

[Penultimate draft of the forthcoming paper in *Politics, Philosophy & Economics* 10.3 (2011): 323–342. Please cite only from the published version.]

Taking reasonable pluralism seriously: an internal critique of political liberalism

Fabian Freyenhagen

University of Essex, UK

Abstract

The later Rawls attempts to offer a non-comprehensive, but nonetheless moral justification in political philosophy. Many critics of political liberalism doubt that this is successful, but Rawlsians often complain that such criticisms rely on the unwarranted assumption that one cannot offer a moral justification other than by taking a philosophically comprehensive route. In this paper, I *internally criticise* the justification strategy employed by the later Rawls. I show that he cannot offer us good grounds for the rational hope that citizens will assign political values priority over non-political values in cases of conflict about political matters. I also suggest an alternative approach to justification in political philosophy – a weak realist, Williams-inspired account – that respects better the later Rawls' concern with non-comprehensiveness and pluralism than either his own view or more comprehensive approaches. Thus, if we take reasonable pluralism seriously, then we should adopt what Shklar aptly called 'liberalism of fear'.

Keywords

Justification, political liberalism, liberalism of fear, realism, pluralism, John Rawls, Bernard Williams, Jürgen Habermas

Value pluralism is a pervasive feature of modern democratic societies and, while we might at one level celebrate the diversity of worldviews, this diversity also presents a serious obstacle to justifying the use of state power to citizens of these societies. The dominant approach to such justification within contemporary political philosophy centrally rests its case on (re)constructing a conception of justice that is meant to be rationally acceptable to each citizen. This purportedly leaves room for diversity when it comes to the ethical question of what the good life is. Whether or not it does is often doubted, but pervasive pluralism gives rise to a more worrying objection. The dominant, broadly Kantian picture relies heavily on a number of philosophically controversial assumptions, even if it eschews – as is now common – the more metaphysically sounding claims of its 18th century founding father (such as claims about intelligible selves and transcendental freedom). In particular, this position (1) builds on specific views in metaethics (such as constructivism), (2) often comes with a particular conception of truth or practical validity, and (3) depends on strong assumptions in moral psychology (namely, the assumption that citizens can be moved by what Rawls called conception-dependent desires, specifically their sense of justice). All of these commitments are controversial, and they are controversial in a way which should be worrying to Kantians: a consensus on these matters is lacking, even after free discussion among people who are willing to be convinced by arguments. If it is true that

philosophical pluralism survives among reasonable people (as Rawls calls them), then no authoritative specification of rational acceptability will be available, and, hence, no justification of the conception of justice.

In his later (post-1985) writings, Rawls tries to address this difficulty by adopting what he calls ‘political liberalism’. His key idea is to formulate a conception of justice which is freestanding in a double sense: (1) it is freestanding from moral and ethical values beyond the political sphere (for example, it is agnostic about whether surfing or monastic devotion leads to the good life); and (2) it is also freestanding from philosophically controversial questions (such as the nature of truth, or the sources of normativity). In Rawlsian terminology, it is a political, not metaphysical conception; it is both ethically and philosophically non-comprehensive.¹ At the same time, it is still meant to be a moral conception.² In fact, Rawls aspires to offer *a fully moral justification*, where this involves that both the content of what is justified and the reasons supporting it are moral, that is, they are based on values and principles, not on group- or self-interest.³ How is this to be achieved? Rawls claims that, despite the plurality of worldviews, there is actually common ground among citizens of modern democratic societies when it comes to deciding what to do in the political sphere. Admittedly, this common ground is only superficial in nature: there is agreement among reasonable citizens about political values and certain considered judgements, but not about their wider moral and philosophical foundations. Still, it does not matter that the

agreement is only superficial. As long as there is sufficient common ground to build a conception of justice which is non-comprehensive in the double sense specified above, then citizens might come to accept that conception, despite the disagreements about its deeper foundations. In this way, it might be possible to achieve agreement with philosophical foundations, but without this having to involve agreement on what these foundations are.

Many critics of the later Rawls doubt that this way of redirecting the search for a conception of justice is successful or attractive. In particular, they question that political liberalism is suitable to furnish what Rawls still takes to be the only adequate form of justification in political philosophy: a fully moral justification (as specified above).⁴

However, Rawlsians often complain that these critics merely assume what is at issue – namely, that the only way one can build a fully moral justification in political philosophy is by way of a philosophically comprehensive route.⁵ Why assume that when reasonable people agree that something is rationally acceptable, these people also need to agree about what makes it rationally acceptable? And why think that epistemic abstinence is a problem, when stronger claims are either unnecessary (because there already is a consensus) or unhelpful (when deep disagreements about the philosophical issues prevails)? To insist on the truth of one's conception of justice is merely to emphatically stamp one's foot. In sum, those defending the theory of the later Rawls argue that the critics do not sufficiently examine this theory on its own merits.

In this paper, I will take up this challenge and argue by way of *internal critique* against the justification strategy offered by the later Rawls, showing it to fail on its own terms and without presupposing that philosophical comprehensiveness is necessary. I begin by laying out Rawls' strategy (section I). Then, I submit it to critical scrutiny (section II). Finally, I suggest an alternative way to think about justification in political philosophy – a way that better respects the later Rawls' concern with non-comprehensiveness and pluralism by giving up on the ideal of a fully moral justification (section III). Thus, if we follow the later Rawls in taking reasonable pluralism seriously, then we should adopt 'liberalism of fear' instead of his political liberalism.

I. Rawls on justification in political philosophy

The later Rawls is most explicit about his conception of justification in 'Reply to Habermas'.⁶ He distinguishes between three levels of justification, in which citizens of democratic societies engage.⁷

The first level of justification concerns the coherence and completeness of political values in dealing with all questions which arise in respect to the political sphere.⁸ It is here that the original position and the idea of a reflective equilibrium find their home in the theory of the later Rawls. Citizens start from their shared intuitions, our considered judgements, about the political; organise these intuitions and political values by constructing an heuristic device (the original position) which generates

principles of justice; they then check these principles against their initial intuitions and values; and then repeat this process until reaching a stable equilibrium, by either qualifying and dropping intuitions, or modifying the construction of the original position (so that it yields different principles), or both.⁹ This first level of justification constitutes merely a *pro tanto* justification, since citizens have checked only for coherence and completeness of the shared political values and intuitions, not for whether the result is acceptable to each of them individually, as liberal legitimacy demands.¹⁰

Rawls divides this latter step into two levels. At the second level of justification ('full justification') each citizen checks individually whether or not her reasonable doctrine allows her to support the political conception of justice constructed at the first level of justification and thereby to accept the priority of political over non-political values.¹¹ Finally, citizens need to find assurance not only that they themselves individually, but also that all other citizens (or, at least, a sufficiently large majority of them) affirm the political conception from within their respective (reasonable) worldviews.

