

On Tolerating the Unreasonable*

ERIN KELLY and LIONEL McPHERSON

Philosophy, Tufts University

THE IDEA of a unanimous social contract has been invoked as the fundamental criterion of political legitimacy by Hobbes, Locke, Rousseau, Kant and, in our times, Rawls. Pluralism has recently emerged, though, as a central concern and potential threat to the possibility of a social contract. In particular, it has become apparent that the need to recognize pluralism as a condition of free democratic institutions complicates the problem of how to achieve political justification through contractual agreement (real or hypothetical). In a liberal democracy, justice requires persons to respect or, at least, to tolerate conceptions of the good others may hold, even though some may disagree with the content of those conceptions. But the persistence of deep disagreement can make it difficult to see what could constitute a credible basis for a social contract. More simply, despite the strenuous and frequent voicing of opinions in public forums, lack of common ground on many central values often means that constructive discussion of important political issues does not take place, much less resolve anything.

In response to the difficulties pluralism poses, some political philosophers have proposed that justifications of political institutions need only secure the consent of persons with reasonable moral views. Joshua Cohen, Charles Larmore and Barbara Herman are among those who have adopted this restriction.¹ A view is reasonable, according to Cohen, “just in case its adherents are stably disposed to affirm it as they acquire new information and subject it to critical reflection.”² Reasonable persons are the only parties to the social contract, properly understood. Ironically, this proposal in defense of liberal democracy would appear to be neither particularly liberal nor democratic.

*We would like to thank Hugo Bedau, Barbara Herman, John Rawls, Tim Scanlon, and the MIT political theory workshop for very helpful comments on an earlier draft. We also thank the editor and referees of *The Journal of Political Philosophy*.

¹See Joshua Cohen, “Moral pluralism and political consensus,” *The Idea of Democracy*, ed. D. Copp, J. Hampton, and J. Roemer (Cambridge: Cambridge UP, 1993), pp. 270–91; Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996), chs 6 and 7; and Barbara Herman, “Pluralism and the community of moral judgment,” *Tolerance: An Elusive Virtue*, ed. David Heyd (Princeton, N.J.: Princeton University Press, 1996), pp. 60–80.

²Cohen, “Moral pluralism and political consensus,” pp. 280–1. Larmore and Herman’s views will be discussed below.

We maintain, against these philosophers, that justice may well require us to acknowledge the claims of persons who hold views that have little or no rational support or seem plainly irrational. The idea that justification of political arrangements need not be addressed to unreasonable persons should be rejected, for these persons could be due a say in the arrangement of institutions binding them. Their exclusion from the social contract would thus violate the requirements of toleration in a liberal society. Against such exclusionary accounts of the ideal social contract, we argue instead for an understanding of toleration as “wide public justification,” that is, a form of justification by agreement that aims to include as many people as would be consistent with the political values of democracy. This is likely to include significant numbers of unreasonable people.

We agree that there ought to be limits to the accommodation of unreasonable views, but a clear sense of these limits, in our view, should be determined from a narrow political standpoint, rather than on the basis of broader philosophical criteria. It is important to recognize that not all views that are philosophically or morally unreasonable should be counted as politically unreasonable. Members of private all-male clubs, for instance, may not turn out to be politically unreasonable, though they may hold views about women that fall into the category of the morally or philosophically unreasonable. It is mistaken to assume that overall evaluations of whether a person is reasonable or unreasonable are necessary for judgments of political reasonableness.

On more exclusionary accounts of toleration, much rides on the criteria of philosophical reasonableness, and this would require determining, among other things, what counts as adequate critical reflection. Such specification would seem to be necessary in order to resolve many important philosophical disagreements or to determine the range of reasonable disagreement. We challenge the idea that justice generally requires the resolution of moral disagreements or, more minimally, determining which philosophical views are reasonable. A relatively well-defined conception of political reasonableness can instead be used to work out the terms of toleration as they are ordinarily understood, namely, in a political sense. Politically reasonable persons are prepared to grant one another the status of free and equal persons, and to propose and abide by terms of social cooperation that they believe are fair and mutually acceptable. In public political discussion, such persons would not appeal to sectarian moral and political philosophies, but only to common political values.³

A politically reasonable position may, however, get support from philosophically unreasonable views. For example, a Klansman could make a reasonable argument, citing autonomy as a political value, that his promulgation

³See John Rawls, “The idea of public reason revisited,” *The University of Chicago Law Review*, 64 (1997), 765–807.

of what others regard as an unreasonable doctrine should be tolerated.⁴ He has reason, of course, to care about autonomy given that it will enable him to espouse his beliefs openly. Yet he need not presuppose that other persons will or should endorse the value of autonomy on the basis of his unreasonable doctrine; they may endorse it on other grounds. As long as the Klansman recognizes that the value of autonomy is in this way independent of his racist beliefs (and hence can be defended as a political value), he is not in making his argument for toleration required to act as if he does not hold these beliefs: a person's racism need not undermine the basis for including that person in the social contract.

