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Author(s): Loren A. King

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# THE FEDERAL STRUCTURE OF A REPUBLIC OF REASONS

LOREN A. KING  
*Wilfrid Laurier University*

*Following Rawls, many political liberals hold reasonableness in high regard. Reasonable citizens can disagree, however, and some may find their arguments routinely ignored in elections and legislatures. Should we be troubled by such failures of institutional responsiveness as a matter of justice? The author argues that the expectation of such failures would lead parties in an original position to favor certain classes of institutions over others: A Theory of Justice and Political Liberalism together suggest a particular federal structure to a republic of reasons.*

**Keywords:** *Rawls; federalism; public reason; legitimacy; representation*

What a social system must not do clearly is to encourage propensities and aspirations that it is bound to repress and disappoint.

—John Rawls, *A Theory of Justice*<sup>1</sup>

## INTRODUCTION

Political liberals ground legitimacy in public reason, and an associated ideal of reasonableness: as reasonable citizens we desire to pursue our ends in cooperative associations with other similarly motivated citizens, whom we view as free and equal, and to whom we want to justify our public claims with

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reasons we think they are able to accept. But even reasonable citizens will likely disagree on some, perhaps a great many, matters of moral principle and public policy, and some may find that their arguments routinely fail to persuade other reasonable citizens. Suppose that some citizens of a just liberal democracy find that elections, referenda, and legislatures are persistently unresponsive to their reasonable arguments on matters profoundly important to them. By this I mean that their reasonable arguments are not represented in the following sense: not only are policy decisions sometimes made that place significant burdens upon them with insufficient consultation and justification but also, as importantly, their reasonable arguments on certain public issues are rarely, if ever, given careful consideration specifically in electoral campaigns and legislative deliberations.

Should political liberals be troubled by the vagaries of electoral and legislative rules that can lead to reasonable citizens being excluded in this way? Should we be troubled when some reasonable arguments about principle and policy are generally absent from campaign platforms, issue advocacy advertising, and legislative debates, in large measure by virtue of the incentives associated with particular electoral rules and divisions of powers between local, regional, and federal or national legislatures? Or should we view such matters as the stuff of political conflict and compromise, with a wide range of outcomes acceptable, morally speaking, so long as the basic structure of society is just, regulated by a conception of justice that falls within public reason?

I will show that political liberalism, as formulated by John Rawls, provides a rather surprising answer to concerns about reasonable disagreement and unresponsive electoral and legislative arrangements: the logic of the original position suggests a particular federal structure to a republic of reasons. Rawls himself suggests that the institutional particulars of a just polity would be addressed after parties have settled on principles of justice, when the veil of ignorance is "partially lifted" and general facts of their society, such as broad patterns of cultural identification and political opinion, are revealed.<sup>2</sup> In contrast, I argue that institutional considerations are more deeply woven into Rawls's argument than he himself suggests.

Before making this case, however, I want to offer some thoughts on why my conclusions matter: even if my argument persuades, why should political liberals (or anyone else) care about when, precisely, institutional considerations arise in the Rawlsian approach to justice and legitimacy? I offer three reasons.

First, political liberalism encourages a certain sort of participation in public life: we justify our public claims with sincere arguments tailored for those

who may not share our beliefs, traditions, and aspirations. But if political arrangements are persistently unresponsive to some such arguments, then this amounts to fostering “propensities and aspirations” that will inevitably be thwarted,<sup>3</sup> and this may eventually result in indifference or hostility toward the political system by those who are encouraged to participate, but then routinely excluded from electoral and legislative influence. Certainly some forms of political influence are enjoyed by everyone in a free and fair polity, but are not directly electoral or legislative; on many issues, however, we want our arguments to sway voters and persuade representatives. It seems perverse to encourage sincere public argument that is unlikely ever to have just this sort of influence. The best we might hope for, under such a regime, is that citizens at least be civil in treating one another “as rivals, or else as obstacles to one another’s ends.”<sup>4</sup> Persistent failures of responsiveness to some reasonable arguments may, then, foster attitudes inimical to reasonableness. Whether such attitudes are morally justified or empirically likely are difficult questions; but if a solution to the problem of responsiveness is woven into the fabric of Rawls’s theory, then we largely avoid these troubling issues.

Second, an implication of my argument is that a moral basis for a particular class of federal arrangements emerges from the logic of Rawls’s *A Theory of Justice* and the aims of his *Political Liberalism*. Mine is certainly not the first effort to find moral foundations for federalism in the conceptual space of egalitarian liberalism,<sup>5</sup> but my argument suggests a general result: a democracy consistent with (Rawlsian) political liberalism will be federal in particular (non-Madisonian) ways.

Third, my argument is motivated by a problem facing a particular sort of minority group in liberal democracies, and many trees have been felled over similar problems facing a range of minority groups (cultural, religious, national, ethnic) in such settings. Debates rage among political philosophers over democratic secession, liberal nationalism, multinational democracy, and cosmopolitan liberalism. Rather than taking sides in specific controversies, my argument intervenes in these debates in the following way: if the logic of the original position applies, then the institutions that follow from application of the Rawlsian framework will be federal in the ways I suggest, whether we are concerned with regional governance, legitimate rule in divided societies, or the contours of a just global order.

I begin by framing the problem of reasonable disagreement and institutional responsiveness within political liberalism, explaining the consequences of the majority principle under reasonable pluralism. I then present my argument about the federal structure of a Rawlsian republic of reasons.

*PUBLIC REASON, REASONABLE DISAGREEMENT,  
AND MAJORITY RULE*

For political liberals, legitimate authority rests in reasons of a certain character: they are public, sincerely offered, and plausible to reasonable citizens. Reasonable citizens view one another as free and equal; they do not resort to force and deception to advance their interests; nor do they justify their public claims by appeal to God, or Truth, or mere prudence. Rather, they offer sincere arguments, drawing on shared facts and plausible rules of inference, and avoiding as far as possible appeals to contestable claims grounded in particular religious or philosophical doctrines. Reasonable citizens make public claims within public reason: "the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution."<sup>6</sup> The content of public reason is the ordering of political values that are brought to bear on fundamental questions of right and obligation in a constitutional democracy.<sup>7</sup> This content is given by political conceptions of justice that are freestanding: their plausibility does not depend on particular comprehensive doctrines.<sup>8</sup>

Public reason favors an overlapping consensus on a political conception of justice, but it does not ensure agreement on all or even most public matters. Different reasonable understandings of how political values ought to be interpreted and ordered may lead to conflicting reasonable judgments on matters of law and policy. Citizens and their representatives may argue sincerely from the same body of facts, applying plausible and even shared rules of inference, yet arrive at conflicting judgements. The limits on practical reason that make such disagreement possible, even likely, are what Rawls calls the burdens of judgement.<sup>9</sup>

When reasonable disagreement persists, some version of the majority principle is generally thought to be both necessary and legitimate: if equal basic liberties are secured and public proceedings are fair and informed, then the judgement of a (suitably defined) majority of reasonable parties ought to be authoritative. No tyranny of the majority results, because "reasonable persons see that the burdens of judgement set limits on what can be reasonably justified to others, and so they endorse some form of liberty of conscience and freedom of thought."<sup>10</sup> It follows that a reasonable majority, upon winning a fair election, referenda, or legislative judgement, need not make concessions to members of a minority group merely because of the reasonableness of dissenting views. Assuming no injustice, mere disagreement with a fair electoral outcome does not suggest illegitimacy, however reasonable the sources of disagreement.

