European University Institute

Department of Political and Social Sciences

A Philosophy of Restraint

Justice and Pluralism in the New Theory of Political Liberalism

João Rosas

Thesis submitted for assessment with a view to obtaining the degree of
Doctor of Political and Social Sciences of the European University Institute

Florence, 2001

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Examining Board:

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Abstract

In this dissertation I analyse and criticise the recent theory of political liberalism of John Rawls and Charles Larmore. Furthermore, I sketch an alternative solution to the challenge which this theory confronts. The main challenge in the political liberalism of Rawls and Larmore is the difficult reconciliation between, on the one hand, the value of *justice* seen as the ultimate and substantive standard for the assessment of institutions and policies and, on the other hand, the pervasive *pluralism* of ideas of the good life and their supporting world views, in contemporary liberal societies. Political liberalism reconciles these by considering that principles of justice can be consensual in a pluralist society because they are political, not comprehensive (according to Rawls) or neutral in their justifications (according to Larmore). In this way, contentious moralities and philosophies, whether religious or not, are precluded from political justification.

I show the unfeasibility of this *justificatory restraint* both at the level of the idea of justice and in the account of pluralism provided by the advocates of political liberalism. Their implicit theories of pluralism require philosophical fallibilism in order to make sense. Moreover, the hidden perfectionism in the justification of the principles of justice advanced by political liberals goes hand in hand with their pluralist views. These 'contaminations', so to speak, of supposedly political principles by controversial epistemological and moral doctrines show the internal defects of political liberalism.

Furthermore, political liberalism cannot keep its promise of consensus because the idea of justice is itself plural. This is due, among other factors, to the influence of personal experiences and the weight of different considerations (i.e., the "burdens of reason") not only in the formation of people's ideas of the good and world views but

also in the process of conceptualizing justice. Once one recognizes the relevance of the pluralism of the former, one must also admit the equal relevance of the pluralism of the latter.

Political liberals were certainly right in facing the challenge of pluralism. However, *political liberalism* is *unsuccessful* in the avoidance of contaminations and it is also *useless* when it no longer provides the hope of a consensus that would strengthen the cause of justice amidst pluralism. If one perseveres to find a solution to the initial challenge, one must abandon the reconciliation proposed by political liberalism and re-interpret what it means to use restraint in a pluralist society. Instead of restraint as philosophical avoidance, my alternative proposal is a view of *restraint as responsibility.* Some specific institutions in liberal societies allow for the rule of conflict through suffrage. Responsibility amounts to moral support for this set of institutions, although they are not just. However, convictions of justice must remain in place. I conclude that liberal arguments for justice should preserve the controversy of deep - or comprehensive, or non-neutral - convictions, while accepting responsibly the institutional limitations of this most important social virtue.

Este trabalho é dedicado à memória do meu pai

*** Constantino Miranda Rosas ***

(1923-1998)

Contents

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I am glad that this project has reached completion, after so many painful hours, drafts and hesitations. However, to reach the end of a project does not fulfill a life. All my efforts would seem meaningless, if it were not for Bé.

INTRODUCTION

1. Presentation of the subject

2. The main ideas in a glimpse

3. Outline of the argument

1. Presentation of the subject

The subject of this dissertation is the new theory of *political liberalism*. This is a quite specific subject and it should not be confused with another and more usual meaning attached to the same expression. This more conventional meaning of political liberalism is primarily a form of liberalism which stresses the political sphere - the state - as opposed to the economic sphere - the marketplace. However, the new theory of political liberalism is not in opposition to economic liberalism in this way. Instead, the adjective *political* refers to the fact that this recent defence of liberalism avoids reliance on comprehensive and controversial religious, metaphysical, epistemological and moral views. In this sense, both its friends and foes agree that political liberalism is a theory of argumentative restraint, avoidance or even abstinence. Political liberalism, then, stands in opposition to *comprehensive liberalism.*

Past (and current) defences of liberalism tend to be unapologetically comprehensive. They use arguments taken from religious revelation, general philosophy and doctrines of moral excellence, together with other arguments - supposedly less controversial - taken from Economics and the social sciences. Liberal philosophers often disagree about the core principles of liberalism. For some, it is 'liberty', for others 'equality'. Another group focuses on 'the rule of law', yet others prefer 'tolerance', and so on and so forth. In their arguments, philosophers also disagree on how one should interpret these basic principles. In general, however, controversies about the substance and the meaning of

liberalism are settled with comprehensive reasoning. This *comprehensiveness*, then, applies across the spectrum, to the different contents that a defence of liberalism may have: from libertarian liberalism and egalitarian liberalism, to democratic liberalism and conservative liberalism alike.

The comprehensive reasoning approach of liberal theory is also apparent when one considers individual thinkers. In spite of their differences, all the great thinkers of the liberal tradition were comprehensive liberals: John Locke and Adam Smith, Jeremy Bentham and John Stuart Mill, Karl Popper and Friedrich Hayek.[1] None of them hesitated about using a given argument only because it would be controversial from a religious, moral or philosophical point of view. On the contrary, controversy involving comprehensive arguments was what they were involved in most of the time. More recently - in the nineteen seventies - when John Rawls and Robert Nozick wrote elaborate defences of liberalism they did not refuse engaging in wider philosophical arguments. Accordingly, they could be seen as comprehensive liberals.

Political liberalism differentiates itself from all these approaches to liberalism. As a well-known contemporary comprehensive liberal writes:

> Never before [political liberalism] has it been suggested
> that governments should be unconcerned with the truth
> of the very views (the doctrine of justice) which inform
> their policies and actions, and never before has it been

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[1] In a previous work, I have focused in length on the intermingling of political, moral, epistemological and cosmological arguments in one of the above mentioned authors: Karl Popper. See Rosas (1990). The same kind of monograph can be done - and has been done - on all the main liberal thinkers of the past.

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argued that certain truths should not be taken into account because, though true, they are of an epistemic class unsuited for political life.[2]

However, this avoidance of the question of truth in the justification of justice is precisely what political or non-comprehensive liberalism contends. Thus, political liberalism is not only recent but also new. It is a new defence of liberalism and, more generally, a new way of philosophizing about politics.

The novelty of political liberalism must be understood in terms of contemporary liberal societies. These societies are characterized by a plurality of comprehensive doctrines or world views. Although the remote origins of this pluralism are found in the religious disputes following the Reformation, the religious wars of the seventeenth century and the subsequent establishment of religious toleration and liberal constitutionalism in Europe and America, present day societies are increasingly plural in the doctrinal (and not only religious) sense. The continuity over time of legal protection of basic liberties makes this pluralism pervasive. Moreover, the development of regional integration among independent states, international business, labour market mobility, rapid traveling, migrations and telecommunications are likely to make doctrinal pluralism increasingly extended. Because comprehensive doctrines that used to be foreign also become internal, each one of the political communities in which we live is faced with a growing number of disparate world views.

Political liberals recognize the insurmountable character (at least, by peaceful means) of this situation. Accordingly, they propose an *Épochê* of sorts regarding comprehensive views in order

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[2] Raz (1990: 4).

to safeguard the institutions which make society just. They set up a divide between, on the one hand, controversial comprehensive doctrines or world views, and a consensual non-comprehensive political morality (a theory of justice) on the other. This non-comprehensive theory of justice provides the justification for an ideal liberal political order. In brief: the problem amounts to the attempt at conciliation between doctrinal pluralism and justice in society. Political liberalism and the justificatory division it proposes is a particular answer to this problem.

Actually, it is a number of answers. The first author to clearly advance a thesis of the distinction between comprehensive and non-comprehensive political argument was Thomas Nagel.[3] However, Nagel did not elaborate a theory of political liberalism and he even retreated from the restriction of reasons in political argument that he had previously proposed.[4] However, the first to put a name to the theory was Charles Larmore.[5] Larmore presented a version of political liberalism which has attracted (unfairly, I think) little attention. The reason must be that John Rawls has distanced himself from his previous supposedly comprehensive liberalism and developed the most extended and well-argued case in favour of political liberalism.[6] As the most important political philosopher of our time, Rawls has drawn all the attention. However, for a better understanding of political liberalism it is preferable to look at it as a set of theories, not reducible to Rawls' theory, or Larmore's, or to that of any other

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[3] See Nagel (1987).
[4] See Nagel (1991: 163, n.49).
[5] The theory is named in Larmore (1987).
[6] Rawls' slide into political liberalism starts with "Justice as Fairness: Political, not Metaphysical", from 1985 - now in Rawls (1999: Chap. 18) - but the label is not adopted until Rawls (1993).

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individual theorist. These different versions of political liberalism have in common the fact of being always distinguishable from comprehensive liberalism.[7]

2. The main ideas in a glimpse

Political liberalism - I argue in this work - raises the correct problem but provides the wrong solution. One must admit the need of conciliating, on the one hand, the value of justice seen as the ultimate substantive standard for the assessment of institutions and policies and the pervasive pluralism of world views in contemporary liberal societies on the other hand. The task is difficult because in a pluralist context each citizen must have his or her say. This is because the idea of justification brings with it a normative content which includes a basic idea of equality of citizens as agents for the justificatory process. Moreover, justification does not require an ideal of actual agreement, but it does imply the idea of ideal agreement. Ideally, everyone in our plural societies must be addressed in the justification of justice.

If the problem is rightly put, then, what is wrong with the solution? There are two things. In the first place, the justificatory restraint proposed by advocates of political liberalism does not work. Their account of pluralism requires an epistemological theory of fallibilism in order to make sense. Moreover, there is a hidden moral perfectionism in the principles of justice which they advance. This perfectionism goes hand-in-hand with fallibilism regarding

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[7] This dissertation concentrates on the work of Larmore and Rawls. However, the latter believes that Judith Shklar anticipated political liberalism in Shklar (1989). Rawls also mentions two authors who share with him aspects of this theory, namely Joshua Cohen and Bruce Ackerman, in Cohen (1989) and

comprehensive doctrines. Both fallibilism and perfectionism 'contaminate', so to speak, the supposedly non-comprehensive conceptions elaborated by political liberals.

Secondly, political liberalism cannot keep its promise of consensus because the idea of justice is itself plural. This is due, in part, to the influence of personal experiences and weighing of different considerations (i.e., what is called by Rawls "the burdens of judgment", or "the burdens of reason") not only in the formation of people's diverse world views but also in the process of conceptualizing justice. In this bootstrap reasoning, once one recognizes the relevance of pluralism of doctrines, one must also admit the equal relevance of pluralism of conceptions of justice.

To sum up: in the conceptualization of justice, pluralism goes all the way down. Liberal conceptions of justice cannot be strictly "political, not comprehensive" and, what is more, their being strictly political would not grant stability of justice because of pluralism within the basic idea of justice. Thus, political liberalism fails by virtue of avoidance of 'contamination' and does not provide the hope of consensus that would strengthen the cause of justice amidst pluralism. So the question is whether there is an alternative solution to the important problem raised by political liberals. I think there is, in the form of another philosophy of restraint.

If one perseveres in searching for a solution to the initial problem, one must abandon the conciliation between pluralism and justice proposed by political liberalisms and re-interpret what it means to make use of argumentative restraint. Instead of restraint as the avoidance of comprehensive moralities and philosophies, I propose viewing restraint as responsibility. Some specific

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Ackerman (1980). On this, see Rawls (1995: 133, n.1). Ackerman explicitly endorses the fundamentals of political liberalism in Ackerman (1994).

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institutional mechanisms in democratic societies - like elections and *referenda* - allow for a rule of conflict. Responsibility amounts to the moral support of this set of procedural institutions, although they are not just, combined with convictions of justice. Accordingly, my argument amounts to saying that liberal conceptions of justice should preserve the controversy of deep - or comprehensive - convictions. Moreover, my argument responsibly accepts some institutional limitations to the social virtue of justice.

3. Outline of the argument

The central problem to which political liberalism is a particular answer is addressed in Chapter I, in a quite analytical way. The terms of the problem, namely the 'idea of justice', the 'context of pluralism' and, last but not least, the concept of the 'justification' of justice amidst pluralism are taken separately. Different accounts of these terms are discussed and a favoured interpretation of each one of them is established. Although the starting point of the argument is not original - but just *the* problem of political liberalism - it may happen that the way the problem is set out in detail is already part of the solution developed throughout the dissertation. This, one cannot avoid. However, Chapter I is only preparatory and it cannot anticipate much of what I will have to say on and beyond political liberalism.

Using the formulation of the problem in the first chapter as an interpretative grid, the theories of Rawls and Larmore are dealt with in Chapters II and III, respectively. Rawls' solution to the central problem of political liberalism is criticized because of his ambiguities in the definition of the context of pluralism which motivates and drives his theoretical endeavour. This critique also

triggers an investigation that concludes with the idea that Rawls' understanding of the justification of justice guides his account of pluralism and prevents him from taking pluralism seriously, as a theory of political liberalism must. Moreover, the political liberalism of Rawls is not really non-comprehensive because it has to use several comprehensive doctrines to coherently sustain the arguments which it advances.

On the face of it, Larmore's pragmatic account of pluralism seems less disappointing, but he is unable to specify a political morality - a conception of justice - for the pluralist societies in which we live. Instead, Larmore develops an account of justification and of the constraints of neutrality that political justification should follow. However, this account remains too formal, lacking substantive content. Whereas Rawls puts justice and justification first and, by doing so, he compromises the relevance of his answer to the challenge of pluralism, Larmore works hard to address this challenge and to elaborate a theory of justification, but he cannot specify a conception of justice. Moreover, Larmore does not do better than Rawls in the attempt to avoid the use of comprehensive doctrines to justify his arguments.

These three Chapters - the first one analytically, the other two hermeneutically - open the way for a more personal argument. Globally, Larmore's inability to solve the problem enunciated in the first chapter is even clearer than Rawls'. However, a return to the Rawlsian solution is not a good alternative and Chapter IV shows why this is the case. In this Chapter, the promises of moral consensus on a conception of justice found in Rawls' political liberalism are rejected. A thesis of the insurmountable disagreement within justice - not only about world views or comprehensive doctrines and the way they "contaminate" the

conceptualization of justice - is favoured. According to this thesis, conceptions of justice cannot coherently define a social ideal, or a basic structure of society which all or almost all the citizens of a liberal constitutional regime could endorse. However, liberal conceptions of justice are still considered essential because they define a substantive standpoint which gives critical sense to one's sense of injustice. Moreover, there is no reason why one should avoid being comprehensive and controversial.

Finally, in Chapter V, an alternative to versions of political liberalism centered on a consensual political morality is presented. This alternative is based on a particular interpretation of the Weberian distinction between conviction and responsibility, grounding the stability of a pluralist society on the latter. This stability does not require a full conception of justice and not even a liberal political principle of legitimacy. Instead, stability is achieved through institutional limitations on justice based on practices of responsibility. These limitations on justice include diverse democratic mechanisms of suffrage. Such limitations are moral but in a strictly consequentialist sense, because they derive from an *ethos* of responsibility. Rejecting a liberal political consensus, my alternative is still favourable to a liberal philosophy of restraint. However, my interpretation of the role of restraint prevents its extension to the justification of an ideal of the just society. Instead, restraint consists in trying to accommodate together, in a moral *modus vivendi*, the primary relevance of comprehensive conceptions of justice and the pluralism which characterizes the liberal democracies in which we live.

CHAPTER I

JUSTICE, PLURALISM AND THE GRIP OF JUSTIFICATION

1. First formulation: justice; pluralism; justification

2. Searching for the core of justice

3. Essential contestability revisited

4. *Ad hoc* definition

5. Pluralism of what?

6. Pluralism and conflict

7. The circumstances of justification

8. Aspects of justification

9. Models and structures

10. Final remarks

In this chapter, I present my personal view of the central problem to which political liberalism replies. I do not refer to the writings of political liberals like John Rawls in his more recent work, or Charles Larmore. However, I believe that their versions of

the central problem of political liberalism - which are presented in chapters II and III, respectively - may be seen as applications of my own formulation. My version of the central problem of political liberalism, then, is quite general, but not theoretically neutral. It already conveys the way I understand the issues found in the work of those major political liberals, as well as my own.

The central problem of political liberalism being about the relationship between 'justice' and 'pluralism', I felt the need to analyze the sense of these terms and to compare alternative meanings. However, it is not the purpose of this chapter to address all the questions that these two terms raise when they are taken separately. Moreover, the intention is not to address all the questions that these two terms may raise for anyone when they are taken together. Taking these two terms together, I will analyze a single problem about the connection between them. This connection is in the idea of political justification. 'Justification', then, is the third and most revealing term in my personal understanding of the problem addressed by political liberalism.

This central problem will be formulated in section 1., as briefly as possible. Then, its different terms will be considered in the framework of relevant contemporary discussions. In sections 2. through 4., the search for the core of justice will lead to revisiting the "essential contestability" controversy and, in the end, to an *ad hoc* definition of the basic idea of justice. In sections 5. through 7., a plurality of pluralisms will be analysed and relevant cases selected to describe the circumstances of political justification. Then, the various aspects, models and structures that clarify the specificity of liberal political justification will be dealt with in sections 7. through 9.

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The goal of this chapter is to develop the central problem of political liberalism sufficiently for clarity and workability throughout the argument. This *desideratum* will be approached slowly and it will be summarized at the end of the chapter, in section 10.

1. First formulation: justice; pluralism; justification

Political liberalism is about 'the idea of justice'. Often, justice is understood with reference to the judiciary setting. Justice is what the judge attempts to provide. Sometimes the law is inappropriately applied but the procedure followed by the judge is perfectly fair. In this case, although the outcome of the process is not just, the basic principles of legal justice (the due process, etc.) are at work. Nevertheless, further questions arise as to whether those principles and the specific laws applied are themselves just or unjust. So, the genesis of the laws and of the principles they imply has to be considered. How are these principles to be justified? Did the laws arise out of a fair political process? And, what does a fair political process consist of? Finally, what is the ultimate foundation of fairness in law and politics?

Only at the bottom end of these various legal and political uses of 'the idea of justice' we find its more basic meaning. In this sense, the basic idea of justice must not be determined by legal and political outcomes nor procedures. Instead, justice must be the idea we use to determine the moral value of those outcomes and procedures. Accordingly, justice is a substantive ideal that we use for the assessment of laws and policies and the way they influence social practices. In the formulation of the central problem behind political liberalism, the focus should be on 'the idea of justice' so

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considered, i.e., as the ultimate moral standard for the assessment of those practices and of the law and policy-making associated with them.

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Moreover, political liberalism is about 'the idea of justice' in the framework of a pluralist society. Political liberals claim that 'a context of pluralism' places decisive constraints on the conceptualization of 'the idea of justice'. However, pluralism is no less a buzzword than justice. In the ordinary usage, pluralism often refers to the architecture of the political system, to associational life, to the diversity of ethnic or cultural communities, or to the multiplicity of people's identities. The kind of pluralism at stake in a theory of political liberalism cannot be dissociated from these references, but it is something different.

'A context of pluralism' refers, *prima facie*, to a state of affairs in the world, rather than to a theoretically worked out idea (like the idea of justice). However, this state of affairs consists of immaterial realities rather than individuals' ties and attachments, communities, associations, political parties and other groups in society. A society provides a pluralist context when it is diverse from the point of view of religious belief, personal values and doctrines, philosophical systems and less worked out - or even acritical - philosophical views. This form of pluralism may arise out of a diversity of social groups, or it may produce over time a variety of such groups. Nevertheless, in the formulation of the central problem of political liberalism 'a context of pluralism' refers to the diversity of what may be shortly called, in a loose sense, people's visions of life, or world views.

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Considering justice in this pluralist context leads to putting the emphasis on 'justification'. This realization is fundamental to political liberalism. Pluralism challenges the very idea of justification because it overturns the presupposition that there is a homogeneous public that shares the most basic ideas about human existence, the good life and our life together. Because this is not the case in most contemporary liberal societies, the justification of a common idea of justice becomes problematic. Nevertheless, it must be at least theoretically possible to bind together the idea of justice and the pluralist context in which we live. Political liberals are thus compelled to spell out a conception of political justification that serves this purpose.

A liberal political theory tends to be particularly careful with the procedure of justification. This is the syntactic aspect, rather than the semantic one, and it is a *sine qua non* for the very possibility of a theory that reverses the presumption of some kind of homogeneity in the *res publica*. A focus on the procedure of justification leads to the consideration of aspects, models and structures that are involved in the task of justifying political terms for us all. Moreover, focusing on justification leads to the fundamental divide between comprehensive and non-comprehensive reasoning. Political terms of agreement must be first of all justified by the latter, although they may also be justified by the former. These, however, are only the formal aspects of justification. Political liberalism also aims to formulate an idea of justice - whether it is a full conception of justice, or a conception limited to certain fundamental aspects - that may be coherently sustained amidst pluralism.

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Although autonomous, the three terms - 'the idea of justice', 'a context of pluralism' and 'justification' - are linked because each one of them influences the consideration of the others. Political liberalism aims at safeguarding the value of justice as the ultimate moral standard for the assessment of a number of social practices influenced by law and policy-making. However, political liberalism cannot avoid acknowledging the difficulty of this task in a context marked by pluralism in world views. Political liberals must then turn to the modeling of political justification in the search for orientation. Their hope is to find a satisfactory justification that makes sense of justice and makes sense of pluralism. Therefore, the shortest formulation of the central problem addressed by political liberalism is: how should the idea of justice be justified in a context of pluralism?

2. Searching for the core of justice

This section and the following two address the distinction between the core of 'the idea of justice' and the specifications of the same idea, referring to the authors who make such distinctions. The purpose is to answer to the question: is there an idea of justice that political liberals can take as a point of agreement, from which disagreement can proceed through specifications of that basic idea ? The first contemporary author seeking a consistent answer to this question was Chaïm Perelman.[8] Perelman argues that the idea of justice is both eminent and confused. Justice has a unique fortune among human ideals. It is often considered the main virtue, the source of all the others. As a social and political value, it is

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[8] See Perelman (1963: Chap. I). This chapter is the English version of *De la Justice*, Office de Publicité, Brussels, 1945.

identified with 'the ideal' in general: the just society is the ideal society. Due to such prominence, everyone seems ready to concede to an argument for the sake of justice, or otherwise to insist on an argument against all the evidence, for the same reason. In conflicts, not only with words but also with weapons, everyone likes to be on the side of justice; perhaps for this same reason, everyone claims to be, in fact, on the side of justice. Eminence, Perelman concludes, leads to confusion.

Maintaining the idea of justice as a social or political value, Perelman tries to reduce the confusion in its character through the distinction between *the formal or abstract formula of justice* and *the concrete formulas of justice*. The abstract formula consists in treating people "in equal fashion". The idea of justice consists of the application of the idea of equality. But it does not require perfect equality. Accordingly, says Perelman, "we can [...] define formal or abstract justice as *a principle of action in accordance with which beings of one and the same essential category must be treated in the same way*." [9] If the idea of justice becomes confused, it is because we feel the need to talk about concrete justice, specifying the terms of formal justice: the "essential categories of beings"; and the meaning of "being treated in the same way".

