was complete equality throughout society. The tension this

requirement places on liberalism may be explicated by considering non-egalitarian liberal ideologies such as Red Toryism. A Tory of any kind accepts as legitimate the existence of a class hierarchy though they may differ as to the justification. A Red Tory typically subscribes to the view that it is the responsibility of those who by grace or grit are prosperous to give some allowance to their social inferiors. Historically Red Tories have supported the development of public works projects, welfare, and government involvement in the undertakings of the market and as such may be seen as broadly in agreement with many of the policy prescriptions that would follow from the egalitarian liberalism of Rawls. Despite this seeming confluence, a Red Tory faction would not find itself much welcomed in a Rawlsian society. Their ability to influence politics would be curtailed and if they apply themselves to matters of business, they will find themselves subjected to increasingly punitive taxes. In the best-case scenario they may as a faction of Red Tories seek constitutional reform, however, it is also possible that their experience may motivate a conversion to a different though probably related ideological sect, such as for instance, the still decided liberal (though less acceptable to Rawls) Blue Tories. The greater risk of a policy of effective exclusion of liberal sub factions is their possible radicalization into illiberal parties.

The significance of the friction between Rawls's society and Red Toryism is chiefly derived from the startling observation that among non-egalitarian forms of liberalism the faction whose policies are perhaps closest to Rawls and decidedly economically left of center is still incompatible with Rawls's onerous egalitarian requirements. While Red Tories may accept a principle of formal equality before the law, they are not committed to egalitarian policies or attitudes. Egalitarianism as contrasted with mere formal equality, entails a political culture that seeks to level class differences and maximize political participation and as such rejects welfarism

and *laissez fairism*. As welfarism is the economic ideology of Red Toryism, this exclusion presents some difficulty, not to mention the Blue Tories and their stubborn attachment to the free market. The Red Tory orientation is further antagonized by this stated goal of economic egalitarianism whereas a Rawlsian endorses leftist economic policies in order to diminish the salience of class differences, a Red Tory advocates for economically leftist policies as a justification for preserving the inherited class structure.

The liberal tradition consists in a broad constellation of ideological principles coalesced into a fairly narrow range of regimes. Due to the rather expansive nature of liberalism, a full bestiary is not practical, however a quick survey will suffice⁷. To begin, there is Right Liberalism and Left Liberalism. These may be further subdivided into Classical Liberalism, Libertarianism, Toryism which itself comes in flavours of red or blue, Progressivism, and Democratic Socialism. Beyond these broad ideological divisions within the liberal camp, there are a multitudinous variety of particular cultural practices and habits that further colour the practice of liberalism in a given country. Whereas, some maintain a tradition of class hierarchy, others are more egalitarian and while some understand fair treatment in economics as entailing a generous welfare entitlement others consider it paramount that the distinction be maintained between the deserving and undeserving poor. What ultimately binds together these relatively disparate ideologies under one family is their mutual appreciation for rights as a legal and moral concept and their opposition to ideologies and regimes predicated on illiberal assumptions. Rawls considers the history of Western tolerance as the movement from a *modus vivendi* to an overlapping consensus where the principle was internalized by individuals regardless of their particular religious or

⁷ This list is an ad hoc assortment, and its division is in no way meant to reflect a canonical account of the kinds of liberalisms. There are numerous ways that one could divide liberal philosophy either broadly or with extreme exactness according to the particular need of the moment.