Indeed, if political liberalism is grounded in the logic of the original position, then parties to an overlapping consensus on a political conception of justice will already have weighed carefully “the strains of commitment” and will only have agreed to those principles the consequences of which they could accept, even if the worst possible contingency prevails. Rawls’s two principles of justice seem *prima facie* to satisfy this condition: a just basic structure, regulated by Rawls’s two principles, will be such that rational and reasonable parties accept the burdens of persistent minority status in electoral campaigns, legislative debates, and subsequent decisions, because their basic liberties—and most importantly, their self-respect—are not unduly threatened by their status. These citizens can exert influence on fellow citizens through public speech and associational choices, and these freedoms are protected by nonmajoritarian institutions, most notably a system of independent courts upholding a constitution.<sup>11</sup> Given equal basic liberties of conscience, expression, and association, “everyone has a similar and secure status when they meet to conduct the common affairs of the wider society. No one is inclined to look beyond the constitutional affirmation of equality for further political ways of securing his status.”<sup>12</sup>

Is it enough that equal standing, as citizens, is publicly affirmed and protected for all? Or should we worry that, in spite of equal standing, persistent failure of some views to gain electoral and legislative sway may undercut the reasonableness of those citizens who affirm these views? Rawls suggests not, describing a moral psychology for rational and reasonable parties, whose desires are not merely for things as such, but also include desires to act in principled ways, and especially in accord with principles that cohere within some attractive moral or political conception, such as a conception of justice.<sup>13</sup> Rawls suggests that, conditional on a sufficiently nurturing and educative family environment, our experiences within a just basic structure will tend to reinforce our trust in others and our support for just institutions. Indeed, just principles and institutions ensure their own stability by fostering a sense of justice:

[W]e develop a desire to apply and to act upon the principles of justice once we realize how social arrangements answering to them have promoted our good and that of those with whom we are affiliated. In due course we come to appreciate the ideal of just human cooperation.<sup>14</sup>

This is not simply prudential updating of one’s expectations; rather,

the active sentiments of love and friendship, and even a sense of justice, arise from the manifest intention of other persons to act for our good. Because we recognize that they wish us well, we care for their well-being in return.<sup>15</sup>

Having thus acquired the sense of justice and reciprocity critical to reasonableness, we enter public life as free and equal citizens, secure in our self-respect and the fair worth of our liberties.

And this is, Rawls thinks, sufficient for legitimacy and stability:

[P]olitical liberalism does not hold that the ideal of public reason should always lead to general agreement of views, nor is it a fault that it does not. Citizens learn and profit from debate and argument, and when their arguments follow public reason, they instruct society's political culture and deepen their understanding of one another even when agreement cannot be reached.<sup>16</sup>

Even if some reasonable parties remain unpersuaded by the argument that has swayed the majority and carried the day, their reasonableness is surely not threatened; instead, what follows from their participation in public life is an "education in public spirit" and an "affirmative sense of political duty and obligation."<sup>17</sup>

On this Rawlsian view the legitimacy of majoritarian decisions is determined by whether the procedure and the resulting decisions comport with the ideal of "democratic citizens trying to conduct their political affairs on terms supported by public values that we might reasonably expect others to endorse."<sup>18</sup> Legitimacy requires that, when voting in referenda and elections, "we sincerely believe that the reasons we would offer for our actions—were we to state them as government officials—are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons."<sup>19</sup> For Rawls, legitimacy is secured by institutions that are in accord with public reason, not a particular political conception of justice. So long as some reasonable conception of justice is authoritative, it is enough that reasons be sincerely offered, and emerge from political values the interpretations and orderings of which other citizens would accept as plausible and deserving of sincere consideration, all against a background of justice secured by his famous principles.

### *Choosing Principles, Choosing Institutions*

I think the question of whether persistent reasonable disagreement eventually undermines reasonableness is important and worthy of further analysis, both as an empirical conjecture and a moral puzzle. For my purposes here, however, I will accept as entirely plausible the case just rehearsed that

persistent reasonable disagreement within just institutions is consistent with enduring reasonableness. But Rawls has only given us broad terms of legitimacy: can the Rawlsian approach tell us anything more precise about the institutional architecture of a just political order? Do *A Theory of Justice* and *Political Liberalism* together tell us anything about the relative worth of, say, single-member plurality versus multimember proportional voting systems, or confederal versus federal divisions of authority? Are such differences of moral consequence when reflecting on justice, or are they sorted out once the basic architecture of a just polity has been established? I argue that such institutional questions are answered very early on in considerations of justice: some institutional constraints follow from the logic of Rawls's argument from the original position and veil of ignorance.

Rawls's account of justice certainly does not ignore issues of institutional design,<sup>20</sup> although Rawls himself did not address many such questions in his writing. And again, in *Theory*, Rawls is explicit that specific institutional questions can and do surface as concerns of justice; they do so, however, as secondary concerns, addressed in later steps of his four-stage sequence, after the core principles of justice have already been settled.<sup>21</sup> The principles of justice apply to the basic structure, and ought not to reflect specific features of our society or ourselves. The veil of ignorance models the irrelevance of certain facts and interests when formulating and justifying principles of justice. The veil obscures this information, allowing choosing parties to know only "that their society is subject to the circumstances of justice and whatever this implies," including "general laws and theories"<sup>22</sup> offered by the human sciences. Once we begin slowly lifting the veil and are permitted to argue about general features of our society (for instance, patterns of cultural and religious pluralism, fractious historical disputes between regions, or legacies of racial injustice), then we may forge institutions in accord with the principles of justice we have already chosen, but tailored to reflect the particulars of our shared social and economic circumstances.