For Perelman, different concrete formulas of justice may be: to each member of the same category according to his merits; or according to his works; or according to his needs. These concrete formulas specify the "way" people should be treated, but allow for an equal attribution of rights - when we consider that all human beings belong to the same category - or an unequal attribution of rights - when we specify categories of people. Other formulas,

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[9] Perelman (1963: 16).

which already imply a division of individuals in categories, but without specifying "the way" people should be treated are: to each one according to his legal entitlements (i.e., the *cuique suum* principle) and to each one according to his rank (a principle of discrimination). All these cases are applications of formal justice.

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More recently, H. L. A. Hart - who references Perelman - has made a similar distinction between two senses of justice.[10] Hart thinks that we should distinguish between *the notion of justice* and *the applications of justice* both in matters of distribution and compensation. He says that "The general principle latent in these diverse applications of the idea of justice is that individuals are entitled in respect to each other to a certain relative position of equality or inequality."[11] Justice, then, is "treat like cases alike" and "different cases differently".

Like Perelman's formal justice, this formula is too empty, as long as all human beings are both equal and different in some respects. Hart concedes that the formula remains empty until one establishes where the resemblance and the differences lie, which cases are alike and which are different. For Hart, then, the idea of justice has two parts: one, corresponding to the basic notion of justice, is universal and constant; the other varies with the criteria that determine the distribution among individuals of burdens and benefits, as well as the compensation for injury done by others. Hart's contention is that this openness to interpretation within the basic notion of justice makes it acritical by itself. Without the specification implied in the second part of the idea of justice,

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[10] See Hart (1961: Chap. VIII).
[11] Hart (1961: 155).

criticism of the law is not possible. This critical aspect was not part of Perelman's concerns.

<p style="text-align:center">*</p>

In *A Theory of Justice*, John Rawls takes from Hart the idea of partitioning the idea of justice.[12] Rawls' distinction is between *the concept of justice* and the different *conceptions of justice.* He states that "it seems natural to think of the concept of justice as distinct from the various conceptions of justice and as being specified by the role which these different sets of principles, these different conceptions have in common."[13] Rawls' distinction is similar to Hart's (and Perelman's) because it presupposes a general agreement on the basic concept, and disagreement on the conceptions. Rawls' approach is also close to Hart's (and Perelman's) as far as it leaves open to interpretation the terms that specify the distinction between people *and* their competing claims about the advantages of life in society. In Rawls' words:

> Those who hold different conceptions of justice can, then, still agree that institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantages of social life.[14]

The meaning of (a) "arbitrary distinctions" between people, and (b) "proper balance" of claims will determinate the substance of each conception of justice. Perelman talked about (a) the same "categories of beings", and (b) "way of treatment". Hart mentioned

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[12] See Rawls (1971: 5-6).
[13] Rawls (1971: 5).
[14] Ibid.

<p style="text-align:center">19</p>

(a) "cases alike or different", and (b) "distribution of benefits and burdens". The similarity between the three authors is striking. With some minor changes, it is possible to paraphrase the definition of Rawls introducing the language of Perelman, or Hart, in the terms left open to definition.

Accordingly, Perelman could say that 'those who hold different conceptions of justice can, then, still agree that institutions are just when the rules determine the treatment of competing claims to the advantage of social life and when the same categories of beings are treated in the same way in terms of basic rights and duties'. By the same token, Hart could say that 'those who hold different conceptions of justice can, then, still agree that institutions are just when they treat like cases alike and different cases differently in the assigning of basic rights and duties and when the rules determine the distribution of benefits (and burdens) between competing claims to the advantages of social life'. If the similarity between these three authors holds, the core idea of justice may have been found.

3. Essential contestability revisited

Whether the above similarities hold or not, any elaboration of the idea of justice is open to controversy. This is perhaps not surprising, as the idea of justice belongs to the family of "essentially contested concepts". This famous doctrine developed by

W. B. Gallie[15] may be seen as implying a distinction between the idea of justice and the different uses of this idea. Although some may think that essential contestability admits the possibility of disagreement even without a shared meaning, here I adopt the view according to which Gallie thought that disagreement implies *some* sharing of meaning.[16] Otherwise, "essential contestability" would refer to words rather than concepts.

"Essentially contested concepts", Gallie writes, are "concepts the proper use of which inevitably involves endless disputes about their proper use on the part of their users"[17]. These concepts are appraisive (they accredit an achievement) and they are used in an aggressive-defensive way. They are also internally complex and variously described. They may change over time and, thus, are open in character. Gallie contends that all the competitors have to recognize an original *exemplar*, which they may develop differently. This *exemplar* is what the competitors for the best account of the concept share. The possible *optimum* (never achieved) of the *exemplar,* is approachable through the competition between the different meaning claims by the users of the concept.

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One interpretation of essential contestability is particularly interesting because it challenges the very possibility of a fruitful inquiry into the idea of justice in the societies in which we live. According to this interpretation, presented, albeit not defended, by John Gray, essential contestability paves the way to scepticism.[18] Gray stresses that the "criteria of correct application [of essentially

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[15] See Gallie (1955-6: Chap. 8).
[16] I will have more to say about this in Chapter IV.
[17] Gallie (1955-6: 158).

contested concepts] are multiple, evaluative, and in no settled relation of priority with one another."[19] Moreover, the use of an essentially contested concept implies the use of a range of contextually-related concepts that are equally contestable. Gray adds that "essentially contested concepts occur characteristically in social contexts which are recognizably those of ideological dispute"[20], such as pluralist contemporary Western liberal society. For Gray, a strong version of essential contestability showing that the subject matter of the concept is such that dispute on any of its uses will always arise, has important philosophical consequences. This essential contestability "sets in motion a vertiginous slide into radical skepticism."[21]

The essential contestability of justice was, in some way, acknowledged by Perelman, Hart and Rawls, but Rawls' theoretical enterprise[22] consists in trying to find a criterion to single out one conception of justice from a menu provided by the history of political philosophy. However, if what Gray calls "strong essential contestability" is correct, this entire enterprise is a mistake - nobody is able to single out one conception from a menu of interpretations of a radically contested concept. This is precisely what Gray says about Steven Lukes' analysis of the concept of power. Criticizing Lukes' account of power as an essentially contested concept, Gray considers that Lukes' preference for one use of the concept of power is incompatible with his own contention

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[18] See Gray (1977). From now on I will refer to this interpretation, not anymore to Gallie's work.
[19] Gray (1977: 332).
[20] Gray (1977: 333).
[21] Gray (1977: 343).
[22] In Rawls (1971).

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about the strong essential contestability of power.[23] The same, then, would happen with 'justice'.

Surprisingly, Steven Lukes seems to be admitting a similar point when he states that his "distinction between 'concept' and 'view' [of power] is closely parallel to that drawn by John Rawls between 'concept' and 'conception'."[24] Agreeing with Rawls' suggestion that the specification of the conceptions implies an idea of social co-operation - which interprets the terms left open - Lukes disagrees "with Rawls' apparent belief that there is ultimately one rational conception or set of principles of justice to be discovered." And he adds: "Justice is no less essentially contested than 'power'."[25]

On the face of it, Lukes is contradicting himself. On the one hand, he affirms the essential contestability of 'power' and 'justice'. On the other hand, he settles on a justified preference for one among the competing conceptions of 'power', but he denies the same for 'justice'. In the theory of justice there is "no Archimedean point"[26], whilst such an Archimedean point exists in the theory of power. However, if Gray is right, Lukes must say of 'power' the same he affirms of 'justice', i.e., that there is no Archimedean point. *Mutatis mutandis*, if Gray is wrong, Lukes should say of 'justice' the same he affirms of 'power', i.e., that it is coherent to admit essential contestability and to prefer one version of 'power' and 'justice' to others. The latter hypothesis is, I think, what better fits Lukes' general approach.

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[23] For Lukes on power, see Lukes (1987).
[24] Lukes (1987: 27, n.1).
[25] Ibid.
[26] On this, see Lukes (1972).

In the first place, Lukes accepts the idea of essential contestability, but he does not accept its sceptic consequences suggested by the strong version of that idea. When Lukes denies that "there is ultimately one rational conception", he is rejecting the essentialist idea of justification based on the discovery of absolute truths. Nevertheless, he is not rejecting the possibility of rational argument about essentially contested concepts and I cannot see a reason why he should. In accordance with what Gray ends up admitting, there is a long way - and not just a quick slide - from essential contestability to skepticism.[27] Essential contestability implies something like methodological fallibilism, i.e., the admission that there are no certainties about the right interpretation of the concept. However, essential contestability does not imply that there is not an ideal (about the concept) to be pursued. On the contrary, there is a competition for an *optimum*, and although there are no infallible methods which lead to this *optimum*, the competition may have a front-runner. Search for this front-runner is precisely what the competitors do. Scepticism would imply the denial of the worth of this search and, for that reason, it would end the dispute, i.e., it would end essential contestability. Instead of being a consequence of essential contestability, then, scepticism is at odds with it. If scepticism prevails, essential contestability does not even arise.

Secondly, Lukes must admit that Rawls may coherently prefer his own conception of justice to rival conceptions. If Rawls were claiming to have discovered the ultimate rational conception of justice this would, indeed, be incompatible with the essential contestability of justice and the methodological fallibilism it

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[27] See Gray (1977: 334-347) and Gray (1978).

requires. However, both in *A Theory of Justice* and in his subsequent writings, Rawls does not have such an essentialist ambition. He is rather interested in constructing one conception of justice that articulates into a coherent view our most cherished political values. Rawls tries to find the front runner among a list of competitors for the concept of justice.[28] By the same token, Lukes tries to find the front runner among a number of views of power. Just as Lukes argues for one account of 'power' over others, Rawls argues for one account of 'justice' over competitive accounts. To privilege one specific use of an essentially contested concept is not incompatible with the previous recognition of essential contestability in the non-sceptic version, and is in accordance with Gallie's initial doctrine. Nevertheless, the acknowledgment of essential contestability changes the *status* of the argument for the political idea at stake. In the present case, it changes the *status* of the argument for justice.

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The argument for justice, then, must have at least two stages. The second stage consists in specifying the idea of justice with a reasonable hope - as opposed to axiomatic certainty - of finding *a* better theory of justice. This is a different theoretical enterprise from trying to find *the* rational theory of justice. Essential contestability rightly understood prohibits the latter and requires the former. The first stage of the argument for justice consists in the formulation of a fixed point that allows for a range of interpretations. This fixed point can be a basic idea of justice and this idea was already found in the previous section through the

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[28] See, for instance, Rawls (1971: § 87) and Rawls (1993: Lecture III).

establishment of some minimum features. Now I propose to return to that first stage.

4. *Ad hoc* definition

The kind of distinction within the idea of justice that Rawls seems to take from Hart and Hart seems to take from Perelman is, apparently, appealing and cogent. One is provided with a basic idea of justice that works as a point of agreement, from which disagreement proceeds through specifications of the basic idea. Each specification is developed through the interpretation of two terms, referring to the universe of people to consider *and* the criteria to take into account in that consideration. The cogency of the distinction lies, as far as I can see, in two aspects: one is aesthetic, the other theoretical.

In the first place, the distinction is graphic. One can easily - and pleasantly - imagine something like a central figure from which several arrows originate, pointing out to different interpretations of the central figure. Our sense of order may be slightly frustrated by the many arrows, but is tranquilized by the central figure. Secondly, the distinction provides an orientation for the argument. One can always refer to the basic idea, putting aside the basic idea in itself. The basic idea is taken as given; one only has to specify it.

However, a tighter analysis of Perelman's formal justice, Hart's notion of justice and Rawls' concept of justice, shows variation in the central figure, in the core idea of justice itself. For Perelman, the basic idea is "the rule of justice".[29] This rule applies, *prima facie*, to actions, as in the traditional, Aristotelian, idea of

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[29] See Perelman (1963: Chap. 3).

justice. The rule of justice is also more vague than the rule of law. The law specifies the terms left open in the rule of justice. The rule of justice, then, becomes similar to the rule of law through the provision by the law of the criteria for its application. Another important point is that Perelman's idea of the rule of justice is perfectly compatible with discrimination between people - for instance, racial apartheid - and all sorts of inequalities.

Hart's basic idea applies, *prima facie*, to rules. He sticks to the idea of "proceeding by rule"[30], but departs from considering it without any specification. Proceeding by rule is only a part of any idea of justice, which is necessarily critical and, therefore, specified. So, Hart's core idea of justice may be very consensual but, like Perelman's, it is too formal to be of any use.

Rawls' core idea of justice may easily include (as we saw) the definitions of both Perelman and Hart. However, Rawls' concept goes farther: it is different from "the rule of justice" and from "proceeding by rule" because it states clearly that justice is a criterion for assessing concrete institutions. For Rawls, an institution is "a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like."[31] An institution has two aspects. The first one is abstract and is "a possible form of conduct expressed by a system of rules"[32]. The second one is concrete and it implies "the realization in thought and conduct of certain persons at a certain time and place of the action specified by these rules."[33] Examples of institutions are games and rituals, trials and parliaments, markets

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[30] Hart (1961: 156-157).
[31] Rawls (1971: 55).
[32] Ibid.
[33] Ibid.

and systems of property. Rawls is interested in the concrete realization of institutions and in the way they determine who gets what - both the benefits and burdens - in social life.

This controversy about the basic idea of justice seems to lead to reverse the answer to my initial search for the core of this idea: in fact, there is no fixed point of agreement on the idea of justice. If one wants to make it meaningful, it becomes controversial. The basic idea of justice is not a well established one.[34] Is this a reason to give up theoretical inquiry? I do not think so.

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[34] Another and very different question is whether or not a basic idea of justice is useful. Even if one takes for granted the core idea of justice, one may still discard the usefulness of such concept. It is not too difficult to find an example of this other kind of disagreement even among supposedly progressivist thinkers. One of the thinkers easily associated with the pursuit of a better and more egalitarian society, namely Karl Marx, discards the idea of justice as "obsolete verbal rubbish", in the *Critique of the Gotha Programme*. Marx coherently attacks the idea of justice together with the idea of rights. In the framework of the materialist conception of history, justice and rights belong to the political and ideological superstructure. As a consequence, they cannot be decisive elements in the transformation of society from the bourgeois mode of production to the socialist mode of production. The social change has to be operated at the structural level, the level in which the great contradiction arises between the development of productive forces and the capitalist relations of production. Nevertheless, Marx's arguments against justice and rights are more specific.

His opposition to the idea of civil and political rights is stated since his early writings. The rights of man declared in France and in the United States are seen by him in *The Jewish Question* as mere expressions of an abstract and false emancipation, at the level of the State. However, men are not only citizens of the State, but also members of civil society. At the level of civil society, the universality of the citizen is lost and what appears is the egoistic individual man reduced to unequality and exploitation. The political emancipation of men achieved by the proclamation of their civil and political rights is, thus, only a disguise for their non-realization in society. It is a form of alienation.

In the *Critique of the Gotha Programme*, Marx's main target are the social and economic rights implied in the idea of distributive justice. The concept of distribution is seen as characteristic of the pre-history of humanity. What happens with the full development of the socialist society is not the realization of justice nor the denial of it, but rather the suppression of the circumstances of scarcity and class struggle that made of distributive justice a likely ideal in previous phases of historical development. The final society - the true beginning of human history - is not just nor unjust but beyond justice and injustice. The slogan invoked by Marx - "from each according to his ability, to each according to his needs!" - is not an application of the idea of justice but rather the spontaneous result of a social order in which the state "withered

A contemporary author, Ronald Dworkin, seems well aware of the issues involved in the debates about the core idea of justice and the wider debate on essential contestability. His own solution allows one to put these issues in perspective and to pursue an investigation about 'the idea of justice' in the framework of the central problem of political liberalism.

In his attempt to argue for genuine theoretical disagreement about the law (mainly against positivism, which considers empirical disagreement only), Dworkin deals, precisely, with the idea of justice.[35] He thinks that disagreements about justice such as the ones we find, at the theoretical level, between utilitarians and libertarians, show that the idea of justice refers to a practice. Thus, justice is itself an institution - i.e., a socially shared practice, usually descending from other practices - that we interpret. Whereas a first and pre-interpretive stage allows the identification of the institution and the assurance that disagreements about justice are genuine, the second and interpretative stage is the philosophical one, which triggers new forms of disagreement. At this second stage, philosophers capture the *plateau* from which conflicting arguments about justice proceed. The *plateau* is equivalent to the concept, or the basic idea. However, Dworkin acknowledges that there are many *plateaus*. He also thinks that it is difficult to find a concept which is simultaneously uncontroversial and useful. The third stage is the post-

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away". What these prophecies really mean is difficult to say. Nevertheless, it is clear that the idea of justice is to be denied as bourgeois, i. e., typical of a certain period that will soon pass away.

Thus, Marx seems to agree with a core idea of justice associated with rights. He wants to criticize that idea. Differently, I believe in the importance of the idea of justice, although it seems difficult to agree on a core concept. See the continuation of this section.

interpretative or reforming one. It establishes what a practice requires. This is the last step or the output of the philosophers' work. This last stage amounts to the production of conceptions of justice, or specifications of the basic idea of justice: libertarian, utilitarian, *etc.*

Dworkin's solution, then, adds another and previous stage to the two stages of the argument for justice considered in section 3. above. There are, in fact, different *plateaus*, or different ways of conceiving the basic idea of justice. One cannot avoid it because this stage is already interpretive and the results of interpretation - in any field - are rarely unanimous and always open.

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If one cannot start with a definite agreed core idea of justice, our initial point must be a *plateau* that serves the simple purpose of giving an orientation in the argument, i.e., some *ad hoc* definition of justice. An *ad hoc* definition is purely methodological (in the etymological sense of the word). It does not aspire to agreement, let alone rationality or truth. However, it has the advantage of supplying a fixed point that stresses the subject matter we refer to when we talk of justice in the framework of political liberalism. 'Justice', like any word, is a label. An *ad hoc* definition allows the same label to be attached to the same package throughout the argument.

Political liberalism focuses on justice as the highest pattern for the assessment of laws and policies. This was stated at the beginning (recall section 1. above). This kind of formulation already includes an idea of "the rule of justice" - it is the *ultimate* pattern - and an idea of "proceeding by rule" - the pattern is to be specified

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[35] See Dworkin (1986: Chap. Two).

by rules, not by arbitrary decisions.[36] To this, it must be added that justice is *substantive* and applies to concrete institutions that set up rights and obligations of citizens, like in the Rawlsian formulation of the concept. For the moment, let us keep in mind that 'the idea of justice' is *the ultimate substantive pattern for the assessment of policies and laws that build the social institutions which determine rights and obligations for the members of a political community*. The size or scope of the political community does not have to be specified.[37] However, any liberal political specification of the idea of justice will have to affirm this basic idea, and a lot more.

5. Pluralism of what?

This section and the following two deal with the meaning of the expression 'in a context of pluralism'. It is clear from the outset that the idea of a pluralist context has several different uses. This does not imply essential contestability, but only a large semantic field. Actually, there is a plurality of pluralisms and all of them may prove useful in distinct forms of inquiry. However, I will proceed with the purpose of finding the peculiar focus that is at stake in the central problem of political liberalism.

On the face of it, pluralism is about 'diversity' of some kind(s) of 'objects'. Although 'diversity' is a word that needs clarification, we have to start by listing the 'objects' that we wish to consider.

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[36] Here, the word "pattern" is a synonym of "standard" or "model". It does not necessarily imply what Robert Nozick calls "a patterned conception of justice" in the sense of a conception that promotes a distribution of goods according to some defined property like virtue, merit, or the contribution to society. For Nozick's critical approach to what he calls patterned conceptions, see Nozick (1974: 155 ff.)

[37] In any case, my concern here is with single political communities and not with international relations.

Before establishing what 'diversity' may mean, we should ask: pluralism of what ? The relevant possibilities are:

(a) of beings;

(b) of epistemic principles;

(c) of social spheres;

(d) of social groups (including ethnic and cultural groups);

(e) of ideas of the good life;

(f) of world views.

Although different, several of these 'objects' seem to be, in some way, related. For this reason, a satisfactory account of the possibilities short-listed requires the following sub-division of the list: (a, b); (c,d); (e,f).[38]

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Pluralism of (a, b) is a philosophical concept, in the field of metaphysics (a) and in the field of epistemology (b).[39] As a metaphysical concept, pluralism refers to reality - in itself - as composed of a diversity of beings. Their diversity means that they are not only various, but also independent and, hence, not susceptible to reduction to any unity or duality. In this sense, pluralism is opposed to both monism and dualism. As an epistemological concept, pluralism may be opposed to egoism. Accordingly, Kant said that pluralism is "the disposition not to see all the world included in one's own self but as a mere world citizens' outlook and attitude".[40] It was Christian Wolff who first referred to pluralism as an epistemological concept opposed to

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[38] Another possibility which is not listed is "pluralism of justice". Although this case was addressed in the three previous sections, it will come out again in Chapter IV, in the framework of a philosophical - not just methodological - argument.

[39] For this point, see Nichols (1974), Breitling (1980), Marcil-Lacoste (1992) and McLennan (1995).

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egoism (around 1720), while Herman Lotze was the first to use it as a metaphysical concept (in 1798).

In the history of Philosophy the mainstream is metaphysical and epistemological anti-pluralism. This general attitude started with a withdrawal from the plurality of things in ordinary experience to the unity of being in the philosophical experience. The path to the knowledge of reality is only One. This is the path chosen by Parmenides, leading to his famous description of being like a "well-rounded sphere", single, homogeneous, indivisible, unchangeable and eternal. Other important strict monists were Spinoza and Hegel. By contrast, strict pluralism is a minority doctrine. Among the Greeks, atomists like Democritus sustained that reality is formed by emptiness and a plurality of particules disposed in different configurations. Human knowledge is produced by the interaction of the atoms that form our body and soul with external atoms. Another important precursor of contemporary pluralism was Leibniz, who defended a view of the world as constituted by an infinite series of monads or souls related to each other only externally. However, only in the twentieth century, through William James' *A Pluralist Universe* (1909), did pluralism become an explicit metaphysical and epistemological doctrine. Against Hegel's pan-spiritualism, James stated a radical empiricism and a view of the constitution of reality by diverse finite beings. Bertrand Russel has also advocated a view that he characterized as a return to common sense and called "absolute pluralism".

The philosophical concept of pluralism is important because it has a double direct bearing on the other listed dimensions of pluralism, from (c) to (f). In the first place, it has a direct bearing in

[40] Quoted from Breitling (1980: 2).

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the use of language. As in Metaphysics, this concept is often treated as the alternative to monism - or dualism - in the question of the One versus the Many. Secondly, the bearing of the philosophical concept is manifest in one ambivalent meaning of pluralism. In dimensions (c) to (f) pluralism may be located either in the object itself - as in metaphysical pluralism - or in the subject of knowledge - as in epistemological pluralism. In other words, pluralism may be addressed as a fact of the world or as a viewpoint of the epistemic subject. Both aspects are necessary to a reflected account of pluralism.