This third level of justification is called 'public justification' by Rawls. This label is somewhat misleading since he does not think that citizens jointly reconstruct a normative basis for their political conception (as Habermas argues should be the case).¹² Rather, the third level of justification consists in finding out whether or not an

overlapping consensus of reasonable doctrines exists.¹³ Such a consensus is different from a mere compromise. Its object – the political conception of justice – has a *pro tanto* justification in moral terms and it is also supported for moral reasons from within the respective reasonable comprehensive doctrines of citizens, that is, for moral reasons external to the political conception which will differ from one citizen to another. In this way, an overlapping consensus makes ‘stability for the right reasons’ possible.¹⁴ Such stability is special insofar as the political-social institutions are supported by moral reasons (and at two levels: the level of *pro tanto* justification and from within comprehensive doctrines).¹⁵ It is also special in a further sense: according to Rawls, a morally endorsed stability is more long-lasting than a prudential compromise (a ‘mere *modus vivendi*’ in his terms), since it is not hostage to the fortune of shifting power alliances.¹⁶ Furthermore, in aiming for a morally endorsed stability, Rawls is aiming for what I call a fully moral justification in political philosophy: both the object of his theory (a conception of justice detailing a well-ordered society which is stable for the right reasons) and the reasons supporting it are moral in nature (both political-moral and comprehensive-moral).

In sum, at the third level of justification, citizens assign normative weight to the existence of an overlapping consensus, since its emergence confirms that it is possible to arrive at principles for fair cooperation over time, while also respecting their different (reasonable) comprehensive worldviews. The collective use of coercive power is

justified to each citizen's reason and judgement in a way that is compatible both with reasonable pluralism and with holding on to the idea of a fully moral justification.

Given how the third level of justification is conceived, it becomes understandable why the key question for the later Rawls is 'how is an overlapping consensus possible?'.¹⁷ He needs to show that his hope that citizens will assign political values priority over non-political values is warranted.¹⁸ In other words, it becomes understandable why Rawls proceeds by way of *explanation*: he does not ask whether an overlapping consensus would justify the political conception (in the sense of making it true or valid or morally wrong to oppose), but, rather, asks how we can account for the possibility that such a consensus can come into existence. Given that political liberalism wants to be philosophically neutral, no deeper justificatory story is possible – the normative resources of political liberalism are exhausted when it comes to justifying political values and their priority itself. It has to be left to each individual how non-political and political values are ranked. The political conception (even a *pro tanto* justified one) cannot give guidance on this or require that political values are given priority within the political sphere – otherwise it would cease to be a political conception and become philosophically comprehensive.¹⁹ However, once an overlapping consensus has arisen, the priority of political values is no longer in question – the existence of an overlapping consensus attests to their having been assigned this priority.²⁰ Hence, an explanation of how an overlapping consensus is possible is all what

is available and all what is required to complete the justification of the political conception of justice – or, at least, this is what Rawls claims.

Before examining Rawls' response to his explanatory question, we should consider what would be – in his own eyes – a successful answer. Rawls seems to believe that, though an overlapping consensus on political liberalism does not yet exist, our modern democratic societies contain all the material required for the construction of a liberal political conception of justice.²¹ Even if he is right about this,²² it would only provide a necessary condition for the possibility an overlapping consensus – the fact that a political conception can be constructed does not by itself show that an overlapping consensus would form around such a conception.

A helpful clue about what would count as a successful answer for Rawls can be gained by looking at the central aim of his theory: '(...) the defense of the possibility of a just constitutional democratic regime', specifically '(...) the defense of reasonable faith' in such a possibility.²³ Without rational hope of this kind, we could not be obligated to work towards the realisation of justice. Unless we are sufficiently assured that an overlapping consensus could emerge, it would be unfair to ask us to work towards achieving this. We could also not be reconciled to our modern social world – for its current imperfections would then be permanent. In other words, political philosophy can only fulfil its functions, if it offers adequate reasons for the possibility of its ideal(s).²⁴ Yet, under the conditions of reasonable pluralism a just society is only

realistically utopian, if an overlapping consensus on a political conception of justice could underpin it. In this sense, the task of finding sufficient grounds for the hope that a reasonably just society is possible, in effect, comes down to the task of finding sufficient grounds for the rational hope that such an overlapping consensus is possible.²⁵ The crucial point is not so much whether or not a reasonable just society based on an overlapping consensus will ever come about, but whether we can give good reasons for believing it to be possible to come about.²⁶ In fact, certain ways of its coming about are not going to count as answers to the explanatory quest – if citizens were brainwashed into an overlapping consensus, or it just occurred as a matter of lucky coincidence, then this would not satisfy the demand of rational hope. A cast-iron guarantee is not necessary, but mere logical possibility would not suffice.²⁷

Thus, the key question is whether or not Rawls can offer good grounds for the possibility that an overlapping consensus on the political conception of justice could arise.

II. An internal critique

Rawls begins his explanation of how such an overlapping consensus is possible by considering a mere *modus vivendi*, in which citizens with competing doctrines have agreed on a liberal conception of justice for strategic reasons, such as the consideration that it would be too costly to impose one's views on others, given the distribution of

power among the different groups. Rawls draws on the historical parallel with the pre-Westphalian world to show how such a *modus vivendi* would arise: it would emerge ‘(...) at first reluctantly, but nevertheless as providing the only workable alternative to endless and destructive civil strife’.²⁸ Thus, the hope would be that, despite the entrenched pluralism, most parties could see that it is rational to agree on mutual toleration in a liberal society and that such a *modus vivendi* would thus not be an unlikely development. Some theorists stress how much luck is at play even in this development.²⁹ Be that as it may be, the explanatory question for Rawls becomes ‘how can a mere *modus vivendi* develop into a lasting overlapping consensus?’.

In answer to this question, Rawls envisions that living under conditions of a *modus vivendi* and benefiting from these conditions of toleration will foster independent support for toleration and the values associated with it.³⁰ In this way, first a ‘constitutional consensus’ on the liberal principles of political justice and then a full overlapping consensus on the (liberal) political conception of justice as a whole could emerge.³¹ However, Rawls is aware that there are obstacles to such a development. In particular, there might be some issues, such as the question of the permissibility of abortion, where political values and non-political values could be in conflict. Such conflicts could prevent citizens from endorsing political values as supremely normative and thereby prevent an overlapping consensus from forming. More importantly still, it is such conflicts which raise doubts about whether or not Rawls’ explanation provides

adequate reasons for the possibility of an overlapping consensus.

Rawls addresses the issue of the priority of political values as follows. Firstly, he claims that political values are ‘very great values and hence not easily overridden’.³² Secondly, he propounds that ‘[p]olitical liberalism counts many familiar and traditional doctrines – religious, philosophical and moral – as reasonable (...)’.³³ As such, these doctrines could partake in an overlapping consensus on political liberalism and, at least insofar as they are widely subscribed to, this explains how such a consensus is possible (or, at any rate, provides reasonable grounds for hope). Rawls does not discuss all of the main contenders for reasonable conceptions of the good and check for their compatibility with the political conception of justice. What he does do is to present ‘a model case of an overlapping consensus’, that is, he presents a case of how a religious view, two comprehensive liberal doctrines (Mill’s and Kant’s), and a non-systematic (‘pluralist’) worldview can come to endorse the political conception of justice and assign it priority in cases of conflict with comprehensive values.³⁴ At a later stage, he also adds classical Utilitarianism to the model case.³⁵ Thirdly, severe conflicts with other values are much reduced, Rawls argues, because of the philosophical agnosticism of political liberalism. Specifically, political liberalism does not imply that political values, all things considered, are intrinsically the most important values.³⁶ Thus, one could give non-political values priority in decisions concerning one’s everyday life (as long as these decisions do not impinge on political matters) and in one’s overall value

theory (as long as this does not call into question the priority of political values when it comes to questions concerning the basic structure of society). Fourthly, citizens do not just value outcomes, but also the legitimacy of democratic decision-making procedures, and this might give them a sufficient reason to continue to endorse political liberalism, even if they disagree with the decisions taken by the majority on particular policy matters, such as going to war or making abortion legal.³⁷ Finally, and most importantly, Rawls argues that most citizens have merely incomplete (‘partial’) and loose conceptions of the good, and this will make it easier for political values to be integrated within these doctrines in such a way that they are assigned priority over other values on questions of basic justice.³⁸