I do not deny the elegance and plausibility of Rawls's formulation. Yet I believe that some constraints on institutions would inevitably enter into even our reflections on justice, absent appeal to particulars of our shared circumstances. The expectation of social and moral diversity, and the possibility of persistent exclusion, can be derived by rational and reasonable parties with only facts "inferred from the circumstances of justice" and "the first principles of social theory."<sup>23</sup> That is, we do not need to know that our society has a durable religious minority or cultural cleavage, for instance, to suspect that a free society would foster and sustain such differences, and that some citizens will find themselves in the minority on important moral and philosophical issues. Nor would we need information about the particular institutions of



our society to infer that a collective decision procedure will be necessary to implement just laws and policies, and that some decision procedures, associated electoral rules, and constitutional divisions of powers will be less rather than more responsive to a wide range of reasonable values and interests.

Thus when behind a veil of ignorance, we would seek to maximize the degree to which institutions allowed voice and sincere consideration for diverse reasonable arguments, not simply in the public sphere broadly understood, but also in the electoral and legislative processes of a just regime. And although knowledge of specific electoral systems may well be derivable from "the first principles of social theory" available behind the veil, this is not necessary for my case: we need not decide on specific electoral mechanisms or constitutional designs behind the veil of ignorance. Instead, we need only insist that, along with principles of justice, we commit ourselves in later stages of Rawls's four-stage sequence to rejecting those electoral and constitutional designs that are obviously less rather than more responsive to diverse reasonable arguments. To be sure, we might then discover (improbably) that our society has no significant historical, cultural, religious, or racial cleavages, and no reasonable arguments that are persistently excluded from electoral and legislative debates and decisions. But because responsive institutions are of great importance just in case such a circumstance does not obtain, our reasoning about electoral systems and constitutional designs behind the veil ought to be risk averse in just the same way Rawls suggests in his discussion of the rationale for the difference principle: on such critical matters with enduring consequences for us and those we care about, we should ensure the most responsive institutions possible when we slowly lift the veil of ignorance, discovering facts about our society, our position in that society, and our own identity.

Of course Rawls's original position and veil of ignorance are not meant to be taken as literally as I have treated them here. Instead, they model a fair choice situation for rational and reasonable parties. My conclusion should, then, be formulated thus: Rawls's ideal of rational and reasonable agents reflecting on justice does not preclude (and indeed seems to favor) insuring against relatively unresponsive electoral institutions and legislative arrangements. This is because rational and reasonable parties can, based on the circumstances of justice and general theories of society, expect to find in their society (1) a diversity of values and reasonable opinions, (2) persistent minorities, and (3) a chronic lack of electoral and legislative responsiveness to reasonable arguments offered by some identifiable minority groups. Thus justice as fairness, appropriately understood, counsels that we be sceptical of institutional forms, such as single-member districts and first-past-the-post electoral rules, that are more likely than others to remain aloof to some rea-

sonable values and traditions in two important spheres of public life in a liberal democracy: electoral campaigns and legislative debates. Even if Rawls's two principles leave us free to make arguments and sway citizens through our public expressions and associational choices, we also want to avoid electoral and legislative arrangements that leave us with only those avenues open to us, if we are members of a minority group with reasonable arguments in support of our public claims.

The aim of minimizing electoral and legislative exclusion and maximizing feasible responsiveness as conditions of justice addresses the concern that, for any identifiable group sharing a reasonable value or judgement, there is likely to be some distinct subgroup whose own interpretation of that value or judgement is in the minority. But parties to an original position need not seek to ensure that every conceivable shade of reasonable opinion gain a definite threshold of electoral and legislative influence. It is enough that, consistent with reasonable political conceptions of justice, parties eliminate those electoral procedures and legislative institutions that are clearly inferior to alternative arrangements in realizing favored principles of justice.

Something like this line of argument seems to me to be implicit in an insightful analysis of Rawls by John Tomasi,<sup>24</sup> and Will Kymlicka has made similar use of Rawls's original position in an illuminating examination of territorial boundaries from a liberal-egalitarian perspective.<sup>25</sup> Whereas Rawls takes territorial borders as settled for parties entering his original position, Kymlicka suggests that this condition is unnecessary. Questions of boundaries could be presented to parties in the original position, and Kymlicka reasons that, behind the veil, we would tend to favor borders that demarcate national cultures. Why wouldn't parties in the original position instead favor open borders (reasoning that they may end up having been born in a desperately poor region with unenviable resource endowments, thus having liberties of little worth through no fault of their own)? Kymlicka's idea is that open borders—or no borders at all—could easily allow migration and settlement patterns that threaten some national cultures, and these cultural contexts are vital to members' effective autonomy. Not knowing whether we are members of potentially threatened cultures, we would opt for borders and supporting institutions (immigration laws, policing, language policy) that favor secure national cultures, consistent with core liberal values.<sup>26</sup>

Distinct from (but consonant with) Kymlicka's argument, my similar interpretation of the Rawlsian model does not use the idea that societal or national cultures are vital to autonomy (although my approach is certainly not hostile to that possibility). I only require that such claims can be framed by reasonable parties within public reason, and that the bearers of these reasonable views (the importance of a shared language, for instance, or a vegan

lifestyle) may face persistent losses in elections and referenda under some electoral schemes. On my view it is the potential threat to political inclusion and institutional responsiveness that motivates parties behind the veil to reject some institutions (open borders, for example, or simple majoritarian electoral schemes), not the threat to cultural security and autonomy, as in Kymlicka's formulation.

### *Deliberative Proportionality*

But what is a responsive institution? I hinted at the outset that a responsive institution is representative in a broad sense. What, by contrast, would be a narrow sense of representation? A widely held view is that responsiveness, on any reasonable definition, is a positive function of legislative representation. If our constituency is represented in our parliament or congress, then policies are more likely to be responsive to our interests than if we are not represented in this way. It follows that, the more proportional the scheme of representation, the more responsive legislatures will be to diverse interests. But although I think some degree and forms of proportionality are indeed favored by a Rawlsian framework, I resist the popular assumption of an easy linkage between proportional legislative representation and responsiveness to reasonable arguments. Why? Because there may be plausible situations where some constituency might be better served by less or even no legislative representation, as Thomas Schwartz has suggested.<sup>27</sup>

Nonetheless, movement toward more proportional methods of representation seems a likely result of reflection on justice, given the constraints imposed by the original position and veil of ignorance. This is, however, a tendency to favor what we might call *deliberative proportionality* as a condition of justice: the aim is not to ensure that disciplined representatives serve as mere delegates, advancing the shared policy preferences of their constituents, but instead to ensure that bearers of reasonable arguments can be confident that their values and reasons will be heard and considered not only in the public sphere generally, but also specifically in the campaigns that fill public offices, and in the deliberations of legislative assemblies. This is simply what rational and reasonable parties would favor as the best strategy for realizing justice as fairness.