One idea that arises from the second direct bearing considered in the previous paragraph is that of a third meaning of pluralism in general, from (c) to (f). In the crossroads between the reality of pluralism and the conceptualizations of pluralism we find the *experience* of pluralism. Pluralism, then, is also an experience of the self. The very distinction between the object and the subject of pluralism is a re-flective operation of a self that experiences pluralism. Accordingly, I will stress the experience of pluralism in my account of dimensions (c) to (f). However, this third meaning of pluralism is to be considered together with the other two: experience refers to some reality and requires conceptualization.

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Pluralism of social spheres and social groups (c,d) is a concept of the Social Sciences.[41] Pluralism of (c) may mean the separation between the public and the private, whatever the frontier between them. But (c) also refers to different domains such us 'the social', 'the political', 'the economic', 'the cultural' and so on, once again independently of the frontiers that we draw between

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[41] For this point, see Breitling (1980) and McLennan (1995).

them. A third interpretation of pluralism of (c) is the idea of "spheres of justice". According to Michael Walzer, different social goods - including membership in the political community, security and welfare, money and commodities, office, etc. - have distinct social meanings in distinct times and places. Thus, they form separate spheres in each society. This interpretation is relevant, even if I disagree with Walzer's claim that the specification of the idea of justice is settled through the shared understanding of the social meaning of these separate spheres and their embedded distributive criteria.[42]

Pluralism of (d) refers to a number of groups in society, like corporations and associations, churches and families. This understanding of pluralism (d) may be found in the so-called "political pluralists" in Europe (like Harold Laski) and, later, in the empirical democratic theory of American political science (such as that of Robert Dahl and Charles E. Lindblom). European pluralists envisaged the role of the State as an association among others, against statism but also against the forgetting of intermediate bodies in the relationship between the individual and the State in representative democracy. American empirists focused instead on the central role of political interest groups in a competitive liberal democracy.

Pluralism of (d) also refers to the existence of communities which are distinguished in various aspects (not only 'color', but also language, beliefs, rituals, practices) and maintain their difference over time. There is a tradition in Antropology and Sociology which explores this kind of ethnic pluralism. Nowadays, this pluralism is particularly visible because of massive

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[42] See Walzer (1983). The reason why I disagree with this approach becomes clear in the analysis of 'justification' in Section 8. below.

immigration of different groups into completely different ethnic and cultural contexts. The phenomenon of multiculturalism is a case of pluralism of (d).

Where pluralism of (c,d) occurs, there is a pluralist society. The idea is clear enough. This is the picture of western contemporary societies, highly differentiated in their spheres, but also in the social, political, ethnic and cultural groups that are part of their human fabric. But how can we convey a more vivid image of this pluralist society ? Nancy Rosenblum gives us an interesting account of this kind of pluralism through the concept - taken from A. O. Hirschman - of "shifting involvements".[43] Using the idea of social spheres in the third way referred to above, Rosenblum says that, in modern liberal societies, the self experiences a variety of contexts and sources of power and influence, not only in the domain of the political but also in the market and in the various social, ethnic, cultural and ideological spheres. Of course, modern liberal societies are not all the same and they have different degrees of variety and openness in the various spheres.

This experience of pluralism is, in the first place, the source of the identity of the self. Through "shifting involvements", the self experiences "complexity and fluidity", which allows him or her to preserve individuality and personal purpose. For Rosenblum, the abstract definition of the liberal self through rights is not what makes identity, but rather what allows the experience of pluralism through which identity is constituted.

Secondly, Rosenblum argues, this experience of pluralism is the best protection for a rich, spontaneous and expressive self. Shifting roles and involvements widen possibilities and reduce

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[43] See Rosenblum (1987: Chap. 6) and (1989). The expression "shifting involvements" is taken by Rosenblum from the work of A. O. Hirshman.

personal vulnerabilities (if you have no choice but to be a housewife, for instance, you may easily become a vulnerable personality). Accordingly, the experience of pluralism in society is a guarantee of self-defence against oppression and manipulation.

Whatever one may think of the normative judgments in Rosenblum's analysis, it illuminates what pluralism of (c,d) is about as a matter of experience. However, this experience of pluralism should be distinguished from the reality of pluralism and from the social theories that make sense of it. An experience of pluralism may reflect a reality of pluralism, but they do not necessarily lead to a pluralist theory in the social sciences.

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Pluralism of ideas of the good life and world views (e,f) is an axiological concept and, accordingly, a basic concept for moral and political theory. Pluralism of (e,f) refers to the many ideas of the realm of 'ought to' located at the individual level. Valued and valuable ideas of individuals may refer to actual states of affairs that are considered desirable, or they may refer to desirable states of affairs that are not actual. In both cases, however, the value is the quality we value, not the thing. Accordingly, a gold ring may be considered a value; but the value, in our sense, is not the gold ring itself. What makes the value is the valuable quality that we attribute to the gold ring.

Pluralism of (e) refers to the different ideas people have about the best way to live. These ideas of the good life may be very elaborated, but they need not to be. Ordinary people have their conceptions of the good life, whether explicitly acknowledged or implicit in the way they live. Accordingly, Ronald Dworkin says that "The scholar who values a life of contemplation has such a conception; so does the television-watching, beer-drinking citizen

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who found of saying 'this is the life'...".[44] One may also hope that most people's ideas of the good life are somewhere in between these two examples.

Pluralism of (f) completes the former kind of pluralism. It refers to the beliefs and arguments that support people's conceptions of the good life. These beliefs and arguments may be of many kinds and deal with philosophical, historical, scientific, religious and common sense ideas. Because everybody has an ideal of the good life, everybody also has a world view which is, most of the time, not clearly perceived, let alone reflexively elaborated.

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Now what kind of pluralism is at stake in the central problem of political liberalism? Political liberalism is concerned with pluralism of (e,f) amidst pluralism of (c,d). The context to consider is contemporary, albeit not necessarily Western, and is characterized by the social relevance of pluralism of (e,f). Although the focus is on pluralism of (e,f), it should be acknowledged that its relevance is closely related to the pluralism of social spheres and groups. A pluralism of ideas of the good life and world views becomes socially relevant when it occurs in a society, which is not an organic community and where a strong plurality of (c,d) exists.

6. Pluralism and conflict

The kind of objects at stake in 'a context of pluralism' is already defined, but not the kind of diversity that should be taken into consideration. Not all forms of pluralism (e,f) raise problems for political liberalism: only those forms which generate conflicts that make difficult for people to live together and make the choices

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[44] Dworkin (1986: 191).

about the rules of justice that social life requires. It is thus necessary to move from the idea of sheer pluralism to the idea of conflict. Because political liberalism is directly concerned with pluralism (e,f) rather than pluralism (c,d), it does not aim at providing solutions to social conflict understood as conflict between differentiated social groups. However, there are important forms of conflict among the plural objects political liberalism focuses on.

Pluralism of (e,f) may reach extreme points of conflict. It may reach incompatibility or incommensurability.[45] Incompatibility refers to situations in which the conflicting values are mutually exclusive. The same person cannot coherently defend two incompatible values at the same time. Incommensurability refers to situations in which the conflicting values are impossible to compare because there is no common element to make them commensurable. Moreover, incommensurability implies that there is no other method for solving the conflict (rules of priority, for instance).

Repeating my procedure in the analysis of pluralism of (c,d) in the previous section, I will use the device of the experience of the self to give a better description of strong conflict of (e,f). Max Weber is the modern author who introduces the issue of strong conflict of personal values. As he puts it, "If one proceeds from pure experience, one arrives at polytheism."[46] This sentence, which Weber claims to take from Stuart Mill, leads to the idea of plurality and conflict in the realm of conceptions of the good life and world views as a matter of experience. This pluralism of (e,f) is our polytheism of sorts,

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[45] Here, I was influenced by Lukes (1991: 9-17).

For here, too, different gods struggle with each other and will do for all time. It is just like in the old world, which was not yet disenchanted with its gods and demons, but in another sense. Just as Hellenic man sacrificed on this occasion to Aphrodite and on another to Apollo, and above all as everybody sacrificed to the gods of the city - things are still the same today, but disenchanted and divested of the mythical but inwardly genuine flexibility of those customs.[47]

Our gods and demons are disenchanted because they have lost their mythical strength, in a world characterized by rationalization (of means to a given end) and intellectualization. But they stand in conflict, like ancient gods and demons, as long as it is impossible to advocate scientifically one value - to the detriment of others - or a system of values - to the detriment of other systems. Nevertheless, Weber does not develop his views on incommensurability into a general doctrine of value pluralism. He seems more concerned with giving an account of the *experience* of modern man.

On the face of it, Isaiah Berlin seems to be referring to the same experience of a strong conflict of values when he says that:

The world that we encounter in ordinary experience is one in which we are faced with choices between ends equally ultimate, and claims equally absolute, the realization of some of which must inevitably involve the sacrifice of others.[48]

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46 Weber (1919b: 22).
47 Weber (1919b: 23).
48 Berlin (1969: 168).

Our choices appeal to values that are "ultimate" but also incompatible. Apparently, this incompatibility and incommensurability are not going to disappear, nor to be overcome by some theoretical or historical synthesis. But the choice is up to us. In the end, we have to 'jump', we have to decide.

However, Berlin's celebrated pluralism is different from Weber's and, in the framework of political liberalism, less important. Berlin admittedly advances a thesis of value pluralism which emphasizes strong conflict. It is a philosophical and comprehensive thesis. It is also a controversial thesis, whatever may be our intuition on this matter. Pluralism of (e,f) may be acknowledged as experience, and even acknowledged as reality, but theoretically denied. This is exactly what monism and dualism of (e,f) do. They state that this experience or reality is illusory. There are only One or Two true value(s) or idea(s) of the good and justificatory doctrines, rather than many. Instead, a theory that gives relevance to pluralism of (e,f) is a pluralist theory and opposes monisms and dualisms. Berlin clearly makes the case for a doctrine of this kind. He thinks that there is no "final solution" in the realm of value and "that we cannot have everything is a necessary, not a contingent truth."[49] Pluralism, Berlin claims, is not only a truer but also a more humane view. It shows men as self-transforming beings, constructing their own identities.

Differently, Weber's pluralism tries to eschew the question of a comprehensive moral and philosophical theory of pluralism. Weber makes a diagnosis of modern societies and of the modern experience of pluralism. However, he does not make the moral and

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[49] Berlin (1969: 170).

philosophical contention that values are many rather than one, nor does he deny it. Weber only points out "one fundamental fact" of the world in which we live: "the incompatibility of the ultimate *possible* attitudes towards life and therefore the inconclusiveness of the battle between them".[50] Weber's approach fits better what "a context of pluralism" means for political and non-comprehensive liberalism because political liberals want to avoid comprehensive reasons in their account of pluralism. Whether they are actually able to live by a standard of philosophically uncontaminated pluralism is still to be established (in Chapters II and III).

7. The circumstances of justification

The context of pluralism - as clarified in the two previous sections - constitutes what may be called "the circumstances of justification" in political liberalism, i.e., those circumstances that make justification both necessary and possible for political liberals. This is a point that derives from the Humean theory of the circumstances of justice, which is of great relevance to political liberalism. According to David Hume, justice is an artificial virtue that public utility renders obligatory. The circumstances of justice are the conditions that show why this virtue is required.[51]

The first one of these circumstances is moderate scarcity of goods. If the rule was "abundance of all external conveniences"[52], "the cautious, jealous virtue of justice would never once have been dreamed of".[53] Conversely, if scarcity was not just moderate, self-

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[50] Weber (1919b: 27).
[51] For this Humean theory, see Hume (1739) and Hume (1777).
[52] Hume (1777: 145).
[53] Ibid.

preservation would take the role of justice. In both circumstances of abundance and of absolute scarcity, justice would be useless. Because in the social world in which we live there is moderate scarcity, justice is required for the partition of goods.

The limited generosity of men is also one of the circumstances of justice. Even amidst scarcity justice would not be required if people's benevolence made all men one single family. "Every man, upon this supposition, being a second self to another, would trust all his interests to the discretion of every man; without jealousy, without partition, without distinction."[54] Conversely, if people were not perfect virtuous men but "ruffians", self preservation would again take the role of justice.

For Hume, the common situation is a middle point between the extremes of abundance and scarcity, and the extremes of generosity and rapaciousness. This is why justice is required to formulate the rules of right and property in civil society. Justice, then, must indicate what is due to each man in societies in which the referred circumstances occur, i.e., in the societies we know.

Moreover, two other conditions add to the Humean circumstances of justice. In the first place, there is rough equality of men's capacities and aptitudes. Because of this equality, no man can alone guarantee his security. As a consequence, another circumstance of justice arises: the interdependence of human beings. If men were clearly superior to other men, or if they were solitary, they would be incapable of justice; instead, every man "would, on every occasion, to the utmost of his power, challenge the preference above every other being".[55]

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[54] Hume (1777: 146).

John Rawls has taken from Hume the theory of the circumstances of justice, but he has modified it.[56] Rawls divides the circumstances of justice into two groups. The first group includes the *objective* circumstances: moderate scarcity of goods, interdependence and rough equality of men. In this respect, Rawls is faithful to the Humean doctrine. The second group includes the *subjective* circumstances. For Rawls, these subjective circumstances lie in the conflict of interests among men. Instead of the Humean account of limited generosity, Rawls prefers the idea of diverging interests insofar as men's interests are defined by their different comprehensive doctrines. Interests, then, are not susceptible to an objective definition. What each person's interests amount to, is defined by his or her conception of the good and his or her comprehensive doctrines. Accordingly, the subjective circumstances of justice may be summarized as pluralism of ideas of the good and world views.

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If one accepts Rawls' interpretation of the subjective circumstances of justice, it seems natural to call them the *circumstances of justification* in political liberalism.[57] In fact, pluralism makes the formulation of the rules of justice not only a requirement from the point of view of public utility, but also necessary and possible from the point of view of the personal ideals and beliefs of each member of the community. It is precisely because they are divided in their ideas of the good and world views that each member of the community may require that his or her corresponding interests will be somehow addressed by the rules of

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[55] Hume (1777: 153).
[56] See Rawls (1971: §22)

justice established in society. If their interests are taken seriously, pluralism must be taken seriously. Accordingly, the same rules of justice will have to be justified to people who have different ideas of the good and world views.

However, it remains to explain why people's interests and pluralism are to be taken seriously in the justification of justice rather than repressed for the sake of some higher-order principle. That justice and pluralism should, as it were, stay together is a fundamental requirement for political liberals. In order to explain this, it is necessary to reflect on the very idea of justification.

8. Aspects of justification

In this and the following section, I will focus on the procedure of 'justification'. I will address the different questions that can be asked when one wants to justify, i.e., to argue for, to give reasons for, an idea of justice amidst pluralism. This task of justifying could be considered in relation to any specific political or social value, such as liberty, equality, etc. However, my point of reference is the basic idea of justice, as previously defined (at the end of section 4.). My purpose in this and the next section is to answer the following questions: what are the aspects of justification that one has to consider *and* how do different ideas fit together to form a complete and coherent structure within the justification?

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[57] Jeremy Waldron prefers the expression "the circumstances of politics" in Waldron (1999a).

The different questions involved are, then, of two kinds. In the first place, they concern the aspects of justification, i.e., the matters one has to consider in order to specify the definition of justice in a context characterized by the kind of pluralism which is addressed here. In the second place, the questions involved refer to the relations between the ideas developed to fulfill the requirements of the different aspects of justification. This second kind of question is about theoretical models and structures.

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The first aspect of justification is deployed through the answer to the question: 'What triggers justification?'. If one thinks of a society where the meaning of the idea of justice is, explicitly or implicitly, unanimously accepted, justification is not actually set in motion. Accordingly, the demand for justification arises when there is disagreement about justice.[58] Disagreement, in turn, is conceivable in at least two different versions: (a) when one disagrees with changing ideas - this is 'conservative' disagreement; (b) when one disagrees with established ideas - this is 'progressist' disagreement. Hence, justification is a response to 'conservative' or 'progressist' criticisms. In a society in which everyone agrees on the same conception of justice, justification is not initiated. If it is initiated, justice is not the same for all.

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'Who justifies?' The answer to this question forms a second aspect of justification. In a pluralist and conflictual context, many different agents may claim the privilege of justification. In a pluralist view - i.e., a view that acknowledges a pluralist context - those distinct and diverging sources of justification have to be

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[58] For this aspect, see Perelman (1980: Chap. 5).

taken into consideration. However, there are many ways in which they could be taken into consideration. For instance, many could be considered invalid because only one, or some, was (were) the reliable source(s) of valid justification. In this case, pluralism would not be taken seriously. It is a fundamental feature of political justification amidst pluralism that all members of the political community are actual or potential agents of justification.

Besides the emitter of justification, one has to consider the receptor. The one who justifies addresses someone. Accordingly, a third aspect of justification must be deployed through the answer to the question: 'justify to whom ?'. The first and simplest hypothesis is to justify to oneself. Disagreement about what is just is not necessarily external; it may also arise - as it often does - within oneself. But justification addresses also - and perhaps mainly - others. One justifies, then, to the sources of disagreement, whether they are from within or outside. But this aspect of justification remains unclear until one defines the 'others' to whom justification is directed.

For instance, if the others are considered to occupy a lower rank (in relation to us) one could depart from justifying to them, and others could think the same of us. The people one actually addresses are recognized in the procedure of justification of political liberalism as equals, in the strict sense of being equally capable of receiving and giving justificatory reasons.

A further and important question is that one cannot take the receptor of justification as coincident with the actual people one addresses. Of course, one addresses actual people; but one also addresses a potential universal audience.[59] Without the

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[59] For this point, see Perelman (1979: Chap. 4).

presumption of this universal audience of people seen as equal individuals, justification could be confused with an attempt to convince, and the success of a justification could be confused with the fact that many people were convinced. However, counting votes is not the way to determine the intrinsic value of a justification.

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It is now clear that a basic idea of equality is present in the justification of justice amidst pluralism. People must be seen as equals both as emitters and as receivers of justification. This basic idea of equality linked with justification also shows in which sense one is working within a liberal view. Searching for the theoretical basis of liberalism, Jeremy Waldron has famously argued that

> The view I want to identify as a foundation of liberal thought is based on this demand for the justification of the social world. Like his empiricist counterparts in science, the liberal insists that intelligible justifications in social and political life must be available in principle for everyone, for society is to be understood by the individual mind, not by the tradition or the sense of a community.[60]

Justification, then, must be provided in principle to all. No one is to be excluded because he or she is seen as inferior or incapable of justification. However, this view does not imply that all have to be actually convinced by a justification. This view does imply that all have to be addressed in justification of justice as equal members of the universal audience. I will have more to say about this in Chapter IV.

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[60] Waldron (1993: 44).

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Finally, one is led to a fourth question: 'For what purpose ?'. If justification arises because of disagreement, it is likely to have the purpose of restoring agreement, or of achieving it, if no previous agreement existed. However, this question is not simple. It is important to distinguish between two kinds of agreement: actual and ideal. Justification may lead to the first kind of agreement, when virtually everybody agrees *and* we can present good reasons to find the justification satisfactory. In which case the very work of justification, as remarked above, vanishes (because disagreement vanishes).

However, and more likely, justification consists of some form of ideal agreement, i.e., agreement to be realized when certain circumstances will (if they are feasible) or would (if they are purely idealized) obtain.[61] Needless to say, an ideal agreement is never fully inclusive; some views are not covered by the description of the ideal circumstances and are, therefore, excluded.

A similar point is rightly made by Thomas Scanlon when he identifies the moral motivation behind justification as "the desire to be able to justify one's action [and institutions] to others on grounds they could not reasonably reject", if they were "similarly motivated".[62] However, this requirement is met even if the others to whom one justifies are not actually satisfied with the justification. Scanlon emphasizes that "the fundamental question is what would it be unreasonable to reject as a basis for informed,

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[61] For a critical account of 'ideal agreement', see Rescher (1993). Rescher thinks that the ideal agreement part of justification found in contemporary authors like John Rawls (and also Jürgen Habermas) should be replaced by a more pragmatic approach which he calls "inverted utilitarianism". In this approach, validation is achieved when the social arrangements cause the least dismay.
[62] Scanlon (1982: 116).

unforced, general agreement."[63] Although he calls this "contractualism", I take the idea to be more general and apply it to different species of justification, whether in the contractualist tradition or not. It is always the notion of an ideal agreement that, in the end, provides justificatory force to one's reasons.

9. Models and structures

In this section I move to the question of the global models and structures of justification. For this purpose, one question has to be addressed: what are the arguments that favour the constitution of actual or ideal agreement ? Before answering this question, let us put forward a preliminary question: what are the arguments that do not favour the constitution of agreement ? This leads to establishing what justification is not, before showing what justification may be.

First, justification is not the same as description. A description of disagreement may be useful, but it does not overcome disagreement. A description becomes important when it is theory-laden. Therefore, description may be part of a justification (or of an explanation) but not for its own sake.

Second, justification is not the same as explanation.[64] Let us consider two types of explanation: historical and psychological. Roughly, a historical explanation is based on the selection of certain developments (the *explicans*) in order to show their impact (the *explicandum*). A psychological explanation may show that, people being what they are (the *explicans*), they are led to a certain

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[63] Scanlon (1982: 117). Thomas Scanlon develops these ideas in a very recent book, which I can not consider here: see Scanlon (1999).

[64] For this point, see Herzog (1985: 16).

state that we wish to explain (the *explicandum*). Historical or psychological explanations of disagreement, however, are not justifications, if they do not set up actual or ideal agreement.

Thirdly, justification is not the same as excuse. An excuse is a statement that aims to dissociate someone from an act that is attributed to him. An excuse is a device of self-defence and an argument *ad homine.* It is not addressed to a universal audience and it is not intended to achieve an agreement.

The arguments that favour agreement, justifications proper, may be included in two different formal models. The first - and apparently the stronger - may be called foundationalist. The second is contextualist and coherentist. I will explain both and describe their structural features. This is important because, as Robert Audi points out, "foundationalism and coherentism are mainly structural positions".[65]

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According to Don Herzog, the foundationalist model of justification is based on principles that are "(1) undeniable and immune to revision and (2) located outside society and politics."[66] Rational evidence, the necessary conditions of experience or religious revelation are ways of fulfilling the first requirement. The second requirement may be fulfilled by 'philosophical objects' such as God's Essence, Human Nature, Language, etc.

Hence, foundationalist justification starts from premises that are neither political nor contestable. In the foundationalist model, as Arthur Ripstein stresses[67], arguments are value-free and do not

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[65] Audi (1993: 4). Although Audi's work is mainly epistemological, I think it contains interesting suggestions for political philosophers.
[66] Herzog (1985: 20).
[67] See the unfairly neglected Ripstein (1987).

