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Liberalism and the Possibility of Multi-Cultural Constitutionalism: The Distinction Between Deliberative and Dedicated Cultures

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ARTICLES

LIBERALISM AND THE POSSIBILITY OF MULTI-CULTURAL CONSTITUTIONALISM: THE DISTINCTION BETWEEN DELIBERATIVE AND DEDICATED CULTURES*

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INTRODUCTION

Liberalism and multicultural constitutionalism are on a collision course destined to become the next great battlefield in the unfolding odyssey of American constitutional law.¹ The impending battle will define the scope and limits of liberal

1. The clash between liberalism and multiculturalism promises to define this battlefield well into the twenty-first century. Liberal political theory differs from non-liberal theories by insisting on a sharp distinction between the public and the private, or more specifically, between the political and the non-political. According to this conception of liberalism, politics should be limited in order to create an arena in which individual liberty can flourish. Multiculturalism recognizes the existence of a plurality of equally plausible cultural values. At first glance, liberalism and multiculturalism seem to be compatible because liberalism's non-political domain appears to be ready-made for accommodating a plurality of different cultural commitments. Problems arise, however, when a minority culture's deep structure is incompatible with liberalism's methods of resolving cultural conflicts. For example, liberalism often conflicts with religions holding non-deliberative values. Any religious culture based on faith has a deep structure incompatible with liberalism.

constitutionalism and its role as the model for democracy around the world.² While turbulence between liberalism and multicultural constitutionalism occurs across a panoply of controversies, the eye of the storm focuses on one central question: Can liberalism tolerate non-liberal cultures?³ This article explores the hypothesis that liberalism's deep structure precludes it from explaining and justifying the toleration of non-liberal cultures. If so, this hypothesis has serious implications concerning the viability of liberal multicultural constitutionalism.⁴ Either liberalism must be radically reconceived or abandoned, or we must revise our conviction that multicultural constitutionalism is normatively desirable.⁵

2. The role of liberal constitutionalism as a model for emerging democracies is complex and contestable with no guarantee of yielding the same results in different cultural contexts. For example, rights might be a component of liberal constitutionalism in some cultures while not in others. See Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363, 1382 (1984) (arguing that if critiques of law are culture-bound, "there is nothing odd about saying that rights in Poland are a good thing, while rights in the United States are not. They are, after all, different cultures.").

3. This question involves at least three additional questions: First, how rich is liberalism's conception of tolerance? Second, in what sense does liberalism *appreciate* or *respect* alternative cultures? Lastly, what ontological and political commitments follow from the concept of a cultural or group right? This last issue focuses on whether the basic normative concepts of a political theory, such as rights, can apply to *groups* the same way that it does to *individuals*. See Robert Justin Lipkin, *In Defense of Outlaws: Liberalism and The Role of Reasonableness, Public Reason, and Tolerance in Multicultural Constitutionalism* 45 DEPAUL L. REV. (Forthcoming 1996). The controversy over cultural rights implicates the controversy between communitarianism and liberalism. See COMMUNITARIANISM AND INDIVIDUALISM (Shlomo Avineri & Avner de-Shalit eds., 1992); see also Amy Gutmann, *Communitarian Critics of Liberalism*, 14 PHIL. & PUB. AFF. 308 (1985).

4. Liberal multiculturalism attempts to resolve the problems of multiculturalism by appealing to autonomy, rationality, equality, and other distinctly liberal values. In a given society, both majority and minority cultures might reflect these values albeit in different ways. If so, the minority culture represents an alternative *liberal* culture. On the other hand, a minority culture might be a non-liberal culture. Consequently, multiculturalism can be understood in a stronger and weaker sense. The weak sense urges responsiveness and sensitivity to other deliberative cultures. The strong sense counsels toleration of nondeliberative cultures.

5. Except where the context indicates otherwise, I use "multiculturalism" and "multicultural constitutionalism" interchangeably. There are useful distinctions between these terms as well as between the terms multiculturalism, multi-national, and multi-ethnic. For an interesting discussion of these distinctions in the context of cultural pluralism, see WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A THEORY OF MINORITY RIGHTS* 10-26 (1995).

Multicultural constitutionalism appears desirable for two reasons. First, the demographics of the United States are undergoing a sea change. Early in the next millennium, the United States will cease being a predominantly caucasian nation with a European heritage. This presents the extraordinary challenge of integrating, fairly and justly, newly arriving cultures with traditional ones.⁶ Multicultural constitutionalism promises a framework for integrating the new with the old. In particular, it promises a resolution of the cultural warfare over education, the arts, religion, and law in American society.⁷ Second, multicultural constitutionalism presents special opportunities for liberalism as a model for constructing democratic institutions in societies recently emerging from the iron rule of authoritarian and totalitarian regimes in Central and Eastern Europe and elsewhere.⁸ Because these multicultural societies often see liberal democracy as a beacon of hope for creating a just society, the question of liberal multicultural constitutionalism assumes great urgency. As we continue to observe in Bosnia-Herzegovina, cultural warfare can be cata-

6. It can be argued that the American experience was born out of a clash of cultures, and the historical record does not portray the current dominant culture in an excessively favorable light. Recall the horrors of slavery, sexism, and the treatment of Native Americans.

One can question the idea of a "dominant" culture. Instead, it can be argued that the dominant culture was actually a compilation of different cultures. Nevertheless, the notion of a "dominant" culture retains explanatory value. Today the dominant culture is threatened by an avalanche of disparate cultures, or so the defenders of the dominant culture contend.

7. Multicultural issues arise in the context of the "culture wars" which seek to determine the future direction of American society concerning such issues as affirmative action, political correctness and the appropriate canon in education. See J. DAVISON, *CULTURE WARS* (1992); see also Robert Justin Lipkin, *Pragmatism, Cultural Criticism, and The Idea of the Postmodern University*, in *AN ETHICAL EDUCATION: COMMUNITY AND DIVERSITY IN THE MULTICULTURAL UNIVERSITY* 49 (M.N.S. Sellers ed., 1994). The critical question for American liberalism is whether it can integrate alien cultures without eviscerating them.

8. Multiculturalism can be understood in at least one of two ways. The first conception argues that cultural factors must be included in political justification because these factors represent the values of individuals. This instrumental and reductionist conception of multiculturalism is compatible with a liberal justification of multicultural values. See, e.g., WILL KYMLICKA, *LIBERALISM, COMMUNITY AND CULTURE* 182-205 (1989). The second conception of multiculturalism regards cultures as intrinsically valuable, arguing, at least in principle, that in the context of justification cultural factors are morally and ontologically basic (along with individualistic factors). Of course, it is not obvious what such a view involves.

strophic and deadly. Consequently, several critical questions arise: Can liberal constitutionalism resolve these costly conflicts by recognizing the cultural identity of disparate cultural and ethnic groups?⁹ Is it possible to integrate liberalism and multiculturalism into a coherent conception of constitutionalism? Additionally, should we be sanguine about the future of liberal revolutions, or are the conceptual and moral resources of liberalism irremediably impoverished?¹⁰ If the latter, do alternatives exist that might better resolve the imminent constitutional and cultural battles?

Our search for a liberal conception of tolerance also implicates a host of doctrinal questions about the appropriate evolution of American law: Should a defendant in a criminal prosecution be permitted to invoke the "culture defense" to excuse or justify conduct that is criminal in the United States?¹¹ Is it permissible or desirable for languages other than English to be used in public education or in public forums such as courts and legislatures?¹² Is it possible for minority cultures to receive

9. The Canadian federation is an attempt constitutionally to recognize two different cultural groups: English and French. Recent events in Canadian constitutional affairs should make one less than sanguine in estimating Canada's chance to remain unified. See William R. Lederman, *Canadian Constitutional Amending Procedures: 1867-1982*, 32 AM. J. COMP. L. 339, 346 (1984). For an interesting philosophical treatment of the argument for secession, see ALLEN BUCHANAN, *SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC* (1991). Last October, separatists were narrowly defeated in their attempt to create an independent Quebec.

10. Bruce Ackerman enthusiastically believes that political liberalism has a good chance to bring about the best future for humankind. See BRUCE ACKERMAN, *THE FUTURE OF LIBERAL REVOLUTION* (1991); Bruce Ackerman, *Political Liberalisms*, 91 J. PHIL. 364 (1994). It is not obvious that Ackerman's optimism can survive the objection that liberal tolerance founders on the distinction between deliberative and dedicated cultures.

11. The culture defense insists that a person should not be convicted of a crime, or that the sentence should be at least mitigated, if her former culture required or encouraged the conduct in question. See Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311 (1991); Note, *The Cultural Defense in the Criminal Law*, 99 HARV. L. REV. 1293 (1986).

12. Canada provides a useful case study of multicultural conflict in a liberal democracy. Canada is constitutionally a bilingual country with both English and French recognized as the two official languages of the Canadian federation. Canada has faced problems of liberal multiculturalism and group democracy from its inception, perhaps because the Quebecois and other Canadians do not share a univocal conception of self-government. Charles Taylor, *Shared and Divergent Values*, in *OPTIONS FOR A NEW*

special recognition or, in the limiting case, should their members be permitted to secede if their cultural aspirations cannot be met by the dominant culture in the United States?¹³ Should prayer and expressions of minority cultural values be permitted in public schools? Can liberal multicultural constitutionalism, even in special circumstances, tolerate public school districts run exclusively according to the dictates of a particular religion?¹⁴ Do general proscriptions against animal sacrifice conflict with religious freedom?¹⁵ How should we have resolved the classic confrontation between church and state that ended the Mormon practice of polygamy?¹⁶ Finally, how should Amer-

CANADA 53 (Ronald L. Watts & Douglas M. Brown eds., 1991).

At one point Quebec passed a law that forbade commercial signs from being written in any language other than French. Before it was repealed the Canadian Supreme Court held that Quebec was warranted in adopting the measure to assure the "predominance of the French language" in *Quebec. Ford v. Quebec*, 2 S.C.R. 712, 778 (1988), *quoted in* P. MONAHAN, *MEECH LAKE: THE INSIDE STORY* (1991).

13. Secession became an ominous possibility in Canada during the late 1970s. Lederman, *supra* note 9, at 346 ("The urgency about basic constitutional matters in the later 1970s arose from the fact that the Parti Quebecquois achieved power as the Provincial Government of Quebec in 1976, with the declared objective of eventually bringing about the secession of Quebec from the Canadian Federal Union."). In rare circumstances, a right to secede may be justified on the grounds of preserving one's culture. Consequently, it can be argued that Quebec is justified in seceding if the perpetuation of Francophone culture requires state protection. *See* BUCHANAN, *supra* note 9, at 63-64, 153, 161. *But see* Will Kymlicka, Book Review, 20 POL. THEORY 527, 531-32 (1992) (charging that Buchanan's argument implies unjustifiably that the burden of proof concerning the propriety of succession falls on the secessionists).

The Meech Lake Accord was a recent attempt to save the Canadian Federal Union from disintegration essentially by recognizing that "Quebec constitutes within Canada a distinct society." PETER W. HOGG, *MEECH LAKE CONSTITUTIONAL ACCORD ANNOTATED* § (2)(1)(b) (1988). Similarly, the Charlottetown Accord gave Native Canadians a greater role in self-government. The Charlottetown Accord, at least indirectly, also addresses the problem of group democracy as it pertains to other groups of Canadians. *See* Errol P. Mendes, *The Charlottetown Accord: Sinking Again into the Quagmire of Conflicting Visions, Groups, Underinclusion and Death by Referendum*, 2 N.J.C.L. 379 (1991). Both accords failed ratification.

14. *Kiryas Joel v. Grumet*, 114 S. Ct. 2481 (1994) (invalidating the creation of a school district based on religious criteria).

15. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 113 S. Ct. 2217 (1993) (invalidating a law designed to prohibit animal sacrifice).

16. One great American religion, Mormonism, altered its fundamental principles partly as a result of the hostility toward the practice of polygamy. Today, in the Southwest, thousands of descendants of Mormons still practice polygamy as part of their religion. One can understand, perhaps, why Judaism, Catholicism and Protestantism forbid polygamy. Can it seriously be argued today, however, that liberalism need not tolerate polygamy as a fundamental part of some people's conception of the good? Can it seriously be argued that polygamy is "in violation of social duties or

ican constitutionalism respond to the sanctified role land plays in Native American culture? Can liberal toleration constitutionally honor the Native American conviction that land has a spiritual meaning beyond that attributed to it by mainstream American culture?¹⁷

This article is part of a larger project which attempts to answer these and other questions about liberal multicultural constitutionalism. For present purposes I explore one reason for being skeptical about the possibility of liberal multicultural constitutionalism. The article introduces a distinction between deliberative and dedicated cultures in light of which we can re-evaluate the possibility of liberal multicultural constitutionalism.¹⁸ Although this distinction tracks such familiar distinctions as reason and tradition, freedom and custom, reason and religion, needs and desires, democracy and authority, open and closed societies, and so forth, it is in fact identical to none of them.¹⁹ It must, instead, be recognized as an independent

subversive of good order." *Reynolds v. United States*, 98 U.S. 145, 164 (1879). Which good order? Gender equality places constraints on polygamy, that is, society must permit both polygyny and polyandry. But what possible argument in terms of autonomy, rationality and equality *require* monogamy? To be sure, a polygamous society might differ from or be more complex than ours, but for liberalism, neither reason is conclusive. Liberalism should foster ingenuity and experimentation in accommodating as many conceptions of the good as possible. This is untrue in American society, where marriage rights are skewed in an illiberal fashion. See Will Kymlicka, *Rethinking the Family*, 20 PHIL. & PUB. AFF. 77, 92 n.1 (1991).

17. Will Kymlicka argues that liberalism can accommodate the cultural values concerning land of indigenous people—because in some cases choice requires special constitutional protection of minority cultures. KYMLICKA, *supra* note 8.

18. My use of liberalism assumes that virtually all political players on the American scene—whether conservative, centrist, or radical—are liberals. As Alasdair MacIntyre asserts: "[T]he contemporary debates within modern political systems are almost exclusively between conservative liberals, liberal liberals, and radical liberals." ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHOSE RATIONALITY?* 392 (1988); see Larry Alexander & Maimon Schwarzschild, *Liberalism, Neutrality, and Equality of Welfare vs. Equal Resources*, 16 PHIL. & PUB. AFF. 85, 86 (1987) (distinguishing between right-liberals and left-liberals).

19. Sir Isaiah Berlin provides a framework for characterizing these familiar distinctions in his description of the political battles of the eighteenth and nineteenth century. Sir Isaiah writes:

On one side stood the supporters of tradition, of political and social hierarchies, whether 'natural' or hallowed by history, or belief in, and obedience to, divine, or at any rate transcendent authority. These were men who believed that the operations of untrammelled reason must be kept within bounds and should, above all, be prevented from questioning the validity of the laws and customs of ancient ways of life—those impalpa-

conceptual device for characterizing problems of liberalism and multiculturalism. The article deploys this distinction to show that the liberal conception of tolerance is more doctrinaire than usually thought, and therefore cannot provide a basis for multicultural constitutionalism. Instead, the possibility of multicultural constitutionalism depends upon an alternative conception of tolerance.²⁰

I do not deny that given present political conditions, liberal political theory can usually explain and justify why one liberal culture tolerates another.²¹ However, liberal political theory can explain and justify toleration²² of *non-liberal* cultures only in the following circumstances: when non-liberal cultures are sufficiently like liberal cultures so as to avoid deadly conflict or when the liberal culture derives *instrumental* benefits in tolerating the non-liberal culture.²³ When an intractable conflict exists between a liberal culture and a non-liberal culture, liberal political theory cannot explain and justify tolerance. Indeed, the history of liberalism is replete with examples of liberal intolerance of non-liberal cultures and regimes.²⁴ Understanding lib-

ble and analyzable bonds that hold society together and alone preserve the moral healthy of states and individuals. This is the faith in the 'integral' community which critical examination by skeptical intellectuals, using rationalist methods, can only discredit in theory and undermine, and in the end disintegrate, in practice. On the other side stood the unswerving champions of reason, who rejected faith in tradition, intuition, transcendent sources of authority as mere smoke-screens to justify irrationality, ignorance, bias, fear of the truth in the matters of theory, and stupidity, injustice, oppression. . . .

ISAIAH BERLIN, *THE CROOKED TIMBER OF HUMANITY* 254-55 (1991).

20. I examine the possibilities of a pragmatic conception of multicultural constitutionalism in Lipkin, *supra* note 3.

21. This ought not to be viewed as a foregone conclusion. A liberal culture might find another liberal culture intolerable if the latter's substantive values are vastly different.

22. In distinguishing different kinds of tolerance, I do not explore the differences in the meaning of "tolerance" and "toleration." Throughout the article, I use these terms interchangeably.

23. A good example of this is Rawls' attempt to show how liberalism can tolerate non-liberal, well-ordered societies. John Rawls, *The Law of Peoples*, in *ON HUMAN RIGHTS* 41 (Stephen Shute & Susan Hurley eds., 1993). I critically examine Rawls' argument in Lipkin, *supra* note 3.