### *Reasonable Autonomy*

More proportional methods of representation may not be sufficient, however: parties are likely to want feasible opportunities for influence over the

spaces in which they live their lives, particularly with others who share their reasonable values and aspirations. Considerable autonomy for diverse ways of life thus seems to be a plausible constraint imposed on whatever institutions are selected in accord with justice as fairness. Such autonomy might be either regional (i.e., territorially defined national cultures or similar groupings) or non-spatial (i.e., religious and intellectual traditions), but it seems to follow from reflection, by rational and reasonable parties behind a veil of ignorance, on the possibility that sustained reasonableness might, in important ways, be implicated with feasible opportunities to shape the character of our shared public spaces, shared cultural traditions, or (likely) both. This does not require that we mandate (ridiculously) that minority values and interests must be decisive on at least some occasions. But it does require attention to feasible opportunities for legislative influence in shaping features of our public sphere, even when institutions at broader spatial and organizational scales are persistently unresponsive to our distinctive reasonable values and interests on a range of issues.

This requirement—of significant autonomy for distinct minority groups with reasonable yet unpopular claims—is necessary to ensure that democratic procedures at all spatial and organizational scales are correctly perceived to be grounded in enduring commitments to reasonableness and mutual respect, even in the face of continuing moral, religious, and philosophical disagreements. By limiting overarching constitutional concerns to preserving the fair worth of basic liberties, the federalism associated with political liberalism allows groups to gain effective voice on certain issues and fair representation on others, but without reifying group identities: as reasonable, groups are not immune to scrutiny and criticism from without, or challenge and transformation from within.

### *RAWLSIAN FEDERALISM*

I have argued that, in a Rawlsian original position, rational and reasonable parties would anticipate the possibility of persistent minority status, and would thus reject certain institutional forms as a threat to responsiveness and inclusion under plausible expectations of diversity and disagreement in a free society. It follows that a just basic structure will be federal in a certain way: invoking a richer historical and conceptual vocabulary, we might say that parties in the revised Rawlsian choice situation would tend to favor Althusian over Madisonian forms of federalism.<sup>28</sup>

As Thomas Hueglin notes, probably the most familiar source of ideas about federalism for North American political theorists is the collection of statements by James Madison, John Jay, and Alexander Hamilton in *The Federalist Papers*. This vision of federalism favors a constitutional separation of powers in which states have important spheres of authority but are ultimately beholden to the federal government, and in which the political divisions of the greater union help to solve “the mischiefs of faction” by limiting the influence of regional majorities.<sup>29</sup> The American federalists were greatly inspired by Montesquieu’s *Spirit of the Laws*, but Hueglin argues that their vision of federalism deliberately distorts Montesquieu’s conception of a “confederate republic,”<sup>30</sup> which is more consonant with the earlier reflections of Johannes Althusius:

While the Federalists endorsed federal supremacy over the states, Montesquieu and Althusius insisted on a balance of power ultimately tilted in favour of the constituent members of a federation. While the Federalists sought to employ territorial divisions of power as a means of cutting across social community and class, Montesquieu and Althusius understood it as a means of reinforcing the stability of such communities. And while the Federalists based their arguments on a hierarchical differentiation of national and local policy needs, Montesquieu and Althusius emphasized that smaller communities would remain fully functioning polities in their own right.<sup>31</sup>

I am suggesting, then, that parties to a Rawlsian original position would tend to prefer an Althusian union characterized by deliberative negotiations among reasonable groups, rather than a constitutionally delineated hierarchy of territorial boundaries and political responsibilities. By way of conclusion I want to sketch some rough contours of this sort of federalism.

Could such a federation of reasonable groups sustain sufficient loyalty to survive as a distinct political community? This is an important concern, but there is no clear reason to think that reasonable and rational citizens cannot be loyal to political institutions at different spatial and organizational scales.<sup>32</sup> Such complex loyalties plausibly require, however, that spaces of resistance and dissent in the public sphere be more than mere “sounding boards,” where the claims of reasonable minority groups can be heard, but then safely put aside by the majority.

What emerges from my argument is a vision of federalism with somewhat fragile boundaries—legal, territorial, and imaginative. Groups with distinctive values and interests can gain effective voice in regional and federal legislatures in rough proportion to their numbers. They can also sequester themselves within private associations and even distinct territorial boundaries, inside of which they form a clear majority and can regulate activities and shape the character of their public spaces. But these are reasonable citizens,

committed to basic rights and mutual respect. Because of this, boundaries are tenuous and vulnerable to challenge and subversion by other free and equal citizens, who may call upon others to justify boundaries, and the values and practices they protect.

This may seem a problematic stance, to suggest that the desire for institutional responsiveness behind the veil of ignorance will lead parties to favor institutional forms that seem to fragment the polity: after repeated disagreement, citizens may lose whatever respect they had for other beliefs, practices, and interests. They may tolerate others, but banish themselves whenever feasible to the realm of the private, as defined by their particular beliefs and principles, and for the most part respected as reasonable by prevailing liberal and democratic institutions. They may eventually refuse to discuss any issues at all with those whose beliefs and practices they find abhorrent, choosing instead to accept their existence as an unpleasant but necessary reality; or they may commit themselves to shouting down these offending voices when they are encountered, and to retreat whenever possible into carefully regulated public enclaves, occupied and policed by those with the same beliefs, values, and practices as themselves. This characterization resonates with the realities of many communities in modern plural societies: we see cultural, ethnic, and religious enclaves throughout existing liberal democracies, both in small rural communities and in insular urban enclaves and suburban neighborhoods.<sup>33</sup>

These strategies of consolidation and sequestering are not necessarily unreasonable: they might reflect a weariness with advancing reasonable claims to no apparent avail.<sup>34</sup> Indeed, a prominent concern about federal states is that such arrangements inevitably fragment the demos, undermining loyalty to shared values and political institutions precisely by allowing groups considerable autonomy to decide their own fates.

This concern, although important, seems to me to overestimate the degree to which fundamentally reasonable groups with conflicting values and interests can successfully insulate themselves under a federal system committed to liberal values and deliberative practices among reasonable parties. Citizens may not be uniformly reasonable over time, certainly. Yet institutions predicated on reasonableness may themselves be transformative, pushing participants toward more accommodating interpretations and articulations of their distinctive values and preferences.

A plausible conjecture, I think, is that such transformations may be further encouraged by durable patterns of economic exchange. Economic interdependence across fragile boundaries may work in concert with deliberative practices to sustain reasonableness. This is because the realities of modern societies and their complex economies make any and all borders increasingly

vulnerable in a variety of ways. The notion that we only engage with others in an agora, from which we can retreat into distinct and guarded publics, is increasingly untenable in a world where economic imperatives diminish the significance—both material and imaginative—of spatial boundaries. Given these tendencies, a federalism of fragile boundaries can deploy central authority to maintain complex ties of economic interdependence sufficient to maintain the fluidity of cultural and political boundaries.