None of these reasons are convincing. As has been widely pointed out, the first one just asserts what is at issue, namely, whether or not political values have sufficient normative force to trump non-political ones in cases of conflict.³⁹ To some extent, Rawls is here guilty of the same problematic move which he and his defenders criticise in those who belong to the truth camp: to say that political values are great values is to emphatically stamp one’s foot, not to give an argument.⁴⁰ Perhaps, the point is that in giving non-political values priority over political ones, a citizen would be risking the social order of modern democracies and the goods it brings. However, it is unclear what else this is other than an appeal to prudential considerations (which are not relevant for a fully moral justification but more apt to support a *modus vivendi*). Also, one need not

deny that political virtues and values help secure important goods (such as a liberal democratic order and the benefits such a system brings) to question that this secures their priority in all cases of conflict with other goods – even important values and goods are sometimes outweighed. Moreover, as Rawls admits,⁴¹ it is not true that only political liberalism can secure the goods in question; something more minimal would do (such as agreement about basic principles and procedures, or a consensus on avoiding great evils).

One might reply here that this criticism overlooks that the political conception has *moral* value in respecting the fact of oppression (that is, the fact that a comprehensive doctrine could not be justified to citizens divided by reasonable pluralism, but only coercively imposed on them).⁴² Thus, those who deny the priority of the political over the non-political values in the political domain are unreasonable, since they are prepared to give up on the idea of justification acceptable to each citizen in their court of reason and impose their view on them, even at the expense of the evil of oppression.

However, this reply misses the mark. Firstly, it is not true that only a fully moral justification would respect the fact of oppression – a more minimal justification could do so too (such as liberalism of fear, to which I return below). Indeed, it is not even clear that respect for the fact of oppression is best characterised as *moral*, since someone might accept this as a fact and decide to forego imposition of his or her

comprehensive doctrine for strategic or prudential reasons alone. Such a citizen can still accept that there is good reason to avoid oppression and to justify the coercive use of power to each other on the grounds that are acceptable to citizens divided by reasonable pluralism, but reject fully moral justifications as unsuitable. In fact, such a citizen could reject the latter because of the former: for example, by arguing that any talk of moral is (at least philosophically) comprehensive and, hence, controversial (I return to this below when discussing Rawls' second reason).

Secondly, and more importantly, a political conception cannot remain freestanding if it includes the claim that the value of avoiding oppression will always trump all other values – for such a claim is about the relationship of values all things considered and, hence, a matter internal to comprehensive doctrines. To say that those who assign the evil of oppression some value, but deny that it has independent or trumping value, are unreasonable would be both to beg the question and to step beyond the strictures of political liberalism. Here, Rawls is normally more careful than those who purport to defend him: at least in his most consistent moments, he avoids any claims about the overriding nature of the political (moral) values (or about their cognitive or rational superiority), since he realises that to make such claims would involve venturing into the realm of comprehensiveness and thereby controversy. In sum, his insistence on the greatness of political values either is not doing any real work, or commits him to a comprehensive view and is thereby inadmissible within political

liberalism.

The second reason is also problematic. Here the issue is less whether or not some sort of consensus of reasonable doctrines is possible, but more whether or not a consensus on political liberalism is possible. In effect, Rawls faces a dilemma here. On the one hand, he could understand 'reasonable' in 'reasonable doctrines' in a restrictive sense. For example, he could make it part of the definition that reasonable doctrines accept the political conception of justice, including the priority of political values. The problem is that this makes compatibility a matter of definitional fiat and too many 'familiar and traditional doctrines' might turn out to be unreasonable on this restrictive definition of it. Consequently, stability for the right reasons could not be achieved (or, at least, we do not have good reasons for hoping that it will). If the majority of citizens in a Rawlsian just society would be coerced on grounds they would themselves not accept, then it would be mainly force, not moral motivations, which would hold this society together. On the other hand, Rawls could understand 'reasonable comprehensive doctrines' in a sufficiently loose sense, without making acceptance of political liberalism part of the definition. This would make it more likely that the familiar and traditional doctrines will be counted among the reasonable doctrines. However, then the problem is that we have no good reasons to think that all or most of the reasonable doctrines would support the political conception of justice (or that they will support it as a morally justified conception).

In fact, Rawls is, by the reckoning of almost all commentators, too optimistic in his model case. For example, Barry argues that neither classical Utilitarianism, nor the views contained in the major world religions need to imply the full list of equal basic liberties or their priority (as is required of any member of the family of liberal principles of justice).⁴³ Similarly, Kymlicka suggests that accepting the fact of reasonable pluralism and the need for mutual toleration is insufficient for showing that one ought to support a liberal regime over, for example, the Millet system of mutual toleration practised in the Ottoman Empire.⁴⁴ Moreover, according to Simmons, anti-state anarchists or pacifists would reasonably reject political liberalism because of its ‘(...) precommitment to finding political solutions to social problems’.⁴⁵

Other commentators contend that many traditional and familiar doctrines would only accept the liberal political conception of justice, if it is slimmed down considerably. Thus, Scheffler argues that traditional doctrines, such as Utilitarianism, could, at most, come to accept the principles of justice themselves, but not the political values and the conception of the person underpinning them.⁴⁶ This would mean that actual acceptance of the political conception would come at the expense of stability for the right reasons and the idea of an overlapping consensus as different from a *modus Vivendi* – the political moral values which Rawls wanted to place within the political conceptions would no longer be included within it and, hence, citizens would not endorse the political conception for moral reasons (or, at least, not for moral reasons

internal to this conception). Additionally, Wenar suggests that for Rawls' conception of justice to qualify as political, it needs to drop, among other things, the idea of conception-dependent desires (which is part of his 'reasonable moral psychology'), since Humeans, Hobbesians, and Utilitarians would reject this idea.⁴⁷ This further drains the moral content from the political conception of justice.

One might reply here that even if the political conception would have to be slimmed down and thereby lose much of its moral content, citizens could still support it for moral reasons – albeit then only for moral reasons from within their respective comprehensive doctrines. However, the problem with this reply is that there is no reason to suppose that this would happen in all cases.⁴⁸ For example, the support from within a pluralist worldview would be, as even defenders of Rawls admit, pragmatic (albeit a pragmatism based on philosophical argument, not mere expediency); and religious believers would base their support not on moral values, but on the belief that religion needs to be freely chosen to be authentic.⁴⁹ Moreover, political liberalism cannot require that citizens support the political conception for moral reasons. By eschewing philosophical claims about moral rightness and leaving it to each individual to find comprehensive reasons to support the political conception, Rawls deprives himself of any basis to justify such a requirement. If it transcends a political conception of justice to argue that each comprehensive doctrine should give political values priority, then surely it also transcends it to insist that the reasons supporting the overlapping

consensus are moral ones. In fact, even the judgement about whether or not the reasons of support are moral is difficult to make from the standpoint of political liberalism, since this judgement is philosophically controversial – Kantians, for example, would not think of the reasons that Utilitarians would give to support the political conception of justice as moral reasons, while Utilitarians would do so. Even Rawls' own understanding of 'moral' is philosophically controversial – there are reasonable people who and doctrines which would link self- or group-interest with morality, possibly as its foundation.⁵⁰ A philosophically agnostic, truly political conception of justice should refrain from dividing the supporting reasons into moral and non-moral ones. Hence, Rawls can neither insist that the support should be moral, nor make claims about whether or not the support actually is moral.