The social contract should include those who are philosophically unreasonable, just as long as their philosophical unreasonableness does not spill over into political unreasonableness. Political debate should, as far as possible, keep its distance from philosophical controversy if it is to elicit a shared basis of public justification. Thus understood, toleration as wide public justification is the proper response to the pluralism characteristic of modern democratic societies. It is not simply a second best in a world doomed to moral, religious and philosophical conflict, or so we will argue.⁵

I.

The distinction between philosophical and political reasonableness is not a distinction without a difference. Our primary concern is with the theoretical question of how inclusive the social contract should be. But the inclusion of philosophically unreasonable persons—whose interests might not otherwise adequately be represented—could have substantive implications for the resulting principles, implications that could extend to matters of public policy. Consider, for example, the problem of how to determine the proper scope of freedom of expression. On the basis only of aesthetic value, certain forms of pornography would not seem to merit any political protection. So it might be natural to think that the protected range for expression need not extend beyond that which philosophically reasonable people would defend. The philosophically unreasonable, however, might have a valid claim to expressive interests with broader range, since the expression of philosophically unreasonable beliefs may not violate the rights of others. It is likely, anyway, that unreasonable persons would best represent their own claims: these claims might be difficult for reasonable persons to articulate, let alone to treat fairly.

Cohen claims that the exclusion he defends “does not amount to a deprivation of liberties or of what are conventionally understood to be the advantages of

⁴The political value of autonomy should be distinguished from a comprehensive moral conception of autonomy found, for example, in Mill or Kant. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. xlv–xlv, 72–81.

⁵We thank an anonymous referee from *The Journal of Political Philosophy* for suggestions on how to phrase this summary.

social cooperation.”⁶ He believes that his conception of the expressive, deliberative and informative interests of reasonable persons supports, for example, a conception of freedom of expression sufficient to protect the unreasonable as well, but this is not guaranteed by his theoretical assumptions.⁷ Moreover, freedom of expression for unreasonable persons follows only indirectly from the interests of reasonable persons, since any attempts to restrict expression could infringe upon the latter’s interests. No independent value is placed upon freedom of expression for unreasonable persons; the rights of the unreasonable are only defended incidentally. We find this inadequate. The attempt to justify freedom of expression should not refer only to the fundamental interests of those adhering to reasonable conceptions of value: a liberal democracy commits its citizens to a willingness to recognize that people whose views or practices they may have decisive reasons to reject may also be entitled to a justification of shared political institutions and of the exercise of political power.⁸

Some basic notions of toleration need to be distinguished. The ordinary notion of toleration as noninterference concerns a presumption against persecuting those who are unreasonable and denying them the rights and liberties of citizenship. By contrast, the notion of toleration we are emphasizing requires that our basic political and social institutions be justifiable in terms that unreasonable as well as reasonable persons have reason to accept. This notion of toleration as wide public justification departs both from the idea of toleration as noninterference and from the way in which toleration is understood by liberal theories that strictly limit justification to reasonable persons.

The notion of toleration as wide public justification is stronger than the ordinary notion of toleration. This “strong” sense of toleration requires not only a presumption against interference but also that the boundaries of noninterference may need to be justifiable to persons who hold unpopular views or engage in offensive behavior. As already suggested, this would be expected to broaden the boundaries of noninterference. Consider, for example, the criminalization of prostitution. A number of arguments have been advanced in support of criminalization: prostitution is degrading to prostitutes; it is enabled by legal and illegal forms of exploitation of women; it promotes a view of women as sex objects, which is counter to the aims of gender equality; it exposes prostitutes to severe health and safety risks and contributes to wider public health problems. Certainly, the desire to deal seriously with these social issues is encouraging, and clients of prostitutes may hold views that supporters of criminalization find unreasonable. Those who support decriminalization could nevertheless argue that it is not clear why sexual activity that would otherwise be

⁶Cohen, “Moral pluralism and political consensus,” pp. 285–6.

⁷Joshua Cohen, “Freedom of expression,” *Philosophy and Public Affairs*, 22 (1993), 207–63.

⁸We are not describing current political trends in the United States, which are increasingly opposed to the requirements of toleration as we describe them here. This should be a matter of serious concern.

legal should become illegal when direct cash transfers are involved. Nor, they might say, would sex that is directly exchanged for money appear for that reason to be less voluntary or more coercive than sexual relations that involve less direct transfers of material goods. Thus supporters of decriminalization might claim that when prostitutes and clients exercise the liberties of association, privacy and expression, they do not directly violate each other's or anyone else's equal rights and liberties. Supporters who hold unreasonable views need not set their views aside in making this argument since (we are supposing) they recognize that denying equal political status to women would not be politically reasonable; that is, supporters need not deny that they hold such views.

The political basis for tolerating the unreasonable is not, as some would argue, that toleration is the surest means for moral and social progress.⁹ Faith in its ultimate rewards may inspire a commitment to toleration, but the extent to which toleration explains any moral or social progress that may have been achieved is far from clear.¹⁰ In any case, an appeal to the prospects of progress does not provide the best justification for toleration. What justifies freedom of expression, for instance, is not the possibility that it advances our collective welfare; we need not believe that the opportunity for white supremacist expression promises any benefit to society.