24. See Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs, Part I*, 12 *PHIL. & PUB. AFF.* 205, 213 (1983) ("*Even though liberal states have become involved in numerous wars with non-liberal states, constitutionally secure liberal states have yet to engage in war with one another.*") (emphasis in original); see also Michael W.

eral theory's incapacity to tolerate non-liberal cultures reveals a salient feature of liberalism's deep structure: liberalism depends upon the deliberative attitude, a specific strategy for living antithetical to nondeliberative, or dedicated forms of life.²⁵ This deep structure implies criteria for evaluating the legitimacy of cultural and political regimes. The deliberative attitude, designed to solve both individual and collective practical problems, seeks to evaluate rationally all cultural constructs in order to determine which are legitimate and which need to be revised or abandoned.

The deliberative attitude is a way of viewing the world,²⁶ and includes a general approach to problem solving. As such the deliberative attitude cannot appreciate or make intelligible to itself, cultures and regimes whose values are inaccessible to deliberation. Liberalism grounds such virtues as liberty, equality, privacy, and the rule of law in the deliberative attitude.²⁷ Unless other grounds are possible, these virtues must then be antithetical, conceptually and morally, to nondeliberative attitudes. Thus, liberalism faces this dilemma: either it can explain and justify liberal toleration of non-liberal cultures or it cannot. If it can explain and justify liberal toleration of non-liberal cultures, it does so at the expense of the deliberative attitude, its primary structural feature. If it cannot explain and justify liberal tolerance of non-liberal cultures, it fails in one of its central purposes, allowing diversity and pluralism.²⁸ Consequently,

Doyle, *Kant, Liberal Legacies, and Foreign Affairs, Part II*, 12 PHIL. & PUB. AFF. 323, 337 (1993) ("[L]iberalism does appear to exacerbate intervention against weak non-liberal societies and hostility against powerful non-liberal societies.").

25. Liberals tend to characterize liberalism in terms of rationality, autonomy, and equality. These values typically depend upon practical reasoning and deliberation as the primary forms of cultural inquiry.

26. Liberalism can be regarded as a comprehensive theory of society, not just a theory of politics. As a theory of society, it includes a political theory, a legal theory, a moral theory and a theory of moral motivation. Each theory is grounded in and connected to one another through the deliberative attitude.

27. See Ronald Dworkin, *Liberalism*, in PUBLIC & PRIVATE MORALITY 113, 116-17 n.1 (Stuart Hampshire ed., 1978).

28. The dilemma of liberal toleration is expressed by what Jean Hampton calls the "paradox of liberalism." Jean Hampton, *Political Philosophy and Metaphysics*, 99 ETHICS 791, 803 (1983). This paradox focuses on the problem of integrating tolerance and partiality into one political conception. At first glance, "[i]t would seem that a liberal, to be consistent, would have to tolerate even those who would challenge (and use violence to attack) that principle, so that, to paraphrase Robert Frost, the liberal

liberalism either betrays its structure or abandons tolerance.²⁹ Liberalism can avoid one horn of this dilemma only by being impaled on the other.³⁰

Part One of this article explains the distinction between deliberative and dedicated cultures. Deliberative cultures advocate resolving the problems of cultural conflict and change by appealing to the values of rationality and autonomy, while dedicated cultures resolve these problems by appealing to the values of constancy and closure.³¹ In Part Two, I suggest that although certain familiar distinctions are relevant to the distinction between deliberative and dedicated cultures, none are identical to it and none offer a systematic understanding of the differences between liberal and non-liberal societies. In fact, the distinction between deliberative and dedicated constructs represents a unique distinction between two different perspectives, or ways of being in the world. In Part Three, the article examines the question of whether liberalism includes a conception of the good, and how the distinction between deliberative and dedicated cultures is relevant to the conception of the good. Finally,

could not take his own side in this argument." *Id.* (citing Nagel, *Moral Conflicts and Political Legitimacy*, 16 PHIL. & PUB. AFF. 215 (1987)).

29. Stanley Fish, *Liberalism Doesn't Exist*, in THERE'S NO SUCH THING AS FREE SPEECH AND IT'S A GOOD THING TOO 135, 138 (1994).

30. Thus, this article casts doubt on liberalism's genuine capacity to tolerate diversity. For some liberals, skepticism concerning moral truth or proof underlies liberalism's toleration of diversity, not an appreciation and respect for diverse ways of human flourishing. This has special force in the context of international relations. As Charles Beitz puts it: "[T]he most that can be said about the relations among communities is that they should be based on a principle of tolerance of diversity—not because diversity has some special, non-local, value but because there can be no basis for imposing any other requirements." Charles Beitz, *Sovereignty and Morality*, in POLITICAL THEORY TODAY 236, 251 (1991). But doesn't this just mean that there can be no other *liberal* basis for tolerating diversity? Granting this does not preclude other non-liberal conceptions of diversity. It should be noted that early liberal proponents of toleration based their arguments in religion. JOHN LOCKE, A LETTER ON TOLERATION (1968).

31. This is not necessarily the manner in which loyal members of a dedicated culture would describe their culture. In fact, it is likely that they would regard their culture as that constituting the supreme truth or highest good. From our external viewpoint, we may not agree to such characterizations. Nevertheless, we can say that dedicated cultures embrace the value of predictability in resolving cultural and moral conflicts and therefore are committed to some institutional device for putting an end to debate, if they permit debate at all. The values of constancy and closure drive certain conceptions of politics and law. Burkean incrementalism is an example of the former, while positivism illustrates the latter.

Part Three explores the role that the distinction between deliberative and dedicated cultures plays in demonstrating liberalism's inability to explain and justify toleration of non-liberal cultures.³²

I. DELIBERATIVE AND DEDICATED CONSTRUCTS

A. *Universal Rationality and Particularist Rationality*

Deliberative inquiry, or "deliberativism," is committed to rationality as the chief mechanism for evaluation and practical reasoning.³³ Deliberative constructs include, *inter alia*, concepts, values, attitudes, judgments, beliefs and desires, and generally anything that can be evaluated rationally. Deliberativism is a problem-solving strategy, designed to evaluate the legitimacy or reliability of any system of beliefs and values, including cultural systems.³⁴

Two forms of rationality deserve special mention: universal rationality and particularist rationality. Universal rationality contends that general principles exist that apply to everyone and that in principle are acceptable to everyone.³⁵ These principles are neutral or impartial with respect to the good life, and therefore can function as arbiters of conflicts between different conceptions of the good. Universal rationality is a modernist conception designed to provide a foundation or irrepressible explanation and justification of our system of beliefs and values, including our conception of the good.³⁶ Typically, such a

32. Saying that liberalism cannot explain and justify liberal toleration of non-liberal cultures means that liberalism cannot tolerate non-liberal systems of norms and values.

33. Both practical reasoning and practical autonomy are central to the ideal of deliberativism.

34. I do not wish to stress the term "system" in foundationalist or rationalist terms. A cultural system is a body of beliefs and values partially integrated, partially coherent, but having a certain character and some experiential cohesion.

35. Typically, universal rationality in politics claims "a privileged, or an extrahistorical and procedurally guaranteed, access to the content of the overall social good. . . ." John Dunn, *Reconceiving the Content and Character of Modern Political Community*, in *INTERPRETING POLITICAL RESPONSIBILITY* 210 (1990).

36. MACINTYRE, *supra* note 18, at 6 (arguing that the Enlightenment strove "to provide for debate in the public realm standards and methods of rational justification by which alternative courses of action in every sphere of life could be judged just or

foundation reflects, or is inescapably connected, to reality or to human reason in the sense that a refusal to be bound by its dictates is a *sine qua non* of irrationality. Universal rationality is necessary for the intelligibility and efficacy of argument and proof, and provides the tools necessary to resolve cultural conflicts.³⁷

Universal rationality purports to be politically and morally neutral. Winning an argument requires a formal exercise in reason, but does not require, and indeed precludes, an appeal to substantive moral or political values. Similarly, universal rationality is the process through which we resolve our cultural wars. In these wars, universal rationality determines which culture or cultural provision is correct and therefore which should be defended. Universal rationality thus is a means for discovering cultural legitimacy.

Critics point out that any universal conception of reason will be too thin for arbitrating conflicts between different conceptions of the good or between antagonistic cultures.³⁸ Instead, "we must inevitably refer to values on which there may perhaps be a consensus within a particular community, but about which there is no prospect of achieving universal agreement by appeal to considerations of rationality alone."³⁹ According to this view, universal rationality is itself based on local values.⁴⁰

unjust, rational or irrational, enlightened or unenlightened."). For an instructive review of MacIntyre's book, see Brian Barry, *The Light that Failed*, 100 ETHICS 160 (1989) (book review). See also Julia Annas, *MacIntyre on Traditions*, 18 PHIL. & PUB. AFF. 388 (1989) (book review).

37. This conception of the role of universal rationality is my characterization of the relevance of such philosophers as Plato and Kant to cultural inquiry.

38. MICHAEL WALZER, *THICK AND THIN: MORAL ARGUMENT AT HOME AND ABROAD* (1994).

39. Beitz, *supra* note 30, at 250-51.

40. In the context of *discovery*, rationality is certainly local, although proponents of universal rationality rarely identify it as such. What then warrants universal values in the context of *justification*? Unless its proponents can demonstrate a conception of rational justification free of cultural factors, their hope of establishing universal rationality is misguided. No philosophical attempt to do this has ever been successful. See Robert Justin Lipkin, *Beyond Skepticism, Foundationalism and the New Fuzziness: The Role of Wide Reflective Equilibrium in Legal Theory*, 75 CORNELL L. REV. 811 (1990) (arguing against the possibility of conceptions like universal rationality). Universal rationality is not a ground for a novel cultural proposition. Rather, it is an aspiration, a proposal to the reflective cultural community or communities to consider, evaluate and endorse a new cultural imperative as having a wide scope.

Consequently, the notion of universal reason is incoherent because it depends on local attitudes and therefore cannot be used to evaluate these attitudes.

By contrast, particularist rationality is antifoundationalist and denies that nontrivial universal principles exist for adjudicating our cultural wars.⁴¹ Particularists may concede that at some level of generality, universal moral and political judgments are true. However, they regard this as a conceptual or linguistic point, not an ontological one. If we define murder as unjustified and unexcused homicide, then murder is always wrong in every cultural context. The problem here is that without universal normative rules for determining when a homicide is unjustified or unexcused, this result is entirely trivial. Abortion, euthanasia, and the death penalty result in taking human life, but they count as *murders* only when they are unjustified and unexcused according to the appropriate normative rules. Thus, murder can be described as universally wrong only in the trivial sense that when a homicide is unjustified and unexcused it is murder. This is a trivial result because we still do not know how this bears on concrete controversies over the moral propriety of such homicides. Our cultural debates concerning these homicides founders on our inability to construct normative rules objectively or universally tying the homicide to justification and excuse. The fact that murder is universally wrong in this linguistic sense is a trivial victory for universalists. If no more robust conception of universality is possible, universal rationality adds little to particularist argument and proof.

Deliberation embraces a process of critically evaluating social conflicts in terms that might defy universality. Instead, we offer arguments and conclusions without a commitment or proof that they are universal in a nontrivial sense. We seek the best objections to our judgments, and when a judgment overcomes these objections, we retain it until we consider the next batch of objections and then fallibilist verification begins again. Particularist rationality seeks consensus in terms of pragmatic

41. For a discussion of foundationalism, and antifoundationalism, see Robert Justin Lipkin, *Can American Constitutional Law Be Postmodern?*, 42 BUFF. L. REV. 317 (1994).

solutions that in no way resolve the conflict finally or without possibility of revision.

A third view, call it "deliberative rationality," combines elements of universal rationality and particularist rationality. Since judgments usually take the form "X is right in C" or "A is right in doing X in C," where "A" is an agent, "X" is an action and "C" are the circumstances, such judgments incorporate and preclude elements of universality. They incorporate elements of universality because a judgment of this form applies to any person in relevantly similar circumstances. In short, the universality is built into the logical form of the judgment. These judgments preclude universality because no judgment of the form "X is always wrong" is intelligible without identifying the relevant circumstances. Try any of the familiar examples "It is wrong to kill" or "It is wrong to lie." Nobody believes that it is wrong to kill independently of context because nobody reasonably believes it is wrong for human beings to build houses which kill plant and animal life. Humankind must kill (some things) in order to live. Similarly, no one believes that it is wrong to lie in every conceivable case.⁴²

Of course these observations do not resolve the question of cultural or moral relativism. A cultural absolutist can accept this proposal concerning the logical form of moral judgments by insisting that cultural factors never or rarely count as relevant factors or circumstances. Thus, the moral absolutist will consider Roberto culpable in killing Duncan in response to an insult, despite the fact that in some cultures this reason justifies killing. The absolutist insists that such a reason either justifies or excuses killing in all cases or never justifies or excuses it; cultural differences are irrelevant. On the other hand, a cultural relativist believes that such cultural differences must be included in the "in C" designator, and will inculcate killings in certain cultures while exculpating them in others.

42. Kant thought differently. Immanuel Kant, *On A Supposed Right to Tell Lies from Benevolent Motives*, in KANT'S CRITIQUE OF PRACTICAL REASON AND OTHER WORKS ON THE THEORY OF ETHICS 361 (T. Abbott, trans., 6th ed. 1967) (arguing against Benjamin Constant's view permitting a lie when the recipient of the information has no right to the truth). *But see* Christine Korsgaard, *The Right to Lie: Kant on Dealing with Evil*, 15 PHIL. & PUB. AFF. 325, 339 (1986) (arguing that lying is permissible in certain contexts).

Judgments evaluating conduct always require morally relevant descriptions of the actor, the act and the circumstances. No form of universality across descriptions is possible. Hence, deliberative rationality is committed to giving reasons for and against various judgments counseling the inquirer to embrace the judgment having the best reasons—where best is understood in terms of comprehensiveness, depth, and coherence, as well as the judgment's role in the process of inquiry and persuasion. Deliberative rationality is a pragmatic conception of inquiry endorsing the universal rationalist's conception of the importance of reasoning and verification and the particularist's conception of the importance of context and circumstances. The distinction between deliberative and dedicated cultures embraces this conception of deliberative rationality. Let us now turn to a statement of this distinction.

B. *Deliberative and Dedicated Cultures*

Deliberative judgments are defended by the best reasons relevant to the reliability⁴³ and scope⁴⁴ of the judgment. In antifoundationalist, deliberative systems, all judgments are revisable, though not at the same time.⁴⁵ Deliberative judgments must be rejected in terms of superior alternative

43. The reliability of a judgment includes the judgment's capacity for overcoming objections, its capacity for supporting and being supported by other judgments, as well as its depth or entrenchment in a cultural system.

44. Deliberative systems can be universalist or particularist depending upon the conception of deliberation under discussion. You can, of course, believe that deliberation applies to *human* culture generally and thus bridges the gap between the universal and the particular. The deliberative attitude takes this last approach. The deliberative attitude seeks universal acceptance for a proposed cultural imperative on pragmatic grounds, recognizing that dissensus is endemic to cultural conflict and contestability will never be overcome entirely.

One problem with this last approach is that a human culture consisting of all existent cultures is likely to be incoherent or, more specifically, is likely to have at least pockets of incoherence that might resist reconciliation. On the other hand, such pockets of incoherence provide the subject matter for creative redescrptions of these problems with the possibility of rectifying the incoherence and providing a more elegant and comprehensive description of human culture. Freedom and equality were once (are still?) such redescrptions.

45. Otto Neurath, *Protocol Sentences*, in LOGICAL POSITIVISM 201 (A. J. Ayer ed., 1959) ("We are like sailors who must rebuild their ship on the open sea, never able to dismantle it in a dry-dock and to reconstruct it out there out of the best materials.").

judgments, and generally, one never has reason to reject an *entire* culture unless one has an alternative cultural system.⁴⁶ The ideal of deliberation integrates truth, justification, and the reflective criticism of a community of individuals committed to deliberation in their political, social, and personal lives.⁴⁷

The role of community in deliberative constructs is important and needs clarification. Community is both a cause and effect of human choice. Community is a necessary causal condition of human choice because human choice requires deliberation—critically scrutinizing and correcting one's judgments—and deliberation requires a social context of shared linguistic and ratiocinative practices. The role of reason and justification can only be understood in terms of linguistic practices or forms of life that have produced the practices of criticism and correction as well as the requisite standards to implement these practices.⁴⁸ In this way reason and justification derive from community, but once derived, reason and justification enable individuals to make further choices. These choices are the effect of commu-

46. I do not mean to suggest that one can never abandon one's local culture, though doing so may present psychological obstacles. I suppose a Westerner can abandon Western culture and become a Buddhist monk, but one cannot abandon every actual human culture for a newly designed culture. Cultures must be lived, and abandoning one's culture typically involves reweaving one's conceptual scheme incrementally in terms of the newly adopted cultural scheme. However, in revolutionary cultural change, "a once-strong, indeed culturally dominant, mode of thought can collapse almost literally overnight." SANFORD LEVINSON, *CONSTITUTIONAL FAITH* 52 (1988). But it is difficult to imagine rejecting an entire culture in one instance for another culture. See RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979) (adapting Thomas Kuhn's distinction between revolutionary and normal science to the context of discourse); see also THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1970). For a redeployment of the Kuhn-Rorty distinction between revolutionary and normal inquiry, see Lipkin, *supra* note 39; Robert Justin Lipkin, *Indeterminacy, Justification and Truth in Constitutional Theory*, 60 *FORDHAM L. REV.* 595 (1992); Robert Justin Lipkin, *The Anatomy of Constitutional Revolutions*, 68 *NEB. L. REV.* 701 (1989); Robert Justin Lipkin, *Conventionalism, Pragmatism, and Constitutional Revolutions*, 21 *U.C. DAVIS L. REV.* 645 (1988). Each of these articles represent statements and refinements of the theory of constitutional revolutions, a theory that distinguishes between normal and revolutionary *adjudication*.