Taking all of these considerations together, Rawls is either wrong in thinking that political liberalism is compatible with the familiar and traditional doctrines, or he cannot provide a fully moral justification. Either way, we still have not been given good grounds for the rational hope that stability for the right reasons and an overlapping consensus (as different from a *modus vivendi*) are attainable.

The third reason Rawls offers to explain why citizens would assign priority to political values is also unconvincing. The fact that political values are not presented as, all things considered, the most important values is little comfort to those who are hesitant about giving them priority in political matters. This is especially so as the

extent of the political in Rawls' conception is, arguably, very far-reaching.⁵¹ We are, after all, talking of all the questions which affect the political, economic and major social institutions, either directly or indirectly.⁵² Thus, many central issues in our lives will be political and, hence, be affected by the priority of political over non-political values. This means that conceding that non-political values have possibly greater importance than political ones outside of the political sphere will make little practical difference, and it is unlikely that those who reject the priority of political values within the political sphere will be satisfied by this concession. Consequently, the priority of political values could stay controversial and give rise to conflicts, even if this priority is limited in scope to the political sphere.

The fourth consideration, that is, having recourse to the value of the procedural legitimacy of democratic decision-making, is also insufficient to account for the priority of political values. Furthermore, this is the case on Rawls' own conception of procedural legitimacy. Rawls distinguishes legitimacy from justice, though he also claims that legitimacy cannot deviate too far from justice without becoming 'corrupted'.⁵³ Thus, while the two notions do not coincide, legitimacy is still constrained by justice: it is a 'purely procedural' ideal, but only within a certain range of not too unjust outcomes.⁵⁴ In effect, the constitutional essentials fix the range of reasonably just outcomes, within which we can use legitimate procedures to choose specific policies. The constitutional essentials themselves, on the other hand, are not

legitimated with the help of democratic procedures. They need to be justified by ‘addressing each citizen’s reason’.⁵⁵ This means that the value which citizens might attach to democratic procedures is, on Rawls’ own account of it, only relevant when it comes to accepting an unwelcome policy, not when it comes to the constitutional essentials – in the latter case, the value of democratic procedures is not of the right kind to outweigh concerns one might have about substantive issues.⁵⁶ Yet, the question of the priority of political over non-political values does not just come in at the level of policy issues, but also at the level of constitutional essentials. Admittedly, Rawls might claim that, for example, the debate about the permissibility of abortion is merely a debate about policy issues. However, at least the pro-life side of the debate would beg to differ: they would argue that the inviolability of human life is at stake in the debate and that this is clearly a constitutional essential.⁵⁷

The final reason Rawls offers to explain how citizens would give political values priority is also problematic. The obstacle to this priority is less that citizens’ comprehensive conceptions of the good are complete or tightly systematised – Rawls might be right that most citizens’ doctrines are neither. Rather, the real obstacle is how strongly citizens are attached to individual elements in their doctrines.⁵⁸ Thus, someone might subscribe to a not fully worked out worldview, but still think that there are certain fixed points, such as the claims (a) that slavery is wrong (something which Rawls agrees is a fixed point in the modern world),⁵⁹ or (b) the claim that abortion should be

outlawed (something Rawls does not endorse).⁶⁰ No matter what views citizens with incomplete and loose doctrines will adopt about truth or metaphysics, it is not unlikely that they would want to hold on to their fixed points – they constitute bright white lines which citizens would not be prepared to cross.⁶¹ Hence, the main obstacle to assigning priority to political values is not completeness or systematicity of comprehensive doctrines, but that citizens have firm commitments. The debate about the moral and legal permissibility of abortion is the most obvious example here (especially in the context of US politics). The pro-life side could, for example, argue ‘(...) that their religious conviction concerning the inviolability of life is more important than any political value in whose name other citizens urge them to accept, say, a moderately liberal regulation [of abortion]’.⁶² Crucially, the importance assigned to the inviolability of life can be independent of the degree of completeness or systematicity of the comprehensive doctrines held by religious citizens of this sort. Moreover, while the abortion debate is the most obvious example of where citizens would insist on the priority of certain non-political values in cases of conflict with political values, it is not the only one – other examples include the education of children, the right to a basic income, the death penalty, and the internal organisation of voluntary associations.⁶³

One might think that other features ascribed to reasonable citizens could help to bolster Rawls’ claim that such citizens would tend to give political values priority, such as the fact that they are willing to abide by fair terms, even to the detriment of their own

self-interest, have high-levels of trust towards each other, and are likely to support political values for their own sake.⁶⁴ However, this rejoinder is unsuccessful. The conflicts in question are not clashes between self-interest and political justice, but between non-political and political values. Hence, the fact that the conception-based desire to abide by fair terms can outweigh or trump desires based on self-interest does not make a difference here. Furthermore, while trust and independent support of political values give us some reason to expect that citizens will support political liberalism in the case of value conflicts, they do not themselves give us sufficient grounds for this. Unless we are given additional reasons to think that it is rational to expect political values to be given priority, the mere fact that they might be given this priority leaves too much to chance.

In sum, none of the five reasons advanced by Rawls to explain why citizens would give political values priority over non-political values in the political sphere is convincing. Consequently, Rawls' explanatory project fails. His theory lacks the resources to account for the possibility that an overlapping consensus will arise, since his epistemic abstinence and strategy of avoidance have left him empty-handed in dealing with the crucial issue of the priority of political values. At most, the emergence of an overlapping consensus (and thereby of citizens assigning priority to political values) would take place as a matter of 'lucky coincidence'.⁶⁵ Yet, as Rawls would agree,⁶⁶ reliance on luck is not a sufficiently good reason for rational hope. Whether or

not an overlapping consensus will ever come about is not the issue. If Rawls could underwrite the possibility of it coming about, then the instant destruction of all human life by an asteroid impact would not invalidate his theory. By the same token, the validation of the theory requires more than that an overlapping consensus might come about as a matter of lucky coincidence.

This shows that the problem with the theory of the later Rawls is not just that an overlapping consensus is impossible or unlikely, but deeper. The problem is that he claims that he can still deliver a fully moral justification of the conception of justice. He does not realise that it is insufficient for such a justification to have stability for the right reasons as an aim, but not to have an account of how such stability could arise for the right reasons, that is, moral reasons which could justify why moving to an overlapping consensus and giving political values priority over non-political ones is the right thing to do. In order to achieve what Rawls sets out to achieve, he would have to appeal to the kind of Kantian arguments about moral rightness and truth which he wants to avoid – to arguments which would show that, whatever particular worldview one subscribes to, our autonomous will guided by practical reason requires us to give justice priority.⁶⁷

While this view might not be metaphysical in a traditional sense, it is certainly comprehensive in Rawls' sense. It might not contain all of the recognised values and virtues or aspire to govern all spheres of life, but it comes with a particular conception of practical reason and autonomy that is philosophically controversial. Thus, it does not

extending the principle of toleration to philosophy itself (as Rawls demands of a political conception).⁶⁸

Hence, there is an underlying tension in the views of the later Rawls: he remains committed to stability for the right reasons, but he can no longer back this up with an account of how such stability could arise for the right reasons, despite the fact that the latter is required for the former. Thus, Rawls cannot provide what he sets out to provide: a fully moral justification of his conception of justice.