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include political considerations. The example that Ripstein deals with is Hobbes' attempt to justify political institutions which ensure absolute sovereignty and obedience, explaining the way they would come about in the state of nature.[68]

The description of the state of nature (formed by rational and mutually indifferent individuals) is supposed to be value-free so that nobody - not even a sceptic - could reject it. Ripstein shows that such an attempt is, actually, impossible. As he puts it:

> Unless rationality and mutual indifference are natural and unavoidable, then they cannot serve as foundations, for they are "optional" in the way any political principle is; yet, if they are natural and unavoidable, they cannot justify anything in particular because they justify everything.[69]

Therefore, the foundationalist justification of political institutions is based on a mistake. Because of the attempt to overcome scepticism, the foundationalist takes for a "foundational principle" what is only an "explanatory principle". But the sceptic is unbeatable. In the attempt to answer the sceptic, the foundationalist does no better than the non-foundationalist.

The failure, I gather, is not only on the part of the foundationalist but also on the part of the sceptic. The mistake of the foundationalist, as Ripstein has shown, lies in a confusion between justification and explanation. The mistake of the skeptic, as I see it, lies in the idea that, because there is actual disagreement, no justification is possible. In fact, actual

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[68] Modern foundationalists are, according to Ripstein, Gauthier, Buchanan, Levin and Wilson. I might add Nozick in *Philosophical Explanations*. See Nozick (1981).

disagreement is the motivation that triggers justification. If justification suppresses actual disagreement, it suppresses its *raison d'être.* Hence, disagreement is the natural companion of justification, not its denial. The agent of justification cannot beat the skeptic, but he does not need to do so, provided he tries to achieve ideal agreement.

As a matter of fact, justification needs the sceptic. It is the sceptic who puts justification in motion through the introduction of disagreement. The mistake arises when the skeptic transforms his role, which is a methodological requirement of justification, into a fixed theoretical standpoint. In this case, he withdraws from the work of theorizing and affirms his doubt as a certainty. However, as philosophers know, this position is self-defeating, as the sceptic's affirmation of doubt is no less doubtful than the other theoretical standpoints that he may criticize.[70]

What is the structure of the foundationalist model of justification ? The main influence comes from demonstration in geometry.[71] This is the dominant inspiration in the history of philosophical and political justification. Plato, one should remember, is to have written at the door of the Academy: "Those who do not know geometry should not enter here". In modern times, argument *more geometrico* was the model of Descartes and Spinoza. More generally, philosophers were often seduced by the rigour and cogency of geometrical reasoning, even after modern geometry. The trend has continued with the triumph of the

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[69] Ripstein (1987: 133).

[70] This is the usual objection to general scepticism. The founder of sceptic philosophy himself, Pyrrho of Elis, concluded that general scepticism could only be sustained tentatively. For a review of several so-called sceptic doctrines which shows that none of them was actually sceptic, see Mendus (1989).

[71] For this question, see Perelman (1980: Chap. 5).

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axiomatic approach in the various fields of mathematics. Political philosophers have not escaped this trend. Hobbes, it should be recalled, took the inspiration for his work from his reading of *The Elements* (and, more precisely, from the theorem of Pithagoras). The force of this inspiration, as one can see among foundationalist thinkers, still exists.

The structure of foundationalist justification is based on a number of principles that can be taken from reason or experience, and proceeds through logical chains of deduction. The certainty of the first principles must be ensured by the purity of the source (the intellect, the senses) from which they come. The certainty of the results is ensured by the rigour of the deductive chains.

The characteristic 'feature' of the structure, then, is given by two points.[72] In the first place, there is the existence of "directly justified" values, i.e., values that are not based on other values. This is possible because of the existence of non-valuational justifiers "located outside", to use Herzog's expression. Secondly, there is the existence of other justified values which are not directly justified but derive entirely, or at least sufficiently, their justification from the directly justified ones.

This view raises a problem that is stressed by Perelman.[73] An object of demonstration is a statement or proposition. An object of political justification, instead, is a choice, a claim or the value on which choices or claims are based. Accordingly, justification of, say, the idea of justice, concerns the adherence to values; justification is about a behaviour (the adherence) of an agent that justifies and of the receptor he addresses. However, I think this is not necessarily true as justification is also about presenting good

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[72] Here, I take a suggestion from Audi (1993: Chap. 2).

reasons, not only about adherence to values. My main criticism of the foundationalist model is about its incapacity to understand - let alone respond to - the challenge of the sceptic, not about the structural aspect.

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Don Herzog, who considers not only the foundationalism of Hobbes, but also the contractarianism of Locke and utilitarianism unsatisfactory, advances a conception of non-foundationalist justification. Contextualist justification is the idea that "one justifies something by showing that it is better than the alternatives"[74]. In this model, one starts with his or her values and explores other possibilities. In this way, one criticizes his or her values and attains stronger formulations. However, in this kind of justification, "nothing is certain, nothing is fixed".[75]

This kind of justification is not a recent development.[76] Herzog finds it in authors like David Hume and Adam Smith. These authors addressed their opponents, not the all-mighty skeptic of the foundationalists. Hence, contextual justification makes a wider use of history, integrating historical facts in justificatory arguments.

The structure of contextualist and coherentist justification takes its inspiration from juridical practice, ancient rhetoric and Aristotelian dialectics. Again, it is Perelman who asks for the rehabilitation of this tradition of argument, seeing it as capable of

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[73] See Perelman (1980: Chap. 5).
[74] Herzog (1985: 224).
[75] Herzog (1985: 225).
[76] Nevertheless, this kind of justification has been recently associated with the work of Richard Rorty. For Rorty's non-foundationalism, see Rorty (1988) and Rorty (1989).

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replacing the foundationalist model.[77] "To reason - he says - is not merely to verify and demonstrate, but also to deliberate, to criticize, and to justify, to give reasons for and against".[78]

One finds this kind of argument in legislative assemblies and in tribunals. In these forums, it is perfectly acceptable that two reasonable and honest men disagree on a determined question. The tradition of rhetoric, sometimes wrongly confused with sophistry, also shows the possibility of a non-formal logic, complementary of formal and demonstrative logic. Finally, this possibility is already present in Aristotle's *Topics*. Aristotle distinguishes demonstrative proofs, starting with absolute truths, from dialectical proofs. The latter are based on contingent assumptions. But they are forms of reasoning, not the subjective expression of random preferences.

From the structural point of view, contextualist justification is a coherence view. Although some may want to differentiate contextualism from coherentism, it is clear that the latter is a feature of the contextualist model considered from the structural point of view, as opposed to a genetic perspective. In coherentism, different reasons sustain each other as a whole. The web of reasoning is what makes the justification compelling, although some points of the web may be more important than others.

The structural 'feature' of a contextualist justification is given by a number of justificatory relations, as in Audi's characterization of coherentism. "First, each justified element stands in some justificatory relation to at least one other." More probably, there will be a variety of such relations, for each element. "Second, each justified element must belong, together with at least one other to which it stands in a justificatory relation, to a coherent set of

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[77] See Perelman (1980: Chaps. 5 and 17).

elements." Hence, the relations occur within a whole set of elements, not only in a pair of elements. "Third, it is (conceptually) necessary for the justification of an element that it belong to such a set."[79]

The logical problem with this view is the 'regression problem'. Justificatory principles tend to stand to each other in a possibly vicious circle. If none can be a sustained point, they are precipitated in a logic vortex. However, this is not a relevant objection. In the first place, the contextualist model consists of comparing terms in a list of alternatives, and not in trying to find out the "first principles". Secondly, I have already rejected the need for foundationalist Archimedean points as an impossible attempt to defeat the sceptic.

The main problem that arises from the contextualist model is a possible shift from justification to bargaining. In this case, the agents involved in the process are no longer interested in reaching a justification proper, but only in defending interests. The output of this procedure cannot be an agreement with reasons worthy in themselves. At best, a bargaining process leads to an accommodation between different forces in society, not to some kind of agreement on intrinsically valuable political values.

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Let us answer to the question raised at the beginning of the two sections dedicated to the idea of justification. While elaborating on an *ad hoc* definition of justice in a context described from the viewpoint of pluralism, one has to consider the four aspects of justification explained above. Hence, one has to inquire about the way disagreement about justice motivates the justification, who

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[78] Perelman (1980: 59).
[79] Audi (1993: 79).

justifies and who is addressed in justification, including a universal audience. A basic idea of equality of persons as justifiers derives from this inquiry. Finally, one must ask to what kind of actual or ideal agreement justification aims .

In political liberalism the contextualist and coherentist model is preferable. In the first place, justification cannot be considered apart from context because it is precisely a pluralist context that political liberals have to address in the justification of justice. Secondly, the structure of such justification must be able to overthrow competitors through the best balance of arguments, not just by denying the relevance of disagreements about justice. Hence, the need for a coherentist view.

Liberal political justification adopts a peculiar strategy within a contextualist and coherentist model, which consists of a partition between comprehensive and non-comprehensive reasons. On the one hand, non-comprehensive reasons must offer a potentially convincing justification of justice to the members of the political community, in a context of pluralism of ideas of the good and world views. On the other hand, comprehensive reasons are not eliminated and they must be able to support the same political conception of justice, but at another and deeper level. However, all this is no longer the central problem of political liberalism. It is already the beginning of the solution to that problem.

10. Final remarks

Let us recall the shortest formulation of the central problem of political liberalism: how should the idea of justice be justified in a context of pluralism? By now, I hope it is more clear what political liberalism is about. The central problem of political

liberalism implies a good number of theoretical decisions about each one of its fundamental terms - 'a context of pluralism', 'the idea of justice', and 'justification' - clarified throughout the chapter. In this sense, the problem of political liberalism has some normative content in all of its terms. I see no reason why this should - or how it could - be avoided.

Pluralism refers to a context of disparate and conflicting ideas of the good life and related world views. This state of affairs gains more relevance in a society which is also pluralist in its social composition. Pluralism of conflicting ideas of the good life and world views forms the circumstances that frame the justification of the terms of agreement, which moral worth may be acknowledged by all members of a political community, in spite of their differences.

The procedure of justification of those terms of agreement, or political morality, must include all both as equal emitters and equal receptors of justificatory reasons. The idea of equality, then, is associated with the requirement of justification and this is a typical liberal view. Justification is triggered by disagreements about justice and it includes an implicit appeal to ideal agreement. This model of justification has to be contextualist and coherentist (in the sense above defined), not sceptic or foundationalist. It is a model of justification that addresses the challenge of pluralism but aims at establishing a political morality.

The content of political morality must specify a basic *ad hoc* idea of justice as the ultimate substantive pattern for the assessment of laws and policies that institutionalize rights and obligations for the members of the political community. The fact that there is no essential core to the idea of justice introduces some

indeterminacy into the theory of justice, but is no argument against it.

Specific ideas about justice depend on complete accounts of pluralism and *vice versa*. The model of justification has to find the right fit between justice and pluralism: justification is the grip. But this grip has to be fleshed out. It is the final and substantive configuration of the theory that will determine, in each version of political liberalism, the place and content of justice and pluralism.

The most extended and well-argued solution to the central problem of political liberalism is found in the recent work of John Rawls. In the next chapter, I will explore Rawls' solution using the analysis of the problem in this first chapter as an interpretive grid.

CHAPTER II

RAWLS' POLITICAL LIBERALISM

1. The theoretical genesis of Rawls' political liberalism
2. "The fact of pluralism"
3. Pluralism bound and unbound
4. Problems of contamination (I): fallibilism
5. Rawlsian constructivism
6. Justice as fairness: political or comprehensive?
7. Problems of contamination (II): perfectionism

In this second chapter, I present and criticise what I take to be the main features of Rawls' theory of political liberalism. I will not exhaust Rawls' theory, but only the aspects which were focused on in my own formulation of the central problem of political liberalism.[80] Nevertheless, the particular formulation and the way the central problem of political liberalism arises in the development of Rawls' thought - accounted for in section 1. - will prove significant because it is an important source of the ambiguities and insufficiencies of his theory.

In sections 2., 3. and 4. I analyze Rawls' idea of 'a context of pluralism'. Rawls gives great importance to what he calls "the fact of pluralism", which is the starting point of his theory. However, I will show that this "fact" is very qualified with the introduction of an idea of *reasonable* pluralism, although that qualification is insufficiently argued for. Moreover, this qualification is at odds with the very project of political liberalism insofar as it requires the

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[80] Moreover, I cannot take here into consideration a very recent literature on different aspects of Rawls' political liberalism, namely the collection of essays edited by Davion and Wolff (2000).

defence of a fallibilist moral epistemology which "contaminates" a supposedly freestanding view of "the fact of pluralism".

I will then proceed - in sections 5., 6. and 7. - with an examination of Rawls' idea of political constructivism and the conceptualization of 'the idea of justice' in the framework of his theory of political liberalism. The purpose is not to revisit Rawls' *A Theory of Justice* but rather to explore and assess the aspects of the conception of justice as fairness which would make it a political and non-comprehensive liberal conception of justice. Here too, I will show that Rawls' new approach to the idea of justice does not live up to its expectations, which would require a truly freestanding theoretical construction. Instead, Rawls needs a moral and comprehensive doctrine of justificatory perfectionism in order to defend his own conception.

Finally, in sections 8., 9. and 10., I will deal with Rawls' approach to 'justification'. Once again, I will not be particularly concerned with the overall justification of justice which Rawls provides in his first book, but rather with the new account of justification that the theory of political liberalism requires. The centerpieces of this new account are the ideas of an overlapping consensus and public reason. However, other aspects will have to be considered. At the end of the chapter - in section 11. - the main lines of my critique of Rawls' solution to the central problem of political liberalism will be very briefly wrapped up.

1. The theoretical genesis of Rawls' political liberalism

"How is it possible - asks Rawls - that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical

and moral doctrines?"[81] The answer to this question - unavoidably a complex and long answer - is Rawls' theory of political liberalism. This theory, then, is about a just society of free and equal citizens. If, in a society so described, people are divided in their reasonable doctrinal outlooks (religious, philosophical, moral...), public support for the core political values may fail. In these circumstances, it is clear that the maintenance of social stability without resorting to oppression becomes problematic. However, Rawls' political liberalism tries to show why and how stability is achievable in a well-ordered society united by the same liberal conception of justice, albeit divided in so many other issues.

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The idea of a just or well-ordered society is central in Rawls' *A Theory of Justice*. The aim of this theory is to formulate a conception of justice to be adopted publicly. In the most favoured description of the initial choice situation - the so-called original position - of the principles of justice, the condition of publicity is a basic formal constraint.[82] The principles to be chosen must be known and accepted by everyone in the well-ordered society. In this sense, the well-ordered society is a transparent society, "in which everyone accepts and knows that the others accept the same principles of justice, and the basic social institutions satisfy and are known to satisfy these principles."[83] Unlike Plato's *Republic* and so many other imaginary or real political orders, the Rawlsian well-ordered society is inhospitable to noble lies.

A just and transparent society must create the conditions for its stability. Actually, the arguments for stability are an important

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[81] Rawls (1993: 4).
[82] See Rawls (1971: 133).
[83] Ralws (1971: 485).

part - but not the most important part - of the Rawlsian conception of justice: other things being equal, a theory is better than its alternatives if its principles of justice tend to generate more social stability than other principles. In the first place, citizens must acquire the sense of justice that garantees the stability of the social order over the generations. Secondly, citizens must have reasons to support that same social order.

In his account of the well-ordered society in the third part of *A Theory of Justice* Rawls deals basically with the first aspect above mentioned: the sense of justice of citizens or, in other words, their psychological motivation to be part of a just society. About the other aspect mentioned in the previous paragraph - the reasons to support the principles and institutions of a just society - Rawls relies on the idea that the members of the ideal society accept the entire set of reasons spelled out by his theory. Rawls presumes that, in a society ordered according to his conception of justice as fairness, everyone adheres to the comprehensive moral and philosophical ideas that underpin the conception of justice as fairness. This is the aspect of the theory which leads to political liberalism.

According to Rawls in *Political Liberalism*, the account of the well-ordered society of justice as fairness in *A Theory of Justice* is problematic. The problem is the following:

> The fact of a plurality of reasonable but incompatible comprehensive doctrines - the fact of reasonable pluralism - shows that, as used in *Theory*, the idea of a well-ordered society of justice as fairness is unrealistic. This is because it is inconsistent with realizing its own principles under the best of foreseeable conditions. The

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account of the stability of a well-ordered society in part III is therefore also unrealistic and must be recast.[84]

The problem, then, consists of a lack of realism at the core of the just society. Because it protects liberty of conscience and freedom of thought - these are part of "its own principles" - this well-ordered society must contain many incompatible comprehensive doctrines. Doctrinal pluralism makes "unrealistic" the agreement of all on the same conception of justice justified by the same comprehensive moral and philosophical doctrine. In these circumstances, the stability of the well-ordered society is "also unrealistic" and has to be reconsidered.

Consequently, the theory of political liberalism is seen by Rawls as an internal correction in his own theory of justice, rather than as a response to external criticism. Nevertheless, the apparently small inconsistency detected in the account of a well-ordered society of justice as fairness triggers off an array of new questions and conceptions.[85] The same small inconsistency drags Rawls into one of the most pressing problems in contemporary liberal societies, not just in a Rawlsian well-ordered society: the difficult conciliation between, on the one hand, state laws and policies that oblige us all, and the doctrinal pluralism apparent in these societies on the other hand.

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Thus, Rawls' political liberalism is a development inside his theory of justice, but it is also the confrontation by Rawls of a current political problem. Rawls' initial intention is nothing more than the elaboration of an ever more coherent and convincing theory of justice. This intention is clear in the Introduction of

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[84] Rawls (1993: xvii).

Political Liberalism quoted above. However, Rawls also says that he is addressing a current and pressing problem.[86] Moreover, the way Rawls develops his theory of political liberalism, dealing with constitutional consensus and questions of legitimacy as distinguished from questions of justice, may favour the idea that Rawls is mainly addressing a current problem in our unjust societies.[87] The first trend is more utopian and deals with an ideal and just society. The second trend is more realistic (or political, albeit not in Rawls' sense of the political, which is analyzed in sections 5. and 6. below) and deals with the instability of contemporary constitutional democracies. In the first trend, the theory of justice prevails and political liberalism is an interpretation of that theory which includes a conception of legitimacy. In the second trend, political liberalism is rather a pragmatic theory of social unity in a pluralist context, which includes a conception of legitimacy independent from justice.

To my mind, these two trends generate a permanent ambiguity in Rawls' political liberalism. As part of a theory about the just society - or, in the language of Rawls, as a full compliance theory - political liberalism resolves the small inconsistency in the third part of *A Theory of Justice* and it should not be concerned with addressing doctrinal pluralism in the world as we know it. However, as a theory about not completely just societies - or, in the language of Rawls, as a partial compliance theory - political liberalism cannot avoid addressing pluralism in actual

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[85] In Rawls (1993) but also in the subsequent writings by Rawls.

[86] For instance, in Rawls (1999: 611).

[87] The focus on political legitimacy and constitutional consensus is particularly apparent in Rawls (1993: 136-7, 216-7). For Rawls, legitimacy consists in the exercise of political power in accordance with constitutional essentials acceptable to free and equal citizens.

constitutional democracies. The thrust of this chapter is to show that Rawls' political liberalism, following his basic interest in full-compliance theory, sticks to the first trend, whereas political liberalism could perhaps become a more relevant theory if it were viewed according to the second trend (on this, see chapter III).

2. "The fact of pluralism"

Rawls' starting point is the idea that even a well-ordered society will have to deal with "the fact of pluralism". Which pluralism ?[88] Let us suppose, along the lines of the analysis of pluralism in Chapter I (sections 5. through 7.), that "the fact of pluralism" is to be defined as a 'diversity' of certain 'objects', to be find in some 'social context'. In this definition, the terms 'diversity', 'objects' and 'historical context' are open to specification. Accordingly, three further questions must be raised. First: which objects ? Or, pluralism of what ? Second: which diversity ? Or, what kind of pluralism ? And, finally, in which social context ? Or, what is the social background of pluralism ? Let us analyze Rawls' account of "the fact of pluralism" along these lines.

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Pluralism of what? Philosophical, religious and moral comprehensive doctrines.[89] A comprehensive doctrine is one that articulates values and virtues in a system. This system may include all recognized values and virtues, or it may comprehend only a number of them, loosely articulated. In the former, the doctrine is fully comprehensive, whereas in the latter it is partially comprehensive. Philosophical, religious and moral doctrines tend to be fully or partially comprehensive. In the framework of his theory

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[88] I have raised - and answered - this question before: see Rosas (1994).

of political liberalism, Rawls prefers to talk about comprehensive doctrines rather than about conceptions of the good *per se*. This is probably due to the fact that Rawls' main concern is to address people's world views more generally, and he sees their ideals of the good life as a part or as a consequence of their comprehensive doctrines. Rawls wants to address the justification of justice amidst pluralism and the argumentative support of a conception of the good must lie in a related comprehensive doctrine. However, Rawls contends, we have to distinguish between those comprehensive doctrines that are rational and reasonable and those which are not.

'Reasonable' is not the same as 'rational'.[90] While there is a certain ambiguity in the idea of the rational in *A Theory of Justice,* sometimes confused with the instrumental rationality of purely self-interested agents, in *Political Liberalism* Rawls clarifies its meaning. 'Rationality' is the characteristic of an agent as capable of balancing and choosing ends, as well as choosing the best means to achieve those ends. Hence, a rational agent is capable of having a specific conception of the good, which can change over time. Determinate conceptions of the good are usually complemented and interpreted by comprehensive doctrines, which make intelligible the ends and attachments involved in each conception. However, those comprehensive doctrines are not always reasonable.

As distinguished from 'rationality', 'reasonableness' is the willingness to propose fair terms of cooperation to others and to abide by them. A purely rational but not reasonable agent would not be concerned with justice in society. To be reasonable is to have the capacity for a sense of justice. Moreover, reasonableness

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[89] See Rawls (1993: 13, 175).
[90] On these two conceptions, see Rawls (1993: 48 f.).

implies the acceptance of disagreement as a consequence of the "burdens of judgment": complexity of evidence, difficulty in determining the weight of relevant considerations, vagueness of concepts and their subjection to hard cases, influence of the total experience of different individuals in their evaluation of evidence, difficulty of overall normative assessments, difficulties in setting priorities of values, etc.[91] To be willing to cooperate, then, implies to take into account that, due to the burdens of judgment, the others with whom we cooperate may hold different, yet still reasonable, comprehensive doctrines.

The rational and the reasonable are both qualities or virtues of persons and features of comprehensive doctrines. Rational and reasonable people affirm rational and reasonable doctrines only. These doctrines are exercises of both theoretical and practical reason. They organize a world view by a set of values and they give moral orientation to life. Usually, they belong to a tradition which may evolve in time, but slowly. While there is a diversity of such philosophical, religious and moral doctrines, there are also many doctrines which are unreasonable or irrational (and even mad). For this reason, Rawls restrains the "fact of pluralism" he addresses. It is not "the fact of pluralism as such", which includes all kinds of comprehensive doctrines, but only "the fact of reasonable pluralism", including only doctrines which are both rational and reasonable.[92]

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At this point, I have answered to the question 'pluralism of what ?', specifying the 'objects' Rawls considers to be plural. But if

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[91] On this, see Rawls (1993: 54-58).