Rather, what justifies a range of views and practices—and requires toleration of those views and practices¹¹—is their compatibility with the greatest range of equal basic rights and liberties for all. Call this the “compatibility requirement.” An argument for it is this: persons who are prepared to respect the equal rights and liberties of others have reason to reject a more restrictive conception of basic rights and liberties on the grounds that once the compatibility requirement has been satisfied, a more restrictive conception would be arbitrary and unmotivated from the point of view of justice.

The compatibility requirement is, in fact, widely acknowledged, and it often frames more particular debates about, for example, the proper scope of freedom of expression or association. We have suggested that a person whose doctrines are otherwise nonliberal could affirm the political status of persons conceived of as free and equal. The compatibility requirement may allow private all-male clubs, for example, insofar as their members are not attempting politically to pursue the unreasonable philosophical views they might have of women. Since (we are supposing) these views have no practical political consequence, they are, in a colloquial sense, merely philosophical. At the same time, the compatibility requirement would underlie objections to these kinds of clubs insofar as it could be shown that they violate the rights of women. In short, such debates often turn

⁹See, for example, John Stuart Mill's *On Liberty*.

¹⁰Sometimes moral progress can be explained by, among other things, the influence of scientific knowledge (e.g., debunking medical explanations of “hysteria” in women).

¹¹Here toleration refers to the common-sense notion of noninterference. Our point is that this notion derives its justification from the rigorous requirement that rights and liberties be justifiable to *all* members of a just society.

on whether views and practices are compatible with protected rights and liberties, not on the status of the compatibility requirement itself.

The compatibility requirement expresses a familiar liberal idea of toleration. More controversial is our claim that the considerations supporting this idea of toleration also support a stronger requirement of justification to persons who may hold various philosophically unreasonable views—a requirement we have referred to as that of wide public justification. The compatibility requirement expresses a political conception of persons conceived of as free and equal, implying that all are due a justification of their shared political institutions. A presumption in favor of according all persons this status is, we argue, fundamental to democracy, and it is captured by the requirement of wide public justification. The reasons for this presumption are as follows. First, reasonable people are not infallible: as suggested above, their reasonableness itself may leave them unable to anticipate the legitimate interests of persons who hold unreasonable views. The greatest range of equal rights and liberties is better ensured if unreasonable people are not excluded, simply for being unreasonable, from representing themselves politically. Second, wide public justification serves to cultivate respect among citizens for one another. This respect is essential to a well-functioning democracy. The third and more purely theoretical reason is that the political autonomy of citizens in a democratic society entitles them to represent themselves, whether or not doing so in fact best promotes their interests. These considerations support the idea that wide public justification properly extends within liberalism the familiar notion of toleration as noninterference. In sum, it would be arbitrary to disqualify unreasonable persons as such from participating fully in the social contract and in public reasoning, for as potential political participants (rather than spectators) they may be owed a justification, just as their reasonable counterparts are.¹²

II.

The full extent of what toleration requires can be obscured by assuming that two distinct senses of the reasonable converge. The clearest statement of the distinction is found in Rawls, who defines “the reasonable” in terms of two basic aspects. The first defines persons as reasonable when “they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them. . . .”¹³ The values and doctrines a reasonable person affirms will thus be ones that do not reject the essentials of a liberal democratic regime.¹⁴ This first

¹²We are not suggesting that critics of our view would impose a literal gag order on philosophically unreasonable persons in excluding them from public reasoning.

¹³Rawls, *Political Liberalism*, p. 49.

¹⁴*Ibid.*, p. xvi.

aspect identifies the “political” sense of the reasonable. The second aspect holds that persons are reasonable when they recognize and are willing to bear the consequences of what Rawls refers to as the “burdens of judgment.”¹⁵ Implicit in Rawls’s discussion of this second aspect is what we refer to as the “philosophical” sense of the reasonable.

The burdens of judgment explain how persons who engage in rational, critical reflection may come to disagree in deep and irreconcilable ways about the nature of the good, even though they may be politically reasonable. The philosophical sense of the reasonable concerns the nature of rational, critical reflection. The burdens of judgment indicate, in a general way, the requirements of this kind of reflection as well as how these requirements fail to guarantee agreement. Larmore summarizes these “burdens” as follows: The empirical evidence may be conflicting and complex; agreement about the kinds of considerations involved does not guarantee agreement about their weight; key concepts may be vague and subject to hard cases; our total experience, which shapes how we assess the evidence and weigh values, is likely in complex modern societies to be rather disparate from person to person; different kinds of normative considerations may be involved on both sides of a question; and, finally, when forced to select among cherished values, we face great difficulties in setting priorities.¹⁶

Philosophically reasonable persons will themselves hold philosophical and moral views that are supported by good arguments. Good arguments are arguments that plausibly rely on empirical evidence (when relevant), give compelling and clear accounts of the basis of their claims, and offer nondogmatic interpretations of: how to understand key concepts, the priority ranking of values, the appropriate weight of various considerations, and the ways in which experience supports value judgments. Good arguments do not rest on reasons that depend upon the distinctively private and esoteric experience of revelation or faith, for instance, but rather on broader, more public reasons the force of which is independent of such private and esoteric experiences. A willingness to offer justification for one’s views is not enough to establish one’s philosophical reasonableness. Justification must be based only on reasons that other persons can be in a position to evaluate rationally.