47. Frederick Schauer helpfully provides an account of some of the problems truth and justification pose for constitutional deliberation that can be extended to deliberation generally. Frederick Schauer, *Deliberating About Deliberation*, 90 *MICH. L. REV.* 1187 (1992).

48. See LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* §§ 241 (88e) (1953); see also Robert Justin Lipkin, *Freewill, Responsibility and the Promise of Forensic Psychiatry*, 13 *INT'L J.L. & PSYCHIATRY* 331 (1991).

nity in two ways. First, it is only when a community of practical reasoners is *already* formed that individuals can make their lone autonomous choices. Since reasoning is itself social, *practical* reasoning can only occur when the individual has learned the appropriate methods of practical reasoning from others, and this requires a community in which the methods of practical reasoning are practiced. Second, living a conscientious life requires making choices in deliberative contexts, where you consider how others would evaluate your choices.⁴⁹ Finally, community is the effect of human choice and deliberation, since the further development of a community from a bare community to a full community (including the state) requires human decision and action.⁵⁰

I wish to contrast deliberative constructs or forms of inquiry with dedicated forms of inquiry, though I do not want to suggest that any mature culture must be constituted by one to the exclusion of the other.⁵¹ Nevertheless, we can distinguish between deliberative forms of inquiry and dedicated forms of inquiry and therefore distinguish between cultures that are *predominantly* deliberative or *predominantly* dedicated.⁵² In

49. Some forms of deliberative reasoning invoke the concepts of mutual respect, provisional solutions, empathy, and reasonableness. See Amy Gutmann, *The Challenge of Multiculturalism in Political Ethics*, 22 PHIL. & PUB. AFF. 171, 199 (1993). According to Gutmann, "[d]eliberation encourages people with conflicting perspective to understand each other's point of view, to minimize moral disagreements, and to search for common ground. . . ." *Id.* at 199. It achieves these goals by first "opening politics up to a range of reasonable disagreements that is restricted by less deliberative politics." *Id.* This might be true. But before endorsing it, we must have a clearer idea of what counts as *reasonable* disagreement. As Gutmann herself concedes, "what counts as reasonable or unreasonable for matters of social justice cannot be specified independently of social understandings." *Id.* at 201. Gutmann goes on to say that reasonableness "with regard to matters of social justice excludes claims that are closed in principle to the most adequate methods of social inquiry." *Id.* Thus, publicly accessible claims, for example, about the importance of personal liberty render judgments more reasonable than claims about God's will. But how does one determine whether publicly accessible claims or God's will represent "the most adequate methods of inquiry?" *Id.* Either choice can be defended only by begging the question.

50. See RONALD DWORKIN, LAW'S EMPIRE 208-15 (1986) (exploring the differences between bare communities and full communities).

51. William Galston invokes a distinction between two kinds of liberalism: autonomy and diversity. William Galston, *Two Concepts of Liberalism*, 105 ETHICS 516 (1995). Galston's distinction between these two types of liberalism should be distinguished from my distinction between deliberative and dedicated cultures.

52. A comprehensive treatment of deliberative and dedicated cultures would include an examination of the possibility of describing ideal deliberative cultures and

such cultures we can distinguish between primary and secondary cultural strategies. Sometimes primary and secondary cultural strategies are lexically ordered and resist incoherence. In other cases, the primary and secondary cultural strategies are in tension and yield incoherent cultural outlooks.

Dedicated forms of inquiry begin with natural and cultural givens. Human beings constitute a certain kind of biological form that determines certain features of human conduct. For example, food, sex, and work are three aspects of human experience that are biologically given.⁵³ This does not mean that society and culture are irrelevant to the particular manifestations of these biological forms, only that the choice of whether we should be the kind of organism that typically needs to eat, to procreate, and to gather materials for food and shelter are questions nature has resolved for us.

Our inclinations for food, sex, and work are dedicated needs, though the precise form our gratification assumes in any case may not be dedicated. To talk of dedicated needs only means that we need certain things if we are to survive at all. The further we travel from biological givens, the less a need is purely dedicated. We also have needs that are constitutive of human flourishing, though the precise nature of these needs is indeterminate and contestable. Many of these needs are not dedicated, but arise only after reflection and deliberation; for example, respect and dignity. Thus, the concept of dedicated needs in no

ideal dedicated cultures. In the worst case scenario, it might turn out that all cultures require traditions that mimic dedicated cultures. Rorty's remarks on democracy lend themselves to such an interpretation when he insists that democracy is important because it is "so basic to one's identity that one wouldn't know who one was if one stopped cherishing [it]." *Towards A Liberal Utopia: An Interview with Richard Rorty*, TIMES LITERARY SUPPLEMENT, June 24, 1994, at 14. Thus, democracy and even perhaps deliberative democracy are based on a dedicated paradigm. If so, the heart of the distinction between deliberative and dedicated cultures can still be preserved by distinguishing between deliberative traditions and non-deliberative traditions *within* dedicated cultures.

53. Of course, each of these activities can be refrained from in certain circumstances. To say that these are biologically given means only that, in these circumstances, a price must be paid to avoid engaging in these activities, such as death in the case of not eating. Consequently, my remarks concerning biological givens should not be understood as endorsing Social Darwinism or any other conservative anthropological perspective on the relationship between biology and social organization.

way reflects Rawls's conception of primary goods.⁵⁴ Most, if not all, primary goods are not dedicated needs.

The vast portion of dedicated needs arise in social and cultural contexts. Since even dedicated *biological* needs require social and cultural expression, we would not be far wrong in regarding all dedicated needs as *cultural* needs. Dedicated cultural inquiry involves cultural givens that are fixed and not *designed* for change, though they can be re-designed to change in nondeliberative ways.⁵⁵ I say that such cultural givens are not designed to change, not that they do not change. A dedicated culture appreciating the fact that even its most cherished institutions do in fact change may construct mechanisms to prevent or control significant change.⁵⁶ Some dedicated cultures might be more amenable to change, seeking to direct change to better fulfill their dedicated values.⁵⁷ At some point, however, when a

54. JOHN RAWLS, *A THEORY OF JUSTICE* 62 (1971).

55. It could be argued that the status quo, like everything else, must change in order to perpetuate itself, or, as Stanley Fish observed, "[t]he maintenance of the status quo is always and simultaneously its alteration[.]" See Adam Begely, *Souped-Up Scholar*, N.Y. TIMES MAG., May 3, 1992, at 38, 52. We can extend this point to the idea of a tradition. Traditions must change to stay the same, since a "tradition is not simply a permanent precondition; rather, we produce it ourselves inasmuch as we understand, participate in the evolution of tradition, and hence further determine it ourselves." HANS-GEORG GADAMER, *TRUTH AND METHOD* 293 (1989). In constitutional adjudication,

[t]he traditions to which we look for guidance . . . are traditions that we create, and recreate upon each engagement. Traditions constrain us, certainly, both in the sense that they are deeply internalized and in the sense that we pledge to follow their external signs. But their meanings are too unstable for those signs to be definitive, and we—individually and collectively—are too conflicted for the internal constraints to be dispositive.

Robert L. Hayman, Jr., *The Color of Tradition: Critical Race Theory and Postmodern Constitutional Traditionalism*, 30 HARV. C.R.-C.L. L. REV. 57, 78 (1995).

56. Dedicated cultures face the following paradox: if they design a mechanism to prevent or control significant change, it probably is a deliberative mechanism; however, if it is a deliberative mechanism, it is based on reasons that, at least relative to that culture's aspirations, are good ones. In other words, a dedicated culture adopts the mechanism to control change because it believes that significant change is dangerous or counter-productive. Such a reason is usually a deliberative reason, though it might be a *bad* deliberative reason. Consequently, it is paradoxical for dedicated cultures to deliberately adopt a mechanism to prevent cultural change. The air of paradox is not reduced by the fact that at times a dedicated culture's decision to control change may be characterized as nondeliberative.

57. I owe this point to Erin Daly.

dedicated culture too readily embraces change, it ceases to be dedicated and embraces an inchoate form of deliberativism.

The *idea* of dedicated concepts or norms is antithetical to deliberative, rational criticism which involves *continued* vigilance in perfecting and refining its normative commitments as well as its concept of a norm. To describe a culture as dedicated, however, does not deny that it has meaning that succeeding generations may interpret and reinterpret. What it does mean is that these interpretations must remain within the confines of the culture, whereas deliberative cultures are self-consciously concerned with justifying their cultures in the broadest possible terms. Hasidic Jews and the Amish are examples of predominantly dedicated cultures within American society.⁵⁸ These cultures have a certain character and style: the Amish, for instance, eschew a reliance on sophisticated technology, such as electricity, in the attempt to remain independent and self-sufficient.⁵⁹ Both cultures have dedicated habits of dress serving as badges of honor for their members.⁶⁰

Dedicated cultures usually include fixed or committed processes of change, usually determined by the contents of a privileged text or the historic pronouncements of a sanctified person,

58. When dedicated and deliberative cultures live in close proximity and share the same resources, conflict is likely. Consider the contemporary example of the state of New York intentionally drawing the boundaries of the Village of Kiryas Joel so that the Satmar Hasidim could run a public school district exclusively. *Kiryas Joel v. Grumet*, 114 S. Ct. 2481 (1994).

59. Some Native American Indian cultures also appear to be dedicated. However, as in the case of the Amish and the Hasidim, characterizing Native American cultures as dedicated (or deliberative) requires greater substantiation than merely saying it is so. The point here is not only that generalization requires support, but more importantly, generalizations concerning racial, sexual, ethnic, and cultural attributions should be carefully scrutinized to ensure that they are not motivated by cultural antagonism or mere lack of familiarity with the character of a particular culture. I thank Bob Hayman for helping me to appreciate the importance of this point.

60. Generally, dedicated cultures do not relish novel ways to solve problems, nor do they attempt to validate the tenets of their culture by seeking disconfirming evidence. Dedicated cultures do not consider personal autonomy as an overriding value driving and guiding cultural change. By contrast, deliberative cultures seek disconfirming evidence and regard autonomy as a central cultural value. This illustrates that some features of the dominant American culture are at most deliberative in name only. A once deliberative form of inquiry can become a dedicated value when it ceases to insist on challenging its own form of rationality and when its commitment to autonomy wanes. See LEVINSON, *supra* note 46 at 52 (arguing that American constitutional culture represents a civic religion based not on reason but faith).

but the concept of a dedicated culture is not necessarily committed to these processes. Conceivably, a dedicated culture might even embrace certain forms of democratic change, provided that democracy serves dedicated ends and is not designed to aid and encourage individual liberty. For example, a dedicated culture might use democracy to make incremental changes in the life of the culture when confronted with crisis, or it might place dedicated constraints on democratic institutions. The legislature, for instance, might be confined only to preserving the actual dedicated values and norms of the given culture. The distinction between deliberative and dedicated cultures, in short, cannot be drawn in terms of democratic cultures and nondemocratic ones.

Dedicated cultures usually seek to preserve traditional mechanisms for solving problems, and are concerned with maintaining the precise character of group identity, though both these elements may not be necessary features of a dedicated culture. One can imagine a dedicated culture holding that human beings have a faculty of moral or practical intuition that answers all such problems in a non-deliberative fashion. A dedicated culture of this kind might not rely on tradition and group identity any more than deliberative cultures do when these conflict with what is learned through intuition. Even in these circumstances, however, the dedicated culture is likely to embrace the faculty of intuition as a defining characteristic of the culture. In this way group identity—people who intuitively think like us—might reinstate the importance of the group's character as a defining characteristic of the culture.

Although the distinction between deliberative and dedicated forms of inquiry is fairly straightforward, it can arise in unusual ways. For example, one might understand the constitutional theory of originalism as a dedicated form of inquiry because it counsels us to accept the Framers' interpretation of constitutional provisions as if these individuals were the sanctified leaders of a dedicated culture. However, while some originalists recommend adopting the Framers' interpretations of the Constitution as privileged because on an originalist theory of meaning the only way to understand the text is to determine the author's meaning, others argue for originalism because it serves democratic ends. Neither one of these arguments need involve

dedicated concepts, though to be free of any dedicated elements, originalism must explain why meaning should be understood as authorial meaning, and why their conception of democracy is the best available one.⁶¹

A deliberative culture, therefore, can have privileged texts and sanctified historical leaders. If it is a truly deliberative culture, it will have found reasons for adopting originalism as a theory of constitutional meaning. This means that in deliberative cultures a particular constitutional methodology must survive the objections of all comers. The deliberative attitude in constitutional matters, as well as elsewhere, means your opinion is always open to question.⁶²

II. DEFENDING THE DISTINCTION BETWEEN DELIBERATIVE AND DEDICATED CULTURES

A. *The Distinction and Other Similar Dichotomies*

In this section I evaluate some important objections to the distinction between deliberative and dedicated cultures. The central purpose is to demonstrate that the distinction between deliberative and dedicated is a unique distinction that is not reducible to any more familiar distinctions.

1. Reason and Tradition

First, it might be objected that *reasoning* occurs in both deliberative and dedicated contexts, and therefore does not distinguish two different types of cultures or methods of cultural inquiry.⁶³ This objection is correct as far as it goes. But the

61. See Lipkin, *supra* note 41.

62. In this sense, the deliberative attitude replaces or is a counterpart to the traditional goal of universality, though not a universality that will satisfy foundationalists or absolutists. To say that a deliberative form of inquiry is always open to confutation means that it ultimately seeks non-idiosyncratic reasons for its conclusions. At times this might entail seeking non-culturally specific reasons, meaning that the *source* of the reason is irrelevant, whether it derives from our culture or others. What matters is the *force* of the reason in explaining or illuminating the problem we want resolved. And it is not obvious that *force* requires culturally specific motivation.

63. The term "cultural inquiry" refers to those concepts, distinctions, and princi-

distinction between deliberative and dedicated forms of inquiry and cultures is not a distinction between reasoning and tradition; instead, it is a distinction between different kinds of reasoning. For instance, no form of cultural inquiry and change can survive without deductive and inductive reasoning. Consequently, in order to understand the distinction between deliberative and dedicated cultures, we must distinguish between the kinds of reasoning that distinguish them. In short, the distinction is a distinction between two different kinds of cultural *attitudes*: the deliberative attitude and the dedicated attitude.

The deliberative attitude incorporates deliberative rationality and deliberative autonomy.⁶⁴ Deliberative rationality is a critical process of giving the best reasons for and against substantive cultural judgments. Deliberative rationality determines the existence of values, the scope of such values, and how to rank conflicting values. This deliberative process recognizes the importance of fallibility and the inclination to revise the culture's substantive commitments when the evidence dictates.

In contrast, dedicated cultures understand their cultural values as representing the final truth about the meaning and value of life. Serious re-evaluation of cultural norms or values occurs rarely, and when it does occur, it is limited by dedicated constraints.⁶⁵ The reasoning of fully dedicated cultures includes both dedicated means as well as dedicated ends. Dedicated cultures are concerned with predictability, order, and closure and therefore restrict both the quality and the quantity of appropriate cultural reasoning. Consequently, though reasoning occurs in dedicated cultures, the depth and breadth of the reasoning is severely limited.

ples of inference that enable us to make sense of social life. For example, the distinction between "nature" and "nurture" helps classify human interests into two categories: those interests that are biologically given and those that are a product of social life and culture.

64. I offer these components as part of deliberativism as the most basic form of strategy employed by the individual. This individual ideal, however, expresses itself in the collectivist, political ideal of democracy. Joshua Cohen, *Deliberation and Democratic Legitimacy*, in *THE GOOD POLITY* 17, 21, 25 (Alan Hamlin & Philip Pettit eds., 1989).

65. Dedicated reasoning involves the standard cognitive capacities of identification, individuating, deductive and inductive reasoning, and so forth. If a dedicated rule admonishes people to obey the word of the Holy Person, reasoning is required to know who the Holy Person is and what counts as her word.