[92] For the definition of reasonable comprehensive doctrine, see Rawls (1993: 59).

pluralism is about diversity of reasonable comprehensive doctrines, what does diversity mean here, what kind of pluralism is at stake ? For Rawls, diversity of reasonable comprehensive doctrines seems to include difference, conflict, incompatibility and incommensurability. I say 'seems' because Rawls uses these terms but does not distinguish between them. However, these distinctions are basic and relevant, as discussed in Chapter I (section 6.). Political liberalism - it was then explained - is concerned with strong conflict, implying incompatibility or incommensurability. In the latter case, the strongest one, cross-comparison is not even possible, as long as there is no way to rank the options. In the former case, it is not possible to hold the different doctrines at the same time; one departs from the other. Incompatibility and incommensurability imply difference, but difference does not always involve conflict, let alone strong conflict. Incompatibility does not imply incommensurability, and vice-versa.

While there was a considerably clear answer to my first question (Pluralism of what ?), there is no answer to my second question (What kind of pluralism ?). The distinctions referred to in the previous paragraph are absent from Rawls' work. The kind of diversity he considers is deliberately loose because he tries to avoid a theorization of doctrinal pluralism. Instead of clarifying the questions involved in cross-comparison of rational and reasonable comprehensive doctrines, he prefers a historical approach - although schematic and simplified - that situates the "fact of reasonable pluralism". What is the social background of pluralism ?

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In the framework of medieval Christianity, the "fact of reasonable pluralism" was not acknowledged.[93] Doctrinal unity was maintained, if necessary, with the Inquisition and the use of state power. This is an example of what is called by Rawls "the fact of oppression", i.e., the imposition of a comprehensive doctrine on society. The Reformation broke religious unity, but Luther and Calvin were as intolerant as the Catholic Church. After the wars of religion and the reluctant acceptance of disunity, pluralism of religious doctrines brought religious toleration, other kinds of doctrinal pluralism, and more extended toleration. Toleration was seen as a *modus vivendi* before it became a principled belief.

Modern ideas of liberty of conscience and freedom of thought arise mainly from the impact of the Reformation, even if other controversies such as the limitation of the power of absolute rulers were also important. Institutions, protecting the free use of reason produce pluralism as a natural outcome, which is intensified rather than diminished in time. There is no way to reconcile this doctrinal pluralism under free institutions and, accordingly, it cannot be reconciled in a well-ordered society of free and equal citizens. In Rawls' words:

> under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable - and, what's more, reasonable - comprehensive doctrines will come about and persist if such diversity does not already obtain.[94]

Accordingly, doctrinal pluralism is a mark of the modern world. Rawls links pluralism with a social background prone to toleration,

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[93] For this historical approach, see Rawls (1993: xxi f.).

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which favours the establishment of free institutions like the ones that exist in a well-ordered society.

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Rawls' account of pluralism, then, describes it as: a) doctrinal and reasonable; b) made of differences and conflicting (in a loose way); c) liberal and irreconcilable. These features specify: a) the 'objects'; b) the 'diversity'; c) the 'social context' of pluralism. Rawls focuses on comprehensive doctrines that include conceptions of the good. Moreover, he accepts a social context and historical heritage, but he does not try to theorize the diversity we find in this context. This account of pluralism is close to my own analysis in the previous chapter, which focuses on ideas of the good and world views, the possibility of strong conflict among them, and their insertion in a modern society. However, besides the loose characterization of conflict by Rawls, there is a major novelty in his account which deserves further examination: the idea of the reasonable.

3. Pluralism bound and unbound

My critical points about Rawls' account of pluralism are two and they are both related to the introduction of the idea of the reasonable. The first critical point is about the limited scope of pluralism, the second one about what may be called a lack of theoretical definition. Although the first one can only be fully explained through the second one, I will treat the first one first.

On the face of it, a political theorist who wants to make sense of doctrinal pluralism in order to ensure the endorsement of a conception of justice by citizens, has to operate under a simple

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[94] Rawls (1993: 36).

dilemma: if he formulates a comprehensive conception of justice, he will not be able to make sense of actual doctrinal pluralism; if he makes sense of actual doctrinal pluralism, he will create insuperable barriers for the formulation of a consensual conception of justice.

Being well aware of this, Rawls restricts the doctrines he considers. Accordingly, he cannot start from "the fact of pluralism as such" and he has to qualify this "fact". As he says, referring to Isaiah Berlin, "there is no social world without loss"[95]. Not all values are compatible in the sense of supporting the same framework of institutions. There is no framework of institutions that allows for all possible value systems. In Rawls, the response to our dilemma is in the notion of the reasonable. However, this allows a good margin of theoretical maneuvering.

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Rawls' notion of the reasonable, as explained above, is given by two main features. Jeremy Waldron separates Rawls' two features. He points out that willingness to modify one's views "in order to make possible social cooperation on terms of freedom and equality with others who may well hold different views" (first meaning of reasonableness) is to be separated from the idea of holding intelligible views "in the light of the circumstances in which human reasoning is usually exercised"[96], i.e., the burdens of judgment (the second meaning of reasonableness). Moreover, Waldron suggests that our intuitive sense of reasonableness is in the second meaning, not in the first. He says:

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[95] Rawls, (1993: 197).
[96] Waldron (1993b: 5).

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I think at least indisputable that modern feminism, militant Islamic advocacy of shari'a, and the type of Christian fundamentalism that espouses family values are all views about God, politics and society which are intelligible in the light of the burdens of modern reason. Though each one of us disagrees with at least one of them, none can be dismissed as an aberration or a lunacy .... Yet at least one of these views is unreasonable in the first sense.[97]

And it may even happen that all of them are.

Take another example: the question of abortion. Rawls thinks that the Catholic position in relation to abortion is unreasonable, although it may be part of a comprehensive doctrine that is, in the whole, reasonable.[98] Yet, the Catholic position seems to me perfectly reasonable in the second sense, even if one thinks that it is unreasonable in the first sense.

The idea of the reasonable, then, could be widened in order to meet our intuitive notion, coincident with the second sense of Rawls' definition, but incompatible with the first. Surprisingly, one suggestion for a wider criterion can be found in the author that Rawls invokes to justify the narrowness of his criterion: Isaiah Berlin. Berlin proposes the idea of "mutual intelligibility"[99]. Applying this idea to the conceptualization of reasonableness leads to its widening. The limits of reasonableness, then, would be the communication between people who hold conflicting views so that each one can understand other persons opinions, whether in a

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[97] Ibid. See also Waldron (1999a: 163).
[98] See Rawls (1993: 243-4, n.).
[99] See Berlin (1994: Part Two).

sympathetic or in an unsympathetic manner. A view that is not intelligible to others who try to understand it is not reasonable.

In this sense, reasonableness can be seen not as a static concept but as one that evolves with our attempts to understand other comprehensive doctrines, like in political argument or cross-cultural studies. In fact, the idea of "mutual intelligibility" is not far from Rawls' second sense of reasonableness. However, I take it only as a rough suggestion aimed at showing the narrowness of Rawls' notion. A full and coherent account of "mutual intelligibility" as a criterion of reasonableness would have to be much more detailed both in its features and in the views that it would exclude (as not reasonable).

However, one might ask: why would the political theorist enlarge the notion of reasonableness to the point that it causes additional problems for the conceptualization of a socially agreed idea of justice? Because, if the idea of the reasonable is too restricted, as it seems in Rawls' theory, the political theorist may lose touch with reality. If he conceptualizes justice for a society in which the notion of reasonableness that constitutes his point of departure is not widely met, he is not really conceptualizing justice for his society. In this case the political theorist loses social relevance.

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My second point of criticism may be raised with a preliminary question: what allows us to narrow or widen the idea of reasonable pluralism? This question is not exploited by Rawls, because he presents reasonable pluralism as a mere historical fact. For the same reason, he does not elaborate his ideas about the kind of diversity which is at stake in his account of reasonable pluralism.

This, however, may be misleading, as long as it conceals that the recognition of that fact is not theoretically neutral.

Rawls stresses the historical fact because he wants to introduce realism into his idea of the well-ordered society. However, a pure historical fact cannot be the starting point of a theory and Rawls' work is a good illustration of this. It is perfectly conceivable that a monist or absolutist doctrine would deny the relevance of "the fact of reasonable pluralism". It is equally conceivable that a pluralist theory might state a wider notion of doctrinal pluralism than Rawls', whether reasonable or not. Therefore, to affirm the relevance of Rawls' idea of reasonable pluralism is not anymore only a historical observation: it becomes a theoretical contention. The problem in Rawls' work is that this theoretical contention, because it is not recognized, is neither developed nor justified.

When one recognizes the fact of reasonable pluralism, one is implying that there is not a single comprehensive doctrine that is the best and which should therefore be enforced with the use of state power, for the good of all. In which case, one is refuting theoretical (philosophical, religious, moral) monism or absolutism and endorsing some kind of theoretical pluralism. Rawls' (thin rather than thick) theory of pluralism is based on his idea of reasonableness.

Perhaps because he anticipates the controversial epistemological and moral aspects of his account of pluralism, Rawls feels the need to state that those controversial aspects do not exist. He says that, in his theory, "being reasonable is not an epistemological idea (though it has epistemological elements). Rather, it is part of a political ideal of democratic citizenship".[100]

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[100] Rawls (1993: 62).

This raises two problems. In the first place, there is the mystery of an idea that has "epistemological elements" but is not epistemological. It is difficult to accept that a theory about the limits of the powers of human reason - including an account of the burdens of judgment - is compatible with, using Joseph Raz's expression, "epistemic abstinence"[101]. Secondly, in being *also* "part of a political ideal of democratic citizenship" the idea of "reasonableness" implies the moral acceptance of liberal democratic institutions. Otherwise, why should one accept them ?

The idea of reasonable pluralism is both a contested moral idea and an epistemological one; it is subjected to epistemological and moral controversy, which is concealed through its presentation as a sheer fact. However, sometimes Rawls makes apparent the link between his account of reasonable pluralism and an *ideal* of democratic citizenship. This being so, pluralism is no longer just a fact, but part of a normative theory of citizenship. In other words, the lack of theoretical definition may suggest to the reader that Rawls is addressing what some may call "the real world" in order to transport it to his idea of the well-ordered society: pluralism is just a fact and a free well-ordered society will have to take it into account. However, the qualification of that fact with the introduction of the idea of the reasonable suggests that the

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[101] See Raz (1990). Raz attacks both Rawls and Nagel (about Nagel, see the "Introduction" above) in the way they face the challenge of diversity. Their "epistemic withdrawal from the fray" - Raz claims - is based on the assumption that the theory of justice has to accept the stability and unity based on consensus as what makes a theory true. In fact, they provide no *epistemic* criteria to establish that the theory of justice is true. Rawls thinks that his theory of justice may be considered the true or the correct theory, but only in political terms. However, Raz thinks that the outcome of Rawls' reasoning is a theory of social stability, not a theory of justice. Instead, I believe that Rawls has a hidden non-abstemic theory of justice, as it will come out farther in this chapter.

Rosas, João (2001), A Philosophy of Restraint Justice and Pluralism in the New Theory of Political Liberalism
European University Institute

boundaries of pluralism are strictly defined. The problem is that the theory behind that view of pluralism is not spelled out.

In conclusion, Rawls' account of pluralism not only suffers from a lack of social relevance but also from a lack of theoretical definition. Accordingly, Rawls' idea of pluralism is too bound in one sense and too unbound in another sense.

4. Problems of contamination (I): fallibilism

In the two previous sections, it became clear that the idea of *reasonable* pluralism of comprehensive doctrines implies a considerable theoretical elaboration. This elaboration allows Rawls to bound the kind of pluralism he wants to take into consideration and to put aside the unqualified fact of pluralism as such. However, this bounding operation is itself unbound because it is not sufficiently explained. Accordingly, the question of what kind of theory lies behind Rawls' account of pluralism arises. One author, namely Brian Barry, thinks it is scepticism.[102]

The starting point of Barry's argument is the acceptance of the requirement for ideal agreement in the justification of justice amidst pluralism. In this, he does not deviate from the first chapter of this work (see section 8.). He thinks we all desire to live in a society in which the members could not reasonably reject the rules (and institutions) of justice. He calls this "the agreement motive". Nevertheless, Barry admits that agreement cannot be based on a particular conception of the good or a particular comprehensive doctrine, because of pluralism.

As a matter of fact, a particular view of the good could be imposed on society through the use of the coercive power of the state. Although the agreement motive requires that the same rules of justice be accepted by people who have different outlooks about the best way to live and associated justifications, one could defend the view that there is only one reasonable idea of the good to be promoted *in public*. Accordingly, to justify the refusal of the coercive imposition of a particular vision of the good on the rest of society, one must "deny that there is any conception of the good that nobody could reasonably reject."[103] The further implication is that "no conception of the good can justifiably be held with a degree of certainty that warrants its imposition on those who reject it."[104] To this Barry calls "the argument from scepticism".

Barry's conception of scepticism about the good life and its justifications is quite uncommon. He does not endorse general scepticism, which in any case is a poor philosophical view (on this, see Chapter I, section 9, above). Barry's conception is one of "moderate scepticism", a middle way between general scepticism and dogmatism. He further suggests that the most accurate term for his thesis is "latitudinarianism". This means that Barry does not reject the possibility of any founded belief (which would be general scepticism), nor does he assert the possibility of certain belief (like dogmatism). Instead, Barry's moderate scepticism or latitudinarianism amounts to the rejection of certainty about conceptions of the good and comprehensive doctrines. The basic argument for this kind of scepticism is experience. Experience shows that one cannot convert by persuasion those who are not

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[102] See Barry (1995: Chap. 5).
[103] Barry (1995: 169).
[104] Ibid.

predisposed to conversion, not only in religious matters but also in the wider domain of ideas of the good and comprehensive doctrines.

According to Barry, Rawls is one of a group of philosophers who needs the kind of scepticism he endorses in order to develop a theory of political liberalism. If Barry is right, however, I think it is clear that the Rawlsian theorisation fails. This is because his theory cannot be presented as freestanding anymore. Being aware of this, Rawls frequently repeats that his theory is not sceptic. He clearly states that

> Political liberalism does not question that many political and moral judgments of certain specified kinds are correct and it views many of them as reasonable. Nor does it question the possible truth of affirmations of faith. Above all, it does not argue that we should be hesitant and uncertain, much less skeptical, about our own beliefs.[105]

The recognition of a plurality of reasonable comprehensive doctrines is seen by Rawls as a practical matter. We know the difficulty in reaching agreement about the truth of comprehensive doctrines out of historical experience. Accordingly, a just society should not rely on that kind of agreement to achieve peace and stability. However, we need not say anything about the correctness, the truth or the certainty of comprehensive doctrines. That kind of judgments does not belong to the province of political liberalism.

Political liberalism needs an uncontaminated view of pluralism. In other words, Rawls' account of pluralism cannot

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[105] Rawls (1993: 63).

presuppose a doctrine like scepticism regarding conceptions of the good and comprehensive doctrines because this scepticism is a comprehensive and controversial moral and epistemological doctrine itself.[106] Scepticism may be part of the plurality of doctrines that political liberalism admits into society, but scepticism cannot be part of the very theory of political liberalism. Thus, the argument from scepticism goes deep into the heart of political liberalism. If the argument sketched above is correct, it leads one to conclude that the starting point of Rawls' political liberalism, his account of pluralism, is inconsistent.

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However, Barry's critique requires a more severe scrutiny. His conception of scepticism is so peculiar that one might not even call it scepticism. If by scepticism Barry understands - as he does - only departure from the idea of certainty, it seems to me that this doctrine could also be named 'fallibilism' about conceptions of the good and comprehensive doctrines. It is perhaps easier to recognize that Rawls endorses a fallibilism of this kind in the idea of reasonable pluralism. Reasonableness in the sense of Rawls means not only willingness to cooperate with others but also the acceptance of the burdens of judgment. The first aspect is the motivational one. The second aspect seems, indeed, a doctrine of fallibilism (recall that the burdens of judgment explain why reasonable people cannot affirm their ideas of the good and world views with certainty).

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[106] Barry, who is not a political liberal, does not see a problem in the endorsement of scepticism. In fact, a non-political liberal may coherently endorse scepticism, or any other comprehensive doctrine. He 'only' has to argue for the doctrines that he endorses.

Rawls himself admits, *malgré lui,* that something like a fallibilist thesis may have to be advanced by political liberals. He mentions the following example:

> imagine rationalist believers who contend that these beliefs are open to and can be fully established by reason (uncommon though this view may be). In this case the believers simply deny what we have called "the fact of reasonable pluralism". So we say of the rationalist believers that they are mistaken in denying that fact; but we need not say that their religious beliefs are not true, since to deny that religious beliefs can be publicly and fully established by reason is not to say that they are not true.[107]

The idea that belief is fully established by reason - or by other means - is probably much more common than Rawls admits. However, the important point in this example is Rawls' claim that the mistake of rationalist believers should not be equated with an attribution of wrongness to their doctrine. According to Rawls, their mistake concerns only the full and public proof of their doctrine.

Nevertheless, Rawls' argument clearly begs the question because the assertion of the possibility of a full and public proof of their beliefs is, precisely, the doctrine of the rationalist believer. Therefore, the mistake that Rawls attributes to rationalist believers should indeed be equated with the assertion of the wrongness of the doctrine defended by rationalist believers. Surprisingly, Rawls admits just that when he goes on writing that "we do not believe the doctrine [rationalist] believers here assert". "Still - Rawls adds -

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[107] Rawls (1993: 152-3).

we do not put forward *more of our comprehensive view* than we think needed or useful for the political aim of consensus."[108] (the stress is mine). The problem with rationalist believers is that they are dogmatic, rather than fallibilist. It is typical of fallibilism neither to deny the truth nor to affirm it. In the end, fallibilism rules out all the doctrines that are dogmatic (together with those that are overly sceptic).

As far as I am concerned, those who do not recognize the fact of reasonable pluralism should, indeed, be contradicted. However, one must be candid about recognizing that this contradiction must be based on a controversial doctrine (and not just a methodology) of fallibilism regarding people's conceptions of the good and world views. Accordingly, the Rawlsian idea of reasonable pluralism is contaminated by a fallibilist moral epistemology. If this is the case, it makes no sense to develop a strategy of political constructivism in order to avoid a contamination that is embedded in the theory from the outset.

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However, other arguments may be adduced in favour of Rawls' thesis. The kind of fallibilism embedded in the idea of reasonable pluralism amounts only to a rebuttal of fundamentalism. One must choose between fundamentalism and pluralism. Whether one accepts the fact of reasonable pluralism, or else one must endorse some kind of fundamentalism and seek to impose one's doctrine to the rest of society, with no further concern about finding terms of accommodation with those who disagree.

Fundamentalism does not seem a very attractive outlook in the modern world. Modernity is characterized by the

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[108] Rawls (1993:153).

"disenchantment of the world" and a kind of "polytheism" which puts away the return to "monotheism" that fundamentalist doctrines favour (see Chapter I, section 6. above). The reflectiveness that marks modernity destroys the unqualified belief in one single truth and opens the way for the experience of pluralism. Thus, in the framework of modernity fundamentalism is no longer an option. This does not mean that fundamentalism is not a theoretical option. It rather means that fundamentalism is not a real and practical option to us, in spite of what we may think. Let us clarify this point.

Bernard Williams makes a relevant distinction between "real confrontation" and "notional confrontation".[109] Disagreements with others seem to matter less when they are at a great distance in time, although this does not mean that such disagreements do not exist. One may disagree with modern ways of life and decide to be, instead, a medieval knight. However, one cannot really be a medieval knight in the modern world, even if one actually tries to be one. A notional option cannot be directly translated into a real option. To this idea Williams calls the "relativism of distance".

By the same token, fundamentalist comprehensive doctrines - those which refuse to accept fallibilism - may not be real options for us in the modern world. If one can associate Rawls' idea of reasonable pluralism with the context of modernity - what Rawls actually does - and the idea of relativism of distance is correct, it must be recognized that Rawls' starting point remains uncontaminated. In fact, Rawls is not thinking of pluralism *sub speciae aeternitatis*, but as a unavoidable context for us, here and now, and for our ideal of the well-ordered constitutional democracy.

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[109] See Williams (1985: Chapter 9).

Nevertheless, the unsympathetic meaning that the word fundamentalism takes these days invites caution. Liberals are eager to rule out any view labeled 'fundamentalist'. Nevertheless, it should be noticed that 'fundamentalist' is often what liberals label some groups but not what those groups call to themselves. Some of those groups would label liberals as 'sceptics', whereas they see themselves as people with convictions, which is supposed to be a positive attribute rather than a negative one.

Let us think once more about the controversies related to abortion. Right to choose groups tend to think that right to life groups are fundamentalist insofar as they want to impose on society with the use of law and state coercion a particular view of human good and the controversial doctrines that justify it. Right to life groups refuse the label. They assert that they are not imposing a particular view on society but are rather safeguarding the universal value of human life. They may even consider that if there is some fundamentalism it comes from the liberal side because liberals want to build a kind of society in which the most basic of human values - life - is sacrificed at the altar of individual choice.

This example suggests that it may be too hasty to rule out as awfully 'fundamentalist' and 'pre-modern' the views one does not agree with. Although fallibilism is a pervasive feature of modern culture, it does not mean that there are no other real options for us today. This is shown by a great number of anti-modern (dogmatic) and also post-modern (perhaps overly sceptic) views, both at the intellectual and at the common sense levels.[110] The fact that one

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[110] A current example of an anti-modern outlook is Alasdair MacIntyre, whereas an example of post-modern outlook is Richard Rorty. The best illustrations are MacIntyre (1981) and Rorty (1989). Most interestingly, both the condemnation of the modern world and the celebration of post-modernity are also common in non-academic *fora* (in *media* culture, for instance).

cannot really become a medieval knight does not prevent one from defending in theory and practice a pre-modern way of life: rural, non-technological, based on the True religion, etc. One can also sustain in theory and practice a post-modern attitude, perhaps characterized by perspectivism, experiencialism and an aesthetic approach to all matters, including political ones. Accordingly, fallibilism - as distinguished from both general scepticism and dogmatism - in the account of reasonable pluralism remains a theory which is inconsistent with the uncontaminated status it is supposed to have.

The work of excavation is not finished yet. At this point, one already knows the theory that lies behind Rawls' apparently innocuous account of pluralism. Nevertheless, one does not know what lies behind this theory. To find out, it is necessary to further analyse Rawls' theory of political liberalism.

5. Rawlsian constructivism

In order to address reasonable pluralism, Rawls contends, a conception of justice has to be a product of political constructivism. He states that

> given the fact of reasonable pluralism, citizens cannot agree on any moral authority, whether a sacred text, or institution. Nor do they agree about the order of moral values, or the dictates of what some regard as natural law. We adopt, then, a constructivist view to specify the

terms of social cooperation as given by the principles of justice[111]

Thus, political constructivism avoids reliance on any reasonable comprehensive doctrine to argue for the conception of justice. This conception is not built on heteronomous foundations such as an authority, a text, an institution, a moral ontology, natural law, etc. The principles of justice are rather the product of the construction itself. The construction aims at the formulation of principles that all citizens can accept.