The idea that economic integration may buttress, rather than undermine, cultural and moral federalism relies on the expectation that crossing established boundaries, even for seemingly mundane economic purposes, is often pregnant with political meaning and moral significance. Mere toleration from within accepted boundaries may be unstable under a dynamic pluralism of contested boundaries, in which even apparently mundane or blatantly self-interested acts of transgression are part of ongoing political arguments. Under such conditions, mere toleration can shift with varying degrees of ease into mutual respect, a

character of individuals who are morally committed, self-reflective about their commitments, discerning of the difference between respectable and merely tolerable differences of opinion, and open to the possibility of changing their minds or modifying their positions at some time in the future if they confront unanswerable objections to their present point of view.<sup>35</sup>

Subversion of boundaries may, of course, be widely viewed as illegitimate within the bounded group in question, and perhaps also by many of those on the outside as well. Repeated violations of boundaries, or efforts at redrawing borders, will thus lead to anger and resentment. This will certainly be the case if the subversive activities seem motivated largely by self-interest, and are carried on by parties who refuse to answer questions and complaints from those who feel adversely affected by these activities.

Consider, for instance, strategic redistricting by legislators aimed at sustaining electoral advantages for some privileged group, or to protect incumbents. Redistricting may sometimes be necessary to reflect demographic changes, certainly; but a real concern is that ruling political parties may use redistricting to advance their own political interests, creating new districts that are almost certain to elect incumbents or their allies. Similarly, influential elites may be able to sway legislatures to redistrict in ways that preserve an electoral majority for white residents in increasingly diverse metropolitan areas. These have been long-standing worries in both the United States and Canada, for instance.

The redistricting case exemplifies an important concern for my argument, and indeed for any effort to provide moral foundations to federalism: the question of membership in a demos. Regardless of whether redistricting is grounded in reasonable concerns or objectionable preferences, a deep concern with the practice is that it generates majorities on a range of issues not by reflection on those issues, but instead by drawing territorial boundaries based on demographic considerations that may or may not have any bearing on the substance of the issues at stake. This might seem to be particularly worrying for the varieties of federalism I am characterizing as derivable from Rawlsian political liberalism. If we conceive of federalism as “treaty-like relationships among autonomous collectives, which remain open to reconsideration and renewal,”<sup>36</sup> then redistricting is a process of legislating autonomous collectives by dint of majority power as defined by the legislature, rather than through deliberative self-definition by group members. Yet I do not think this concern is as threatening as it might seem at first blush, for two reasons.

First, the worry about redistricting is not about changing boundaries *per se*, but doing so in ways that are unreasonable, yet difficult for interested parties to expose and challenge. But if processes of group identification and boundary drawing were open to widespread scrutiny, challenge, and revision on reasonable terms, then surely a plausible answer to the question “Who belongs to a demos?” is “Those who, upon sustained reflection and in light of relevant historical information and public debates, understand themselves as belonging to the particular demos in question.” There are, to be sure, important questions (about exclusionary impulses, and the distribution of entitlements and obligations) associated with this answer (because, on this definition, we may plausibly be members of several distinct publics). But if a group could define itself in this way, with debates open to scrutiny and challenge from both within and without, would we fault a provincial or federal legislature for accepting that deliberative self-definition in deciding how best to represent this group in political proceedings, including the drawing of jurisdictional boundaries? I suspect not.

Second, the sorts of federal arrangements I claim to be derivable from a Rawlsian choice situation lessen the worries associated with redistricting in the United States and Canada, by favoring experiments with more proportional schemes of representation. Such schemes challenge, or at the very least supplement, the historical focus on geographical districting that has become a durable legacy of most modern representative democracies. By encouraging representation of groups and values that do not map easily onto existing geographic boundaries, a federalism of more proportional representation among reasonable groups permits serious (but reasonable) challenges to pre-



vailing boundaries. Furthermore, more proportional systems of representation can provide incentives for political debate and representation even in jurisdictions dominated by a particular voting bloc, lessening considerably the incentive for legislators to gerrymander non-competitive districts to protect incumbents. Such efforts are less appealing if, even in seemingly “safe” districts, other political parties can gain representation in some proportion to their support, however modest that may be.<sup>37</sup>

The redistricting example thus may not be particularly worrying under the forms of federalism I’m considering here, as compared with, say, the current single-member district systems that prevail in Canada and the United States. But a more problematic example is efforts by corporations interested in extracting natural resources from lands occupied by indigenous peoples, or held in trust by the government under conservation programs: these companies may “buy out” key members of indigenous communities, or lobby aggressively with the relevant authorities to gain access and legal title to these resources. Such efforts are exemplified in Canada and the United States by various attempts to allow mining on, or lumber extraction from, lands used and occupied by indigenous tribes, or held as wildlife sanctuaries or national parks. Such self-interested efforts on the part of corporations tend to be aggressive and intrusive, without any effort made by the offending companies to explain why their interests ought to prevail over other competing interests, other values—for instance, those of local communities whose livelihood may be threatened by the corporate activities in question. Such intrusions into other systems of values and interests, and onto distinct physical spaces bound up with these values and interests, are likely to be (correctly) interpreted as predatory and insulting to those whose values and interests are threatened.

Yet upon closer examination even these cases are less clear than they at first appear: persistent attempts to subvert prevailing spatial and normative boundaries may eventually lead some of those on the inside to reflect carefully on why their borders—and by implication, their characteristic values and traditions—are being threatened from without. Addressing this question calls for encounters with those on the outside, so as to discover who is responsible for the subversive efforts at issue, and to demand of these parties some justification for their actions. This very act of seeking accountability leads to the possibility of exchanges across group boundaries, and sets the context for the appeal to mutually acceptable reasons.

Such exchanges may at first be motivated simply by anger or distrust; and no doubt there will be a great many cases where anger and distrust are entirely justified, cases for which the subversion of a community’s distinctive values and norms, and intrusions into the physical space used by its members,

will in fact have been motivated by mere self-interest, as in the case of corporations interested in exploiting resources or dominating new markets, who offer modest but widely publicized concessions and incentives to local communities, even though shareholders are likely to gain far more from these intrusive activities than local employees and their families.

In some cases, the demand that outside parties account for their actions will lead to a defiant stand: "We have intruded onto your significant places or interfered in your activities, challenging your characteristic values and rules," the interlopers may say, "because one of your own members has appealed to us, citing principles of fairness, fundamental right, or economic liberty, that we uphold, but you do not." Thus, for instance, the imposition of state or federal law with respect to gender equity on indigenous or religious communities may be the result of women within these communities appealing to state or federal courts, asking these agencies to protect them from traditional practices they find oppressive. To such incursions, the response may be angry retreat, or retaliation of some sort, or dialogue aimed at finding some common ground, from which to negotiate a solution acceptable to all parties.