III. The moral of the story: comprehensive justice or non-Rawlsian legitimacy

Where does this leave the question of justification in political philosophy? Habermas has a clear answer: he thinks that a procedural, but philosophically comprehensive account is both unavoidable and possible.⁶⁹ Dworkin and Raz would agree with the need for philosophical comprehensiveness, but take a more substantive route instead (such as, in Dworkin's case, relying on the challenge model of the good life).⁷⁰ Similarly, others also argue that a defence of liberal political philosophy cannot be philosophically neutral in the way the later Rawls claims, and they suggest going back to something like the picture presented by the early Rawls.⁷¹

However, one could also give up on the idea of fully moral justifications and move to a realist picture. Realism in political philosophy can take two different forms. According to its strong variant, politics is just a game of power and self-interest, and

political philosophy ignores this at its peril.⁷² On this picture, justifications play no or at most an epiphenomenal role. Weak realists, on the other hand, can admit that the influence of moral reasons and ideals on politics is not always futile or illegitimate (and that political philosophy should make use of them). Still, for them politics is not merely an exercise in applied ethics, that is, politics is not the implementation of a moral conception which is conceived or constructed independently of what are, according to weak realism, the distinctive features of the political realm (such as the importance and difficulty of maintaining civil order; the limitations of political agents; and entrenched value pluralism).⁷³

In fact, adopting a realist outlook would respect the key motivation behind Rawls' move to political liberalism better than holding on to the idea of fully moral justifications at the expense of philosophical neutrality. It was the recognition of the fact of reasonable pluralism which made Rawls give up on the philosophical status of these views.⁷⁴ Moreover, because of this fact, there may be something to the idea that justification in political philosophy needs to be non-comprehensive. To recall, the main idea of reasonable pluralism is that there is so much leeway involved in the judgements which make up our worldviews that even reasonable citizens can disagree about which worldview is the right one.⁷⁵ This is to say that even citizens who are genuinely willing to be convinced by reasons need not necessarily agree on this matter, even if the discussion has been free and the conditions ideal for the exchange of reasons.

Importantly, reasonable pluralism extends to philosophical issues itself (such as to questions about the correct conception of moral rightness and truth, or about the nature of practical justification).⁷⁶ Thus, it might not be unreasonable to deny that moral discourse is epistemic (contrary to what, for example, Habermas or Raz think), or to reject that political legitimacy requires giving citizens moral reasons, or to argue against the categorical nature of morality and justice. One upshot of this is that justification in political philosophy should not only be neutral between different conceptions of the good (as Habermas, Dworkin and Raz maintain their views are). Rather, it should also be philosophically neutral.

Perhaps, the best way to achieve this is to adopt a weak realist perspective, such as one influenced by the work of Williams. He does not think that politics – even at its best – is or should be merely the application of moral ideals and reasons. This makes him a realist, albeit of the weak kind, since he is not against the idea of justification or the role of moral ideals and reasons in politics *per se*. In fact, according to Williams, a claim to legitimacy (though perhaps not to justice) is constitutive of politics, not an external and independent moral standard brought to it.⁷⁷ In contrast to naked conflict or warfare, politics is about rulers claiming that they wield coercive power with legitimate authority and that citizens would be wrong to fight back. Now, often this claim might be false, but at least it suggests that the question of legitimacy cannot be neatly separated from politics, and with that question, the further question of justification is on the table

from the start as well. Moreover, Williams admits what both Habermas and Rawls insist on, namely, that in the modern world the questions of legitimacy and justification need to be answered in a way which addresses each citizen's reason and judgement, something which (Williams further admits) cannot be achieved by appeal to traditional authority.⁷⁸ Yet, he would also argue that these questions can be answered without aiming for, or demanding, stability for the right reasons. In other words, he would refrain from giving a fully moral justification. In fact, it is here where a completely non-comprehensive liberalism might be at home.

Admittedly, Williams has strong views on philosophical issues, such as whether or not moral discourse is epistemic.⁷⁹ Still, perhaps he would be prepared to bracket these views for the purpose of political philosophy. At any rate, a non-comprehensive liberalism inspired by Williams could do so. Thus, the view I am sketching here might differ substantially from Williams's actual view in political philosophy, at least if the latter is understood to include the whole range of his philosophical commitments. Yet, I can see nothing in Williams's characterisation of the political which would prevent us from adopting this characterisation within a liberalism which is non-comprehensive both doctrinally and philosophically.⁸⁰

Like Rawls' political liberalism, such a Williams-inspired liberalism would tie its content to what is acceptable to actual citizens who are willing to cooperate with others. Unlike Rawls's view, however, this content would be more minimal; the

agreement would not be seen to have moral significance; and the cooperating parties would not have to be reasonable in the full Rawlsian sense. On this view, legitimacy would merely require that the universally accepted evils of coercion, pain, oppression, torture, humiliation, and premature death are avoided – for Williams, this evaluative standard is the minimal core of the idea of legitimacy and thereby of the idea of politics (as a solution to disorder and warfare). Adopting this perspective, one might then suggest that, given the experiences of the past millennia, avoidance of these evils might be best achieved by adopting democratic governance, basic liberties, and a social safety net. In such a way, this liberalism (a ‘liberalism of fear’)⁸¹ would also arrive at a liberal conception of legitimacy. However, it would not do so on the grounds of a moral conception of personhood or on the grounds of the quasi-transcendental presuppositions of discourses, but instead on the grounds of historical experience. And it would leave it to each individual to fill in their (further) reasons in support of this liberalism, even if that meant that they did support it for merely prudential reasons. Admittedly, there would be no cast-iron defence of the political regime so legitimated; only a prudential reminder that civil order is difficult to achieve and should not be put in jeopardy unless it is absolutely unavoidable. Such liberalism cannot lay claim to grounding stability for the right reasons. It could at most say that it would be a lucky coincidence if such stability arose, but, as we saw, Rawls cannot say more than this either. Whereas this element of luck is problematic for the Rawlsian enterprise, it does not present any

difficulties for the liberalism of fear (at least not at the level of theorising), since the latter does not consist in the attempt to explain how stability for the right reasons is possible.

How would a liberalism of fear handle the difficult cases considered earlier, such as the (im)permissibility of abortion, or objections to the public education of children? Much of the debate would presumably be conducted in terms of the universally accepted evils mentioned above. Admittedly, for many morally and doctrinally contentious issues, such as abortion, this is unlikely to suffice for a consensus – the evil of premature death is one of the factors the pro-life side would emphasise, while the pro-choice side would view legal restrictions as oppressive use of state power. If taking a legal stance is unavoidable (as with abortion), then whatever legal regime is put in place will depend – as always in democratic politics – on a mixture of interests, pressure, the imagination and resourcefulness of the different actors involved, and other factors impacting on the institutional mechanisms that pass and regulate such a regime. As a limiting case, liberalism of fear would provide dissenters to an existing legal regime only with prudential reasons against taking violent means to oppose this regime. It would also provide such reasons in defence of legally constituted and consistently administered use of state power to maintain civil order against violent dissenters. Whether this will always suffice to avoid such violence or to hold together a society, is an open question. The key point is that, if the arguments put forward earlier are correct,

then Rawls' Political Liberalism is in no better position: nothing in liberalism of fear excludes the emergence – by lucky coincidence – of a thicker, moral consensus; and nothing in the Rawls' view can underpin anything more than the prudential consideration mobilised by liberalism of fear and the possibility of a lucky coincidence.