The difference between deliberative and dedicated cultures also rests in the deliberative culture's commitment to autonomy and fallibilism. Through self-regulation, deliberative autonomy guides the reason-giving process both for the individual and for the society. The members of a deliberative culture are always open to the criticism and correction of cultural and personal values. The members, individually and collectively, seek evidence to discredit their own values.⁶⁶

This paradoxical feature of the deliberative attitude derives from the conviction that cultural values are reliable only when they continually survive challenge. In a dedicated culture, the role of criticism is diminished greatly. No explicit (and rarely implicit) cultural imperatives exist requiring or permitting individual members to criticize, revise, and reform society. Indeed, criticism, revision, and reform may be severely restricted or expressly forbidden. The deep structure of a dedicated culture is concerned with truth (at least from its own perspective), finality, and closure.

While the distinction between deliberative and dedicated inquiry does not track the distinction between reason and tradition, it does include a distinction between deliberative reasoning and dedicated reasoning. According to this distinction, deliberative reasoning is fallibilistic and autonomy-oriented, while dedicated reasoning is directed at preserving the identity of the group as expressed through the dedicated values of that culture. Moreover, dedicated cultures do not value individual autonomy and self-realization independently, as do deliberative cultures.⁶⁷ Deliberative cultures continually seek the best reasons to support cultural inquiry. Consequently, a deliberative culture employs deliberative reasoning, even concerning the question of its own legitimacy. Dedicated cultures restrict reasoning within the confines of its dedicated values.

66. For alternative accounts of deliberative autonomy, see Larry A. Alexander, *Trouble on Track Two: Incidental Regulations of Speech and Free Speech Theory*, 44 HASTINGS L.J. 921 (1993); Richard H. Fallon, Jr., *Two Senses of Autonomy*, 46 STAN. L. REV. 875 (1994); and James E. Fleming, *Constructing the Substantive Constitution*, 72 TEX. L. REV. 211 (1993).

67. This does not necessarily imply that deliberative cultures are anti-communitarian.

To describe deliberativism as incorporating deliberative autonomy is not to say that all values in deliberative society are "chosen anew" with each generation. Nor is it that autonomy-oriented values are the only values considered important by deliberative cultures.⁶⁸ Of course, values in a deliberative culture "have been adopted, inculcated, absorbed from an enveloping social environment."⁶⁹ But deliberative values are always subject to critical re-examination. Moreover, the justification of these values is always deliberative. If challenged, those endorsing the deliberative attitude must present their reasons in defense of a particular practice, as well as reasons showing why an alternative practice cannot survive deliberative scrutiny.⁷⁰

2. Freedom and Authority

A second objection insists that the distinction between deliberative and dedicated cultures founders because it characterizes deliberative cultures as free or autonomous while dedicated cultures are authoritarian. Instead, the argument continues, freedom is a necessary element of both kinds of cultures.⁷¹ In-

68. Autonomy-oriented values apply to both persons and to states of affairs. Cf. S. I. Benn, *Person and Values: Reasons in Conflict and Moral Disagreement*, 95 *ETHICS* 20, 24-27 (1984) (distinguishing between person-centered reasons and value-centered reasons).

69. *Id.* at 36.

70. Are rationality and autonomy merely dedicated values of "deliberative" cultures? How much of their meaning is open to inquiry and reconsideration? In ideal circumstances, their meaning is always open to inquiry and reconsideration. In practice, some deliberative cultures allow the deliberative attitude to atrophy or to become mechanical. In the limiting cases, the deliberative attitude can become dedicated, or rather, it can be *held* in a non-deliberative fashion. This, however, is a failing of the particular culture, not the concept of a well functioning deliberative culture. I am grateful to Bob Hayman for assisting me in seeing the significance of this point.

71. Similarly, it can be argued that the distinction between freedom and custom is specious because custom is a necessary ingredient of autonomy. On this view, freedom cannot exist in a vacuum. Society cannot generate institutions that are free without custom, and custom often requires freedom for its generation. As Roger Scruton observes:

I have given a few, partly empirical, partly *a priori*, reasons for thinking that custom and its associated forms of conduct are necessary for the formation of the 'primary' desires that form the basis of our autonomy. It is only such desires that political freedom should be concerned to foster, since it is only then that freedom can be considered a value. Custom is not, then, the enemy of freedom, but it is a necessary precondition. The business of government is not the generation of abstract civil liberty, but

deed, it is difficult to imagine what a totally free or a totally authoritarian culture would be like. It is true that liberty and freedom often are considered a critical feature of deliberative cultures, while dedicated cultures are often authoritarian. However, when stated as a generalization, this overlooks the fact that "the history, culture and religion of the community may be such that authoritarian regimes come . . . naturally, reflecting a widely shared world view or way of life."⁷²

This is not an endorsement of authoritarian regimes. Instead, it merely indicates that a dedicated culture might survive because it achieves the continued loyalty of the majority of its members concerning the meaning of life and the proper relationship of cultural and legal institutions to the people affected by these institutions. A particular dedicated culture might hope to survive by the consent of its members without imposing its values on an unwilling populace. The members of the culture might be fervently willing to preserve the culture.⁷³ Keep in mind that requiring a consensus for cultural legitimacy does not preclude dedicated cultures from being legitimate. Consent can be part of a dedicated culture or regime.⁷⁴ But doesn't this

the founding of institutions that make liberty possible.

Roger Scruton, *Freedom and Custom*, in ANTI-THEORY IN ETHICS AND MORAL CONSERVATIVISM 205, para. 22 (S.G. Clarke & E. Simpson eds., 1989). No culture-free liberty or pure liberty exists, and that if it did exist it would not be of any value. Pure liberty "would be situationless." CHARLES TAYLOR, *HEGEL AND MODERN SOCIETY* 157 (1979). Consider:

And by the same token it would be empty. Complete freedom would be a void in which nothing would be worth doing, nothing would deserve to count for anything. The self which has arrived at freedom by setting aside all external obstacles and impingements is characterless, and hence without definite purposes, however much this is hidden by such seemingly positive terms as 'rationality' or 'creativity.' These are ultimately quite indeterminate as criteria for human action or modes of life. They cannot specify any content to our action outside of a situation which sets goals for us, which thus imparts a shape to rationality and provides an inspiration for creativity.

Id. Nor is it the case that deliberative autonomy has no unchosen conditions. See Lipkin, *supra* note 48.

72. Michael Walzer, *The Moral Standing of States*, 9 PHIL. & PUB. AFF. 209, 225 (1980).

73. At this point, the question of minority repression becomes urgently relevant.

74. We can see how even dedicated cultures can be legitimate in a liberal sense of the term when its members consent to its authority. See A. JOHN SIMMONS, *MORAL PRINCIPLES AND POLITICAL OBLIGATIONS* 71 (1979) (describing a legitimate government as one that has authority over its citizens through their consent).

make the culture deliberative if its legitimacy depends on consent? Not necessarily. A culture can rest on consent and still be dedicated if the values consented to are dedicated values, not discovered or justified through deliberative reasoning. Additionally, these values are dedicated if consent concerns mere preference, and not deliberative consent.⁷⁵ Deliberative consent requires more than liberty—which after all is a negative freedom; in addition deliberative consent requires individual autonomy, and autonomy refers to the operation of each individual's capacity for practical reasoning.

Deliberative cultures rank individual and collective autonomy as primary values. Therefore, deliberative cultures value consent, but the converse does not follow. Like cultures generally, a dedicated culture must secure consent, but it can do so without adopting the deliberative attitude. Similarly, consent can be a legitimizing feature of a culture without the culture valuing deliberative autonomy. To determine whether the culture is deliberative or dedicated we must know more than that cultural legitimacy requires consent. If values arise and are justified through a process of criticism and evaluation with the goal of enhancing autonomy, then the culture is deliberative. If values arise and are justified through appeals to authority for the purpose of constancy and closure, then the culture is dedicated. However, consent can be a feature of both processes. Just because cultural values are not *deliberatively* chosen does not mean that these values are not genuinely valued by the culture, or that they do not have great relevance to the lives of the members.

It is true, of course, that dedicated cultures are not autonomously chosen, "but then no set of political institutions is ever freely chosen from the full range of alternatives by a single set of people at a single moment in time."⁷⁶ Even though a con-

75. This raises the question of just what American democracy means. Does it mean mere majoritarianism together with a few explicit constraints as Robert Bork contends? ROBERT BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* (1990). Or is the American conception of democracy deliberative democracy? CASS R. SUNSTEIN, *THE PARTIAL CONSTITUTION* (1993). For a critical examination of Sunstein's important work, see Robert Justin Lipkin, *The Quest for the Common Good: Neutrality and Deliberative Democracy in Sunstein's Conception of American Constitutionalism*, 26 CONN. L. REV. 1039 (1994).

76. SIMMONS, *supra* note 74, at 70.

sensus of shared perceptions, judgments and actions might exist in a dedicated society, the members of the society might sincerely endorse the regime, despite never having consciously chosen it or even despite never having the opportunity for such choice. Consequently, we cannot distinguish between deliberative and dedicated cultures by appealing to the distinction between consent-oriented societies and authority-oriented societies. Deliberative societies are clearly consent-oriented, but in principle, there is no reason why dedicated cultures cannot give a significant, though limited, role to consent.

It could be argued that there are weaker and stronger conceptions of consent. The weak conception contends simply that the members of the culture consent to the culture's values and requirements. The stronger conception maintains that consent is required for cultural legitimacy. It could then be argued that only the first conception of consent can be included in the notion of a dedicated culture. I would go further to argue that even when consent is formally tied to cultural legitimacy the values consented to may be dedicated values. Of course, even when using the first conception, cultural legitimacy may still depend on consent if only as a subliminal and highly informal mechanism.

If consent is not sufficient in itself to distinguish between deliberative and dedicated cultures, autonomy clearly is. A deliberative culture considers autonomy as a necessary and, in some circumstances, a sufficient condition of the deliberative attitude.⁷⁷ As stated earlier, the deliberative attitude includes deliberative rationality, the process of achieving epistemic reliability through fallibilistic verification. In the context of cultural inquiry this involves giving reasons for and against both means and ends in a critical, fallibilist fashion. The deliberative attitude, however, also includes deliberative autonomy. Deliberative autonomy is concerned with individual and collective self-determination, self-reflection, self-regulation, and self-criticism. We shape our lives by creating norms of personal and social con-

77. Not all values are autonomy-oriented. But in deliberative cultures the non-autonomy-oriented values must always be subject to deliberative evaluation to determine which values maximize autonomy and choice. If some values are neutral regarding this process of maximization, deliberative cultures have the discretion to embrace those values or not.

duct.⁷⁸ It is this deliberative attitude, consisting of deliberative rationality *and* deliberative autonomy, that must be part of a deliberative culture. The deliberative attitude, especially its component of deliberative autonomy, is what distinguishes deliberative and dedicated cultures.

According to deliberative autonomy “[a]n autonomous person is self-governing where self-government requires that people engage in deliberation in shaping the many dimensions of their lives, personal and political.”⁷⁹ The deliberative attitude “encourages autonomy, our ability to shape our lives in accordance with well-considered judgments.”⁸⁰ Amy Gutmann provides an instructive account of the kind of autonomy embraced by the deliberative attitude.

An autonomous person wants to evaluate choices in life, including the choice of delegating decisions, and live life in accordance with these evaluations. The desire to live such a life is a matter of autonomous character; the ability is also a matter of information, education, will power, and good fortune. By its very nature, autonomy cannot be given to people; it must be claimed. But political practices and institutions can encourage or discourage autonomy, render autonomy impossible or within our grasp.⁸¹

Gutmann is right. A person cannot be autonomous if her self-conception prompts her to accept the views of others uncritically and if she has no great desire to be unique, distinct, and independent. One must struggle to become autonomous and

78. Consider: “One creates values, generates, through one’s developing commitments and pursuits, reasons which transcend the reasons one had for undertaking one’s commitments and pursuits. In that way a person’s life is (in part) of his own making. It is a normative creation, a creation of new values and reasons.” JOSEPH RAZ, *THE MORALITY OF FREEDOM* 387 (1986).

79. Amy Gutmann, *The Disharmony of Democracy*, in 35 *NOMOS: DEMOCRATIC COMMUNITY* 126, 140 (John W. Chapman and Ian Shapiro eds., 1993) (arguing for deliberative democracy); see also David Miller, *Deliberative Democracy and Social Choice*, 40 *POL. STUD.* 54 (1992) (arguing in favor of a conception of deliberative democracy similar to Gutmann’s); see generally THEODORE J. LOWI, *THE END OF LIBERALISM* (1969) (arguing against interest-group liberalism). See IAN SHAPIRO, *POLITICAL CRITICISM* 282 (1990) (arguing that democracy “should be thought of as that system of structured instabilities that best prevents the ossification of arbitrary entitlements and undermines entrenched power without collapsing into anarchial chaos.”).

80. Gutmann, *supra* note 79, at 141.

81. *Id.* at 142.

self-authenticating. A person is self-authenticating when her character ultimately derives from self-critical choices made in the context of a community of other individuals adopting the deliberative attitude. A self-authenticating person is one whose character is justified to oneself and others.⁸²

It is crucial, however, not to overlook the requirement that deliberative autonomy can exist only when the conditions for developing the deliberative attitude are institutional fixtures of one's culture. Among these conditions are freedom from external compulsion and encouragement of the *inclination* to be self-authenticating. Only when these conditions are present can a deliberative character develop. In this sense, a deliberative person must be *given* autonomy before she can claim it. Unchosen conditions of choice must first exist for autonomy to exist at all.⁸³

Self-authentication involves appreciating the conditions that make different lives meaningful as well as the conditions that lead to an impoverished emptiness and alienation. The political conditions necessary for the development of the deliberative character must allow for experimentation, revision, and a determination to stand behind self-authenticated values. The deliberative character has little chance in societies in which such major institutions as schools, churches, and the workplace do not encourage the development of this inclination. Only when such political conditions exist can a person then *claim* autonomy.⁸⁴

Gutmann is also right in stating that deliberative autonomy does not preclude delegating decision-making authority. The key

82. Adopting the deliberative attitude entails wanting to justify yourself to others, especially when your adversaries reject the deliberative attitude. See Thomas M. Scanlon, *Contractualism and Utilitarianism*, in *UTILITARIANISM AND BEYOND* 103, 116 (Amartya Sen & Bernard Williams eds., 1982).

83. These conditions can be metaphysical or political. Although there have been formidable attempts to determine the metaphysical conditions, it is not obvious that any have succeeded. I have in mind Kant's attempt in *THE GROUNDWORK FOR A METAPHYSICS OF MORALS* and both the *CRITIQUE OF PURE REASON* and the *CRITIQUE OF PRACTICAL REASON*. For a challenging contemporary attempt, see THOMAS NAGEL, *THE POSSIBILITY OF ALTRUISM* (1970).

84. For a more comprehensive statement of how autonomy includes unchosen conditions, see Lipkin, *supra* note 48. See also, Edward Sankowski, *Blame and Autonomy*, 29 *AMER. PHIL. Q.* 291 (1992).

word here is *delegating* in contradistinction to *abdicating*. In an array of circumstances, it makes perfect sense to let others make decisions for you provided that you retain ultimate control over the decisions and that they are accountable to you. Thus, a deliberative culture, one which encourages autonomy, need not be radically individualistic or one in which each person decides everything of importance from scratch.⁸⁵ When there are good reasons for delegating authority, the deliberative attitude is fulfilled, not abrogated. By contrast the alienation of autonomy is anathema to the deliberative attitude.⁸⁶ Alienation occurs when one gives up the right to question, criticize, and to hold others accountable, or when others assume such authority by coercion.

3. Democracy and Authority

This last point has implications for democracy. A democracy can exist when people are free from external coercion, even when they are not autonomous. In other words, the idea of democracy implies that political decisions rest with the citizenry; it does not imply that each citizen's opinions be autonomous or reflective. Consequently, if autonomy depicts a fundamental ingredient in the deliberative attitude, a society can be democratic despite not encouraging the deliberative attitude. The limiting case of such a society is a dedicated society that is democratic in permitting the will of the majority to prevail simply because it is the majority, without encouraging deliberative politics.⁸⁷ The point here is that we cannot under-

85. In fact, deliberative cultures can rely on the collective natural and cultural history of humankind provided that this history is subject to cultural interpretation. See Robert Justin Lipkin, *Pragmatism—The Unfinished Revolution: Doctrinaire and Reflective Pragmatism in Rorty's Social Thought*, 67 TUL. L. REV. 1561 (1993).