ideological allegiances. Indeed, Rawls is hopeful that citizens will interpret their own religious doctrines as justifying liberal democracy. To this end, he cites the argument of Abdullahi Ahmed An-Na'im, who advocated for , "reconsidering the traditional interpretation of Shari'a, ... he says that Shari'a supports constitutional democracy ... equality of men and women, and complete freedom of choice in matters of faith and religion, both of which are in accordance with the constitutional principle of equality before the law" (Rawls 1997, 783). While the history of Europe at a cursory glance may seem to support such a development, an investigation into the factional character of such reform movements will reveal an alternate underlying mechanism at work. To the extent that modern organized traditionally Western religions have become compatible with the kind of society that Rawls is advocating for it is because these religious traditions have been transformed. They have been converted to liberal versions of themselves often at the expense of their texts and doctrines. An old Anglican joke reports, that a missionary comes to a man's door and asks are you religious? The man answers, "No, we're Church of England" The point of the joke being that Anglicans stereotypically seldom take religion very seriously. A more substantive criticism of this form of religious revisionism comes from the Christian apologist C. S. Lewis who wrote, "All theology of the liberal type involves at some point - and often involves throughout - the claim that the real behaviour and purpose and teaching of Christ came very rapidly to be misunderstood and misrepresented by His followers and has been recovered or exhumed only by modern scholars" (Lewis 1968, 38-39). Such an interpretation may hardly be reckoned reasonable and yet this is precisely the requirement that Rawls makes of those with religious allegiances.

When understood as a matter of factional analysis, a sect of ultramontane Catholics and a group of liberal democratic Catholics must be considered to be of distinct and possibly opposing

parties. In a similar vein, a socialist radical who believes that parliaments are unjust institutions that exists solely to maintain an oppressive status quo is quite distinct from a social democrat who views parliaments as a ready instrument for social and economic reform. While one may compute the division described above as between Catholics and Socialists, to do so would commit an elementary category error. Such errors are not uncommon even amongst seasoned practitioners of the hurly-burly of political life as suggested in the famous quote of Louis St. Laurent, “Socialists are liberals in a hurry” (Colombo 1987, 350). When discussing contests between ideologies, it is essential it is correctly identified and situated between themselves. It may be tempting to think of politics as a contest between right and left and therefore place right liberals in a shield wall with the ultramontane and to make a phalanx with left liberals and socialists. Yet the liberals, right and left, have more in common ideologically than they do with their nominal right-left peers. Moreover, the relative success of liberals and liberal variants of other religious and ideological traditions is the product of a process of consecutive, historical controversies where the liberal side was ultimately though by no means inevitably victorious.

The category error committed when liberals associate themselves with illiberal causes undermines society’s liberalism by diluting and diminishing the prospective liberal faction while buttressing alternate illiberal factions. One potential consequence of this might be the incorporating of political radicals into mainstream parties or the elevation of illiberal attitudes within politics. A Stalinist running under the banner of a major political party would be dangerous both as a result of the possibility that the government might come under the thrall of such an individual as well as the legitimation of the Stalinist position. Avoiding these sorts of catastrophes is made difficult by the irascible character of adversarial politics. An old American cliché holds that politics is contested between the forty-yard lines meaning that the difference

between the GOP and the Democratic Party is quite minor. Yet despite the broad ideological overlap that invariably exists between the different coalitions of liberals, they have a notable tendency to succumb to what is sometimes referred to as, narcissism of small differences. Minor disagreements about tax policy are framed as manichean struggles against fascism and socialism (for tax cuts and tax hikes respectively) and the prospect of the opposing party winning election foretells the end of democracy.

The attitudes, beliefs and assumptions that underlie a liberal society did not spring like Athena from the brow of Zeus, but rather was developed by a slow and gradual process that was, Whig historiography and other schools of historical teleology notwithstanding, contingent upon the particular material and social facts of Britain and to a lesser extent northwestern Europe and as such, was not inevitable. Indeed, when liberal ideas were novel as in the 17th and 18th centuries, liberals and proto-liberals were but one faction in society and were not always successful in contests of popularity or common sense. Between 1787 to 1795, an attempt was made to impeach Warren Hastings, the Governor General of Bengal on charges of personal corruption and the misuse of his office. The case is presently significant for two reasons; first the emphasis placed by Edmund Burke on the priority of the rights of the Indian peoples; second, the argument and attitudes of Hastings and his allies, notably Cornwallis, who defended absolutism in colonial government (Mukherjee 2005, 629). While the Burkean view would later come to some prominence in the thinking of imperial reformers who sought to maintain the British Empire in India and elsewhere (as well as the early anti-colonial movements) it nevertheless failed in Burke's own time. Had the liberal faction won in this case, it would have set the precedent that imperial officials can and should be held accountable for the mistreatment of indigenous populations and for violating local laws and customs. That the case failed indicates the relative

weakness of the liberal faction within British society at the end of the 18th century but also the important observation that while a given ideological faction may at any one moment seem insignificant, it may in time grow and develop into a formidable faction within society.