Those who think that more is required would have to turn to philosophically comprehensive accounts (be it of a procedural or substantive kind). Nothing I argued here bars them from doing so, though they face the challenge of having to address reasonable pluralism on both doctrinal and philosophical matters. What I have argued is that when it comes to justification in political philosophy one has to decide between fully moral, but comprehensive views (such as Habermas's or Dworkin's), on the one hand, and non-Rawlsian views of legitimacy (such as Williams's) that need not be comprehensive, on the other hand. Either way, what is not tenable is the position of the later Rawls, who aims to have both – a fully moral view and non-comprehensiveness.

Reference list

- Baier K (1989) Justice and the Aims of Political Philosophy. *Ethics* 99(4): 771-790.
- Barry B (1995) John Rawls and the Search for Stability. *Ethics* 105(4): 874-915.
- Cohen J (1993) Moral pluralism and political consensus. In Copp D, Hampton J and Roemer J (eds.), *The Idea of Democracy*. Cambridge: Cambridge University Press, pp. 270-91.
- Cohen J (1994), A More Democratic Liberalism. *Michigan Law Review* 92(6): 1503-1546.
- Cohen J (2009) Truth and Public Reason. *Philosophy & Public Affairs* 37(1): 2-42.

- Dreben B (2003) On Rawls and Political Liberalism. In Freeman S (ed.) *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, 316-346.
- Dworkin R (2000), *Sovereign Virtue*. Cambridge, MA: Harvard University Press.
- Estlund D (1998) The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth. *Ethics* 108: 252-275.
- Forst R (2007), Die Rechtfertigung der Gerechtigkeit: Rawls' Politischer Liberalismus und Habermas' Diskurstheorie in der Diskussion. Reprinted in his *Das Recht auf Rechtfertigung: Elemente einer konstruktivistischen Theorie der Gerechtigkeit*. Frankfurt am Main: Suhrkamp, Ch. 4.
- Galston WA (1989) Pluralism and Social Unity. *Ethics* 99(4): 711-26.
- Galston WA (2009) Realism and Moralism in Political Theory. In Young SP (ed.), *Reflections on Rawls: An Assessment of his Legacy*. Farnham: Ashgate, Ch. 6.
- Gauthier D (1986) *Morals by Agreement*. Oxford: Clarendon Press.
- Geuss R (2008), *Philosophy and Real Politics*. Princeton, NJ: Princeton University Press.
- Gowan P (2001), Neoliberal Cosmopolitanism. *New Left Review* 11: 79-93.
- Habermas J (1995), Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism. *The Journal of Philosophy* 92(3): 109-131.
- Habermas J (1998) "Reasonable" versus "True," or the Morality of Worldviews. In his *Inclusion of the Other: Studies in Political Theory*, ed. by C. Cronin and P. de Gruff, trans. by C. Cronin. Cambridge MA: MIT Press.
- Hill TE Jr.(2000) The Problem of Stability in *Political Liberalism*. Reprinted in his *Respect, Pluralism, and Justice: Kantian Perspectives*. Oxford: Oxford University Press, Ch. 9.
- Krasnoff L (1998) Consensus, Stability, and Normativity in Rawls's Political Liberalism. *Journal of Philosophy* 95(6): 269-292.

- Kymlicka W (2002), *Contemporary Political Philosophy*. Oxford: Oxford University Press, [1990], second edition.
- Laden AS (2003) The House That Jack Built: Thirty Years of Reading Rawls. *Ethics* 113(2): 367-390.
- Larmore C (1990) Political Liberalism. *Political Theory* 18(3): 339-360.
- Larmore C (1999), The Moral Basis of Political Liberalism. *Journal of Philosophy* 96(12): 599-625.
- McCarthy T (1994) Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue. *Ethics* 105(1): 44-63.
- Macebo S (1990) The Politics of Justification. *Political Theory* 18(2): 280-304.
- Morgenthau HJ (1948) *Politics Among Nations: The Struggle for Power and Peace*. New York: Alfred Knopf.
- Peritz D (unpublished) Substantive and Procedural Democracy: Reflections on the Reasonable and the Rational in Rawls and Habermas. Available at <http://pages.slc.edu/~dperitz/papers/substantive-and-procedural.pdf>.
- Rawls (1995) Reply to Habermas. *The Journal of Philosophy* 92(3): 132-180. Reprinted in PL, lecture IX. [References to the reprinted version; abbreviated 'RH'.]
- Rawls J (1996) *Political Liberalism*. New York: Columbia University Press, [1993], paperback edition. [Abbreviated 'PL'.]
- Rawls J (1999) *Law of Peoples*. Cambridge, MA: Harvard University Press. [Abbreviated 'LP']
- Rawls J (2001) *Justice as Fairness: A Restatement*, ed. by E. Kelly. Cambridge, MA: Harvard University Press. [Abbreviated 'JF'.]
- Rawls J (2007) *Lectures on the History of Political Philosophy*, ed. by S. Freeman. Cambridge, MA: Harvard University Press. [Abbreviated 'LHPP'.]
- Raz J (1990), Facing Diversity: the Case of Epistemic Abstinence. *Philosophy & Public Affairs* 19(1): 3-46.

- Scanlon TM (2003) Rawls on Justification. In Freeman S (ed.) *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, Ch. 3.
- Schaub J (2009), *Gerechtigkeit und Versöhnung. John Rawls' politischer Liberalismus*. Frankfurt/New York: Campus.
- Scheffler S (1994) The Appeal of Political Liberalism. *Ethics* 105(1): 4-22.
- Shklar J (1998), Liberalism of Fear. In her *Political Thought and Political Thinkers*, ed. by S. Hoffmann. Chicago and London: Chicago University Press, Ch. 1.
- Simmons AJ (1999) Justification and Legitimacy. *Ethics* 109(4): 739-771.
- Williams B (1981) *Moral Luck*. Cambridge: Cambridge University Press.
- Williams B (1985), *Ethics and the Limits of Philosophy*. London: Fontana Press.
- Williams B (2005) *In the Beginning Was the Deed*, ed. by G. Hawthorn. Princeton, NJ: Princeton University Press.
- Wenar L (1995) Political Liberalism: an Internal Critique. *Ethics* 106(1): 32-62.
- Wolf U (1997) Übergreifender Konsens und öffentliche Vernunft. In: Philosophische Gesellschaft Bad Homburg & Hinsch W (eds.) *Zur Idee des politischen Liberalismus: John Rawls in der Diskussion*. Frankfurt a.M.: Suhrkamp, 52-66.

Author bio

Fabian Freyenhagen is Lecturer in Philosophy at the University of Essex, UK. He recently co-edited (with J.G. Finlayson) *Habermas and Rawls: Disputing the Political*. He also works on the theories of Kant and Adorno.