86. Gutmann, *supra* note 69, at 145.

87. In contemporary debates, such a view is championed by Robert Bork in *THE TEMPTING OF AMERICA*. BORK *supra* note 75. Permitting the majority will to prevail simply because it is the will of the majority is not ruled out *a priori* by the deliberative attitude. However, since the deliberative attitude seeks *reasons* for individual and collective decisions, the majority must always be prepared to justify its decisions in terms other than simple majoritarianism. Bork's reply doubtlessly would be that requiring the majority to give reasons for its preferences is pointless and redundant. Who decides whether the majority's reasons are good reasons? In the absence of explicit constraints, any institution responsible for evaluating the majority's reasons other than the majoritarian branches of government is countermajoritarian and there-

stand the distinction between deliberative cultures by distinguishing between democratic and nondemocratic cultures.⁸⁸ Sometimes the background conditions of democratic societies depict a dedicated, not a deliberative, culture. For example, when wealth plays an inordinate role in voting, the resulting system of voting tends to be dedicated and one that is anathema to democracy.⁸⁹

In a dedicated culture, even when a consensus exists concerning its legitimacy, the consensus is contingent and sometimes unstable. In a deliberative culture, consensus is systematically tested and refined as a matter of cultural and institutional imperative. In a dedicated culture, everyone might consent to the cultural system when the effects of its institutions are stable and productive. But then its members are lucky that their culture has such fortuitous consequences. In such circumstances, the consensus is contingently stable. A dedicated culture is still less free than a deliberative one because critical examination of the culture is not required or encouraged, and in some cases it is proscribed. Deliberative cultures seek a consensus on certain substantive values, but often create the conditions for a plurality of values. Some might argue that dedicated cultures empirically fare better in creating at least a rudimentary form of stability than deliberative cultures do.

On the other hand, when debilitating dissension breaks out in a deliberative society,⁹⁰ the institutions for criticism and

fore unacceptable. The deliberative process, however, embraces additional and independent deliberation—say by the Supreme Court—without being troubled by skeptical questions about who is to decide whether the majority's reasons are good ones. See generally 1 BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* (1991). I critically evaluate Ackerman's intriguing conception of constitutional democracy in Lipkin, *supra* note 41.

88. But see Amy Gutmann, *Democratic Politics and Ethics*, in *FROM THE TWILIGHT OF PROBABILITY* 43, 49 (William R. Shea & Antonio Spadafora eds., 1992) (arguing that "democracy is part of what it means to be morally autonomous"). Democracy might be a necessary condition of moral autonomy, but it is not a sufficient condition. A culture might permit democracy without the deliberative attitude, and therefore, not encourage moral autonomy.

89. For an interesting argument that the United States Constitution ought to include a principle of "equal-dollars-per-voter," see Edward B. Foley, *Equal-Dollars-Per-Voter: A Constitutional Principle of Campaign Finance*, 94 COLUM. L. REV. 1204 (1994).

90. Critical re-evaluation of cultural norms should be an institutional feature of a deliberative society. See Lipkin, *supra* note 7.

change shift into overdrive if the society is designed correctly. Since they are already in operation in a deliberative culture, they can be readily applied to the crisis at hand. Should dissensus occur in a dedicated society, the only vehicle for solution might be the very institutions that cause the dissensus in the first place. No independent process for expressing, accommodating, and dealing with dissensus exists, except coercion. Consequently, while pockets of autonomy and freedom exist in dedicated cultures, autonomy is more pervasive and deeper in deliberative cultures. Deliberative cultures intend criticism and revision to be institutional features of the culture, processes in which every individual is entitled to engage. In dedicated cultures, criticism and revision are not the primary responsibility of the citizen, if a responsibility at all. If criticism and correction exist, they are usually the priority of a privileged class of individuals. Generally, both the quality and quantity of criticism differ in deliberative and dedicated cultures.

4. Reason and Religion

The distinction between deliberative constructs and dedicated constructs tracks the distinction between reason and religion, but is not identical to it. Although many religions include dedicated constructs exclusively, some do not. The more a religion insists that the proposition "God exists" is meaningful and provable, the more that religion will need deliberative constructs in its argument. Religions that cede authority for making personal and moral decisions to the individual will depend upon deliberative concepts. Deliberative concepts are even required by those religions emphasizing faith as a primary religious virtue, provided that the religion distinguishes between faith as a way of coming to know or understand God and deliberation as a way of making the concept of God intelligible and provable.⁹¹ Moreover, religions that emphasize responsibility

91. Neither can the distinction between deliberative and dedicated cultures be equated with the distinction between seeking reasonable solutions or accommodations with one's adversaries, and the inclination to use force. The concept of a deliberative culture does not entail that its members "may never use violence, coercion or deception, or that they may never injure in other ways. Actual human disputes often cannot be resolved without some injury to some parties." Onora O'Neill, *Reason and the Resolution of Disputes*, 67 NOTRE DAME L. REV. 1365, 1377 (1992).

and guilt require at least a limited degree of deliberative autonomy within the strict confines of the religion's dedicated values, and individual members of the religion might be required to engage in deliberation and choice. In principle, a religious culture can be committed to maximizing religious freedom for the members of one religion or for members of every religion within the culture.⁹²

5. Open and Closed Societies

Nor is the distinction between deliberative and dedicated cultures identical to the distinction between open and closed societies. A culture is open when it permits information from the outside to enter freely into its confines. A closed culture forbids such information from entering the society, or if such information is permitted, the culture proscribes the formal, public recognition of the information. But an open culture can be a dedicated culture, and a closed culture can be a deliberative one. The question of whether a culture is deliberative or dedicated involves the role evidentiary information plays in resolving cultural conflicts and in promoting cultural change. A deliberative culture actively seeks appropriate evidentiary information relevant to the resolution of conflicts and to promoting cultural change, while a dedicated culture does not seek such evidentiary information, and when it is exposed to such information does not regard it as evidence for or against its dedicated values. The question of openness pertains to the extent its members are *exposed* to or have *access* to foreign evidentiary information. The question of deliberative versus dedicated goes to whether the information plays an evidentiary role in the culture's system of cultural inquiry.

Is it then possible to have an open dedicated culture or a closed deliberative culture? A culture can be dedicated though still open in that it does not prevent evidentiary information from entering its borders. When such information does insinuate itself, in a dedicated culture, it will not typically become the

92. For an instructive interpretation of the establishment clause as liberty-maximizing, see Rodney K. Smith, *Establishment Clause Analysis: A Liberty Maximizing Proposal*, 4 NOTRE DAME J.L. ETHICS & PUB. POL'Y 463 (1990).

ground for cultural change unless the information is sanctified through a dedicated process of cultural legitimacy. Conceivably, a dedicated culture can be so confident of its security that it permits foreign information to freely enter the society. Thus, a culture can be open, yet remain dedicated. An open, dedicated culture is committed to its values until an implicit cultural process overturns these values. One can imagine an open dedicated culture whose values are so beneficial to its members, and to which the members are so devoted that the openness of the society has little effect on its dedicated values. For example, Hasidic Jewry exists in an open American society, and its members are aware of information from the greater society, yet they remain loyal to their dedicated values.⁹³

But can a deliberative culture be a closed one? Consider a deliberative culture existing in a sea of dedicated cultures each of which contains a principle of duplicity or deception as a moral imperative. A deliberative culture therefore has a reason to suspect the truth of evidentiary information entering its domain from foreign cultures. In response to this situation, a deliberative culture can close its conceptual borders to the surrounding territories on the ground that since incoming information is unreliable and untrustworthy, it is preferable to exclude such information entirely and apply the deliberative process only to information that they can verify themselves. In this situation the culture is a closed culture, yet it remains deliberative.⁹⁴

I do not want to suggest that a closed deliberative culture can be *as* deliberative as an open deliberative culture. But that does not mean that the concept of a closed deliberative culture

93. In most instances it would be hyperbole to describe members of the Hasidim as "remaining loyal" where that connotes a deliberative choice. Rather, the foreign evidentiary information never even challenges their beliefs in the first place. Thus one could object that the Hasidim exist in an open culture but is not itself open, and thus the example fails. However, some dedicated religious societies seek access to other cultures while remaining dedicated. Roman Catholicism is a good example of this point.

94. When anti-deliberative forces abound, defenders of deliberation might restrict debate on the ground that the enemies of deliberation are poisoning public dialogue. Put in its best light, if it had one, the anti-communist movement in the United States illustrates this point. However, a deliberative culture must always be open to re-examining its reasons for closing its conceptual borders, and the anti-communism movement was not.

is incoherent. In actual circumstances, we may not find any open societies that are dedicated or any closed cultures that are deliberative. But this equivalence is an extensional equivalence, not an intensional one. The distinctions between deliberative cultures and dedicated cultures, on the one hand, and open and closed cultures, on the other, overlap. Nevertheless, these distinctions are not conceptually equivalent.

One might object that this conception of openness is highly attenuated and tendentious. How can a culture be open unless it seeks out disconfirming evidentiary information with the intent of comparing it to present cultural values? Moreover, deliberative cultures may not be possible when information is unreliable. But since information is almost always unreliable to some degree, the critic might reply that *ideally* the distinction between deliberative and dedicated cultures tracks the distinction between open and closed societies. This may amount to a mere stipulation that an open society is deliberative. If so, it must be evaluated by determining whether the stipulation is useful. I would argue that this stipulation is counterproductive because by assimilating the distinction between open and closed cultures to the distinction between deliberative and dedicated cultures, we foreclose the possibility of understanding the causal relations between openness and deliberation on the one hand and closed and dedicated on the other. Though conceptually distinct, openness may in part causally explain deliberative cultures, while the feature of being closed may be a causal condition of dedicated cultures.

B. *Deliberativism in Education and American Constitutionalism*

This distinction between deliberative and dedicated constructs arises also in the context of education. We can distinguish between educational processes that encourage deliberative rationality and autonomy and those that encourage fidelity to dedicated cultural values. Deliberative educational processes, of course, cannot dispense with certain fixed elements, since a deliberative culture has a particular past and context that must be understood just as much as in dedicated cultures. In deliberative cultures, these fixed elements are not dedicated because they must be amenable to deliberative justification. An important difference between deliberative and dedicated cultures is

that the latter is in some important sense content with itself, while the former seeks to challenge, criticize and refine its values. This description is not biased in favor of a deliberative culture, since challenging one's culture is not always good, and being content with one's culture is not always bad.

The distinction between deliberative and dedicated concepts will often apply in different ways to the same item. For example, it could be argued that the United States Constitution is a deliberative document concerning white males, but not concerning Native Americans, African Americans, women, and others. For these groups, one would have to say that the Constitution was almost entirely a dedicated document. None of these groups were permitted to engage in a deliberative process during the creation and ratification of the Constitution, nor could they participate in deliberative politics afterward. This shows that a document or system of government can be deliberative for some people and dedicated for others.⁹⁵ Moreover, certain parts of a generally deliberative document can be dedicated. For example, the United States Senate is arguably a dedicated branch of government, since there is no obvious deliberative reason for supporting regional representation.⁹⁶

C. *The Perils of Deliberativism*

The distinction between deliberative and dedicated cultures is intended to represent two distinct strategies for living, two different ways of experiencing—and acting in—the world. This article does not presume that either style is inherently superior to the other. In Anglo-American culture, however, dedicated

95. Of course, this assumes (perhaps erroneously) that we can determine whether a document is deliberative or dedicated merely by understanding its text without application to actual cases—as if the text had an internal strategy for problem solving that could be characterized as deliberative or dedicated independently of its application to the relevant social groups.

96. One could argue that the several states or regions have unique problems and interests, and that the best way for these to be assured of a hearing in deliberation is to create a branch of government that can protect these problems and interests. In this view, a Senate representing disadvantaged groups may be equally legitimate. See Will Kymlicka, *Group Representation in Canadian Politics*, in *EQUITY & COMMUNITY: THE CHARTER, INTEREST ADVOCACY AND REPRESENTATION* 61, 65 (F. Leslie Seidle ed., 1993).

reasoning is often denigrated as unthinking, shallow, or anti-thetical to human flourishing. Nevertheless, dedicated cultures are at least predictable, stable, and promise to provide uniquely correct solutions to cultural conflicts. Moreover, dedicated cultures attempt to preserve group identity and loyalty and permit the communication of cultural messages through an identifiable and reliable process.

Dedicated cultures also provide an attractive conception of security and social continuity. In Alasdair MacIntyre's childhood culture, for example, "[w]hat mattered . . . were particular loyalties and ties to kinship and the land. To be just was to play one's assigned role in the life of one's local community. Each person's identity derived from the person's place in their community and in the conflicts and arguments that constituted its ongoing . . . history."⁹⁷ Moreover, a dedicated culture "consists in the temporary saturation of his first-person perspective with a sense of the permanence of the social world. . . . Tradition provides one of the ways in which men acquire the sense of their continuity."⁹⁸ Dedicated cultures provide social customs and ceremonies that anchor individuals in predictable, gratifying ways of life. For these and other reasons, this article does not *presume* that deliberative cultures are superior to dedicated ones. Moreover, independent reasons exist for doubting the superiority of the deliberative attitude.⁹⁹

97. GIOVANNA BORRADORI, *THE AMERICAN PHILOSOPHER: CONVERSATIONS WITH QUINE, DAVIDSON, PUTNAM, NOZICK, DANTO, RORTY, CAVELL, MACINTYRE, AND KUHN* 140 (Rosanna Crocitto trans., 1994). MacIntyre's description depicts a premodern society, but I do not believe that is what he has in mind.

98. Scruton, *supra* note 71, at 220.

99. A person might live a mixed life, embracing dedicated values in some areas of her life and deliberative values in others. For example, a person might adopt dedicated values as an expression of her religious devotion and deliberative values in her occupation as a rocket scientist. The distinction between deliberative and dedicated concepts is not a *dichotomy* between people who use deliberative values exclusively, on the one hand, and those using only dedicated values, on the other hand. Nevertheless, unless there is a principled way to determine when one paradigm is appropriate and the other not, this sort of compartmentalization or bifurcation can be self-stultifying. Moreover, if there is such a principle it must be justified deliberatively.

1. Anguish

Too much deliberation in one's practical life can result in anguish and torment.¹⁰⁰ Because deliberation knows no inherent closure, one can never enjoy the peace, certainty, and predictability that closure brings. Since deliberation is inextricably interwoven with autonomy, the deliberative attitude must continue to engage in self-criticism, self-reflection, and the continual revision and refinement of personal and collective strategies of problem-solving.¹⁰¹ Indeed, the deliberative attitude praises these virtues because they will enable the individual to become self-regulating.¹⁰² The problem of closure arises because the deliberative attitude does not itself appear to provide a principle for determining when enough deliberation is enough.¹⁰³ It is not obvious that such a principle can be constructed for an individual's practical reasoning. Yet, even if such a principle exists for the individual, it is unlikely that we can construct such a principle across persons.¹⁰⁴ In other words, one high

100. See KYMLICKA, *supra* note 8, at 61 (asserting that "this vaunting of 'free individuality' will result not in the confident affirmation and pursuit of worthy courses of action but rather an existential uncertainty and anomie, in doubt about the very value of one's life and its purposes.").

101. Sometimes, an unintended consequence of trying to lead a deliberatively autonomous life is becoming obsessive about the reasons—their strength, scope, and ranking—one has for one's values and life plans. This obsession represents the possibility of a silent pathology for many people. Of course, it is true that the deliberative attitude does not *entail* such an obsession.

102. Just as a person who single-mindedly pursues pleasure is often brought to despair and ruin, a slavish devotion to deliberation can be similarly debilitating. Both dangers can be prevented by devising pleasure-maximizing or autonomy-maximizing *rules* as opposed to trying to determine which *action* maximizes pleasure or autonomy every time one decides to act.

103. The deliberativist might reply that closure occurs when the deliberative attitude is threatened by continued deliberation. But when does that occur? The deliberative attitude is also threatened by premature closure; consequently, a deliberative personality must continually monitor her deliberative system to determine when closure is neither premature nor overdue. Even short of obsession, there are severe costs to this process.

A deliberativist might reply that this pathology does not indict deliberativism *per se*, only its incorrect deployment. But since the problem of determining when one reaches the limits of deliberativism is itself a deliberative problem and indeterminate, the risk of this pathology remains.

104. See Lipkin, *supra* note 40.

cost of the deliberative attitude is the risk of interminable deliberation and controversy.¹⁰⁵

2. Responsibility

Another cost of the deliberative attitude is the assumption of responsibility that comes with a commitment to the deliberative attitude. Deliberation is directed towards getting things right for oneself and others. The deliberative attitude is ultimate; at least in theory it defers to no further principle. In this way a deliberative person might be condemned to be free.¹⁰⁶ Depending upon how well one can endure the strain of deliberation, a person might choose one *last* deliberative act by deciding to live a dedicated life instead. Everyone knows someone who just cannot stop reevaluating his decisions and second-guessing himself. The allure of a dedicated life might be irresistible to such a person, if only he can claim it.¹⁰⁷

The problem of closure can be generalized beyond personal decisions because deliberativism "renders our social and moral ties too open to dissolution by rational criticism."¹⁰⁸ Dedicated values, on the other hand, provide a kind of closure, or better, an independent procedure for resolving social and moral issues that one can adopt in advance. Everyone risks the uncertainty that leading a life of deliberative autonomy engenders. We can avoid this by deciding in advance to adopt dedicated values. The question of whether to adopt the deliberative attitude or instead to adopt a system of dedicated norms and values is an open question that might not lend itself to general or final answers.¹⁰⁹

105. In a similar fashion, Catherine MacKinnon has described postmodernism as "discourse unto death." Catherine A. MacKinnon, *From Practice to Theory, or What is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991) ("The postmodern version of the relation between theory and practice is discourse unto death.").