The first two responses may be appealing in some cases, in particular for those groups that are closed to internal discussion of their basic values and rules of conduct. For some very insular groups, no intrusion by outside influences is ever justified; such groups may forever remain closed enclaves, the leaders and perhaps most or all members of which are unwilling to consider the possibility that their characteristic beliefs, interests, and aspirations might be questioned, even transformed. But such groups are, in all likelihood, not reasonable. For reasonable groups pursuing the third strategy, the possibility of transformation is real: we may ourselves be transformed through deliberative encounters with other facts, opinions, traditions, and perspectives. For groups that are not insular, and especially those for which boundaries are already highly permeable (some immigrant communities, for instance, members of which are often very open to the values and traditions they find in their new surroundings), this transformative possibility is experienced at a personal level in a range of encounters.

Some such encounters are formal, routinized, and unambiguously public, as when we interact with other citizens through various roles in civil society (as employees and consumers, for instance), or in the formal public sphere (for example, as jurors, members of an established political party, or elected representatives). Other encounters are less formal: some of these occur in public spaces during our day-to-day affairs in towns and cities; others take place in private spaces, as when we invite a new friend or colleague to share a meal with us at home, inviting them into a neighborhood they may never have entered before, and exposing them informally to our own values and prac-

tices. And yet other encounters occupy an ambiguous and sometimes contested terrain between our settled notions of public and private.

Indeed, some of our encounters with other beliefs and perspectives may be unsettling and disconcerting precisely because they challenge our assumptions about where the boundary lies between private and public. And yet other encounters may be imaginative, provoked by our engagement with, for instance, works of literature, art, and journalism.<sup>38</sup>

Our encounters with other persons and ideas in a variety of settings may lead us to reformulate our values, interests, and aspirations in ways that may not have occurred to us prior to our encounters with other citizens, other perspectives, other beliefs and traditions. We may return to our neighborhoods, our city, our province, our distinctive communities, with new ideas about how our own favored spaces and associative norms might be reshaped, to better accommodate some new idea or practice. But what is critical here is that, once unreasonable incentives for violating and transforming boundaries have been removed by more proportional schemes of representation and more balanced power differentials among diverse groups, what remain are reasonable debates over reasonable values and demands. Whether or not these exchanges are reliably transformative in the way I've outlined, there is certainly no good reason to think that they will necessarily result either in greater entrenchment and vigorous policing of boundaries, or persistent efforts to threaten the distinctiveness of reasonable traditions by constantly redrawing boundaries (conceptual and geographical).

### *Unsettling Implications?*

Nonetheless, this account of federalism with contestable boundaries and fluid identities might seem to have unsettling implications for popular liberal intuitions about the content of certain fundamental rights. Reasonable differences over, say, environmental impact may be problematic if, as is so often the case, externalities extend well beyond the jurisdictional boundaries separating these differing political conceptions of justice. But I've suggested that the very nature of reasonable disagreement—within deliberative institutions and a complex, integrated economic region—encourages vigorous debate that will likely challenge settled convictions about rights and the character of the public sphere within each distinctive community of shared reasonable beliefs. Boundaries of effective control that survive these encounters will reflect these reasonable disputes, transformed orthodoxies, and subsequent judgements about morality and justice. The fluidity of identities, and flexibility of reasonable values within surviving boundaries, reflect the transformations of public reason itself.

This suggests a deeper challenge to prevailing orthodoxies: boundaries may be meaningful yet fragile, not simply between communities embodying differing reasonable conceptions of the good life and the appropriate ordering of political values, but also within these communities, and perhaps also beyond federal systems. If, as Rawls has suggested, the distinction between public and private falls out of political conceptions of justice, then why wouldn't other boundaries have a comparable origin, as markers of reasonable debate over the content of public reason itself?

This view seems entirely consistent with some partial commitments—that is, claims that there might be something special, ethically speaking, about our fellow citizens—but only in the sense that we might, in some settings (for instance, against a background of basic justice), reasonably give special consideration to those who have accepted the burdens of membership in an association that we ourselves have (or would have), upon due reflection, freely joined, and to which we contribute our time and resources. What I follow others in denying is that such privileged status may be ultimately grounded in some intrinsic moral worth associated with historically and geographically contingent (and fluid) national and cultural identities.

Several of the scholars I have in mind here have been engrossed for some time now in trying to formulate theories about when reasonable claims are best accommodated by federal arrangements,<sup>39</sup> in contrast to claims with sufficient moral weight to justify the costs of separating and establishing a new sovereign state.<sup>40</sup> Others opt instead for applications of the “original position” logic beyond the territorially bounded Westphalian sovereign state, arguing that the spatial boundaries associated with traditional sovereignty claims by “nation-states” do not have any deep or enduring moral significance. I would add that the significance they do have derives chiefly from concerns for efficient public service provision, fair representation at various organizational scales, and a reasonable expectation of effective influence over the character of shared public spaces.

The acknowledgment of contingent (but denial of fundamental) moral significance for state borders and national identities is famously advanced within a classical Rawlsian framework by Charles Beitz,<sup>41</sup> and the idea is important to much subsequent work on cosmopolitan justice.<sup>42</sup> I cannot here take sides on specific debates between, say, some of the more enthusiastic cosmopolitans (those Simon Caney calls “radical”),<sup>43</sup> certain liberal nationalists, cultural rights advocates, and bemused but sceptical realists. Nor need I take sides for my argument to persuade. But what I have said thus far may reasonably be thought to chart a principled path between these poles on the question of justifying jurisdictional boundaries and associated institutional forms.

### CONCLUDING REMARKS

Although much recent work in liberal theory has suggested that particular policies and institutions are consonant with a Rawlsian approach to reasonable differences in values and traditions, and especially different cultural traditions, comparatively little has been said about what specific implications the logic of the original position might have for the institutional, and specifically electoral, architecture of a just polity. I have argued that rational and reasonable parties, aware of the likelihood of reasonable disagreement and the possibility of being in the minority on matters of profound importance to them, would not rest content with principles regulating the basic structure of society. They would also reject institutional forms that were obviously inferior to others with respect to inclusion and responsiveness. Thus the Rawlsian approach developed in *A Theory of Justice* and *Political Liberalism* has implications for the electoral and legislative forms of a just order: the Rawlsian state will be federal in a particular way.