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To start with, political constructivism may be contrasted with both the realist and transcendental views exemplified by rational intuitionism and kantianism, respectively. According to Rawls, both of these views are comprehensive, not only political. They affirm moral epistemologies and ideas of man and society which are all-purpose and not only for political purposes. Let us address other and more specific differences.

Political constructivism, then, is opposed to rational intuitionism.[112] The latter starts from self-evident principles, whereas the former starts from a democratic public culture. Rational intuitionism aims at the theoretical knowledge of a transcendent moral order. On the contrary, political liberalism is based on practical reason and looks at the principles of justice as products of a procedure of construction, not as given objects.

In rational intuitionism, the person is seen as the subject of knowledge who accedes to the independent moral order; moral judgments are true only when they reflect this order of moral

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[111] Rawls (1993: 97).
[112] Rational intuitionists are, for example, Samuel Clarke and Richard Price, Henry Sidgwick and W. D. Ross.

values. By contrast, political constructivism sees the person as capable of a sense of justice and a conception of the good, and works with the idea of the reasonable - instead of the idea of truth - as the most suitable to achieve public justification.

Political constructivism is also opposed to kantian moral constructivism.[113] Kant's moral doctrine is based on a comprehensive conception of personal autonomy, valid for all aspects of life. This conception is called by Rawls "constitutive autonomy" because the order of moral values is constituted by practical reason, rather than given to the subject (like in rational intuitionism). Political constructivism, on the contrary, is not a comprehensive view because it does not work with a conception of human autonomy - political liberalism regards the autonomy of the citizen, not the autonomy of the person.

Moreover, the foundation of Kant's conceptions of person and society is a transcendental idealism which aims at defending the unity and coherence of theoretical and practical reason. Instead, political constructivism takes the ideas of person and society from the political culture (of liberal democracies) and aims at defending a public basis of justification for the conception of justice.

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So far, I have explained what political constructivism is not. Now it is necessary to specify what political constructivism is. As distinguished from both rational intuitionism and kantian constructivism, political constructivism admits that justification addresses the others and, thus, starts from common

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[113] In his *Dewey Lectures* on "Kantian constructivism in Moral Theory" (1980), Rawls fails to distinguish between "kantian constructivism" and the view that he actually endorses (at least since *Political Liberalism*), namely "political constructivism". Nevertheless, the latter elaborates many ideas which were

understandings in the public culture of a constitutional democracy.[114] This is the domain from which political constructivism takes the materials for the conceptualization of justice.

In the Rawlsian conception of justice as fairness, these materials are: a political idea of the person, an idea of social cooperation, and the companion idea (to both) of the well-ordered society. Rawls summarizes these in the "organizing idea" of a well-ordered society as "a fair system of social cooperation between free and equal persons viewed as fully cooperating members of society over a complete life."[115] For Rawls, these materials are not constructed. They are the starting points of the construction.

Being political, the idea of the person as free and equal may be equated with the idea of the citizen. Freedom and equality are derived from the two moral powers of citizens already referred to in the account of pluralism: their rationality *and* their reasonableness, which imply their capacities to form a conception of the good *and* to have a sense of justice. Citizens are equal in this respect (i.e., in their moral powers) and they are free insofar as they can develop and put into practice a determinate conception of the good together with a comprehensive doctrine.

A system of cooperation between citizens so considered must be fair. In any society there is cooperation on and competition for the advantages of social life. In a well-ordered society, the fairness of free and equal citizens' claims to those advantages is not decided

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already advanced in the *Dewey Lectures*. This is acknowledged in Rawls (1993: xxxi and 90 n.1). For the *Dewey Lectures*, see Rawls (1999: Chap. 16).

[114] To start from these common understandings does not mean to accept common understandings in general as the criteria of justice. The latter view may be attributed to Michael Walzer in Walzer (1983). On this, see Rawls (1993: 44).

[115] Rawls (1993: 9).

by an authority, but by a basic institutional structure in accordance with publicly recognized principles of justice. To this it must be added that the activities of citizens are thought of as taking place in a defined territory - the political community - over the generations.

Rawls' most favoured situation for the choice of the conception of justice - the original position - together with the overall argument leading to the content of justice as fairness are not constructed but, as he says, "simply laid out"[116]. Starting from the "organizing idea" referred to above, the original position is the choice-situation that represents the rationality and reasonableness of citizens. However, the way these moral powers are represented is not linear.

For instance, the parties in the original position are rational, but they are not reasonable. As rational, parties make use of a means-ends rationality and they are mutually disinterested because they take care of their self-interest. Parties know that individuals have a capacity for a sense of justice. However, reasonableness is not a characteristic of the parties, but it is ensured by the fact that the parties are equally situated vis-à-vis each other, and by the "veil of ignorance". The latter, as Rawls elegantly puts, "excludes the knowledge of the contingencies which set men at odds and allows them to be guided by their prejudices."[117] These contingencies include men's aspirations, inclinations, conceptions of the good and comprehensive doctrines. So, both rationality and reasonableness are represented in the original position, albeit not in the same manner.

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[116] Rawls (1993: 103).
[117] Rawls (1971: 19).

Parties in the original position must select principles of justice that establish the rules of distribution for social primary goods like liberties, opportunities, income, wealth and the social basis of self-respect. These goods are social because they are distributed by the basic structure and they are primary because they are what citizens want independent from whatever else they may want. The list of social primary goods is *not* derived from human nature or rationality but from the idea of free and equal citizens.[118] Social primary goods are what citizens need to give practical content to their equality and freedom. Accordingly, the idea of social primary goods is derived from citizens' equality and freedom, or rationality *and* reasonableness.

This is enough to show how the argument of the original position models the basic starting points of political constructivism. The choice argument itself is only an instrument to pick up the best conception of justice from a list of alternatives and I will have more to say about this in the next section.

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To sum up: political constructivism as illustrated by the conception of justice as fairness starts from ideas of society and person implicit in the public culture of a constitutional democracy. These ideas are not constructed but modeled by the constructivist procedure. In the procedure one finds these fundamental basic ideas, together with the principles of practical reason. Practical reason produces objects, instead of taking them as given like theoretical reason does. In this case, the object of practical reason

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[118] Before Rawls developed the theory of political liberalism, social primary goods were deduced from rationality. Accordingly, he could state that "The theory of justice is a part, perhaps the most significant part, of the theory of rational choice." (Rawls: 1971: 16). In the framework of political liberalism, this does not hold anymore.

is the conception of the well-ordered society. The principles of judgment, inference and logic are those usually accepted.

The idea of the original position is not more constructed than the ideas of society and person. The original position is only a procedural device which represents free and equal citizens with their two moral powers. The rationality of the parties in the original position represents the rationality of the citizen. Although the parties in the original position are not reasonable, reasonableness is embedded in their position of equality and in the restrictions imposed by the veil of ignorance (which lead, for instance, to the idea that the parties ignore their determinate conceptions of the good, in spite of their being rational).

What is actually constructed is the content of the political conception of justice that results from this procedure. The principles that specify this conception are shaped by the starting points and by reason, through all the work of abstraction that includes the idea and the argument of the original position. Although constructed, the political conception of justice is objective in the sense that it yields reasons which may convince rational and reasonable people, using their normal abilities of practical reason together with powers of judgment, inference and logic.

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Is political constructivism convincing as a way to meet the challenge of reasonable pluralism? Political constructivism must lead to a non-comprehensive conception of justice. Thus, it must be itself a non-comprehensive methodology. I.e., political constructivism has to be acceptable to all or to the most important comprehensive outlooks in a pluralist society.

However, it may seem that political constructivism is not only distinguished from rational intuitionism and kantian

constructivism (and other possible outlooks), but also at odds with those views. To understand this it is enough to imagine what a rational intuitionist or a kantian constructivist would think of political constructivism. Clearly, they would look at it as an inadequate methodology to conceptualize justice.

If the true conception of justice exists *sub speciae aeternitatis* and can be acceded to by the human mind (as the intuitionist claims), or if the conception of justice is founded solely on practical reason working in tandem with theoretical reason (as the kantian claims), then political constructivism is wrong. "Justice" should not be established through public reason starting from ideas implicit in the public culture of constitutional democracies but rather through the methods of intuitionism or kantism. In other words, true public reason is not what Rawls thinks it is (sticking to the idea of the reasonable and putting aside the idea of truth), but rather the accession by all to the same independent moral order (says the intuitionist), or to the mandates of shared human practical reason (says the kantian).

However, Rawls thinks differently. Although he is the first to acknowledge the differences between political constructivism and the other methodologies he mentions, he also thinks that they may converge on the same conception of justice. The political conception he wants to construct - namely justice as fairness - could then be the focus of an overlapping consensus. Being a politically constructed conception would not prevent it from being supported by other methodologies, according to their own perspectives. In this case, political constructivism would, indeed, be different from other approaches, but not at odds with them.

Accordingly, Rawls thinks that political constructivism needs not take sides on the issue of which comprehensive methodology -

intuitionist or kantian - is the most adequate to give deeper foundations to a conception of justice. The connection of these foundations with justice is a subsequent question. Before, one must construct the political conception of justice following the methodology sketched above and disregard deeper foundations of any kind. Then, one must look at the results of the construction in the conception of justice as fairness with the aim of assessing the promise of political constructivism.

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Nevertheless, there is one intriguing feature in political constructivism. Rawls admits that the starting points of the construction - ideas of cooperation, citizenship and the well-ordered society - are not constructed. So, are they acritically accepted? For Rawls, they are not, insofar as they are modeled by the conception of justice. This conception uses them as basic materials and, at the same time, provides the available justification. Furthermore, it may be argued that one has to start somewhere and this is unavoidable.

However, it seems that the arbitrariness in the choice of the starting points of the construction remains. One could start elsewhere and, then, argue that other starting points are modeled by our conception. For instance, one could start from the idea that conflict prevails over cooperation in society and that the only secure basis for a social order is egotistic self-interest. Instead of free citizens, one could think of citizens characterized by instrumental rationality alone. A well-ordered society of citizens so conceived would have to be based on the mutual recognition of the rational satisfaction of citizens' egotistic interests. This is hardly what Rawls has in mind in his constructivist approach.

There are, of course, several other candidates for the starting points of political constructivists. This is why *Rawlsian* constructivism is probably a better label for the methodology analysed in this section. Rawlsian constructivism is not neutral. It conveys a methodology and a content (in its starting points), which are biased and controversial. However, Rawls' theoretical endeavour must be evaluated as a whole. I now turn to the conception which Rawls actually constructed to see how the basic ideas from which he builds are developed.

6. Justice as fairness: political or comprehensive?

In this section I will focus on Rawls' account of the principles of justice. Which justice? Rawls affirms the primacy of justice as the first virtue of social institutions. This is a well-known aspect of his theory, which I interpret in accordance with my *ad hoc* definition. In Rawls' words:

> Justice is the first virtue of social institutions, as truth is of systems of thought. A theory, however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.[119]

I take Rawls to be saying here that whatever conception specifying a basic idea of justice - like his own concept of justice, or the one I advanced in the first chapter - is the highest standard to assess a society's laws and institutions. Moreover, I do not think that Rawls

[119] Rawls (1971: 3).

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is saying here that no other social values should be advanced as long as justice is not fully put into practice. He is rather implying that, being the highest standard, justice cannot be itself assessed from the point of view of other values. It should go the other way around. For instance, we want efficiency but with justice, not efficiency for the sake of efficiency. By the same token, we want stability but with justice, not stability for the sake of stability. So, what is justice?

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In *Political Liberalism*, Rawls prefers the following version of the two principles specifying his conception of justice:

> a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
>
> b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.[120]

The ordering of the principles is not intuitive but based on a lexical priority. Accordingly, the first principle is prior to the second and the first part of the second principle is prior to its second part. The "principle of equal liberty" (a.) sets up the priority of basic rights and states the need to ensure the "fair value" of political liberties alone. This shows the liberal bench of the conception. But "justice

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[120] Rawls (1993: 6). This is, to my knowledge, the latest version of Rawls' two principles of justice.

<p style="text-align:center">96</p>

as fairness" is more demanding than other possible liberal conceptions. It sets up the "principle of equality of opportunity" (first part of b.) and the "difference principle", asking that inequalities should maximize the benefit of the worst-off (second part of b.). Hence, justice as fairness is an egalitarian form of liberalism.

With few changes in its formulation, these principles were presented in *A Theory of Justice* as a superior alternative to utilitarianism, but also to other teleological conceptions such as perfectionism (on perfectionism and teleology, see the next section). Furthermore, Rawls criticizes what he calls intuitionist and egotistic conceptions. He finds intuitionism intellectually unsatisfactory because it does not establish criteria to determine the weight of competing principles of justice. Egotistic views are excluded because they do not satisfy the formal constraints of justice, such as generality and the ordering of conflicting claims.[121]

Besides arguing for the superiority of the conception of justice as fairness, Rawls also argues against alternative interpretations of his second principle of justice. His main adversary seems to be Adam Smith's "system of natural liberty". Whereas the attack on utilitarianism and the other conceptions mentioned above is mainly conducted from the point of view of the original position, the critique of the "system of natural liberty" is done during the initial formulation of the principles of justice as fairness and before a list

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[121] For the complete list of alternatives presented by Rawls, including justice as fairness, and teleological, intuitionistic and egotistic conceptions, see Rawls (1971: § 21).

of alternatives is presented to the parties in the original position.[122]

I do not need to summarize or sketch here the many arguments advanced by Rawls to justify the superiority of his own conception of justice over other conceptions and interpretations. The important point is about the substantive values affirmed in his conception, against alternative values affirmed by other conceptions. Rawls' conception stresses the priority of the system of liberties, which allows for the autonomous choice and change of individuals' conceptions of the good. Participation in the political process is also stressed. Equality of opportunity must be fair, not only formal, and the position of the worst-off maximized, disregarding individual desert and unequal personal assets. This way, social cooperation and the idea of the well-ordered society are modeled from the point of view of the basic ideas of freedom and equality of persons.

On the face of it, the superiority of justice as fairness is established both outside (through "reflective equilibrium" - I will have more to say about this notion in section 9. below) and inside the original position as a partially comprehensive view. The competitors of justice as fairness are also comprehensive views. Although no religious or metaphysic notions are invoked by Rawls in favour of his own conception or its adversaries, all the conceptions look like general moral and philosophical views. In other words, Rawls seems to be affirming a Kantian theory of justice as fairness, characterised by the prevalence of a conception of rational and autonomous moral personality, against well-known

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[122] The "system of natural liberty" is criticised in Rawls (1971: 65 f.).

alternative philosophies such as utilitarianism, perfectionism, intuitionism and a theory of natural liberty.

However, the fact of reasonable pluralism leads Rawls to qualify the theoretical *status* of justice as fairness. It is not, he argues in *Political Liberalism*, a comprehensive moral doctrine but a political conception. What does this mean?

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A political conception of justice is confined to the domain of the political.[123] The political domain is not a family, nor a purposive association, nor a community. It is rather a closed and complete system in the sense that it is not voluntary - Rawls says that people enter by birth and exit by death - and that "has a place for all the main purposes of human life"[124], including people's attachments to others, to families, associations and communities. The political is also a domain of coercive power to enforce the law, the power of the state and, in a democracy, also the power of citizens as a collective body. Rawls points out three main features of any conception of justice applied to this domain.[125]

A political conception of justice is, in the first place, one that is worked out for a modern constitutional democracy. It must specify the main standards and institutional framework - the political constitution and the main social and economic arrangements - of such democracy. This means that the object of a political conception of justice is, in Rawls' language, the "basic structure" of our societies.

A second major feature of this conception is that it must be presented as a "freestanding view", i.e., independently from any

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[123] For this question, see Rawls (1993: Lecture I).
[124] Rawls (1993: 40).
[125] See Rawls (1993: Lecture I, § 2.).

comprehensive philosophical, religious or moral doctrine that a citizen can affirm. The political value of justice is presented as autonomous from other values, although it may be reconnected with them through an overlapping consensus of different comprehensive doctrines, as we will see below.

A third aspect is the fact that a political conception of justice starts from ideas implicit in the public culture of the democracies it addresses: mainly, some specific notions of social cooperation and of the person, and a companion idea of the well-ordered society. Hence, political justice is not conceivable without the historical background from which we take the materials to build it in accordance with the methodology of political constructivism.

These three features restrain the conception of justice to the political domain, starting with the basic ideas - they belong to the public culture - and finishing with a freestanding conception, the object of which is the basic structure.

For Rawls, a political conception of justice must be, broadly speaking, liberal. This means that it will protect basic individual rights, assign them a special priority, and will include measures to give the citizens the material means to make effective use of those rights. However, Rawls claims, there are several possible formulations of those rights, of their relative priorities and of a social minimum. Therefore, one may conceive different liberal conceptions of justice confined to the domain of the political, i.e., different political liberalisms. Rawls states that justice as fairness is a form of political liberalism, as it fulfills all the above requirements.

In the first place, justice as fairness addresses contemporary democracies. It is not a theory for all times and all circumstances; its universalizability depends on the generalization of democracy.

Moreover, justice as fairness applies to the basic structure of these societies, specifying a fair allocation of "social primary goods", namely, liberties (the principle of equal liberty), income and wealth (the difference principle), opportunities (the principle of fair equality of opportunity) and the social basis of self-respect (which is the result of the combined working of all the principles of justice).

Secondly, justice as fairness may be presented as a freestanding view. Freestandingness means independence from comprehensive religious, moral or philosophical views. Justice as fairness is not - explicitly - built on any of these moral, metaphysical or epistemological grounds anymore. Moreover, it does not presuppose or imply any of those wider grounds. However, it may be linked to them through an overlapping consensus in which people holding different comprehensive doctrines see justice as fairness as supported or acceptable according to their own comprehensive doctrines.

Thirdly, justice as fairness starts from three intuitive ideas embodied in the public culture of democracy. It looks at society as: a "fair system of cooperation over time", between citizens considered as "free and equal", to whom a "well-ordered society" is regulated by a political conception of justice. These are the background ideas that allow the specification of the conception. The fact that they are presented as belonging to the public culture shows the concern with dissociating them from any particular comprehensive doctrine.

Finally, justice as fairness is a liberal conception of justice because it warrants the basic rights, liberties and opportunities. Justice as fairness also secures from the outset the fair value of

political liberties (and of *political* liberties only).[126] The importance it gives to the 'second principle', including fair equality of opportunity and the maximization of the situation of the worst-off, makes of justice as fairness an egalitarian form of political liberalism.

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In short: justice as fairness is a substantive conception of "the first virtue of society". Although it was initially defended as a particular moral outlook, distinguished from other traditional moral outlooks, it ended up being presented as 'political, not comprehensive'.

7. Problems of contamination (II): perfectionism

Rawls' account of pluralism, I argued above, implies a form of moral and epistemological (not just methodological) fallibilism. Accordingly, one could be lead to think that his conception of justice as fairness and the methodology of political constructivism are also fallibilist. However, this is not the case. This section will show that Rawls' account of justice is also contaminated, albeit not by the same comprehensive doctrine. The comprehensive doctrine that gives a sense to the conception of justice as fairness in particular and to the methodology of political constructivism in general - I will argue - is a modality of liberal perfectionism.

Perfectionism is a form of moral theory. "This moral theory starts from an account of the good human life, or the intrinsically desirable life. And it characterizes this life in a distinctive way."[127] Although perfectionists disagree about the content of the good

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[126] For the special role of political liberties, see Rawls (1993: 356 f.).

human life, they all think that there is a hierarchy of human excellence that society should promote. Nevertheless, there is a divide between two kinds of perfectionists. Some believe that human excellence must be a development of human nature. Others prefer to severe the relationship between the metaphysics of human nature and the ideal of human excellence.

Perfectionism of the first kind - or "narrow perfectionism" - is often and correctly associated with Aristotle and Aquinas, but it is much more generalized. Perfectionism of the second kind - or "broad perfectionism"[128] - is perhaps less common, but it coincides with the definition given by Rawls. The sharpest version of perfectionism, Rawls contends, sees this theory as "the sole principle of a teleological theory directing society to arrange institutions and to define the duties of individuals so as to maximize the achievement of human excellence in art, science and culture."[129] Rawls' best example of this perfectionism is Nietzsche's.[130]

I argue below that Rawls' political constructivism and the resulting conception of justice as fairness is not a form of narrow

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[127] Hurka (1993: 3).

[128] The terminology of "narrow" and "broad perfectionism" is taken from Hurka (1993).

[129] Rawls (1971: 325).

[130] Rawls sees perfectionism, together with utilitarianism, as teleological doctrines. These are theories that define the right in terms of maximization of the good. Instead, deontological doctrines such as Kant's moral philosophy, or justice as fairness, define the right independently from a full theory of the good. The origin of this conceptual divide in Rawls is Frankena (1963), who is mentioned in Rawls (1971: 24, n.11). The same divide is rightly criticized in Kymlicka (1989: Chap. 3). He says that "Just as being a perfectionist doesn't commit you to accepting a 'teleological' theory in which there are no constraints on the way that we maximize the desired good, so being an anti-perfectionist does not commit you to accepting 'deontological' constraints on the promotion of social welfare." (Kymlicka 1989: 36). Following Kymlicka, I find unhelpful the characterization of perfectionism as a teleological doctrine. I endorse what remains from Rawls' definition, together with Hurka's.

perfectionism, as suggested by Michael Sandel in a critique of Rawls' *A Theory of Justice*.[131] However, Rawls' conception and methodology do include a perfectionist theory in the broad sense. This critique was advanced by William Galston in view of Rawls' political liberalism. Let us consider the arguments of both Sandel and Galston.

Michael Sandel accepts Rawls' own distinction between teleology and deontology and points out to the fact that Rawls is a major proponent of deontological liberalism. This is a form of liberalism, Sandel explains, that establishes the primacy of justice over the good in the justification and in the content of the conception of justice. Actually, justice is prior for Rawls *and* it is constructed without a full theory of the good (only with a thin theory of the good). Sandel's most important claim is that this deontologism of Rawls is a consequence of his metaphysic conception of the person.

To explain: Rawls pictures the person as rational and, thus, as primarily concerned with the prosecution of his or her own conception of the good. The parties in the original position are rational in this sense, although they ignore their specific conceptions of the good, due to the veil of ignorance. This presumption of the "mutual disinterest" of the parties is combined with the idea of "the circumstances of justice", which points out to the conflict among people about the distribution of the advantages of social life (the so-called subjective circumstances of justice - see I ,7.). As a result, the parties choose a conception of justice that serves people who are rational choosers, separate from one

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[131] In Sandel (1982).

another, and who look at a plurality of conceptions of the good seen as exterior to themselves.