The success of liberalism to this point in history was not merely the product of a war of words but rather includes the successful application of force against illiberal factions. The most evident case of this more visceral form of argument is the American Civil War. Needless to say, if the Confederacy had won or at least survived as a legitimate government, then America would today be patently a less liberal place. In a similar vein it has been a historical blessing that the liberal regimes that have emerged in the modern era have tended to be wealthier and more powerful than their despotic neighbours and would be conquerors. This is especially noteworthy in the context of the 20th century where both radical rightist and leftist regimes in Europe attempted self-aggrandizement through reckless war and the spread of pestilential illiberal ideologies by mendacious propagandists. That the world wars were won by the liberal west (notwithstanding the Soviets and their contributions and complications) was by no means an inevitability. Yet victory was a precondition for the preservation of liberalism on continental Europe and indeed was responsible for the proliferation of liberal regimes across Europe and Asia. The Allies' triumph over the Axis combined with the geostrategic concerns of an emboldened and engorged Soviet Union motivated the establishment of a liberal international order that has hitherto secured the liberal world against shocks.

Rawls's project has much to commend. He certainly takes the right tactic by emphasizing the importance of pluralism within a liberal society. Similarly, he is quite correct to emphasize the centrality of stability in any attempt to fashion a regime, particularly a liberal one. Although these represent perfectly respectable aims, for a speculative liberal society, they are far from

uncomplicated as is implicated in a factional analysis. Liberalism as a faction contains within itself immense ideological and philosophical diversity and as such liberals are easily subdivided into opposing parties. Given that for a liberal society to survive to a venerable age it must be peopled in the main by liberals and accepting that liberals represent but one faction among many, it is paramount that the liberal party be as inclusive as possible. This would not be expressed in a single party line that all good liberals would be expected to conform to, rather, liberals of every stripe would continue to argue and electioneer for their preferred policies, candidates and official parties. They would however discriminate against illiberal factions in society at large and illiberal elements within their own parties. Although Rawls attempts to foster a conciliatory posture by distinguishing between political liberalism and comprehensive liberalism and by emphasizing the importance of reasonable pluralism, his conception of reasonableness is too narrow and the basic policies that undergird political liberalism are too broad.

The danger that factionalism presents to a liberal society is great and grim. Even in the case where liberal attitudes are relatively well ingrained in society, illiberal factionalism may still achieve a foothold and thereby compromise the integrity of liberalism. As previously discussed, the politics of the American South were for much of its history atavistic maintaining cultural and legal habits that were fundamentally at odds with a liberal society. Yet the Southern Segregationists were themselves a regional minority and consequently were defanged when the issue became a national controversy. It is not inevitable that liberalism will win an easy victory in all such contests, nor is it guaranteed to endure to the last syllable of recorded time. On this point, T.S. Elliot was perspicacious. "If we take the widest and wisest view of a Cause, there is no such thing as a Lost Cause because there is no such thing as a Gained Cause. We fight for lost causes because we know that our defeat and dismay may be the preface to our successors'

victory, though that victory itself will be temporary” (Elliot 1951, 449). If a legitimate goal of political philosophy is to develop and defend workable arrangements of civil society, then if one wishes to achieve the best result, as a matter of course, only the firmest foundation should be selected. If a liberal society is ever to hope to achieve the “long tradition of existence” (Landis, 1978) that many monarchies acquired, then it is incumbent for this society’s liberals to act with a unity of purpose when confronted with illiberal principles and parties. Rawls’s society ultimately fails to achieve this purpose as it is headless of the danger of faction as such. Therefore, if a program of Rawlsian reform is to be pursued without fear of retort, then it is incumbent for Rawlsianism to provide an account of endemic faction and how best to mollify it lest their project be stillborn.

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