A concern with this argument is that the resulting federalism of deliberative proportionality and partially autonomous enclaves may undermine loyalty and threaten stability. But the nature of reasonable disagreement, paired with the realities of modern economies and identities therein, mitigate the force of this concern: a federal government can foster economic integration in ways that ensure complex interdependence across boundaries, and vigorous public debate about the values and practices that sustain these boundaries. Boundaries can be at once meaningful yet routinely questioned; reasonableness is thus sustained, even given persistent reasonable disagreement. We may agree, then, with Michael Walzer that liberalism is importantly an art of separation,<sup>44</sup> but it is, at least in its (Rawlsian) political forms, an art that requires boundaries vulnerable to principled challenges, and collective identities open to reasonable transformation. Furthermore, although political liberalism does move us toward distinctly deliberative proportionality in legislatures, this move does not mandate choice only among existing electoral systems: institutional experimentation with mixed systems is to be expected as a practical matter. I only argue that such moves—toward deliberative proportionality and autonomy for distinct groups—are a condition of justice under what has arguably become the standard model of justice and legitimacy: Rawlsian justice as fairness.

Indeed my argument addresses a concern that the logic of *A Theory of Justice* is in tension with the aims of *Political Liberalism*: Rawls's original theory is grounded in an ideal of autonomy, of choosing our ends in freedom,<sup>45</sup> but political liberals allow that some citizens may be reasonable in limiting or even rejecting autonomy, and their reasonable claims and associated argu-

ments must be admitted within public reason. Political liberals thus ask us to give up a vital liberal conviction in the quest for an overlapping consensus in support of a political conception of justice. The problem I have explored here might be thought to follow from such a concern: even when majority rule is used within a just basic structure, reasonable disagreement creates a source of instability. If the same reasonable citizens are routinely thwarted in public decisions on matters deeply important to them, they may adopt increasingly unreasonable strategies of resistance, or simply opt for exit, forging instead their own just polity in which their political conception of justice is authoritative. By attempting to cast the scope of an overlapping consensus so broadly, the resulting consensus is too fragile, too vulnerable to just this sort of instability to be attractive to liberals. Political liberals must choose, it seems, between their liberalism, on one hand, and their desire for an overlapping consensus of reasonable comprehensive doctrines, on the other.

If, however, my argument persuades, then political liberalism can be secured against this worry, by properly framing the choice situation in a Rawlsian original position. When we do this, we find that parties in an original position would choose not only principles of justice, but also restrictions on the institutional forms through which these principles are realized. Specifically, these parties would favor federal arrangements that satisfactorily secure the fair worth of their liberties and tend to be more rather than less responsive to their reasonable values and interests, even if they are in a clear minority. Thus parties would seek broadly inclusive schemes of political representation, and they would want to ensure considerable autonomy for communities of reasonable citizens.

This conclusion stands aloof with respect to the questions of constitutional politics and institutional design that have recently dominated the empirical literature on federalism. Much of this literature emphasizes strategic considerations and associated problems of fiscal discipline, the efficient and effective division of political powers, and the management of regional differences in language, culture, and national values and traditions.<sup>46</sup> These are important concerns, to be sure. My analysis suggests, however, that there is an independent moral rationale for federal arrangements: if you find the argument of *A Theory of Justice* persuasive and the aims of *Political Liberalism* attractive, then you will be led to endorse particular sorts of federal solutions to the question "How should we arrive at authoritative public decisions when reasonable citizens disagree?" and you will do so quite apart from efficiency arguments and strategic considerations.

Thus, and finally, my conclusion here provides modest vindication of a stance recently suggested by Gerald Cohen: the attractiveness of our deepest normative commitments is not ultimately determined by facts about the

world.<sup>47</sup> Cohen develops this claim against Rawls, but if my argument persuades, then an instance of Cohen's general thesis seems to follow from a plausible formulation of Rawls's theory itself! Reasonable pluralism is a theoretical derivation, not merely a factual appeal: when citizens choose their ends in freedom, they are likely to arrive at distinct and incompatible political conceptions of justice. We then extend the Rawlsian model to account for likely consequences of this derivation with respect to how rational and reasonable parties would approach the choice of principles under conditions of ignorance. Anticipating that freedom will likely generate reasonable pluralism and the possibility of persistent lack of influence, these parties will choose fundamental principles and constraints on institutions to minimize exclusion. The resulting polity will thus be federal in a certain way, by virtue of the theory of political liberalism, not historical facts about persons and groups, their languages, religions, and cultures.

### NOTES

1. John Rawls, *A Theory of Justice*, rev ed. (Cambridge, Mass.: Belknap, 1999), 474.
2. *Ibid.*, 172.
3. *Ibid.*, 474.
4. *Ibid.*, 206.
5. See, for instance, Wayne J. Norman, "Towards a Philosophy of Federalism," in *Group Rights*, ed. Judith Baker (Toronto: University of Toronto Press, 1994), 79-100; and Samuel V. LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Statehood* (Montreal: McGill-Queen's University Press, 1996).
6. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 214.
7. John Rawls, "The Idea of Public Reason Revisited," in *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), 129-80, esp. 144-45.
8. Rawls, *Political Liberalism*, 223-27; and Rawls, "The Idea of Public Reason Revisited," 143-44.
9. Rawls, *Political Liberalism*, 54-58.
10. *Ibid.*, 61.
11. For a related argument—that the nonmajoritarian features of the U.S. Constitution are a vital part of American democracy—see Christopher L. Eisgruber, *Constitutional Self-government* (Cambridge, Mass.: Harvard University Press, 2001).
12. Rawls, *A Theory of Justice*, 477; see also 200-3, 205-6.
13. Rawls, *Political Liberalism*, lecture II, esp. 77-88.
14. Rawls, *A Theory of Justice*, 415.
15. *Ibid.*, 433.
16. Rawls, "The Idea of Public Reason Revisited," 170-71. Amy Gutmann and Dennis Thompson make much the same point: when reasonable disagreement prevails, widespread commitment to a principle of reciprocity allows parties to find terms of accommodation—however provisional and unstable—that are at least consistent with mutual respect among reasonable persons. Reciprocity requires, *inter alia*, that we grant sincere consideration to the beliefs, values,

and arguments of others, and that we seek not only to minimize the dependence of our positions on controversial claims of fact, but also to pursue an “economy of moral disagreement” whereby we “avoid unnecessary conflict in characterizing the moral grounds or drawing out the policy implications” of our positions, the aim being “to search for significant points of convergence between one’s own understandings and those of citizens whose positions, taken in their more comprehensive forms, one must reject.” See Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Harvard University Press, 1996), 55-85.

17. Rawls, *A Theory of Justice*, 206.

18. Rawls, *Political Liberalism*, 253.

19. Rawls, “The Idea of Public Reason Revisited,” 137.

20. In considering the demands of justice with respect to political participation, for instance, Rawls briefly discusses single-member electoral districts and gerrymandering (*A Theory of Justice*, 196), and endorses public financing of parties and electoral campaigns (pp. 198-99).