The burdens of judgment imply that some range of disagreement about what constitutes the good is the inevitable result of the free exercise of reason, for various conceptions can each have the support of good arguments. Thus it is a mistake to assume generally that persons who are philosophically reasonable will be politically reasonable. The fact that a philosophical or moral position is supported by good arguments is not enough to show that it is a suitable basis for public political justification. The point of Rawls’s second aspect of the reasonable is that persons who are politically as well as philosophically reasonable will

¹⁵Ibid., pp. 58–9.

¹⁶Larmore, *Morals of Modernity*, p. 170.

accept that a just arrangement of political institutions cannot presuppose a shared conception of the good. These institutions must be based, instead, on common political values. Here Rawls assumes that reasonable persons will be both politically and philosophically reasonable.

The burdens of judgment suggest an account of the importance of toleration. To some philosophers, such as Larmore, they also seem to mark out naturally the boundaries of toleration; namely, members of a liberal society should tolerate all and only those persons whose views and practices could be supported by good arguments.¹⁷ We will refer to this as the argument from reasonable disagreement, an argument we reject: Relying on the philosophical sense of the reasonable in order to draw the boundaries of toleration leads to a conception of toleration that is too narrow. As we have claimed, justice may well require citizens to ensure that their shared political institutions are acceptable also to those persons whose views lack the support of good arguments (and thus are not philosophically reasonable). This will be the case when persons holding these views are not making demands on shared resources. Restricting toleration, however, will sometimes be required when persons would make demands on public resources in order to promote unreasonable doctrines. Creationists, for instance, cannot make a legitimate claim on public schools for time and materials to balance their teachings against the teaching of evolution in science classes. Philosophically reasonable persons will of course also be constrained to defend any claims on public resources with reasons that could be accepted by all politically reasonable persons.

The burdens of judgments indicate that the politically reasonable response to pluralism is to accept that a just arrangement of political institutions cannot presuppose a shared conception of the good. The argument from reasonable disagreement acknowledges this, but it mistakenly assumes that persons who are politically reasonable will always be philosophically reasonable. Views that cannot be supported by good arguments may nonetheless be consistent with the requirements of citizenship. We believe it is not in fact uncommon for people to “cabin off” dubious philosophical views.¹⁸ (Many people, for example, affirm among themselves the superiority of their own religious or ethnic group, yet might not do this in the public realm or otherwise in their political behavior.) Ordinarily, we recognize a distinction between our personal interests and those interests it is appropriate to insist upon in the public realm. Also, being politically reasonable can be a rather passive affair. Those who are not interested in participating more actively in the democratic process—perhaps because they hold philosophically unreasonable views—can still count as citizens in good standing.

¹⁷See Larmore, *Morals of Modernity*, chs 6 and 7.

¹⁸There is strong evidence that persons are able to compartmentalize even outrageous behavior. See, for example, Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 1963).

This is not to say that all philosophically unreasonable persons would need to cabin off their views or be politically passive in order to count as politically reasonable. For example, highly speculative religious convictions that may lack the support of rational arguments could underlie a pacifist's reasonable political objection to engaging in military combat. Freedom of conscience as a political value in a pluralistic society constitutes the politically reasonable grounds for conscientious objection. But pacifists need not disguise the religious content of their conscientious objection as they appeal to this shared public principle.

Persons who are philosophically reasonable would be politically unreasonable in simply refusing to tolerate persons who hold philosophically unreasonable views. The idea that toleration is justified because it will bring us closer to the truth is as misleading as the idea that toleration is justified by the prospects of moral and social progress.

III.

Some may be doubting at this point whether there could be many examples of views that are politically reasonable but not philosophically reasonable. What could these views look like? Recent activities by terrorist militias in the United States, for instance, demonstrate that their members are not politically reasonable. Such examples might tempt one to draw the general conclusion that egregious philosophical unreasonableness goes hand-in-hand with political unreasonableness; that even if there is a theoretical distinction, as a matter of fact there is no viable distinction to be drawn. Still, there are other philosophical extremists (for example, eugenicists) who, presumably, could remain within the bounds of the politically reasonable. Below is a brief sketch of several kinds of claims and perspectives that could well be philosophically unreasonable yet might be maintained by politically reasonable persons.¹⁹

1. Ideas of human nature can play a role in unreasonable philosophical doctrines in a number of ways. Perhaps most commonly, social conventions are taken to express essential and fundamentally unchanging characteristics of human nature. It may then be assumed that alternatives to current social arrangements would undermine the natural order, and that this would be psychologically and socially detrimental. For example, attempts to justify directing women to the domestic sphere often appeal to allegedly intrinsic differences in ability between men and women.