Sandel thinks that the fact that the parties in the original position put justice first (in relation to a full theory of the good) is a consequence of their being "disembodied" and "unencumbered" selves, pure voluntaristic individuals without "constitutive attachments". Sandel points out that

> To imagine a person incapable of constitutive attachments ... is not to conceive an ideally free and rational agent, but to imagine a person wholly without character, without moral depth. For to have character is to know that I move in a history I neither summon nor command, which carries consequences none the less for my choices and conduct. It draws me closer to some and more distant from others; it makes some aims more appropriate, others less so.[132]

Accordingly, Sandel believes that Rawls has a metaphysic conception of the person which misrepresents what people actually are, i.e., born in a social context, with their specific ends and attachments, which are not the product of external and voluntaristic choice but rather the result of a process of self-consciousness.

Sandel may be right about Rawls' conception of moral personality, but I find it difficult to understand why he insists that Rawls' picture of the parties in the original position requires a *metaphysic* conception of the person. In the framework of his theory of political liberalism Rawls makes even clearer that the description

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[132] Sandel (1982: 179).

of the parties in the original position is just a methodological device. The aim is to construct a conception of justice for the basic structure of society. However, Rawls' disclaimer does not protect him from the charge of being a perfectionist in the sense above given to broad - as opposed to narrow - perfectionism. It is not necessary to affirm a theory of human nature in order to defend or presuppose a perfectionist theory. A broad perfectionism does not require such foundations.

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William Galston differs from Sandel in the fact that he addresses Rawls' more recent work and that he does not attribute to Rawls unnecessary - and non existent - metaphysic views. Galston looks at the starting point in Rawls' constructivism, namely the organizing idea of person and society. This idea is derived from person's - or citizen's - two moral powers but it also conveys, Galston argues, two moral goals:

> Individuals choosing principles of justice seek, first and foremost, to create circumstances in which they can realize and express their moral powers. Second, we as observers appraise social institutions in light of their propensity to promote the realization and facilitate the expression of these powers, and this standard takes priority over our other concerns.[133]

Accordingly, Rawls' strategy of argumentation leads to the construction of a conception of justice - and the companion idea of a well-ordered society - that expresses the two moral powers. These powers include rationality or the capacity for a conception of the

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[133] Galston (1991: 121).

good, and reasonableness leading to the capacity for a sense of justice. External observers - we who are not parties in the original position and who are not citizens of a well-ordered society - assess the basic structure of society in view of their contribution to the development of these two moral powers.

Galston concludes that Rawls' constructivism is a kind of perfectionism that gives *just* action the first place in the ideal of the person. Moreover, the incorporation of the two moral powers supports the preeminence of freedom and equality in the substantive conception of justice. This is clear because rationality and reasonableness are the basis of citizens' freedom and equality. As a consequence,

> At least for political purposes, Rawlsian moral freedom liberates us from all antecedent principles - all duties and obligations, all intrinsic values other than freedom itself. Rawlsian moral equality reduces to moral nullity the respects in which we are naturally unequal. And Rawlsian justice severs the link between what we *do* and what we *deserve*. The valid claims we address to one another are posed on the basis of being rather than doing, of bare abstract existence, shorn of any of the features that distinguish us from one another.[134]

Rawls' perfectionism, then, rests on the idea that individual freedom and equality outweigh other aspects of our human good. These are political aspects of the human good and they are given priority. The priority of freedom trumps all other values and the assertion of abstract equality trumps the relevance of desert.

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[134] Galston (1991: 160).

Moreover, the stress that Rawls puts on the public side of moral personality may lead to sacrifice other aspects of people's non-public identities (like a comprehensive religious view, applying to all aspects of life, including the public ones). Galston has captured these points as evidence of the "democratic perfectionism"[135] of Rawls' political liberalism.

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What can be said on behalf of Rawls' position? Rawls does not apologize for the role of abstractions in his theory, such as citizen's freedom and equality. Moreover, Rawls does not deny the importance and primary relevance of certain non-political - religious, philosophical or moral - values. The values of the political domain are prior in the political domain only. However, Rawls admits the best we can do is to accommodate in the political community all kinds of comprehensive views which are compatible with the constitutional essentials and basic justice secured by a political conception of justice.

Galston is aware of these contentions, but he rejects them. He affirms as inevitable that a certain conception of the person permeates Rawls - or any other - version of liberalism. Moreover, he thinks that Rawls' conception "tends to exclude individuals and groups that do not place a high value on personal autonomy and revisable plans of life"[136]. Galston further believes that liberalism can do well without the conceptions of justice and the person which he attributes to Rawls.

I think that Galston's critique cannot be easily dismissed by Rawls. Galston's critique shows that Rawls' conception of the person shapes his conception of justice and makes it a liberal

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[135] Galston (1991: 148).

perfectionist conception. The primacy of individual freedom, equality and justice in the political order leads to the acknowledgment of the fact of reasonable pluralism. This acknowledgment is tainted with fallibilism because this is the natural view for a liberal perfectionist like Rawls: once personal freedom and equality come first and are secured by just institutions, a plurality of doctrines comes about and it is not up to the liberal perfectionist to decide which one is true from a political point of view. The truth of the many doctrines is not a concern of the liberal perfectionist *qua* political man, with the obvious exclusion of the truth of the idea of person that sustains the liberal perfectionist view.

The argument is not completed yet. The connection between Rawls' liberal perfectionism and his moderate scepticism about comprehensive doctrines will become clearer by the end of the chapter.

8. Overlapping consensus and public reason

In a well-ordered society, the idea of justice as fairness or another liberal political conception of justice may be secured by an overlapping consensus of reasonable comprehensive doctrines. This way, the value of justice is secured by restricted reasons as long as it is not dependent on any particular comprehensive doctrine. Justice is the centre to which all the doctrines converge, in spite of their differences.

The idea of an overlapping consensus[137] is quite intuitive. It settles an agreement in political matters, but allows for

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[136] Galston (1991: 153).

[137] For this idea, see Rawls (1993: Lectures I, IV and VI).

disagreement in non-political matters. The focus of an overlapping consensus is the conception of justice; the participants that overlap are reasonable comprehensive doctrines. Accordingly, for each doctrine, there are points of consensus - concerning the principles of justice that order the society well and their restricted rationale - and points of dissent - concerning other values and the procedures of justification specific to each reasonable comprehensive doctrine.

Rawls distinguishes overlapping consensus from a mere *modus vivendi*. This is an important distinction insofar as it shows that the overlapping consensus is not an agreement of circumstance but a true moral agreement, both in its object and in the argument that supports it. A *modus vivendi* is a strategic agreement based on interests and bargaining. Like in a treaty between sovereign states, a *modus vivendi* between individuals and groups with their different comprehensive doctrines does not create a stable support for a conception of justice. Lacking in moral substance, a *modus vivendi* is easily broken as soon as it is no longer in the interest of all or some of the parties.

Rawls uses a case model to illustrate an overlapping consensus.[138] Three different reasonable comprehensive views take part in this model: a religious doctrine of free faith (such as Locke's); a comprehensive moral doctrine of liberalism (like those of Kant or Mill); a partially comprehensive doctrine including a large and diverse number of both political and nonpolitical values. On another occasion, Rawls prefers a model including the view of Kant, the utilitarianism of Bentham and Sidgwick, and the pluralist and partially comprehensive view referred to above.[139] Ralws considers that these doctrines taking part in an overlapping consensus do not

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[138] See Rawls (1993: 145 f.).

need to change in order to reach a compromise with each other. They all affirm the political conception of justice on the basis of the reasons that are specified at the deeper level of each one of them.

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It is difficult to see how this is feasible. As a matter of fact, the doctrines in Rawls' case model have different conceptions of justice in accordance with the deepest reasons they affirm about human beings and their place in the world. For instance, one wonders why Rawls bothered to do the impressive work of rebutting utilitarianism in *A Theory of Justice* when the mentioned theories of Bentham and Sidgwick may, in the end, be part of an overlapping consensus on justice as fairness or a similar conception of justice.[140] The fact is that Rawls criticized utilitarianism and other moral doctrines because they convey different and contentious views of morality and political life, grounded in diverging moral epistemologies.

Let us suppose that the critique just sketched does not work and that an overlapping consensus does arise between completely different comprehensive doctrines. Nevertheless, the fact that a same conception of justice is sustained by a number of reasonable comprehensive doctrines does not mean that it will be sustained by all the relevant doctrines in society. One can think of a multiplicity of political liberalisms leading to something similar to justice as fairness, but one can also think of a multiplicity of non-political liberalisms leading to different substantive conclusions. Thus, being the core of an overlapping consensus of some doctrines does not award a conception the character of freestandingness. Freestandingness would have to be previously granted. However,

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[139] See Rawls (1993: 169 f.).
[140] This question was raised in Scheffler (1994).

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this is not the case with Rawlsian political constructivism and justice as fairness.

Furthermore, the fact that some reasonable comprehensive doctrines overlap on some points does not entail that these doctrines overlap on all the matters of basic justice. One doctrine may overlap with another one about civil rights but not on the principle of fair equality of opportunity. The former doctrine may overlap with a third one regarding equality of opportunity, but not on taxation of income. And the same doctrine may overlap with a fourth one on equality of opportunity, but be at odds with this fourth doctrine about some basic rights (for instance, about the right to life and death penalty). There are many possible overlaps and non-overlaps among doctrines. The Rawlsian image of an overlapping consensus is a far too simplified view in a world of complex possibilities.

In spite of all its difficulties, the idea of an overlapping consensus gives space to reasonable pluralism regarding conceptions of the good and comprehensive doctrines. Rawls' overlapping consensus allows for a fallibilism compatible with the political values stated in the conception of justice as fairness.

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An overlapping consensus necessarily implies a freestanding public reason. For Rawls, this ideal of public reason is part of the conception of justice and the well-ordered society.

The distinction between public and private reason is taken from Kant in "What is Enlightenment?"[141]. However, the meaning and substance of the distinction in Rawls is very different from Kant's. According to Rawls, for any rational and reasonable public

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[141] See Kant (1784).

or private agent 'reason' is to be understood as "a way of formulating its plans, of putting its ends in an order of priority and of making its decisions accordingly."[142] The way a democratic society does this is in its public reason. A democratic well-ordered society is no exception.

Public reason has a limited content: it applies to constitutional essentials and matters of basic justice. It also interprets those fundamental political values. As the reason in the public political forum, it applies particularly to some people. Who, in the public political forum, must be legally subjected to the requirements of public reason? Government officials, candidates to public office and the judges in their decisions. For Rawls, the model of these decisions is to be found in the U.S. Supreme Court, but it could also be found in many Constitutional Courts in Europe. Moreover, public reason is the reason of the public in a constitutional democracy. For citizens, the requirements of public reason are not legal but moral. They apply to their duty of civility and also when they exert power as a collective body through their vote.

Rawls rejects the views according to which his concept of public reason would preclude comprehensive reason giving in public. As far as I can see, he has two arguments against this idea. In the first place, public political culture is different from background culture, which includes the culture of associations, churches, universities, the media, etc. In this background culture there are no restrictions to open discussion and invocation of comprehensive reasons. Secondly, comprehensive reasons may also be introduced in the public political forum "provided that in due

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142 Rawls (1993: 212).

course proper political reasons - and not reasons given solely by comprehensive doctrines - are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support."[143] This requirement Rawls calls "*the proviso*".

Because he thinks that there may be a number of liberal political conceptions of justice and the respective number of conceptions of the well-ordered society, Rawls considers that there are many possible forms of public reason. The content of public reason as such, then, is given by a family of political liberalisms. However, all these political liberalisms have to be the result of a political constructivism in which the starting points are the ideas of rationality and reasonableness, and freedom and equality of citizens, together with an idea of fair social cooperation.

This plurality within political liberalism may lead, Rawls concedes, to stand-off cases in which public reason is unable to decide. In this case, the solution is not to retreat to comprehensive liberalism and invoke comprehensive doctrines, but rather to vote. If voting is done in accordance with the political and liberal principle of legitimacy, the resulting bodies and laws respect the basic requirement of reciprocity.

The liberal political principle of legitimacy is a companion to the idea of public reason (in justice as fairness, they are both adopted in the original position). For Rawls, our exercise of power through vote

"is proper and hence justifiable only when it is exercised
in accordance with a constitution the essentials of which
all citizens may reasonably be expected to endorse in the

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[143] Rawls (1999: 591).

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light of principles and ideals acceptable to them as reasonable and rational."[144]

So, political legitimacy exists when a constitutional consensus works. In historical terms, Rawls seems to view legitimacy as a step to justice, like the constitutional consensus itself.

In conclusion: Rawls' account of an overlapping consensus and public reason are linked with his own theory of justice. Although these ideas cannot be equated with justice as fairness, they are considered from the point of view of Rawls' conception of justice. In order to work, the content of an overlapping consensus and public reason must be restricted by the liberal perfectionist conception of justice as fairness or a family of similar conceptions. This situation allows for reasonable pluralism and fallibilism regarding comprehensive doctrines.

9. First and second rank justifications

In this section, I will interpret Rawls' account of the justification procedure of justice amidst pluralism focusing on some issues raised in the account of 'justification' in Chapter I. I will end with a reflection on the global model and structure of Rawls' conception of justification.

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Rawls believes that every citizen is a source of justification and that justification addresses disagreement both in the others and in ourselves: "Justification - he says - is argument addressed to those who disagree with us, or to ourselves, when we are of two

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[144] Rawls (1993: 217).

minds."[145] Accordingly, justification requires publicity both of the principles of justice and the intuitive starting points. Agreement is the purpose.

Justification, addressed to us and to the others, is seen by Rawls as a practical matter. It is not set apart from our society, the traditions of this society and our more or less loose convictions. Nevertheless, justification is not confined to shared understandings, nor to particular judgments; it has to make use of abstraction.[146]

More abstraction is required when disagreement is deeper and, accordingly, there is a wider gap between us and those whom the justification addresses. However, Rawls stresses, "The work of abstraction [...] is not gratuitous: not abstraction for abstraction's sake. Rather, it is a way of continuing public discussion when shared understandings of lesser generality have broken down."[147]

When disagreement arises in a given principle, then, agreement may be achieved at a higher level of generality. Political Philosophy looks for new basis of a higher level agreement and works from there. "Justifying grounds - Rawls reminds us - do not lie ready to hand: they need to be discovered and suitably expressed, sometimes by lucky guesses, sometimes by noting the requirements of theory."[148] Construction of agreement starts from some minimum shared ideas and theorizes from there to reach consensus at a different level.

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[145] Rawls (1971: 580).
[146] For this question, see Rawls (1993: 43-46).
[147] Rawls (1993: 46).
[148] Rawls (1971: 582).

In order to show the way Rawls' work achieves this justificatory agreement, one has to digress on some fundamental notions of Rawls' theory. There are two sides to consider. On the one hand, Rawls sets up a procedure to specify a political idea of justice in a context of pluralism. On the other hand, he sets up a procedure which ensures the "grounds of toleration" of this idea in this context. As I will show in more detail, the leading ideas of the first stage of the procedure are those of the "original position" and "reflective equilibrium". Instead, the main ideas of the second stage of the procedure are those of the "overlapping consensus" and the distinction between public and non-public reasons. I will treat the first part first.

"What is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?"[149], Rawls asks. This question embodies several assumptions. From the outset, one knows that it is possible to specify fair terms of social cooperation, that cooperation takes place between members of society during their entire lives and overtime, and that the individuals involved in this social cooperation are to be considered free and equal. From the outset, then, Rawls establishes fixed points of agreement. In accordance with his justification procedure, he seems to think that these starting points may be mutually recognized, or that the conclusions to which they lead may be so persuasive that people are reasonably compelled to accept the premises.

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[149] Rawls (1993: 3).

Starting from here, how can one choose, according to Rawls, if a given conception of justice amidst pluralism is better than others? Two requirements are to be satisfied. In the first place, the idea of justice has to be chosen under the most favoured conditions of choice, i.e., the original position.[150] A second requirement of the justification procedure to choose a conception of justice is that chosen principles should match one's considered convictions and vice-versa. The objective is to achieve a "reflective equilibrium". With this purpose, one may modify the description of the original position and one may revise existing judgments. Fixed points are always provisional.[151]

This procedure of justification does not involve exterior or independent criteria. It is rather a work of political constructivism in which the intuitive elements from which it starts, the ideas that develops, and the final results are worked out solely through the constructive process itself.

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The second stage of Rawls' procedure of justification starts with a different question: "what are the grounds of toleration understood in a general way, given the fact of reasonable pluralism as the inevitable result of the powers of human reason at work within enduring free institutions?"[152] This is the question of political liberalism.

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[150] For the complete list of characteristics of the original position, see Rawls (1971: 146-7).

[151] One may distinguish between "narrow reflective equilibrium" and "wide reflective equilibrium". Whereas the former is achieved whenever there is a fit between one's principles and one's considered judgements, the latter requires that one considers the relative strengths and weaknesses of all the relevant theories or sets of principles. This distinction is in Rawls' "The Independence of Moral Theory", now in Rawls (1999: Chap. 15), but was much developed by Norman Daniels in Daniels (1996).

[152] Rawls (1993: 47).

Rawls wants to establish a way of ensuring doctrinal tolerance and apply the idea of toleration to philosophy itself. This tolerance, he hopes, will allow citizens to endorse justice and to give stability to a society ordered according to justice. How is this possible? Rawls contends that justice may be endorsed on the basis of an "overlapping consensus" of reasonable comprehensive doctrines.   Agreement and justification are reached, then, during the two stages of the process. In the first stage, one is able to choose a conception of justice. In the second stage, one is able to secure the conception on a tolerant basis.

However, these are two different kinds of ideal agreement. In the first stage, agreement is produced by the original position, whereas in the second stage agreement is produced by the overlapping consensus. The first agreement, then, is purely hypothetical and non-historical. The second one is also hypothetical but conceivable - and, according to Rawls, desirable - in reality.

My critical point here is precisely about the priority of the first stage of justification. My contention is that the second stage is subordinated, in order to cohere with the first one.

In Rawls, there is no requirement to adapt the results of the first stage to the constraints set up by the second stage. He thinks that, other things being equal, there would be no important differences between the conception chosen in the first stage and the conception that is the focus of consensus in the second stage. In other words, the idea of an overlapping consensus does not oblige the modification of the content of the political conception of justice as fairness or of the procedure of its choice.

As Joshua Cohen puts it, satisfying the "pluralistic consensus test" at the second stage "is not necessary [to the correct account of

justice] though it does provide *some support* for a conception of justice."[153] Cohen does not see a problem here; but the problem arises from the fact that actual doctrinal pluralism is never taken into account.

Although the "fact of pluralism" is present at the beginning of the first stage, it is restrained after the choice of the conception of justice (whether justice as fairness or a similar one). From that moment, we only have to consider "the fact of reasonable pluralism". When we move to the second stage, we formulate the basis of tolerance of this second-order pluralism. The second stage *seems* to introduce a concern with feasibility and realism. However, this does not happen, as the kind of pluralism which is taken into account is purely idealized.

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What model and structure of justification are at stake here ? Rawls is a contextualist and a coherentist. He is not foundationalist in a Cartesian or in an empiricist sense:

> A conception of justice cannot be deduced from self-evident premises or conditions or principles; instead, its justification is a matter of the mutual support of many considerations, everything fitting together into one coherent view.[154]

If no independent and absolute principles exist, as they exist in foundationalist justification, one has to start with some ideas that one considers largely recognized. The important point about justification, however, is that the conceptual web must be well

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[153] Cohen (1993: 273).
[154] Rawls (1971: 21).

built. In other words, the several elements of the construction must fit well with each other.

This same contextualist and coherentist model is implied in the second stage of the justification. No definite basis is given for consensus. The idea of an overlapping consensus is that of a fit between a political conception and diverse comprehensive views. If this is feasible or not is not a matter of certainty but of reasonable hope, in the context of modern democracies.

Finally, the first stage of justification is completed by the second in order to insure tolerance amidst pluralism. However, a good fit between these two stages is not achieved. The overlapping consensus is always a second-rank justification and the primacy is at the level of the conceptualization of justice as fairness.

The interpretation of political justification here developed raises the issue of 'partisanship' in political justification. This has already been pointed out by comprehensive views that are not compatible with liberalism. Moreover, a liberal conception requires a particular conception of the person as being capable of impersonal standards and a *continuous process of justification* (not justification once and for all).

A political conception may be tolerant, but it cannot avoid partisanship. The very idea of justification in Rawls is engaged with a partisan view that puts together partially comprehensive doctrines of fallibilism (regarding the pluralist context) and perfectionism (regarding the conception of justice). Although some kind of justificatory partisanship seems unavoidable, it should be clearly acknowledged.

10. Taking pluralism seriously?

Rawls' answer to the question 'which pluralism?' is closely connected with his answer to the question 'which justice?'. My contention is that the flaws in Rawls' treatment of 'a context of pluralism' are a consequence of the need to accommodate the fact of pluralism to a previous conceptualization of justice and that this is also shown by the two-rank structure of Rawls' procedure of justification of justice for a pluralist context. As a consequence, no autonomous theory of pluralism is avowedly developed nor could be.

In justice as fairness, the so-called principle of equal greatest liberty is lexically prior to the other principles. Basic liberties, including political liberties, freedom of speech and assembly, liberty of conscience and freedom of thought, are, then, to be fulfilled even before other principles are considered. As a consequence, a plurality of conceptions of the good and comprehensive doctrines comes about.

Moreover, in a society ordered according to a political conception of justice citizens are aware of this regulative conception, which they support. Therefore, their sense of justice is educated by the conditions of the society. In these conditions, it is not surprising that they are reasonable not only in the sense of abiding to 'the burdens of judgment', but also in the sense of willingness to cooperate and to modify their views for the sake of fair cooperation. An overlapping consensus is, then, feasible. Public reason unfolds within the limits of justice as fairness.

This is the description of the perfectly well-ordered society according to Rawlsian justice, not the description of really existing societies. Rawls, one can now restate, is not addressing real pluralism. The 'fact' he talks about is not from observation, but rather created by normative theory. The normative theory that

creates this 'fact' is justice as fairness or a similar liberal and political conception.

11. Final remarks

The disappointment with the political liberalism of Rawls may be summarized as follows: in spite of what he sometimes suggests, Rawls works only within ideal theory and, accordingly, he must start with the conceptualization of justice and then move to the idea of the well-ordered society. Pluralism cannot be considered but as an element in the well-ordered society, not really as a fact. This priority of justice over pluralism leads to an account of the latter that is shaped by the requirements of reasonableness. This reasonableness is what better fits justice as fairness or, more generally, any other liberal political conception of justice. The problem lies in the evidence that the liberal political theory of justice and the methodology of political constructivism are not really independent from comprehensive reasons. Moreover, as a form of liberal perfectionism that stresses the duality of the man and the citizen, Rawls' liberalism also needs a view of our pluralist context that may be identified as a theory of fallibilism about comprehensive doctrines.