Notes

For critical comments on earlier drafts, I would like to thank a number of audiences as well as

individuals, especially Paul Bou-Habib, Gordon Finlayson, Tony Laden, Richard Raatzsch, Jörg Schaub, Dan Watts, Albert Weale and Leif Wenar as well as two anonymous referees for this journal.

1 See, for example, PL, xx-xxii, xxixf, xliif, xlvif, 10-15, 154-158.

2 Rawls acknowledges, even insists, that political liberalism is a moral conception, by which he means ‘(...) that its content is given by certain ideals, principles and standards; that these norms articulate certain values, in this case political values’ (PL, 11n11). In *Law of Peoples*, Rawls speaks of ‘the political (moral) conception of right and justice’ (LP, 24) and ‘political (moral) ideals’ (LP, 14, 17); in ‘The Idea of Public Reason Revisited’ [1997], he states ‘that political values are intrinsically moral’ (reprinted in LP, 129-180, here 137n19; see also 174n91).

3 This characterisation of the ‘moral’ is never stated this explicitly in Rawls, but is a reconstruction based on the various things he does say about ‘moral reasons’ (see note 2 above) and about a form of consensus which is not moral (what he calls a ‘*modus vivendi*’; see PL, 147).

4 See, for example, Habermas, 1995, 1998; Raz, 1990; and Barry, 1995.

5 See, for example, Dreben, 2003; and Larmore, 1990; see also Krasnoff, 1998 and Peritz. A related strategy is to attempt to make truth safe for political liberalism, either by operating with truth in a minimal sense or by offering a political conception of it (see Estlund, 1998; Cohen, 2009).

6 RH, §2.

7 Philosophers have no particularly privileged position in this process, although they can help citizens to undertake this task in a clearer fashion. See RH, 383; LHPP, 1-2.

8 RH, 386, 389.

9 For a useful clarification of this method, see Scanlon, 2003.

10 On liberal legitimacy, see PL, 136-7, 217; see also JF, 41, 84, 186, and especially 89-94.

11 RH, 386-7.

12 See Habermas, 1998: 83ff; see also Forst, 2007: 152.

-
- 13 RH, 387. See also Krasnoff, 1998: 169.
- 14 See RH, 390, 392; PL, xlii; see also 142-144; JF, 185-6.
- 15 See PL, 147; JF, 194-5.
- 16 PL, 148-9; JF, 195; see also Larmore, 1990: 346.
- 17 To be precise, Rawls asks a number of different questions (see PL, 159; JF, 189, 193), which, however, all turn on the same issue: whether or not citizens assign priority to the political over the non-political values in the political sphere.
- 18 See RH, 392.
- 19 See RH, 386-7. This point has another implication: the second level of justification (the individual checking for whether the political conception is compatible with their comprehensive conception of the good) will be affected as much as the third level of justification by the critique that follows (though, for the sake of simplicity, I concentrate on the latter). The priority of political values is the key issue of contention in both cases.
- 20 See also Habermas, 1998: 93.
- 21 See JF, 34-5; PL, 38n41.
- 22 For doubts that Rawls is right about the political culture of contemporary society, see Galston 1989; Geuss, 2008, 80-94, especially 85-6, 92; McCarthy, 1994: 61-2; and Wolf, 1997: 61-2; see also PL, 9.
- 23 PL, 101, 172; see also Cohen, 1994: 1509; and Laden, 2003: 386.
- 24 Rawls suggests that political philosophy has four functions: (a) conflict-resolution; (b) orientation; (c) reconciling citizens to their social world; and (d) expanding what is practical possible (see JF, 1-5; LHPP, 10-11). All of these presuppose the possibility of a just regime. Schaub 2009 shows that the Hegelian idea of reconciliation plays a central role in Rawls' thinking.
- 25 See PL, 172.

26 Rawls is most explicit about this idea in the international context: ‘While realization is, of course, important, I believe that the very possibility of such a social order [i.e., a liberal and decent one] can itself reconcile us to the social world. (...) For as long as we believe for good reasons that a self-sustaining and reasonably just political and social order both at home and abroad is possible, we can reasonably hope that we and others will someday, somewhere, achieve it; and we can then do something towards this achievement’ (LP, 128). See also Hill, 2000: 242, 252, 254n31.

27 Rawls is explicit that he aims at hope, but cannot provide a guarantee (PL, 65; see also xlvii-viii; JF, 37). His concern with rational hope is also different from making predictions, and this might explain why he does not engage in certain empirical enquires which his explanatory quest might suggest that he should engage in – such as detailed political sociology or historical analysis. See also Hill, 2000: 248-9; and Baier, 1989: 783.

28 PL, 159; JF, 192.

29 See, for example, Williams, 2005: 2n2.

30 According to Rawls, the move beyond a mere *modus vivendi* will be helped by the following advantages of liberal principles of justice: (1) ‘(...) they fix, once and for, all the content of certain political basic rights and liberties, and to assign them special priority’ (PL, 161; JF, 194), which is important given the fact of reasonable pluralism and the possible conflicts this could give rise to; (2) their application has a certain simplicity which makes it easier for people to check that justice has been done (PL, 162; JF, 194); and (3) once institutionalised, the liberal principles encourage the political virtues (PL, 163; JF, 194), such as fairmindedness, thereby helping to sustain stability for the right reasons. For a critique of (1), see Macebo, 1990: 287-8.

31 PL, 158-168.

32 PL, 139; see also 155, 393; JF, 183, 189.

33 PL, 59; see also 140; JF, 190-1.

34 PL, 145-6; see also 147, 155, 169-71, and 'The Idea of Public Reason Revisited' [1997] (reprinted in LP, 129-180), which contains a number of passages on how religious views can come to accept political liberalism. For a more systematic discussion of this 'model case', see Krasnoff, 1998: 285-9.

35 PL, 169-171

36 See PL, 157.

37 RH, 393-4.

38 PL, 159-60; JF, 193-4.

39 See, for example, Habermas, 1998: 93; Wolf, 1997: 64.

40 Moreover, there is also a tension between saying (a) that political values are great values which are not easily overridden by other values (the first reason) and saying (b) that conflict with other values is reduced in political liberalism because it includes no claim to the effect that political values are the most important values all things considered (the third reason). If (b) is the case, then (a) is either false or needs to be weakened and will then not justify the priority of political values. On the other hand, if (a) is meant as a claim about values all things considered, then (b) is false and Rawls' theory is comprehensive, after all.

41 See PL, 149, where Rawls admits 'certain kinds of social unity and stability' do not necessarily require an overlapping consensus of the sort he suggests. He would however maintain that it is only possible to have a 'fair social cooperation (...) on a footing of mutual respect', if political values are assigned priority (PL, 157; see also LHPP, 5-9).

⁴² On the 'fact of oppression', see PL, 37; JF, 34.

43 Barry, 1995: section XII-XIII, especially 907, 909-10; on Rawls' view of the family of liberal political conceptions of justice see PL, xlviii, 6, 156-7. Barry also argues that Millian or Kantian views of autonomy might commit one to libertarianism (1995: 907f), which, as Rawls insists himself, is not part of

the family of liberal conceptions (see PL, lviii; LHPP, 13).