Usually, however, there is no compelling evidence to underwrite these claims and much evidence to suggest that conventions could be different. With regard to gender arrangements, the point is not that women could never decide to accept them. Rather, it is that limiting a person's opportunities cannot be politically

¹⁹There are people with incomprehensible beliefs and practices who may not be politically unreasonable, e.g., the man Rawls imagines spending his spare time counting blades of grass. From a political point of view there is no need to evaluate some private activities for their reasonableness.

justified on the basis of rationally unsustainable assumptions. Also dubious is the assumption that ideas of human nature must carry with them a normative claim—namely, that we should do what is natural for us. Persons who have unreasonable ideas of human nature could nevertheless be politically reasonable provided they would not try politically to impose their views on others.

2. Religion continues to receive cautious treatment in political philosophy. Specifically, many philosophers seem determined to regard comprehensive religious conceptions as philosophically reasonable conceptions of the good. This tendency can be resisted, however, without threatening politically reasonable notions of toleration. The fact that a metaphysical tenet is part of a comprehensive conception in no way implies its philosophical reasonableness. Although some metaphysical aspects of a religion may have rational support (deistic defenses of a prime mover, for instance), other metaphysical aspects have no more rational support than what some may regard as mere superstitions. But while such tenets may be philosophically unreasonable, their adherents may be politically reasonable in advancing only reasons appropriate to political discourse. Others cannot be expected to accept reasons that belong to a religious tradition that is not their own and lack the support of reasonable arguments they could accept.

We distinguish the metaphysical aspects of a religion from any social value it may have. In addition, we are not dismissing the likelihood that religious beliefs can have independent moral justification (for example, “thou shalt not kill”). This is important, for the claims believers advance politically must have independent moral justification, that is, a political justification that nonbelievers could accept. While separation of church and state may originally have been proposed to ensure religious freedom for believers, the terms of public discussion must serve to protect both the nonreligious and the religious.

3. Many persons believe that broad categories of difference in gross morphological features (for example, skin color, bone structure) are representative of naturally distinct racial groups. There is a continuum of difference, of course, which makes it unclear how such differences themselves could represent essential “natural” divisions.²⁰ In any case, it is entirely unclear how such differences could justify political and social discrimination. Conceivably, though, someone could hold philosophically unreasonable views about race without believing that persistent patterns of political and social inequality are acceptable. One might think, for example, that individuals do not morally deserve their natural characteristics and so should not be further disadvantaged by them. Groups committed to a belief in their own superiority or righteousness could be careful not to claim privileges in political discourse.

²⁰For an excellent criticism of the concept of race, see Anthony Appiah, “The uncompleted argument: Du Bois and the illusion of race,” *“Race,” Writing, and Difference*, ed. Henry Louis Gates, Jr. (Chicago: University of Chicago Press, 1985).

IV.

Ideal theories of political justice tend to assume that citizens of a just society will be fully reasonable, in both the philosophical and political senses. By assuming that the philosophical and political will converge in an account of the reasonable, these theories can oversimplify the problem of determining the proper limits of toleration. This may seem to be true of Rawls's formulation of political liberalism since, as already suggested, he assumes that a political conception of justice is to be justified to persons who are in both senses reasonable.²¹ Such persons are willing to propose and abide by principles of justice that are acceptable to others similarly motivated as well as hold "reasonable comprehensive doctrines." A comprehensive doctrine is supposed reasonable when it involves the exercise of both practical and theoretical reason in articulating an intelligible and consistent account of the major religious, philosophical and moral aspects of life.²² Such a doctrine, furthermore, evolves in view of reasons that within its perspective have the support of good arguments. While Rawls argues that toleration should accommodate the full range of such reasonable comprehensive views, he may seem to avoid the question of its proper limits under non-ideal conditions, in particular, those under which politically reasonable persons may fail adequately to exercise practical and theoretical reason and hence may hold unreasonable doctrines.

Although Rawls suggests that the philosophical and the political aspects of the reasonable will converge, he does not, on our reading, commit himself to the exclusionary principle of toleration we are criticizing. He presents no basis for excluding philosophically unreasonable persons from the domain of toleration in a just liberal democracy since he does not ground toleration on the argument from reasonable disagreement.²³ Recall the first aspect of the reasonable, which holds that principles of justice must be acceptable to all citizens considered as free and equal. This is a requirement of the "liberal principle of legitimacy,"²⁴ the fundamental criterion of legitimacy for social contract theories, according to Rawls. This principle supports the idea that the social contract should include all politically reasonable persons; thus Rawls would seem to accept the idea of toleration as wide public justification. A conception of toleration limited to the philosophically reasonable could not secure agreement among free and equal citizens; those citizens who were philosophically unreasonable would have good reason to reject this restriction. To assume that justifications are owed only to persons who are reasonable in both senses would be to ignore the prior and independent force of the liberal principle of legitimacy. Its priority should lead

²¹He writes, "Assume first that reasonable persons affirm only reasonable comprehensive doctrines"; Rawls, *Political Liberalism*, p. 59.

²²Ibid.

²³On the argument from reasonable disagreement, see Section II, above.