106. See JEAN-PAUL SARTRE, EXISTENTIALISM AND HUMANISM 52 (1950) ("[M]an being condemned to be free carries the weight of the whole world on his shoulders; he is responsible for the world and for himself as a way of being.").

107. The phenomenon of a deliberative person "converting" to a dedicated life style is not uncommon.

108. Alasdair MacIntyre, *Is Patriotism a Virtue?*, in THEORIZING CITIZENSHIP 209 (R. Beiner ed., 1995).

109. Once we demystify the modernist conception of reason which originally generated the deliberative attitude, we begin to see the deliberative attitude in a different light. It is a strategy for cultural inquiry that has benefits and burdens just as dedi-

A defender of the deliberative attitude might reply that choosing a dedicated life requires deliberation even if only for one last deliberative decision. Since a deliberative decision—how one should live—is made in any case, it is incumbent upon us to decide well. Thus, we cannot escape deliberative reasoning: we can only decide to do it well or poorly. Doing it well requires that we keep our deliberative options open. However, the deliberativist overlooks the fact that no one engages in deliberative autonomy in all situations. The question here then becomes how often and in what kinds of circumstances should we deliberate. Of course, that too involves a deliberative choice. But even if the deliberative attitude must play some role in one's system of practical reasoning, one can still choose a system that is predominantly dedicated. If so, then the reply establishes only that deliberation is required in some circumstances. It does not require anyone to adopt a predominantly deliberative set of norms and values.

These problems do not constitute dispositive evidence against the deliberative attitude. They are intended to show only that the distinction between deliberative and dedicated cultures does not presume the superiority of the deliberative attitude.¹¹⁰ Deliberative cultures object to dedicated constructs because they do not foster self-criticism, self-determination, and so forth. Moreover, dedicated systems fail to prepare you for contemporary democratic society. In short, dedicated cultures fail because they are not deliberative, but this does not provide a non-circular argument against dedicated cultures.

cated systems of cultural inquiry have benefits and burdens. Only from an Archimedean perspective can we embrace the deliberative attitude and reject dedicated cultures in advance. Abandoning such foundationalist devices entails rejecting the notion that deliberative systems are *always* superior to dedicated systems, no matter the content of the system, the historical era in which they exist, and the *person* and the *community* adopting them.

110. For an argument that can be redeployed in the present context as an objection to deliberative cultures, see MICHAEL OAKESHOTT, *RATIONALISM IN POLITICS AND OTHER ESSAYS* 5-42 (1991).

3. The Identity and Justification of a System of Norms

We should distinguish between the *identity* or *characterization* of a system of norms and values and its *justification*. How we identify or characterize a system of norms depends upon the social expectations that naturally flow from the characterization. For example, when we identify a system of norms as deliberative, we invite others to systematically criticize, revise, and attempt to falsify the system's norms. When we identify a system of norms as dedicated, we expect allegiance. How we identify or characterize a system of norms is one thing; how we justify that system is another. We can therefore have a dedicated system of norms that is justified deliberatively, and we can have a system of deliberative norms that are justified by appealing to dedicated factors. The United States military is a dedicated system that in principle has a deliberative justification, whereas a system of religious norms committed to the deliberative attitude because it is the word of God is an example of a system of norms characterized deliberatively, but whose ultimate justification appeals to a dedicated factor, namely, the existence and will of God.¹¹¹ Of course, neither example is a case of a fully deliberative or a fully dedicated system, and it is these ideal types that concern us here.

The distinction between deliberative and dedicated cultures is a distinction between two *types* or conceptions of comprehensive doctrines of the good. The virtues of the deliberative attitude are self-determination, self-realization, and self-authentication. The virtues of the dedicated attitude are closure, predictability, stability, and security. It seems to follow that since liberalism is committed to the deliberative attitude, it incorporates a conception of the good.¹¹² If so, liberalism cannot then be neutral

111. This example assumes that the existence of God is not subject to deliberative proof. The example fails if you believe that deliberative proof can justify a belief in God. In that case, the identity and justification of a (religious) cultural system may be fully deliberative.

112. In order to deny that liberalism incorporates a conception of the good, it can be argued that liberalism does not presuppose the deliberative attitude, and therefore does not presuppose a conception of the good. Yet, no one can deny that liberal justification is committed to the deliberative attitude in the political context. If so, the deliberative attitude presupposed in political justification is *itself* a conception of the

concerning different conceptions of the good and may be unable to tolerate different conceptions of the good not based on the deliberative attitude.¹¹³ Let us now explore this critical issue.

III. LIBERALISM AND THE CONCEPT OF THE GOOD

A. *Does Liberalism Contain a Conception of the Good?*

The distinction between deliberative and dedicated cultures does not depend upon an answer to the question of whether liberalism contains a conception of the good.¹¹⁴ Nevertheless, an answer to this question is required to show that liberalism cannot tolerate dedicated cultures.¹¹⁵ In this section I discuss the issue of whether liberalism contains a conception of the good, and if so, whether liberalism unfairly benefits liberals in constructing principles of public reason.¹¹⁶

good.

113. There are two different strains of liberalism which when distinguished represent two different kinds of liberal theory. The first emphasizes *neutrality*, the other *pluralism*. RAZ, *supra* note 78, at 132-33. Far from neutral, liberal pluralism insists that the state should provide the conditions for a multiplicity of different comprehensive conceptions of the good. Nevertheless, liberal pluralism might be neutral with respect to each individual conception of the good.

114. The concept of the good refers to a person's ultimate values. A complete answer to the question of whether liberalism contains a comprehensive conception of the good must address these questions: First, is the deliberative attitude an intrinsic good? In other words, is there something of value associated with the deliberative attitude that cannot be explained by reference to its consequences? Second, how does the deliberative attitude in political contexts differ from the deliberative attitude as a constituent feature of the good? Third, is it possible or desirable to adopt the deliberative attitude in political contexts *only*, while simultaneously embracing a highly structured system of dedicated norms and values in one's social life?

115. Liberalism contains a conception of the good if any of the following are true: (1) the liberal theory of the right presupposes a conception of the good; (2) the liberal theory of the right contains a structural feature that is a constituent feature of a conception of the good; or (3) people who adopt the deliberative attitude in their social lives are systematically more likely to adopt the deliberative attitude in political justification.

116. According to Rawls, "in democratic society public reason is 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." JOHN RAWLS, *POLITICAL LIBERALISM* 214 (1993). This is a narrower conception of public reason than Kant's because Kant believed that "[t]he *public* use of one's reason must always be free, and it alone can bring about enlightenment." IMMANUEL KANT, *What is Enlightenment?*, in *PERPETUAL PEACE AND OTHER ESSAYS* 41-42 (1983).

Liberalism contains a conception of the good because it is committed to the deliberative attitude.¹¹⁷ Taking the deliberative attitude seriously entails adopting it as the principle for motivating and justifying your choice of substantive goals.¹¹⁸ This means that whatever your substantive goals concerning health, knowledge, wealth, and social benefits, you express and structure these substantive values through deliberative rationality and deliberative autonomy. In short, your substantive goals are not merely important in themselves, but rather *in how they are motivated and justified by the deliberative attitude*. This makes the deliberative attitude a constituent feature of your system of substantive values, and arguably more important than the substantive values themselves.

1. Comprehensive Liberalism and Political Liberalism

Since the deliberative attitude is a constituent feature of the good, liberals are necessarily benefited by adopting the deliberative attitude in the context of political justification.¹¹⁹ Let us call the liberal who embraces the deliberative attitude as a constituent feature of both political reason and social reason "the comprehensive liberal," and let us call "the political liberal" one who embraces the deliberative attitude as a constituent feature of political reason alone.¹²⁰ Does the comprehensive liberal benefit from the deliberative attitude in political dis-

117. The inescapability of the deliberative attitude as a constituent feature of the good is argued in greater detail in Lipkin, *supra* note 3.

118. Moreover, if liberalism is preferred because it avoids conflict or strife, then you will embrace liberalism if the avoidance of conflict and strife are your primary values. See Seyla Benhabib, *Liberal Dialogue Versus a Critical Theory of Discursive Legitimation*, in *LIBERALISM AND THE MORAL LIFE* 143, 146-47 (Nancy L. Rosenblum, ed., 1989). This hardly shows that liberalism is not dependent on at least a partial conception of the good.

119. Political reason refers to the basic structure of society, while social reason refers to personal and associational activities in non-constitutional and non-governmental contexts.

120. This departs from Rawls' use of political liberalism. According to Rawls, the political liberal is someone who accepts liberalism concerning public reason and political justification, but whose conception of the good is irrelevant to political justification. RAWLS, *supra* note 116. Since I believe liberalism contains a conception of the good, I want to contrast the comprehensive liberal with a political liberal. To make the appropriate contrast, the political liberal must embrace the deliberative attitude concerning political justification, but reject it concerning her conception of the good.

course in a way that the political liberal does not?¹²¹ If she does, then adopting the deliberative attitude in political contexts is neither neutral,¹²² nor impartial, nor merely the result of an overlapping consensus.¹²³ Nor is the relationship between political reason and social reason contingent. Instead, the deliberative attitude as the *sine qua non* is necessarily related to social liberalism, and its adoption, therefore, unfairly favors comprehensive liberals over political liberals.¹²⁴

John Rawls, a champion of political liberalism, rejects this conclusion by invoking the principle that the right is prior to the good.¹²⁵ The theory of the right concerns those rights and duties that follow from the most plausible conception of political justification, while the theory of the good concerns those traits of persons and states of affair that have moral value. According

121. As Kent Greenawalt puts it, "[l]iberal nonreligious comprehensive perspectives are bound to 'suffer less' from a principle of [liberal] self-restraint than both religious and nonreligious, non-liberal views. This difference may reasonably be thought to involve a kind of inequity." Kent Greenawalt, *On Public Reason*, 69 CHI.-KENT L. REV. 669, 688 (1994).

122. See MACINTYRE, *supra* note 18, at 345 (arguing that the liberal's conception of practical reasoning "and the theory . . . of justice . . . are not neutral with respect to rival and conflicting theories of the human good."). The claim here is that even if liberalism wanted to, it cannot escape a bias in its own favor because "[t]he starting points of liberal theorizing are never neutral as between conceptions of the human good; they are always liberal starting points." *Id.*

123. See RAWLS, *supra* note 116, at 133-72.

124. The comprehensive liberal expresses the deliberative attitude as the unifying principle of her theoretical and practical life. See STEPHEN MACEDO, LIBERAL VIRTUES: CITIZENSHIP, VIRTUE AND COMMUNITY IN LIBERAL CONSTITUTIONALISM 276 (1990). Hence, the deliberative attitude represents a way of life, a technique of being in the world. *Id.* at 256 (asserting that freedom is a way of life). This way of life "contains *within itself* the resources it needs to declare and to defend a conception of the good life that is in no way truncated or contemptible." William Galston, *Defending Liberalism*, 76 AM. POL. SCI. REV. 621, 629 (1982). Not everyone, of course, concurs in the desirability of the deliberative attitude.

125. RAWLS, *supra* note 54. *But see* Joseph Raz, *Facing Diversity: The Case of Epistemic Abstinence*, 19 PHIL. & PUB. AFF. 3, 15 (1990) (arguing that endorsing Rawls' theory of justice achieves stability and unity and that makes the theory true). So called political liberalism applies to the public, political arena. See RAWLS, *supra* note 114; *see also* Bruce Ackerman, *supra* note 10. *But see* Bruce W. Brower, *The Limits of Public Reason*, 91 J. PHIL. 5, 15 (1994) (arguing that "Rawlsian arguments will be acceptable only to those who have already approved the contractarian ideal of the reasonable person").

In Rawls' terminology, my point is that a political liberal who integrates the deliberative attitude throughout her political life *and* her social life has an advantage over a political liberal who adopts the deliberative attitude in her political life only.

to Rawls, the theory of the right is *independent* of the theory of the good.¹²⁶ In other words, political justification does not *pre-suppose* any particular conception of the good, or comprehensive metaphysical, epistemological or ethical doctrine. Given a plurality of different conceptions of the good, reasonable people—people who regard themselves as free and equal, and who have a sense of justice and a particular conception of the good—will construct a political domain governed by fairness and impartiality, permitting or guaranteeing a plurality of comprehensive doctrines about the meaning of life.¹²⁷

Rawls' goal is to show how people with incompatible conceptions of the good can agree on fundamental principles of political justification. In the Rawlsian framework, this goal must be possible for liberal democracy to function at all. In order for

126. *But see* Will Kymlicka, *Rawls on Teleology and Deontology*, 17 PHIL. & PUB. AFF. 173, 184-85 (1988) (a thought-provoking article arguing that this view is misplaced).

127. Rawls adopts the distinction between "pluralism as such" (or pluralism in fact) and reasonable pluralism. Pluralism as such constitutes "a mere historical condition that may soon pass away." RAWLS, *supra* note 6, at 36. While reasonable pluralism "is a permanent feature of the public culture," pluralism as such implies that free institutions tend to encourage a variety of different views based on idiosyncratic features of peoples' points of view. *Id.* Reasonable pluralism "is the fact that among the views that develop are a diversity of reasonable comprehensive doctrines." Joshua Cohen, *Moral Pluralism and Political Consensus*, in THE IDEA OF DEMOCRACY 270, 280. (David Copp et al. eds., 1993). Rawls does not explain his conception of reasonableness, but Cohen attempts a definition, according to which "[a]n understanding of value is fully reasonable just in case its adherents are stably disposed to affirm it as they acquire new information and subject it to critical reflection." RAWLS, *supra* note at 116, at 28-81. In my view, both Rawls and Cohen need to say more about the notion of reasonableness. Interpreting Cohen's conception of reasonableness narrowly, only few comprehensive views will be reasonable, while if we construe the critical terms expansively, almost everyone's view is reasonable. The problem is trying to formulate a conception of reasonableness that is neither too narrow nor too expansive, nor circular. But what can such a conception be based on? A reasonable conception of reasonableness? Since the concept of reasonableness plays such a significant role in most characterizations of liberalism, we need a thorough analysis of this concept before we can determine whether it is successfully used in constructing liberal theory.

The existence of a plurality of values does not itself entail liberalism, nor does it entail any other political theory. *See generally* George Crowder, *Pluralism and Liberalism*, 42 POL. STUD. 293 (1994). Moreover, liberal theorists typically advocate a plurality of liberal values, but "[w]hy should we accept that the plurality of values available to us is, on the whole, a plurality of liberal values?" *Id.* at 304. Moreover, to justify the restriction, it might be necessary for liberalism to embrace historicism. *Id.* at 304-05. *But see* Isaiah Berlin & Bernard Williams, *Pluralism and Liberalism: A Reply*, 42 POL. STUD. 306 (1994).

Rawls' project to succeed, he must adopt a narrow conception of the independence of the right and the good. Indeed, Rawls appears to believe that only if principles of political justification logically presuppose principles of the good is the right dependent upon the good. There are, however, alternative conceptions of the dependency of the right and the good. The right is dependent upon the good when a particular type of person—with her particular conception of the good—is drawn to and benefits from a particular conception of the right. If comprehensive liberals tend to adopt a particular conception of political justification, and if they benefit over others in doing so, we have reason to believe, barring an alternative explanation, that their conception of the good is more closely allied with political justification than are other conceptions of the good.

What benefits does the comprehensive liberal gain from adopting the deliberative attitude that are unavailable to the political liberal? Comprehensive liberals can justify principles of political reason all the way down, whereas political liberals can justify principles of political reason deliberatively, but must justify their conception of the good in dedicated terms or not at all. This precludes political liberals from achieving a unity in their conception of justification throughout their public and nonpublic lives, as well as throughout their system of practical reasoning generally.

2. The Problem of Unity

Two problems arise in this context. The first problem is a conceptual and moral point about the advantages of comprehensive liberalism over political liberalism. The advantage is that the comprehensive liberal is afforded the opportunity of achieving a *unity* between political reason and social reason not afforded to the political liberal.¹²⁸ Because she uses the deliberative attitude in both political and social contexts, the compre-

128. This type of unity is an important value if one endorses the idea of a structured, integrated sense of self. The more bifurcated one's life, the less one has an integrated sense of self. A truncated sense of self requires principles for ranking or balancing the disparate parts of the self, and such principles are hard to find. The deliberative attitude is designed to integrate the disparate parts of one's life and therefore expresses the unity of the self.

hensive liberal requires only one conception of justification for the central areas of her life. Moreover, the comprehensive liberal achieves a structure to her consciousness, a unification of the public and private not available to the political liberal.

Liberalism is often commended or criticized for embracing a separation of the public and the private, but in one sense comprehensive liberalism does not embrace this dichotomy at all. Instead, it seeks the simplicity of a single, though sophisticated, attitude unifying the public and the private or the political and the social into one perspective. Comprehensive liberalism seeks the unity of perception, thought, and action in terms of the deliberative attitude. Everything the comprehensive liberal experiences, reflects on, and decides to do can be explained by the deliberative attitude. In short, the comprehensive liberal is committed to the deliberative attitude not only for its instrumental rewards, but more importantly, for the constituent role the deliberative attitude plays in unifying her conceptions of the right and the good.