44 Kymlicka, 2002: 230ff. See also Galston, 1989: 716-7.

45 Simmons, 1999: 765.

46 Scheffler, 1994: 8-11; see also Wenar, 1995: 39n11.

47 Wenar, 1995: pp. 48-51; see also Galston, 1989: 713-4. Wenar thinks that Rawls also needs to drop from his political conception (a) the burdens of judgement as explanation of tolerance and (b) political constructivism as account of objectivity. For a critique of Wenar's argument in respect to (a), see Krasnoff, 1998: 279-80n8.

48 Also, if the slimmed-down political conception contained no moral reasons with which to support the principles of justice, then this would spell trouble for the political-moral autonomy and the sense of justice envisioned by Rawls. Citizens could not achieve autonomy, since this requires that a '(...) full explanation and justification (...) is publicly available' (PL, 78), but a slimmed-down political conception could not supply this. Additionally, there would then be no moral reasons external to each citizen's comprehensive doctrine with which to critically scrutinise this doctrine (see also Forst, 2007: 147).

49 See Krasnoff, 1998: 287-9.

50 See, for example, Gauthier 1986. Similar considerations apply to talk of 'rational' – Rawlsians could not have recourse to any philosophically and doctrinally controversial sense of rationality. See also Wenar, 1995.

51 See also Wolf, 1997: 58.

52 Rawls has often been criticised (for example, by feminists such as Okin) for upholding the distinction between the public and the private sphere, and thereby (wrongly) exempting the latter from regulation by the principles of justice. However, while Rawls argues that the principles of justice do not apply directly to the internal organisation of the family or of voluntary associations, he also maintains

there is no private sphere in the sense of a sphere not affected or constrained by the principles of justice (see JF, 163-168, especially 166).

53 RH, 427-8.

54 RH, 428.

55 JF, 186; see also PL, 136-7, 217; JF, 41, 84, 89-94.

56 See also RH, 388n22.

57 See also Wolf, 1997: 60. Rawls is undecided as to whether or not the abortion debate concerns constitutional essentials. Sometimes, he seems to say that it does (see, e.g., PL, 243-4n32, 246); at other times, what he says might suggest otherwise (see RH, 393-4); and at one point he simply admits that it is unclear whether or not abortion concerns constitutional essentials (JF, 117). However, many participants in the abortion debate would take this issue to be a matter of basic justice and a constitutional essential, which means that appeal to the value of procedural democratic legitimacy is not sufficient to underpin the priority of political values in this context.

58 I have benefited from discussions with Angela Pepper on this point.

59 See PL, 8, 124, 152n16; JF, 29; see also PL, 33.

60 See PL, lv-vin30, 243-4n32.

61 Such a view would be doctrinally, but not philosophically, comprehensive.

62 Habermas, 1998: 92. I presuppose here (with Rawls) that any reasonable balance of political values would be in favour of a suitably qualified right to abortion. Still, my argument does not depend on this. If the balance would tip the other way, pro-choice supporters would be in the similar predicament of not accepting the political conception. (Also, the issue could not be left undecided – the law either permits or does not permit abortions.).

63 Thus, rescuing the soul of one's children by shielding them from teachings which could tempt them from the true path might be another reason to oppose the whole family of liberal political

conceptions of justice, and this view need not involve a fully worked out comprehensive doctrine. Rawls cannot just dismiss such views as irrational, since he has a very low threshold of what is required of a doctrine to count as rational (see Krasnoff, 1998: 277ff, 292).

At one point, Rawls admits that ‘(...) we may have to assert at least certain aspects of our own comprehensive religious or philosophical doctrine’, namely, ‘(...) whenever someone insists, for example, that certain questions are so fundamental that to insure their being rightly settled justifies civil strife’ (PL, 152). Specifically, we would have to say of those who deny the fact of reasonable pluralism that they are mistaken and of those who assert that faith or belief can be a source of justification that they are unreasonable—both of which involves comprehensive claims (about the nature of reason and justification respectively). Rawls and his defenders do not fully acknowledge the difficulties this raises for his view. It is not merely the case that this means that some people will be subject to state power without accepting the values and norms used in justifying it (this difficulty is acknowledged by Cohen, 1993: 286). Rather, and more worryingly, it means that the norms and values used in justifying state power to those allegedly mistaken and unreasonable people cannot even be shared among those who accept the fact of reasonable pluralism. Thus, ultimately, there will be no full public justification of state power which is non-comprehensive and moral.

64 See, for example, PL, 163.

65 Habermas, 1998: 83, 84; see also Wolf, 1997: 58.

66 Evidence for thinking that Rawls would agree that reliance on luck is not a sufficiently good reason for rational hope is provided by the fact that he repeatedly contrasts a *modus vivendi* with an overlapping consensus on the basis of the elements of luck, contingency and happenstance involved in the former (see PL, 147-8; RH, 392; JF, 198).

67 See Habermas, 1998: 99-100; see also Forst, 2007: section 3. It is not clear whether the same point applies to Larmore’s political liberalism. While Larmore follows Rawls in conceiving political

liberalism as freestanding in one sense (namely, as independent from comprehensive views about the good life), he insists that it is not ‘(...) freestanding in respect to morality altogether’ (1999: 608). This would place him along Habermas and Forst. Yet, on the other hand, Larmore rests the moral foundation of liberalism for which he argues (i.e., the principle of respect) on consensus, not philosophical arguments about truth, validity, etc. (1999: 624). This brings his view closer to the one of the later Rawls, and might also open Larmore to the same objection, namely, that he cannot underwrite the priority of political values over non-political values, since his appeal to a ‘higher moral authority’ in the end dissolves into appeal to what people (allegedly) agree to in modern liberal societies.

68 See PL, 10; see also 154.

69 See Habermas, 1998: 95ff; see also Forst, 2007: especially section 3. Habermas (and the same is true of most other critics of Rawls) seems to think that such philosophical comprehensiveness need not imply doctrinal comprehensiveness: the moral requirements of justice are universal and thereby transcend doctrinal differences. Moreover, no particular answer to the ethical question about the good life is implied or prescribed.

70 Dworkin, 2000: Ch. 6.

71 See, for example, Barry, 1995.

72 Strong realism is often ascribed to thinkers who work on international relations, such as H.J. Morgenthau. Still, his views are, in fact, ambiguous between (a) the thesis that morality, ethics and justification have no place in politics at all, and (b) the position that states (morally) should pursue their national interests (see 1948). A clearer example of strong realism is P. Gowan, 2001.

73 See, for example, Williams, 2005; and Geuss, 2008. For a useful summary of (weak) realism in political theory, see Galston, 2009.

74 See PL, xviii-iv.

75 See PL, xxvi-vii, 36-7; see also 54-58.

76 This point is also emphasised by Peritz, especially 27-29, 31, 39, 47-8; see also Larmore, 1999: 614-616.

77 See Williams, 2005: Ch. 1.

78 See Williams, 2005: Ch. 1; see also Habermas, 1998: 101; and PL, 136-7, 216-7; JF, 40-1, 186; LHPP, 13.

79 See Williams, 1985.

80 Admittedly, Williams's characterisation of the political implies that the political constitutively involves reason-giving activities, but this does not by itself commit one to a particular account of this activity or to his view that there are only internal reasons, properly speaking (on the latter view, see Williams, 1981: 101-13).

81 See Williams, 1995: Ch. 5 and also 3, 138. The term 'liberalism of fear' was first suggested by the late J. Shklar in an essay bearing that title (1998).