²⁴Ibid., p. 137.

Rawls to reject Cohen's principle of exclusion. Our own view finds support in the case for the liberal principle of legitimacy that Rawls makes.

In his recent collection of essays, *The Morals of Modernity*, Larmore comes much closer to grounding toleration on an argument from reasonable disagreement, and hence to rejecting the requirement of toleration as wide public justification. His view in this respect bears an affinity to Cohen's. According to Larmore, toleration is a distinctively modern phenomenon, an outgrowth of liberalism's primary aim "to find principles of political association expressing certain fundamental values that, to as great an extent as possible, reasonable people may accept despite the different views about the nature of the good and about religious truth that divide them."²⁵ Liberalism is suitably tolerant when it remains "neutral" with respect to ideas of the good about which reasonable people may disagree. It cannot endorse, for example, either the value of autonomy as understood by Mill or Kant, or the value of belonging and custom espoused by contemporary communitarians. We question Larmore's derivation of this principle of neutrality.

Larmore argues that reasonable people will accept a "norm of rational dialogue." This norm governs the way in which they respond to and resolve disagreements. It dictates that they first try to convince each other of their respective positions by means of good arguments—an aim connected with what we have referred to as the "philosophical" aspect of the reasonable. If this fails, a second step becomes necessary: reasonable people will attempt to bypass their disagreement altogether by seeking a resolution that relies upon shared beliefs. In the political arena they will thus settle disagreements by appeal to principles that are not partial to any particular view of the good. Therefore, the structure of rational dialogue leads to the liberal principle of neutrality; this represents the deepest (and perhaps the only) possible basis of agreement.

To illustrate Larmore's reasoning, consider the controversy between environmentalists and loggers over the fate of the spotted owl. Environmentalists might argue that because the owl is an endangered species, logging in areas that threaten its survival should be stopped. Loggers might argue that their way of life is oriented around logging: they have no other marketable skills and value their rural culture. Both the environmentalists and the loggers have good arguments for their opposing positions, and it is plausible to think that neither will be able to convince the other to accept what each regards as the best reasons. At this point the norm of rational dialogue requires that both find reasons they can expect the others to share. A resolution cannot depend, for example, upon uncompromising claims about either the intrinsic value of preserving the ecosystem or maintaining an established local economy as is. Instead, shared reasons might appeal to the value of preserving the ecosystem for human purposes and the need of particular groups to make a living.

²⁵Larmore, *Morals of Modernity*, p. 154.

In Larmore's view, however, the norm of rational dialogue does not on its own lead to the principle of neutrality. What leads parties to take the second step, when necessary, is the mutual respect they have for one another given the philosophical reasonableness each has already demonstrated. Larmore refers to this as the norm of "equal respect." This additional norm compels us to treat persons as ends (and never as mere means), in virtue of their exercise of reason;²⁶ it rules out the use of force as a way to settle disagreements.

The role Larmore assigns to the norm of equal respect may appear to cast doubt on our claim that he comes much closer than Rawls does to grounding toleration on reasonable disagreement alone. But unlike the argument from Rawls's liberal principle of legitimacy, the argument from Larmore's norm of equal respect is not generated by considerations significantly independent of the argument from the norm of rational dialogue; rather, Larmore's norm of equal respect is embedded within his norm of rational dialogue.²⁷ Persons to whom equal respect is due abide by the norm of rational dialogue and hence are philosophically reasonable. Larmore is quite explicit about this. He defines the reasonable in the following way:

"Reasonable" people are those who think and converse in good faith and apply...the general capacities of reason that belong to every domain of inquiry....It has become a salient feature of modern experience that on matters concerning the meaning of life, and also concerning deep aspects of morality, discussion among reasonable people tends naturally not toward consensus, but toward controversy.²⁸

In contrast, the liberal principle of legitimacy does not assume that persons to whom justification of political principles is addressed will be philosophically reasonable. Larmore's argument for toleration from reasonable disagreement restricts the domain of toleration where toleration is needed most—namely, in the political arena, which encompasses unreasonable along with reasonable philosophical views. Against his view we maintain that what warrants attention is not the philosophical baggage people bring to the political arena but their interest in being politically reasonable, whatever philosophical views they may hold. While Cartesian carnivores hold the philosophically unreasonable view that animals are like "machines" and have no moral standing whatsoever, they may be politically reasonable in adopting standards for the humane treatment of animals. Animal rights supporters who can tolerate others consuming meat and fish need not concede that Cartesian speciesism is philosophically reasonable. It is the political reasonableness of each perspective that motivates toleration. Minimal standards for the humane treatment of animals allow for the greatest liberty of conscience and action compatible with both perspectives.

²⁶Ibid., p. 137.

²⁷This raises a question whether Larmore's view properly counts as a social contract theory.

²⁸Larmore, *Morals of Modernity*, p. 168.

V.