By contrast, the political liberal, who is a non-liberal concerning social reason, is compelled to live a bifurcated life. She must accept the deliberative attitude in political justification and dedicated attitudes in social justification. In other words, she adopts the deliberative attitude when justifying the basic structure of society and dedicated attitudes when determining the meaning of her life. There is a price to pay for this bifurcation: one's deepest commitments must be suppressed or disguised or, at best, become truncated. In the context of political justification, political liberalism compels individuals committed to dedicated social values to lead closeted political lives denying their dedicated attitudes. In the context of political justification, political liberals must approach political questions obliquely and incompletely. The comprehensive liberal, on the other hand, can express her deepest commitments by embracing the deliberative attitude because it is this attitude that unifies her political and social lives. Liberalism grants the benefits of unity and coherence in one's life to the comprehensive liberal but withholds them from the political liberal. More importantly, political liberalism takes a stance on the formal dimension of a person's conception of the good or comprehensive view of life.¹²⁹ Only

129. Consider Miriam Galston's remarks:

comprehensive doctrines that permit the bifurcation of political justice and conceptions of the good need apply. That in itself is part of a particular conception of the good.

3. The Problem of Authenticity

The second problem can be called, absent a better term, the problem of authenticity: Does liberalism encourage people to act sincerely on their political principles?¹³⁰ The problem of authenticity directly implicates the stability of a liberal regime. Since a constituent feature of the comprehensive liberal's conception of the right and her conception of the good is the deliberative attitude, embracing this attitude in political justification while denying a role to the concept of the good generally breeds suspicion and distrust, and therefore threatens the stability of democratic government. The political liberal perceives the role the deliberative attitude plays in the comprehensive liberal's life and begins to believe that liberalism is skewed in the comprehensive liberal's favor. For the comprehensive liberal, the deliberative attitude structures, unifies and integrates both her conception of public reason and her conception of the good. In short, it structures the comprehensive liberal's practical reasoning generally. It is little wonder that the political liberal is likely to become suspicious of the comprehensive liberal and conclude that political liberalism is a charade. More importantly, the comprehensive liberal should want political liberals to be as deeply committed to their common political concepts.¹³¹ Only in this way is the appropriate force behind social unity possible.¹³²

Rawls denies the label "reasonable" to any comprehensive views that see political principles as derived from or dictating to moral, psychological, religious, or metaphysical views. Thus, Rawls excludes from his democratic society any comprehensive view that sees political theory as part of and inseparable from a comprehensive view.

Miriam Galston, *Rawlsian Dualism and the Autonomy of Political Thought*, 94 COLUM. L. REV. 1842, 1851 (1994).

130. Cf. S. A. Lloyd, *Relativizing Rawls*, 69 CHI.-KENT L. REV. 709, 729 (1994) ("We may also think it is a good thing that others be able to act *authentically* on their political commitments, for reasons of both moral integrity and psychological health.") (emphasis added).

131. See *id.*

132. See *id.* Rawls maintains that the stability of a political conception of justice

The problem for authenticity arises because adopting the deliberative attitude is or, at least, *appears* to be taking sides in the battle of the conception of the good.¹³³ Typically, the deliberative attitude generates substantive answers to questions of political organization that are at odds with dedicated answers to these questions. Consequently, those who must suppress their conception of the good often feel that political liberalism is unfairly skewed toward the comprehensive liberal, disadvantaging those with dedicated conceptions of the good.¹³⁴

lies in its support from an overlapping consensus. In this view, the same political conception will be embedded in different comprehensive doctrines. Thus, political reason will have the appropriate force and unity. But this assumes that the political conception will be embedded in these different comprehensive doctrines in the same way and to the same extent. Nowhere does Rawls demonstrate that this is so. If it is not so, there is no guarantee that stability and unity can be achieved through this consensus.

133. While not endorsing it, Nagel gives a good description of this distrust.

[D]efenders of strong toleration tend to place a high value on individual freedom, and limitation on state interference based on a higher-order impartiality among values that tends to promote individual freedom to which they are partial. This leads to the suspicion that the escalation to a higher level of impartiality is a sham, and that all the pleas for toleration and restraint really disguise a campaign to put the state behind a secular, individualistic, and libertine morality—against religion and in favor of sex, roughly.

THOMAS NAGEL, *EQUALITY AND PARTIALITY* 156 (1991). Nagel goes on to say that a liberal “should at least be able to convince *himself* that [others] have reason to accept certain principles of political toleration and impartiality. . . .” *Id.* at 157. The problem here is that in the important, controversial cases no reliable procedure exists to rule out self-deception and bad faith. Without such a procedure we are left only with a case by case process that engenders suspicion and distrust.

On another occasion Nagel writes: “Liberal impartiality is not in competition with more specific values as one conception of the good among others. If it were, it would be unintelligible. . . .” Nagel, *supra* note 28, at 239. According to Nagel, it is a mistake to think that liberalism requires “its adherents to step outside liberalism itself to compromise with antiliberal positions. It purports to provide a maximally impartial standard of right which has priority over more specialized conceptions in determining what may be imposed on us by our fellow humans, and vice versa.” *Id.* Liberal *impartiality* may or may not be “in competition with more specific values as one conception of the good among others.” *Id.* But the deliberative attitude is in competition with other conceptions of the good. That is what makes it an attractive attitude; it promises a life that endorses the process of choice more than the object chosen.

134. Joshua Cohen, *A More Democratic Liberalism*, 92 MICH. L. REV. 1503, 1519-20 (1994). More specifically, “the case for stability . . . depends upon a set of moral commitments and self-understandings that some members of a well-ordered society will reasonably reject.” *Id.*

Political liberals might contend that whenever questions of justification arise they always preclude reference to the good because justification requires the original position. And the original position is neither liberal nor non-liberal, but uses a neutral conception of deliberation that avoids characterization in these terms. Consequently, justification in terms of the original position cannot presuppose anyone's conception of the good.¹³⁵ But this reply simply denies, without argument, that the deliberative attitude is a constituent feature of a conception of the good. If a particular conception of political justification is more likely to be chosen by a people having a particular conception of the good, and if these same people are benefited by that conception of political justification, then we have reason to say that this conception of political justification is skewed toward people having that conception of the good.

The political liberal will not deny that principles of public reason might benefit some groups over others. Instead, the political liberal replies that this overlooks an important distinction between *justifying* the principles of justice and the *consequences* of adopting these principles.¹³⁶ In this view, liberalism need not, and perhaps, cannot provide consequential neutrality; on the other hand, it must be justificatorily neutral. Is this distinction between the justificatory and consequentialist features of public reason dispositive? In adopting a certain conception of public reason, should not its predictable consequences be relevant to its desirability?¹³⁷ When justificatory neutrality continually has nonneutral consequences and nonneutral conse-

135. Rawls contends that "accepting the political conception does not *presuppose* accepting any particular comprehensive religious, philosophical, or moral doctrine; rather, the political conception presents itself as a reasonable conception for the basic structure alone. . . ." RAWLS, *supra* note 116, at 175. *But see* Cohen, *supra* note 132, at 1527 ("Even if the conception *presents itself* as political, accepting it may still *presuppose* accepting a comprehensive view if a single view provides the only reasons for accepting the political conception.") (emphasis added).

136. Will Kymlicka, *Liberal Individualism and Liberal Neutrality*, 99 ETHICS 883, 884-86 (1989). According to Kymlicka, a liberal state is sufficiently neutral when it fails to "justify its actions by reference to some public ranking of intrinsic value of different ways of life, for there is no public ranking to refer to. This kind of neutrality is consistent with the legitimate nonneutral consequences of cultural competition and individual responsibility." *Id.* at 886.

137. Isn't it irrational to evaluate a conception of public reason without considering its predictable consequences? *Cf.* Thomas Pogge, *Cosmopolitanism and Sovereignty*, 103 ETHICS 48, 54 (1992).

quences of the same kind, it is unclear how this distinction helps. If liberal justification continually has deliberative consequences, isn't the distinction between justification and consequences artificial? But more importantly, how do we distinguish between the character of *political justification* and the character of a conception of the *good*? If the character of both includes the deliberative attitude, it seems to follow that the deliberative attitude integrates the comprehensive liberal's conception of the right and her conception of the good. Moreover, it also appears that the relationship between the comprehensive liberal's conception of the right and her conception of the good is more than a contingent relationship; instead, the conception of the right and the conception of the good are non-contingently unified by the deliberative attitude.¹³⁸

Joshua Cohen attempts to defuse the objection "that the ideal of deliberative democracy is objectionably sectarian because it depends on a particular view of the good life—an ideal of active citizenship."¹³⁹ He argues that the good is relevant to liberalism either because it is part of liberal *justification* or because it is required for *stability*.¹⁴⁰ Cohen grants that a conception of the good may be required for stability, but insists that "[a] political conception is objectionably sectarian only if its *justification* depends on a particular view of the human good, and not simply because its stability is contingent on widespread agreement on the value of certain activities and aspirations."¹⁴¹ For national allegiance to be part of the justification of a political democracy, patriotic devotion may be required for its stability.¹⁴² If patriotic stability is truly required for a democracy in all practically conceivable circumstances, it is unclear how it avoids inclusion in the justificatory framework. Moreover, as a conception of the good, patriotic devotion, when acted upon through the legal and political institutions of the state, may burden conceptions of the good not including patriotic devotion or those explicitly opposed to such a conception. The real test of

138. If this distinction is viable, distrust and suspicion concerning public reason will naturally arise when those not sharing the comprehensive deliberative approach find themselves on the short end of the consequences of public reason.

139. Cohen, *supra* note 64, at 27.

140. *Id.*

141. *Id.* (emphasis added).

142. *Id.*

sectarianism should be whether those values associated with the political conception under evaluation burdens other conceptions of the good. Since this will almost always be so, the charge of sectarianism must be taken much more seriously.

This explains the traditional liberal's rejection of the idea of a liberal conception of the good. If there is no such conception, then the problem of authenticity—appearing to favor the liberal's conception of the good—drops out. The liberal's conception of the good cannot be unfairly favored or unduly benefited because the liberal, *qua* liberal, can have no good. Any conception of the good the liberal assumes is conceptually and morally independent of political liberalism. If the liberal's conception of the right was conceptually and morally independent of the good, then political liberalism as a theory of the right favors no conception of the good. However, the kind of justification that occurs in the original position is deliberative, and deliberative people are likely to adopt this type of justification and will benefit from adopting it. When a particular kind of justification is so intertwined with a particular conception of the good, one is warranted in saying that it politically if not logically presupposes that conception.

The theory of the good answers the question "what sort of culture human beings have good reason to seek to fashion for themselves and their descendants, or as a theory of what sort of human beings it is desirable in principle for cultures to continue to form. . . ." ¹⁴³ The theory of the good must determine whether the bifurcation between the political and the personal is an attractive feature of political liberalism's moral psychology. This conception of politics sacrifices unity and coherence in one's moral personality. ¹⁴⁴ In answering the question "what kind of person is it desirable to be?" liberalism's answer must be the kind of person committed to the deliberative attitude. This renders the deliberative attitude a particular conception of the good. The deliberative attitude unifies and structures the comprehensive liberal's conceptions of the right and the good.

143. John Dunn, *Social Theory, Social Understanding, and Political Action*, in *SOCIAL THEORY & POLITICAL PRACTICE* 109, 112 (Christopher Lloyd ed., 1983).

144. See Elizabeth H. Wolgast, *The Demands of Public Reason*, 94 COLUM. L. REV. 1936, 1941-44 (1994) (arguing that a theory that sacrifices integrity for Rawls' conception of civility will not be widely acceptable).

Hence, it is difficult to understand how someone committed to the deliberative attitude concerning the good could fail to adopt the deliberative attitude in the context of political justification. Consequently, the comprehensive liberal benefits more from political liberalism than does the political liberal because the connection between the comprehensive liberal's conception of the right and her conception of the good is conceptual, not accidental.

Rawls believes that *reasonable* people will be drawn to political liberalism, not merely deliberative people.¹⁴⁵ And reasonable people can have different conceptions of the good, even dedicated conceptions of the good. However, Rawls employs an unanalyzed conception of reasonableness, one that must be specified in greater detail if reasonableness is used to connect the political culture to principles of justice.¹⁴⁶ Even if Rawls succeeds, he can have no realistic hope of transposing this argument to international multicultural contexts, since no shared political culture exists in that context.¹⁴⁷ Moreover, it is very dangerous to rely on the notion of reasonableness as the basis for determining which conceptions of political justification are acceptable. The common tendency is to regard the dominant group's conception of reasonableness, whether liberal or non-liberal, as a constraint of reasonableness generally and therefore as a constraint on political justification without an independent argument for this conclusion.¹⁴⁸

Rawls uses reasonableness to achieve a form of neutrality that he earlier believed was nonpolitical.¹⁴⁹ This new political methodology can achieve moral neutrality only in highly homogeneous and localized contexts or only in the sense of a *modus*

145. Rawls wants to derive political justification from our political culture in which free and equal people must adopt some scheme of social cooperation. The concept of free and equal people seeking social cooperation seems conspicuously liberal and deliberative from the start. How can that be the *neutral* basis of political liberalism?

146. Basically, Rawls' conception of reasonableness centers around people regarding themselves as free and equal with a sense of justice and a conception of the good.

147. See Onora O'Neill, *Ethical Reasoning and Ideological Pluralism*, 98 ETHICS 705, 716-17 (1988).

148. See Jean Hampton, *The Moral Commitments of Liberalism*, in THE IDEA OF DEMOCRACY, 292, 309 (David Copp et al. eds., 1993) ("It is easy for any powerful group to insist that its society's standards of what is reasonable and rational justify only its views of the world.").

149. RAWLS, *supra* note 54.

vivendi.¹⁵⁰ Consequently, liberal justification is not neutral because it incorporates the deliberative attitude, and the deliberative attitude is a constituent feature of a liberal conception of the good.¹⁵¹

Liberalism must be defended, not as a theory morally prior to any theory of the Good, but as a component of such a theory, or as one value or set of values among a larger set. That is, the princip[al] values of liberalism, individual autonomy, and political and legal neutrality vis-à-vis lifestyles will find their place—and *their limits*—among the competing, and at times compelling, values of welfare, truth,

150. As Hampton observes:

Either Rawls defends his theory of justice in a way that is genuinely morally neutral by arguing that the ideas from which it is deduced are accepted by the populace—in which case the public charter of the society turns into a mere *modus vivendi* based on beliefs that happened to be held by the people today and that they might abandon tomorrow; or he defends them as correct . . . in which case his defense of liberal values presupposes the truth of a comprehensive metaphysical view that includes them, and implicitly rejects the idea that a liberal democratic society can take a neutral stand on every value-issue.

Hampton, *supra* note 148, at 309, Hampton believes that “when Rawls suggests that his ‘reasonableness’ principle of legitimating political coercion is derived from assumptions of human freedom and equality, his rhetoric suggests his (in my view legitimate) intolerance of the views of those who would repudiate these assumptions.” *Id.* at 310. Now Hampton’s view might be the only one left standing after considering the alternatives. Nevertheless, it is puzzling why Hampton does not appear to recognize that this conclusion is troubling. Simply put, is there no more compelling conception of tolerance that either permits us to tolerate the intolerant, or at least to understand in a principled fashion why we need not bother? Hampton might reply that we can explain the latter by indicating that toleration cannot survive if we allow those who repudiate its assumptions to destroy our system of tolerance. But this begs the question against fascists, communists, and Social Darwinists. Perhaps this is as far as we go. Perhaps we must conclude that liberal toleration is a very bad system because it cannot refute these other perspectives. Perhaps it is the worst system of political organization, except for the rest. *See id.* at 311.

151. Although the character of liberal justification might not necessarily commit one to a particular conception of the good, if only certain kinds of people having a particular conception of the good are inclined to adopt liberal justification, then liberal justification is skewed in favor of that kind of good. Consider:

The objection to the original position was not that its very statement reveals it to be part of a liberal philosophy of life but rather that citizens will be drawn to it—will find it a reasonable device for settling on principles of justice—only if they endorse such a philosophy. So, too, even if the formulation of a political conception is freed from objectionable sectarianism, it may still win support only from adherents to a single comprehensive doctrine or a narrow range of such doctrines.

Cohen, *supra* note 134, at 1526.

desert, friendship, love, community, tradition, and so forth.¹⁵²

In other words, if individuals committed to the above virtues as part of their conception of the good embrace deliberative justification, then that is evidence, barring an alternative explanation, that deliberative justification in the original position is linked to the liberal conception of the good. Whether we describe this connection as one of presupposition or dependency is irrelevant. The connection between political justification and the concept of the good is close enough to justify charges that liberalism favors a particular conception of the good.¹⁵³

Liberal virtues are mirrored in political liberalism, and when taken seriously have the tendency to insinuate themselves in one's personal life. Moreover, once instilled into one's life these virtues have a tendency to undermine dedicated values. A liberal is someone who holds back from judgment at least until reasons have been given for the judgment and often until she compares those reasons with reasons for alternative judgments. In the most favorable picture, the liberal is a person who chooses to be self-legislating, to be committed to her own sense of values, and to be authentic.¹⁵⁴ This involves being committed to few, if any, dedicated values. When a liberal does embrace dedicated values, it is only after deliberatively evaluating them and granting them the liberal pedigree as a result of this deliberation. Consequently, how can liberalism tolerate dedicated cultures?