21. *Ibid.*, 171-76. That the institutional considerations I have in mind might reasonably be settled later rather than earlier in the four-stage sequence was made especially clear to me by Samuel Freeman.

22. *Ibid.*, 119.

23. *Ibid.*, 175.

24. John Tomasi, *Liberalism beyond Justice: Citizens, Society, and the Boundaries of Political Theory* (Princeton, N.J.: Princeton University Press, 2001), 100-6 and 114-24.

25. Will Kymlicka, “Territorial Boundaries: A Liberal-Egalitarian Perspective,” in *Boundaries and Justice: Diverse Ethical Perspectives*, ed. David Miller and Sohail H. Hashmi (Princeton, N.J.: Princeton University Press, 2001), 249-75.

26. *Ibid.*, 266-67.

27. Thomas Schwartz, “The Paradox of Representation,” *Journal of Politics* 57 (1995): 309-23.

28. On this distinction see Thomas Hueglin, “Federalism at the Crossroads: Old Meanings, New Significance,” *Canadian Journal of Political Science* 36 (2003): 275-94; and Thomas Hueglin, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* (Waterloo, Canada: Wilfrid Laurier University Press, 1999), ch. 12, esp. 210-17. Another suggestive historical contrast would be between the federalism of Madison and Hamilton, on one hand, and Cartier’s vision of Canadian confederation, on the other; on this, see LaSelva, *Moral Foundations of Canadian Federalism*, ch. 2.

29. Federalist 10; from the Avalon Project, Yale University, *The Federalist Papers*, no. 10, <http://www.yale.edu/lawweb/avalon/federal/fed10.htm> (accessed 18 February 2005).

30. See especially Hueglin’s analysis (“Federalism at the Crossroads,” 280, 284) of Hamilton’s characterization in Federalist 9, *The Federalist Papers*; and more generally, see Hueglin, “Federalism at the Crossroads,” 283-88.

31. Hueglin, “Federalism at the Crossroads,” 276.

32. A similar suspicion is explored for the case of multinational federalism by LaSelva, *Moral Foundations of Canadian Federalism*.

33. On the latter point, see Richard Sennett, *The Uses of Disorder: Personal Identity and City Life* (New York: W. W. Norton, 1970), which examines “white flight” to carefully ordered suburban neighborhoods in the postwar United States; on retreat and disengagement in contemporary U.S. metropolitan settings, consider the findings of J. Eric Oliver, *Democracy in Suburbia* (Princeton, N.J.: Princeton University Press, 2001). On spatial features of difference and exclusion more generally, see David Sibley, *Geographies of Exclusion* (London: Routledge, 1995).

34. I stress “might”: such strategies might instead reflect unreasonable claims grounded merely in narrow self-interest and odious stereotypes—for instance, a shared desire among afflu-



ent white residents to preserve high neighborhood property values against perceived threats from racial mixing.

35. Gutmann and Thompson, *Democracy and Disagreement*, 80.

36. Hueglin, *Early Modern Concepts for a Late Modern World*, 217.

37. See Steven Hill, *Fixing Elections: The Failure of America's Winner-Take-All Politics* (New York: Routledge, 2003), ch. 5; more generally, see the debate over Robert Richie and Steven Hill's endorsement of proportional representation in the United States, "The Case for Proportional Representation," in the New Democracy Forum of the *Boston Review* 23, no. 1 (February/March 1998), <http://bostonreview.net/ndf.html#Reflecting> (accessed 5 May 2005). The theoretical and empirical literatures on voting systems, and specifically on the merits and failings of various proportional representation schemes, are vast. An interesting contribution that provides a succinct historical overview and interesting normative reflections is Burt L. Monroe, "Fully Proportional Representation," *American Political Science Review* 89, no. 4 (1995): 925-40.

38. Robert E. Goodin, "Democratic Deliberation Within," *Philosophy and Public Affairs* 29 (2000): 81-109.

39. Typically of an "asymmetric" sort in which some groups have different, and often more, powers and responsibilities than others, such as a territorially concentrated national and linguistic community demanding extensive control over education and immigration policies in their territory.

40. Thus the burgeoning normative literatures on both federalism and secession: see Harry Beran, "A Liberal Theory of Secession," *Political Studies* 32 (1984): 21-31; Allen Buchanan, *Secession: the Morality of Political Divorce* (Boulder, Colo.: Westview, 1991); David Gauthier, "Breaking Up: An Essay on Secession," *Canadian Journal of Philosophy* 24 (1994): 357-72; Norman, "Towards a Philosophy of Federalism"; Christopher H. Wellman, "A Defence of Secession and Political Self-determination," *Philosophy and Public Affairs* 24 (1995): 142-71; LaSelva, *Moral Foundations of Canadian Federalism*; Will Kymlicka, "Is Federalism a Viable Alternative to Secession?" in *Theories of Secession*, ed. Percy B. Lehning (London: Routledge, 1998): 111-50; Alan Patten, "Democratic Secession from a Multinational State," *Ethics* 112 (2002): 558-86; and Dimitrios Karmis and Wayne J. Norman, eds., *Theories of Federalism* (New York: Palgrave, 2004).

41. Charles R. Beitz, *Political Theory and International Relations*, with new afterword (Princeton, N.J.: Princeton University Press, 1999).

42. For a good review, see Simon Caney, "International Distributive Justice," *Political Studies* 49 (2001): 974-97.

43. *Ibid.*

44. Michael Walzer, "Liberalism and the Art of Separation," *Political Theory* 12 (1984): 315-30.

45. This point is made clearly by Robert S. Taylor, "Rawls's Defense of the Priority of Liberty: A Kantian Reconstruction," *Philosophy and Public Affairs* 41 (2003): 246-71.

46. Some representative works are William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964); Barry R. Weingast, "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development," *Journal of Law, Economics, and Organization* 11 (1995): 1-31; Daniel Treisman, "Political Decentralization and Economic Reform: A Game-Theoretic Analysis," *American Journal of Political Science* 43 (1999): 488-517; Jonathan Rodden, "The Dilemma of Fiscal Federalism: Grants and Fiscal Performance around the World," *American Journal of Political Science* (2002): 670-87; and Jenna Bednar, "Judicial Predictability and Federal Stability: Strategic Consequences of Institutional Imperfection," *Journal of Theoretical Politics* 16 (2004): 423-46.

47. Gerald A. Cohen, "Facts and Principles," *Philosophy and Public Affairs* 31 (2003): 211-45.

*Loren King is an assistant professor in the Department of Political Science at Wilfrid Laurier University, Waterloo, Ontario, Canada. His writings on democratic theory have appeared in Politics, Philosophy & Economics, Governance, and the Journal of Politics.*