Sometimes political discourse will require philosophical discussion in order to resolve matters of justice. Our position in favor of extending public justification to the unreasonable implies, however, that philosophical discussion in the public sphere should ideally be kept to a minimum. This discussion is to be conducted only in terms appropriate to the political domain²⁹—people should not invoke comprehensive moral doctrines or religious beliefs as justifying reasons—and debate should not extend to issues that do not require political resolution. There is reasonable moral dispute, for instance, over whether the traditional division of labor within a marriage allows women sufficient opportunity to develop their talents and abilities. But in a society in which marriage is for women one among other meaningful and available options, this dispute need not be settled within the political domain.³⁰ Larmore reverses the proper order of his two steps. Philosophical argument that aims to resolve disagreement is appropriate in the political realm not as a first step, but only when politically necessary. Philosophical discussion will thus be considerably more narrow and, we believe, the standards of philosophical reasonableness will be less controversial than those for many other philosophical and moral issues.

In her essay “Pluralism and the Community of Moral Judgment,” Herman argues that philosophical deliberation should play a much greater role in political discourse. Her argument in effect challenges the liberal idea of toleration as noninterference by recommending a kind of moral censure in public political discussion. If she is right, this would also challenge the notion of wide public justification: the philosophically reasonable would not so much be obligated to address political justification to the philosophically unreasonable as, rather, to elevate the unreasonable to the status of the reasonable. In fact, Herman’s view seems to collapse any distinction between the politically reasonable and the philosophically reasonable. Whereas we have argued that in the political realm many philosophical disagreements do not require resolution, she disagrees. She thinks we always have incentive to resolve philosophical conflict. Skeptical of the liberal ideal of an overlapping consensus of comprehensive moral views, Herman argues that a society ideally constitutes a unified “community of moral judgment.” Pluralism is not a condition that would inevitably persist under just political institutions.

Toleration as noninterference is the response to pluralism generally offered by liberal theory. The problem with this response, Herman argues, is that liberal

²⁹With regard to questions that are not as clearly mediated by considerations of justice (e.g., how much land should be set aside for public parks), “public reasons” may not extend far enough to determine a decision. In that case, citizens can reasonably fall back on non-public (including religious) reasons.

³⁰The political/nonpolitical distinction may seem morally arbitrary from the point of view of certain philosophically reasonable doctrines. This does not bother us, however, since politically reasonable persons will find it important to accept this distinction in order to formulate a conception of justice acceptable to others similarly motivated.

toleration can be self-defeating, in a practical sense.³¹ Because toleration concerns itself chiefly with what goes on in public political discourse, it allows “private” intolerant attitudes toward objects of toleration to persist. But these attitudes are unlikely to remain private; instead, they insidiously reappear in the political sphere and can have the effect of perpetuating discrimination. For this reason, tolerating resolutely intolerant attitudes undermines the liberal ideal of a tolerant society. Her solution is to restrict toleration to the philosophically (that is, morally) reasonable, a restriction which she concludes turns out not to support conditions of pluralism.

Herman claims that toleration should not extend to views that are harmful to others. This claim itself is not in conflict with liberal theory, which in no way suggests that such views must be tolerated. As we have argued, toleration should be restricted to politically reasonable views, even though it can at the same time allow philosophically unreasonable views. Herman seems to find this position unstable. She argues that what constitutes harm may not be obvious in advance and will require evaluation of practices and beliefs that is sensitive to local values. In order to avoid relativism and provide for the possibility of local moral conversation between those who disagree, regulative principles are needed.³² Herman proposes that Kantian regulative principles, in particular, are both suitably context sensitive and substantive enough to guide moral conversation and judgment. These principles enable people with different ways of life to form a community of moral judgment.

Stronger yet, Herman argues that persons in society with one another have a moral obligation to create a moral community, since on her understanding only then can they fairly and effectively mediate conflicting claims. This implies that the community of moral judgment is pressed to become ever more inclusive. There is an impetus to unity despite conditions of pluralism. “Because toleration is at issue only where people can affect one another, where the conditions for toleration obtain,” Herman writes, “there is already in place a prior moral requirement to a more inclusive community of moral judgment.”³³ She claims that this requirement points to the inadequacy of toleration as a fundamental moral response to pluralism. The attitude of toleration does not challenge us to reconsider our own values when confronted with the values of others with whom we may disagree. By contrast, the moral imperative to form a community of moral judgment may require persons to revise their moral beliefs and practices. Although not every existing view will be represented in a community of moral judgment, the community is ever expansive and will include all persons whose ways of life can become consistent with the requirements of Kantian agency.

We believe Herman offers a sustained and compelling critique of a disengaged liberalism, a liberalism which rests with a conception of toleration that is

³¹Herman, “Pluralism and the community of moral judgment,” p. 62.

³²Ibid., p. 67.

³³Ibid., pp. 75–6.

inadequately responsive to entrenched and politically significant inequalities. She also, importantly, calls attention to the need for deliberative principles. Without principles of public reason, political discourse is unlikely to move beyond the advantage-negotiation of self and group interests. At this point, though, we must part ways with her account. Toleration is more than an adequate moral response to pluralism—it is the proper response.