152. Alexander & Schwarzschild, *supra* note 18, at 109. Liberalism also includes such personal virtues as autonomy, critical reflection, independence, liberal pluralism, respect, dignity, mutual trust, responsibility, and experimentation. See DAVID HELD, *MODELS OF DEMOCRACY* 270 (1987); see also William Galston, *Defending Liberalism*, 76 AMER. POL. SCI. REV. 621, 628 (1982) (describing the elements in the liberal conception of the good including social peace, the rule of law, diversity, inclusiveness, decency, affluence, self-realization, approximate justice, truth, and privacy).

153. Moreover, in international contexts having no shared political culture, this connection is sufficiently close to warrant the charge that liberalism fails to provide a procedure for *neutrally* deciding on principles of political justification. Instead, liberal principles of justification in international contexts smuggle in a liberal conception of the good.

154. CHARLES TAYLOR, *MULTICULTURALISM AND "THE POLITICS OF RECOGNITION"*: AN ESSAY BY CHARLES TAYLOR (1992); CHARLES TAYLOR, *THE ETHICS OF AUTHENTICITY* (1991).

B. *Liberalism and Tolerance*

1. The Traditional Conception of Tolerance

The traditional conception of tolerance involves forbearance in the sense of permitting the occurrence of something odious or disparaged. According to this conception, a person tolerates only something that she disapproves of or abhors. It makes no sense according to this conception of tolerance for an individual to tolerate something that she can see the point of, respect, or appreciate. Let me suggest that the standard conception of tolerance is an incomplete conception of tolerance, one that almost every political theory can accept. As a philosophical matter, tolerance is interesting when it relates to moral psychology and depicts attitudes that reflect or mirror the basic categories of the theory under examination. An interesting conception of tolerance shows how the moral attitudes conspicuous to the theory under examination can generate an appreciation of the tolerated attitudes. When tolerance is merely forbearance, liberalism is merely a call to tolerance without an explanation or justification of why tolerance follows from a deliberative structure. When liberal theory claims to tolerate alternative attitudes better than non-liberal theories, it does so by begging the question of which attitudes deserve toleration. Why is liberalism more attractive than fascism? Because liberalism can tolerate more non-liberal attitudes than fascism can tolerate nonfascist attitudes. If liberalism embraces the good of the deliberative attitude, however, its capacity for explaining and justifying toleration of non-liberal, dedicated cultures becomes problematic. Liberalism is then committed to a conception of the good that is antithetical to dedicated cultures.

2. Toleration as Appreciation and Respect

Toleration beyond a *modus vivendi* shows how an individual's scheme of practical reasons can tolerate alternative schemes based on the core element in her practical scheme. In order to defend this proposition let us distinguish between three kinds of tolerance. The first form of tolerance is *appreciation*. Although I disagree with your radical political views, I nonethe-

less recognize their force and commitment.¹⁵⁵ Because they represent an alternative perspective on cultural conflicts and cultural change, I appreciate how you value them. Your views represent an alternative perspective, a different conception of how to solve problems of a certain kind. I might even learn something by considering them, though without endorsing them or believing them to be true.¹⁵⁶ The basis for toleration in this sense is the deliberative attitude. I recognize that your views derive from a deliberative process that makes your view intelligible to me, sometimes even plausible. I can perceive the deliberative process at work in the derivation of your views.

The second kind of tolerance is *respect*. I tolerate your views not because I would ever consider them true or plausible, but because I respect you. Although, I believe that your views are totally false, I respect them because I can perceive their deliberative basis. The third sense of tolerance simply involves a *modus vivendi* approach to a plurality of values. In this sense, I need not appreciate nor respect your views; I simply permit them because doing so brings about my independent goal of living in a pluralist society. Were I to have my druthers, I might act to repress the expression of your views or take more aggressive action to prevent you from holding such views.¹⁵⁷ But since I have neither the power, nor perhaps the inclination to do so, I ruefully permit their expression.

Joseph Raz captures this last sense of tolerance when he observes that tolerance "implies the suppression or containment of an inclination or desire to persecute, harass, harm or react in an unwelcome way to a person."¹⁵⁸ According to Raz's conception, "a person is tolerant if and only if he suppresses a

155. Albert Weale, *Toleration, Individual Differences and Respect for Persons*, in ASPECTS OF TOLERATION 16, 18 (John Horton & Susan Mendus eds., 1985) ("To be tolerant involves the acceptance of differences that really matter to you.").

156. See ONORA O'NEILL, CONSTRUCTIONS OF REASON: EXPLORATIONS OF KANT'S PRACTICAL PHILOSOPHY 31 (1989).

157. This attitude can be found in Hobbes' political philosophy and does not exactly assume the moral high road, though it might occupy a morally middle ground position. I might not appreciate nor respect your views, but I might believe that a good society tolerates—in this *modus vivendi* sense—even unacceptable or despicable views.

158. RAZ, *supra* note 78, at 401. But see Edward Sankowski, *Personal Autonomy Institutions, and Moral Philosophy*, in PARADIGMS IN POLITICAL THEORY 34 (Steven J. Gold ed., 1993).

desire to cause to another a harm or hurt which he thinks the other deserves.”¹⁵⁹ Tolerance requires refraining from “an activity likely to be unwelcome to its recipient, or of an inclination so to act which is in itself morally valuable and which is based on a dislike or antagonism towards the person or a feature of his life, reflecting a judgment that these represent limitations or deficiencies in him. . . .”¹⁶⁰ Nevertheless, since increased knowledge can also increase or encourage tolerance, tolerance is more than just an inclination to curb morally oppressive views or limitations and deficiencies of character or conduct. Tolerance occurs when we learn to appreciate or respect someone’s views after initially being inclined to suppress them.¹⁶¹ True tolerance is more than a mere tight-faced acceptance of the obnoxious or outrageous; it is in part learning to see the other person’s life from her perspective, a coming to understand what we still consider to be false, or morally wrong. Learning to tolerate another’s perspective in the sense of appreciating it brings us close to, but does not compel, embracing Pascal’s “Tous comprendre est tous pardonner.”¹⁶²

159. RAZ, *supra* note 78, at 401-02.

160. *Id.* at 402.

161. Raz comes close to this conception in discussing multiculturalism. According to Raz, “multiculturalism insists that members of different groups in a society should be aware of the different cultures in their society, and learn to appreciate their strengths and respect them.” Joseph Raz, *Multiculturalism: A Liberal Perspective*, in *ETHICS IN THE PUBLIC DOMAIN* 155, 166 (1994). Raz probably would insist that appreciating and respecting different cultures means considerably more than tolerating them. In my view, we understand the moral psychology of toleration better, and how it relates to pluralism, when we see it in terms of appreciation and respect, even when what we tolerate—appreciate and respect—is antithetical to our conception of the good. Perhaps there is less that separates Raz’s view of tolerance and mine, since Raz believes that “even when cultures are at fault, and certainly when they are inferior without being oppressive, we have reason for supportive tolerance.” *Id.* at 170. Consider Raz’s words:

People bred and socialized within such cultures often knew no better, and had no choice. Moreover, by the time they are grown up their ability to transplant themselves and become a part of another culture are limited Given that even oppressive cultures can give people quite a lot, it follows one should be particularly wary of organized campaigns of assimilation and discrimination against inferior and even oppressive cultures. For many of their members they provide them with all that they can have, as it may be too late for them to make a transition.

Id.

162. “To understand everything is to forgive everything.”

To summarize, I tolerate your views when I believe them to be false, yet I appreciate their significance, respect their derivation, or permit you to utter them because suppressing them will cause a greater harm. If I can learn to appreciate the significance your views have for you and others, I can tolerate them even if I still convey my disapproval. Similarly, if I cannot appreciate their significance, I may still respect your right to express views that I believe are morally pernicious. Tolerance is thus a complex attitude that incorporates these and other features of moral psychology and should not be viewed as limited merely to the *modus vivendi* conception of tolerance.¹⁶³

Liberalism cannot explain and justify toleration of dedicated cultures in the first two senses; it cannot appreciate or respect dedicated cultures.¹⁶⁴ Since liberalism is committed to a deliberative strategy for resolving cultural conflicts and cultural change, it cannot explain and justify appreciating or respecting non-deliberated systems. In fact, dedicated cultures are in an important sense unintelligible from a liberal perspective. They can be described by liberalism, but explaining their deep structure is a non-starter for liberalism.¹⁶⁵

163. The attitudes of appreciating and respecting dedicated cultures are associated with empathy and sympathy. Developing the capacity for sympathy is perhaps a general way to come to recognize diversity. Also, sympathy is related to tolerance in that sympathy is likely to increase and deepen one's capacity for tolerance. In the standard interpretation of Hume's ethics, sympathy plays a pivotal role as the empirically discoverable primary moral emotion. See generally DAVID HUME, AN ENQUIRY CONCERNING THE PRINCIPLES OF MORALS (L.A. Selby-Bigge & P.H. Nidditch eds., 1975); DAVID HUME, A TREATISE OF HUMAN NATURE (L.A. Selby-Bigge ed., 3d ed. 1965). But see Robert Justin Lipkin, *Altruism and Sympathy in Hume's Ethics*, 65 AUSTRALASIAN J. PHIL. 18, 65 (1987) (interpreting Hume's conception of sympathy as a necessary feature of moral personality). For a phenomenological account of sympathy, see MAX SCHELER, THE NATURE OF SYMPATHY (Peter Heath, trans., 1970).

164. It might be argued that liberalism requires the existence of dedicated cultures in order to provide individuals with a sufficiently wide array of different lifestyles from which to exercise deliberative autonomy. Therefore, in the name of deliberative autonomy, liberalism must tolerate dedicated cultures. But how can dedicated cultures benefit *liberal* choice? If the values of the dedicated culture are truly dedicated and therefore do not admit of a deliberative justification, they are irrelevant to liberal reasoning. More importantly, even if successful, this objection explains liberal tolerance in the wrong way. Rather than appreciating or respecting dedicated cultures, this objection contends that liberals should *use* such cultures as a means to benefit liberal choice. If liberalism truly tolerated dedicated cultures, it must do so for the benefit of the dedicated culture, not for the liberal's benefit.

165. Explaining and *justifying* the deep structure of dedicated cultures can only be performed by non-deliberative factors.

Some liberals may not care if liberalism fails to explain liberal toleration of dedicated cultures in the sense of appreciation or respect, provided it can explain and justify tolerating dedicated cultures as a *modus vivendi*.¹⁶⁶ Both Rawls and Nagel, however, reject the notion that tolerance should be understood in *modus vivendi* sense.¹⁶⁷ The reason for this rejection is that such an accommodation appeals to instrumental, not intrinsic values.¹⁶⁸ A *modus vivendi* approach depends on equal accessibility to the means of power and domination. It implies that other groups hold views which are not appreciated, nor respected, but instead are despised and feared. Further, the requirement of *modus vivendi* is not explained and justified by liberalism, except in an ad hoc manner.

If liberalism is committed to either a conception of tolerance as appreciation or of respect, the theory then explains and justifies why one liberal culture should tolerate other *liberal* cultures. Since liberalism involves a deliberative strategy of cultural inquiry, all values, whatever their substantive dimension, should be appreciated or respected if they result from the deliberative attitude. But this is precisely the sort of move liberalism cannot make regarding dedicated cultures. A liberal

166. CHARLES LARMORE, *PATTERNS OF MORAL COMPLEXITY* (1988). Nevertheless, any culture can explain toleration in this sense. Liberalism has nothing special to offer here. See Cohen, *supra* note 134, at 1543.

167. If tolerating non-liberal cultures is possible at all, it consists of an *ad hoc* compromise or accommodation between the liberal and non-liberal cultures following no more strongly from liberalism than it follows from non-liberalism. In fact, prominent liberals themselves have rejected such compromises as inconsistent with the deep structure of liberal theory. For example, Rawls rejects the possibility of political liberalism resting on "a mere *modus vivendi*, dependent on a fortuitous conjunction of contingencies." John Rawls, *The Idea of an Overlapping Consensus*, 7 OXFORD J. OF LEGAL STUD., 1 (1987); RAWLS, *supra* note 116, at 47-48 (arguing that the *modus vivendi* approach is inherently unstable).

Nagel also argues against a *modus vivendi* approach because:

[A] defense of toleration as a *modus vivendi* can be offered to holders of radically divergent moral and political positions, but it is an instrumental argument, and does not present higher-order impartiality in the political sphere as a value in itself. It could not therefore be offered as a reason for toleration to those who felt certain that their domination of the society was completely secure.

NAGEL, *supra* note 133, at 157.

168. Moreover, if we understand toleration as a *modus vivendi*, we cannot offer the appropriate assurances to minorities having only a weak position in the accommodation.

culture cannot appreciate or respect dedicated cultures, not merely because its values may not be liberal, but more importantly because the process for deriving or discovering these values does not admit deliberative justification. Consequently, if liberalism is committed to only a *modus vivendi* conception of tolerance, it cannot explain and justify liberal toleration of other cultures in a conceptually and morally significant fashion.¹⁶⁹ Only appreciation or respect can provide *liberal* grounds for tolerance, and these grounds are unavailable to the liberal perspective on dedicated cultures.

IV. CONCLUSION

Let us draw together the threads of this discussion. My query has been whether liberalism can explain and justify tolerating non-liberal cultures. In raising this question, I have assumed that liberalism can explain and justify tolerating *liberal* cultures, though I have not argued for this position; nor do I think that the answer is transparent. Liberalism can explain and justify liberal cultures engaging in dialogue and conversation, but it does not follow that every liberal culture will tolerate every other liberal culture. In some cases, we can imagine two cultures, both committed to the deliberative attitude, disagreeing, even stridently, over the different substantive values each embraces. We can imagine, in the limiting case, the differences being so stark that these liberal cultures turn to war to resolve the conflict. However, such conflict rarely occurs.¹⁷⁰ Typically, since both cultures embrace the deliberative attitude, each should appreciate, or at least respect, the commitments of the deliberative process. Of course, the result might be different in circumstances in which the material conditions of each culture are so vastly different as to generate radically different substantive choices. Given similar circumstances, the deliberative attitude should not generate vastly different substantive values.

The real question is, of course, the possibility of liberalism explaining and justifying the toleration of non-liberal cultures. I

169. One feature of almost every significant conception of tolerance is mutuality or reciprocity.

170. See Doyle, *supra* note 24 (arguing that this rarely occurs).

have argued that this question can only be resolved after appreciating the distinction between deliberative and dedicated cultural constructs. Liberalism embraces deliberative constructs. The more liberal the culture, the more comprehensive its application of the deliberative attitude as a strategy for resolving conflicts and for cultural change. Since a deliberative construct is at the heart of both liberalism's theory of the right *and* its theory of the good, liberalism cannot explain and justify tolerating dedicated cultures in the sense of appreciating or respecting their values. It can, however, as any theory can, explain and justify tolerating dedicated cultures in the *modus vivendi* sense. Consequently, we must rethink liberalism's compatibility with multicultural constitutionalism both in domestic contexts and in foreign affairs.¹⁷¹ At best, liberalism can justify multicultural constitutionalism as an accommodation or compromise. At worst, liberalism is incompatible with dedicated cultures because its commitment to the deliberative attitude inclines it toward justifying dedicated cultures only in deliberative terms. This creates a tendency to interpret and justify dedicated cultures in terms not shared by the members of the given culture, resulting in distortion of the culture and condescension towards its members. When tolerance is unlikely, liberalism is inclined towards reforming or eliminating dedicated cultures in its drive to become the *culture* of cultures.¹⁷²

171. In correspondence Edward Sankowski points out that my worries are really over the compatibility of certain forms of liberalism and certain kinds of minority cultures, not liberalism and minority cultures or multiculturalism generally. I would put this point differently. The compatibility of liberalism and multiculturalism rests on whether deliberative cultures can tolerate dedicated cultures. If liberalism can tolerate only some forms of dedicated cultures, we must understand why, and we must be suspicious of conceptions of liberalism such as Rawls' that seem to stack the deck in favor of the deliberative process.

172. One such account of liberalism as the culture of cultures is revealed in the following:

[W]e should always maintain only a contingent and never a constitutive allegiance to any substantial view of the good life, that is, to any concrete way of life involving a specific structure of purposes, significances, and activities (e.g. the life devoted to art, or to a career, or to a particular religion). Such forms of life can be truly valuable . . . only if they are chosen from a position of critical attachment, in something like an experimental spirit. The source of value, and so the supreme value, is what is expressed in this posture of choice[.]

Charles Larmore, *Political Liberalism*, 18 POL. THEORY 339, 343 (1990).