Not only can moral resolution of broad questions about value and the good prove hard to come by, but even the basic terms for extended philosophical engagement may be deeply contested on either philosophical or political grounds. Specifically, the burdens of judgment explain how philosophically reasonable persons may fail to agree upon the methods and conclusions of moral deliberation. Both philosophically reasonable and unreasonable persons, moreover, might reasonably reject political terms requiring philosophical engagement. While moral progress in public life would be desirable, we cannot require persons to participate in moral discussion; that would be neither feasible nor just.

Although Herman agrees that participation in a moral community should not be coerced, she maintains a motivational requirement that is far too strong: persons are obligated to deliberate in the political realm with others who are philosophically reasonable and as a result are similarly motivated to form a community of moral judgment. This requirement is apparently built into the concept of what it is to be reasonable. Yet the burdens of judgment explain how persons can reasonably differ about the proper account of morality, and it seems implausible to insist that persons who would otherwise be philosophically reasonable are philosophically unreasonable simply because they fail to accept the motivational requirement. Persons can satisfy the burdens of judgment and hold politically reasonable views without being concerned about participating in and expanding a shared moral discussion; that kind of moral engagement with others is not a requirement of philosophy or justice. Why, for example, should traditionally-excluded minorities with an acquired understanding of what constitutes equal respect be morally required to invest time and energy attempting to bring others more fully into the community of moral judgment?

Still, as Herman requires, political deliberation guided by shared regulative principles will be needed to settle conflicting claims fairly in the public sphere. For her this means that people are “obligated to enter and sustain a community of moral judgment not to secure enforceable rights, but to bring about the conditions for moral development and colloquy...”³⁴ But the “moral development and colloquy” needed to settle political claims falls far short of what it would take to resolve those philosophical disagreements about morality that stand in the way of the possibility of a shared moral community. We have stressed that the terms of political discourse should be acceptable to all who are

³⁴Ibid.

politically reasonable, whether or not those persons are philosophically reasonable. Failure to reject Herman's motivational requirement obscures the claims that philosophically unreasonable persons may have in public discourse, from the right to a fair trial (which Herman would take for granted) to a right to be left alone to pursuits that are non-aggressive, even if morally dubious.

Moral judgment in the political arena does not inherently commit us to the pursuit of philosophical insight and resolution. One may go so far as to judge that the views and practices of certain persons are worthless yet have no obligation to compel those persons to change nor to engage in dialogue with them. Justice may require us simply not to interfere with them. This does not imply a disengaged liberalism but, rather, expresses appropriate respect for political autonomy—autonomy secured by protecting those views and practices compatible with the greatest range of equal rights and liberties for all (that is, by the compatibility requirement). Whereas philosophical disagreement characteristically leads to attempts at philosophical resolution, there need be no drive to philosophical resolution in the political arena. Political deliberation often can and should leave philosophical disagreements alone. Moreover, given the philosophical unreasonableness of some, there may be no rational grounds for attempting a resolution. Such is life in a just democratic society.

VI.

We have described how it is possible for philosophically unreasonable persons to accept a politically reasonable conception of justice. At the same time we acknowledge a likely gulf between actual practice and ideal theory. Persons who appear to be politically reasonable may accept the political conception as a mere *modus vivendi*. Such persons thus turn out to be politically unreasonable, biding their time until the balance of power shifts in their favor, whether through sheer force or a tyranny of the majority. Still, there presumably are those, few as they may be, with philosophically unreasonable views who believe that the values of toleration and equal citizenship are politically fundamental.

The fact that philosophically unreasonable people exist is no more a problem for our account of toleration than for any other theory. We have criticized preemptive attempts by ideal theories to exclude such persons from political consideration. Holding the line in principle against the philosophically unreasonable does not further help practically to bring about or maintain just political arrangements. The worry that philosophically unreasonable persons threaten such arrangements seems exaggerated insofar as these persons generally meet the requirements of political reasonableness. Their views may present obstacles to personal ethical development or to scientific inquiry, for instance, but this cannot justify restricting the domain of toleration.

Views that are not philosophically reasonable are commonplace, and their being widely or deeply held does not make them any more reasonable. Efforts to

exclude persons who hold such views would be neither feasible nor, more importantly, politically reasonable. Comprehensive philosophical enlightenment should not be a precondition of moral status in a political society founded on the idea of a social contract. In this sense our account of toleration is less ambitious and more practical than accounts that insist on satisfying more strenuous philosophical requirements. The requirement of tolerating the philosophically unreasonable appropriately extends the familiar liberal concept of toleration.

Of course, just political arrangements will depend on some reasonable philosophical orientation. Yet we contend that the range of candidate philosophical views is rather narrow with regard to the basic rights and liberties of citizenship. There can be no reasonable disagreement, for example, about whether the worst off have legitimate claims to a minimally decent standard of living. This is hardly a matter for philosophical enlightenment.

One of our aims has been to explicate the distinction between *philosophical* and *political* reasonableness. We have also pointed out the significance of failing to recognize this distinction. A greater awareness of how political and philosophical reasonableness diverge calls attention to serious problems with accounts that would limit the scope of toleration or discount its value altogether.