What has just been said sums up the itinerary of the chapter in inverted order. However, the argument works both ways. One may start with the analysis of pluralism, or with the analysis of justice. The result is the same, namely that justification has to make use of comprehensive doctrines, not purely political or freestanding reasons. The comprehensiveness of Rawls' political liberalism takes its coherence from the fact that he always works within ideal theory: second-level agreement (i.e., the overlapping

consensus) has to cohere with first-level agreement (i.e., the original position and reflective equilibrium). This way, the liberal perfectionism of justice as fairness permeates the whole theory; and this is the broken promise of Rawls' political liberalism.

However, the failure in Rawls' political liberalism may be answered with an alternative suggestion: another possibility would be to start by establishing the basis of tolerance in a pluralist society and, then, move to the choice of the conception of justice. But this would imply doing exactly the opposite of what Rawls does. It would imply starting with a less idealized and more developed theory of pluralism of ideas of the good and comprehensive doctrines and trying to sort out the constraints that this theory would put on the choice of a conception of justice. In this more pragmatic solution for the problem of social unity, both the lack of relevance and the lack of consistency of Rawls' account of pluralism could be overcome. Furthermore, liberal political legitimacy could be established independently from the idea of justice and the conditions for the conceptualization of the just society amidst pluralism clearly defined. Such an alternative - within the theory of political liberalism - is illustrated by the work of Charles Larmore, to which I now turn.

CHAPTER III

LARMORE'S POLITICAL LIBERALISM

1. Political liberalism in the context of Larmore's work

2. Reasonable disagreement

3. Contextualist justification

4. Neutrality

5. The neutrality of neutrality

6. Problems of contamination (I): fallibilism

7. The indeterminacy of justice

This chapter is exclusively dedicated to the political liberalism of Charles Larmore. Larmore's version of political liberalism and what he calls the dimensions of "moral complexity" that point to this theory are of primary relevance in the whole of his philosophical work, as I will show in section 1. However, I will not explore all the connections between the multiple and diverse subjects and aspects of Larmore's writings. As in the previous chapter, I will concentrate on the main terms of the central problem to which political liberalisms attempt to answer, namely 'a context of pluralism', 'justification' and 'the idea of justice'.

Larmore's views on pluralism are exposed in section 2. In sections 3. to 5., the kind of political justification induced by a pluralist context is duly characterized, according to Larmore. In both aspects of pluralism and justification Larmore claims to introduce improvements into the new theory of political liberalism. In this sense, the idea of pluralism is replaced by the idea of reasonable disagreement. Moreover, the account of justification is particularly elaborated and linked with a conceptualization of

neutrality towards the ideals of the good life that people disagree about.

Only after the explanation of these points in detail will I be able - in section 6. - to consider a first charge of contamination of the theory by moderate scepticism or fallibilism. In the following section - 7. - I deal with what may be called the indeterminacy of justice in Larmore's work. In section 8., I resume the charges of contamination - this time by perfectionism - of Larmore's political liberalism.

Before the final conclusion - which is drawn in 10. - I will compare the achievements of Larmore's political liberalism with those of Rawls' in section 9. In this already conclusive section I will show that, although Larmore is more accurate than Rawls in his account of both pluralism and justification, his other failures outweigh those of the Rawlsian theory of political liberalism. In the first place, Larmore's political liberalism is not less contaminated by controversial comprehensive moral and epistemic views than Rawls'. Secondly, Larmore's theory is excessively abstract and it does not give a substantive content to the political values (i.e., a conception of justice) that one could expect to be agreed to by all citizens in a pluralist society. In the end, one can say that Larmore does not really do better than Rawls and that he also does less.

1. Political liberalism in the context of Larmore's work

"Fundamental political principles - writes Larmore - must express a moral conception that citizens can affirm together, despite their inevitable differences about the worth of specific ways

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of life."[155] These principles may be thought to form a core morality, or a conception of justice, for the political domain. These principles are "moral" because they define the common good and not just a prudent means of accommodation. They are also "minimal" because they are intended to constitute common ground amidst different ideals of the good life and their background justifications. One way of expressing these ideas is to say that fundamental political principles should be *neutral*. In accordance with these principles, the liberal state should not promote substantial ideals of the good life with the use of coercive power, whenever they are controversial in society. This is the basic idea of Larmore's political liberalism.

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Unlike Rawls', Larmore's political liberalism derives from a reflection on the complexities of morality as a whole. The political liberalism of Rawls has cut short the elaboration of the political theory of "justice as fairness" as a comprehensive moral view. It was made clear in the previous chapter that, instead of developing "justice as fairness" in this way, Rawls decided to stick to a political interpretation of his own theory. Differently, the interest of Larmore in the building of a core morality restricted to the political realm derives from the acknowledgment that, in this realm, a comprehensive view would elude one of the main dimensions of complexity in modern morals.

The plea for the abandonment of simplifications in moral philosophy is the thrust of Larmore's work. In *Patterns of Moral Complexity*,[156] he deals with three main simplifications. First, Larmore discards the idea that the ultimate source of value is one

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[155] Larmore (1996: 123).

rather than many. Practical reason does not provide a simple principle for the ranking of moral duties. Instead, there are three principles, all of them bearing important moral demands: consequentialism, deontology and partiality. The latter expresses a priority of the good over the right. Particularistic duties arise out of a specific form of life and purport obligations connected with our empirically conditioned desires. Instead, both deontological and consequentialist duties express a priority of the right over the good. Larmore stresses - against academic conventions - that consequentialism is not less categorical (in the Kantian sense) than deontology. Both consequentialism and deontology give rise to imperative duties independent from the empirical interests of the individuals. Thus, both outlooks are categorical and should be opposed to particularism.

Nevertheless, deontological reasons to act refer to what the agent alone is responsible for, whereas consequentialist reasons refer to the foreseeable consequences for which others would be responsible as a result of my act. The real issue here is the extent of our responsibility as opposed to the responsibility of others. Larmore devises some rules of thumb to decide whenever conflicting duties arise, but he has no clear-cut *criteria* to resolve such conflicts.[157] Larmore's theory of the heterogeneity of morals

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156 See Larmore (1987).

157 These are the rules of thumb summarized by Larmore: "1.Consequentialist reasons become urgent, and so can be at least seriously considered as overriding those of partiality and deontology, only when the greater good overall involves the avoidance of pain and the satisfaction of needs. 2. Deontological reasons of the strictest sort are always more decisive than those of partiality, except where failure to heed a particularistic consideration would amount to our violating a similar deontological claim. 3. Urgent consequentialist reasons *can* be reasonably held to be stronger than the strictest deontological ones, only when the greater evil that doing our deontological duty would lead to is significantly grave and significantly certain." (Larmore, 1987: 148). For Larmore, these rules of thumb by no means imply overcoming scepticism about the

prevents him from establishing a hierarchy among the different kinds of moral duties.

The second basic dimension of moral complexity is to be found in the concept of moral virtue. Against both utilitarianism and kantianism, Larmore argues that virtue should not be understood in terms of conscientious adherence to settled principles. This view of virtue - which may also be found in Kant and Mill - neglects the role of judgment. The reason for this neglect is the tendency of modern morals to resolve moral conflict through an appeal to univocal principles (Kantian categorical imperatives; the principle of utility). Actually, the modern outlook applies this idea not only to morals but also to the different forms of knowledge: understanding always proceeds through the discovery of laws or rules. In this context, moral judgment is pushed out to the field of literary imagination. In modern ethics, the role of judgment is seen as rhetorical.

Because of these limitations in the prevailing modern understanding, some have turned to ancient ethics in search of a more satisfactory view of the role of judgment in the concept of virtue. This is probably the prevailing trend in academic ethics at the end of twentieth century and Larmore dedicates several pages to one neo-Aristotelian - namely, Alasdair MacIntyre - whom he finds to be representative of the inability of neo-Aristotelianism to guide moral deliberation in a modern context.[158] The problem lies in the account of moral conflict and the thesis of the heterogeneity of morals explained above. Aristotle's account of virtue, although emphasizing the importance of particular examples and judgment,

possibility of clear principles to resolve all conflicts of duties. Moreover, rules one and three cannot dispense the intervention of judgment.
[158] See Larmore (1987: Chapter 2).

fails to recognize the reality of moral conflict. Like modern utilitarianism and kantianism, Aristotle too was a monist. However, taking seriously the exercise of judgment requires the acknowledgment of the reality of moral conflict and the abandonment of monism. Moral conflict cannot be overcome through the appeal to some higher-order principle, like the moderns aspired to. Moreover, moral conflict can no longer be resolved by the appeal to the attractive conception of morals of the ancients, which supposes a preordained human world. However, the exercise of non-theoretical forms of understanding like moral judgment may help - albeit not always - to find acceptable ways of dealing with our insurmountable moral conflicts.

The third pattern of moral complexity analyzed by Larmore points to the distinctiveness of reasons for action in the political realm. Personal moral ideals do not have to extend to the whole of morality. Political morality understood as the morality of the state should not promote controversial ideals of the good. The reason for this distinction of reasons could be called "pluralism", but Larmore prefers to call it "reasonable disagreement" about personal ideals of the good life. The elaboration of this third pattern of moral complexity leads Larmore to the doctrine of political liberalism and I will have more to say about this below.

More recently, Larmore has been dealing with other subjects which, I think, should be considered two further patterns of moral complexity: the first one is about the epistemological status of norms and the second one is about the general model of justification of those norms. The first one is presented in *Modernité*

et Morale and subsequently in *The Morals of Modernity*[159]. In these works, Larmore develops a critique of naturalist meta-ethics and he defends a more complex view - namely, moral cognitivism - which does not reduce morality to the expression of preferences. Whereas naturalism - from David Hume to J.L. Mackie - reduces the moral facts to natural or psychological facts, cognitivism recognizes that the reality also contains a normative dimension and that morality constitutes a reflection on a part of this dimension.

The second pattern of moral complexity mentioned in the previous paragraph is elaborated by Larmore in the two works referred to above but also in *The Romantic Legacy*[160]. Larmore formulates a theory of moral justification against two other predominant and less complex views. He argues that both abstract universalism associated with the enlightenment and romantic historicism should be discarded in the name of a contextualist view of justification that acknowledges that moral universalism is a component of our form of life, but not less universalist for that matter. This second new pattern of moral complexity will be particularly important in the construction of Larmore's political liberalism.

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I do not wish to reduce these various forms of moral complexity to a single one. Although they arise of a similar concern with oversimplification, they must be analyzed separately. The heterogeneity of morals, the interpretation of virtue, the specificity of political morality, the ontological status of morality and the model of justification in this field are matters so wide and difficult

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[159] See Larmore (1993) and Larmore (1996a), respectively. The second book is not just the English translation of the first book. It includes new chapters and it suppresses others. Moreover, the chapters which are repeated are also modified.

that my account in this section cannot go beyond a simple listing. In my dissertation I am exclusively interested in the dimensions of complexity dealing with the ideas of *reasonable disagreement* and *contextualist justification.* Because they indicate the way in which Larmore connects pluralism, justification and, ultimately, justice, they are the two pillars of his political liberalism. It is to a closer examination of the first of these two pillars that I now turn.

2. Reasonable Disagreement

Reasonable disagreement about conceptions of the good life is usually equated with value pluralism. Larmore wants to distinguish between these two views. Whereas he finds the idea of reasonable disagreement extremely relevant for political liberalism, he thinks that pluralism is only one of the comprehensive views with which political liberalism as such is not concerned.[161] I think that the importance of this distinction cannot be emphasized too greatly. If the distinction is successful, the theory of political liberalism may be rescued from the kind of criticism of Rawls' account of pluralism epitomized in Chapter II.

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According to Larmore, pluralism is a thesis about the nature of value. Larmore is a pluralist himself, as is clear from the section above. The heterogeneity of morals is a characteristically pluralist thesis that regards the ultimate sources of moral value. However, Larmore is also a pluralist in another sense of the idea of value pluralism. A good life includes other elements which are not moral

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[160] See Larmore (1996b).
[161] The clearest formulation of reasonable disagreement is in Larmore (1996: Chapter 7).

<p style="text-align:center">133</p>

values. If forms of human realization are not one but many, pluralism considers that there are different kinds of good life and that we cannot view them as expressing a single overarching good. This other sense of value pluralism is about self-realization, whereas the previous sense - which Larmore calls the heterogeneity of morals - concerns the nature of morality.

Larmore says that "In its broad form [pluralism] asserts that the kinds of moral claims upon us and the forms of self realization we can admire are in the end not one, but many."[162] These two forms of pluralism are often associated and Larmore finds both in the work of Isaiah Berlin. In fact, Berlin draws a complex picture of human good life **and** he opposes the idea that there is only One metaphysic or religious source of value. Berlin further believes in the pluralist thesis that there are no universal standards of cultural evaluation, but Larmore does not follow him on this point.[163]

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Reasonable disagreement about the nature of value and the good life is, Larmore contends, a different thing from pluralism. Although Larmore does not mention Max Weber in his account, the picture he gives of the social background of reasonable disagreement is close to the one I gave of pluralism in Chapter I (section 6.) referring to some of Weber's writings. However, Larmore does not affirm the idea of disenchantment of the world, as Weber does, as the core of modernity. Larmore stresses that reasonable disagreement

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[162] Larmore (1996: 155).

responds to the idea of a religiously and metaphysically disenchanted world not by affirming it, as pluralism seems to do, but rather by recognizing that like other deep conceptions of value this disenchantment is an idea about which reasonable people are likely to disagree, as indeed they do.[164]

Thus, reasonable disagreement is a modern product linked with the disenchantment that marks modernity, but the idea of reasonable disagreement does not assert this disenchantment. The idea of reasonable disagreement does not transform the experience of pluralism of the ideals of good life into a moral or a social doctrine - like pluralisms do - but accepts to learn from that experience rather than to escape it. And the learning is this: "The more we talk about such things (even with ourselves!), the more we disagree."[165]

However, a reader of Larmore should not ignore the introduction of the idea of the reasonable in this conception of disagreement. Larmore could say that, at least in the modern world, we just tend to disagree on certain matters. Nevertheless, he also says that such disagreement is reasonable. Although Larmore does not sophisticate the idea of the reasonable the way Rawls does, his understanding is very similar to Rawls'.

For Larmore, "Reasonable people are those who think and converse in good faith and apply, as best they can, the general capacities of reason that belong to every domain of inquiry."[166] Accordingly, reasonableness implies the application of the normal

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[163] Actually, the views of Berlin on this matter should also be qualified insofar as he believes in a universal criterion of mutual intelligibility. On this, see Chapter II, section 3. above.
[164] Larmore (1996: 167-168).
[165] Larmore (1996: 168).
[166] Ibid.

powers of reason in a well-minded way. So, the idea is that this reasonable attitude produces a multiplicity of reasonable views about the meaning of the good life (Rawls would agree and add: because of the burdens of judgment). Instead of leading to agreement, reasonableness leads to ever deeper disagreements.

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The conclusion of Larmore's approach is that the problem with Rawls' account of pluralism is a question of words rather than a question of substance. In the end, Larmore agrees that what Rawls calls "the fact of pluralism" is about ideas of the good life and their supporting arguments. Moreover, Larmore avoids theorizing on this fact. He presents it as a modern phenomenon, but avoids any contentious claim about the nature of modernity. Larmore also accepts the introduction of the idea of the reasonable. Nevertheless, he refuses the expression "the fact of reasonable pluralism" and thinks that this expression actually expresses the idea of "reasonable disagreement" about the meaning of the good life.

This conclusion, I gather, does not look very promising when one tries to rescue pluralism from contamination by moderate scepticism or fallibilism. As was shown in the previous chapter, the problems with Rawls' account of pluralism are substantive rather than nominal. But before contamination is considered, one must turn the attention to the second pillar of Larmore's political liberalism.

3. Contextualist Justification

In this section, I will focus on the conception of moral justification that Larmore applies in his theory of political liberalism, in view of reasonable disagreement. I will follow closely

my outline from the first chapter, dealing with different aspects, models and structures of justification.

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For Larmore, justification does not start from nothing. It starts from the beliefs that we already have. So, what triggers the work of justification? The occurrence of some change in our moral beliefs does. Justification arises when one thinks that a belief might be false and one is left without reasons to believe. The subject of justification, then, is not belief in itself but a change in belief. Larmore summarizes this view about the motivation for the justification of belief in two principles. The first principle states that there is a demand for symmetry. One must have good reasons to considering a belief doubtful and, symmetrically, one must have good reasons to considering it worth believing. The second principle states that justification is a problem-solving activity. Justification does not arise when there are no problems to solve, namely a suspicion that a belief may be false. In other words: agreement without suspicion prevents justification.

Who justifies and to whom? Larmore seems to think that individuals may all justify to the others as well as to themselves. Accordingly, everybody may be a source of justification in her or his community of meaning. In spite of the need for a community of meaning, Larmore also affirms that we, the community, believe in a set of universal moral duties. Universality is rooted in the community's form of life (where else could it be grounded?), but it is not less universal for that matter. So, apart from the communitarian "we" that justification addresses, there is also a universal "we".[167] Although justification must address the others,

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[167] See Larmore (1996: 63).

a set of beliefs is not justified because we, the community, adhere to it. As explained above, agreement in the community actually blocks the procedures of justification. If justification does arise, this means that we, the community, are divided and that we have to appeal to our moral we. I may add that, when this process is in motion, it is clear to me that a universal audience is also being addressed. This way of conceiving the receiver of justification used in this dissertation since the first chapter seems to me perfectly compatible with Larmore's account.

A last question: what is the purpose of justification? The purpose is to attain the truth. However, the moral facts the truth of which one wants to attain are not perceptual but rather facts of reasons. These moral facts belong to the realm of normative ideas and not to the realm of physical objects. I suppose that the idea of ideal agreement as presented in the first chapter is precisely the way to attain the moral truth which Larmore is referring to. Ideal agreement seems also the most adequate way toward truth or correctness in a pluralist context such as the one political liberalism addresses.

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Interestingly, Larmore considers that this model of justification is neither foundationalist nor coherentist. However, he calls his model the "contextualist view of justification".[168] For Larmore, both foundationalism and coherentism share the view according to which beliefs *must be* justified. They disagree about the way justification should take place. For coherentists, justification proceeds through the mutual support of many different considerations (Rawls is, of course, an example of this view).

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[168] For this point, the best source is Larmore (1996: 59-64). See also Larmore (1996: 33-63).

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Foundationalists, on the other hand, think that justification proceeds from some proved set of beliefs. Against both these views, Larmore's contextualism asserts that justification proceeds starting from our existing beliefs and only if they become doubtful. Otherwise, those beliefs require no justification.

In this model of contextualist justification - like in other aspects of his work - Larmore wants to create a synthesis between what he takes to be the main ideas of enlightenment and romanticism. More precisely, he wants to synthesize enlightened rationalism and romantic historicism. Following Hegel, Larmore thinks that reason and history are not like oil and water. Rationalism was often conceived as a way of viewing the world from an Archimedean point. This implied an ontological conception of reason - the example of Kant comes to mind - independent from historical context. Instead, historicism privileged the rootedness of ideas but ended up in historical relativism - here, it is Herder who comes to mind. According to Larmore, both enlightened rationalism and romantic historicism misrepresent the relation between reason and history. Whereas rationalism flies from historical context, historicism remains stuck to it. However, contextualist justification acknowledges the truth in historicism, namely that justification is located in coordinates of time and space. Contextualist justification also acknowledges the truth in rationalism, namely that justification has a universalist content because one holds beliefs which one finds to be true beliefs and not just the beliefs that one happens to hold. In the contextualist model of justification, reason and universality come together with history and location.

So far, the general features of the contextualist model of justification have been outlined. The model presented by Larmore is interesting because he affirms contextualism but not coherentism,

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although these two aspects are usually associated. This is the result of the stress on the community of meaning and on the non-existence of justificatory problems outside this community. As Karl Marx would put it, humanity only raises the problems that it can solve. And solve it can, according to Larmore, because contextualism coexists with the possibility of true and universal moral beliefs.

Because the model of justification in Larmore's theory is already outlined, one must move to the content of justification. The basic content of justification at work in the political philosophy of Larmore lies in the idea of neutrality and its *rationale*.

4. Neutrality

In a context of reasonable disagreement, properly justified principles of justice have to be neutral. In this sense, neutrality implies that the state should not promote substantial ideals of the good life whenever they are controversial in society. Whereas the ideas of reasonable disagreement and contextualist justification are the two pillars of Larmore's political liberalism, the idea of neutrality is its centerpiece.

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The idea of neutrality is particularly slippery. As Jeremy Waldron writes,

> We talk about *the* liberal view and *the* doctrine of liberal neutrality, but … there are in fact *several* such views, each based on premises and yielding practical

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requirements that differ subtly from those involved in each of the others.[169]

Although my interest here is exclusively to get a clear picture of Larmore's view - as opposed to *the* liberal view - of neutrality, some previous clarifications may prove useful.

The idea of neutrality applies in other domains. People talk about (or deny) the neutrality of science and technology in their methods and findings, the neutrality of mass media about the news they publish and broadcast, the neutrality of market institutions towards the interests of consumers and producers, and the neutrality of the contents and methods of teaching in schools. In all these cases, it is not the neutrality of the state that is, *prima facie*, at stake (although it may also be the case, for instance in public education or state intervention in the economy). The idea of neutrality is also often used in international relations. People talk of neutral countries in a situation of war. In this case it is indeed the neutrality of the state that is at stake, but in relation with other states and not with its own citizens. None of these meanings of neutrality is relevant in the context of this dissertation. Here, the idea of neutrality applies to the liberal state (the subject of neutrality) *and* only in its relations with the conceptions or ideals of the good life and comprehensive doctrines (the objects of neutrality) of its citizens. Let us clarify both aspects.

Conceptions of the good life, recall, are constituted by what individuals value in human life. They include ends, attachments and loyalties. These conceptions or ideals may change over an entire life span, but they tend not to change very often. Conceptions or ideals may be linked to fully or partially

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[169] Waldron (1991: 143).

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comprehensive doctrines, which justify the options epitomized in the ideals of the good life. Thus, comprehensive doctrines are the world views that develop and articulate ideals of the good life. Some people work out their own comprehensive doctrines. Most people identify with the comprehensive doctrines of churches and other groups in society. Still others feel no need to link their ideals of the good life with comprehensive doctrines. In the latter case, comprehensive doctrines are unarticulated and indeterminate.

The idea of the liberal state is used here in a loose way. The liberal state ensures the basic rights and liberties familiar from modern constitutionalism. In this kind of state, the exercise of political power is limited by those rights and liberties and submitted to a system of checks and balances. Elections by direct and universal suffrage allow for the peaceful replacement of governments. A non-liberal state - whether despotic, totalitarian, authoritarian or "communitarian" - can never be the subject of neutrality. The feasibility of neutrality implies the maintenance of a sphere of autonomy of the individual citizen, which is a distinctive mark of the liberal state.

The neutrality of the state (as defined) towards the ideals of the good life (as defined) does not mean inaction or indifference. On the contrary, the state has to act in order to show its neutrality. This neutrality has to be apparent at some level: the constitution and ordinary legislation, the adjudication of the law, the normal working of the administration, the definition and implementation of specific public policies. In other words, if there is state neutrality, there must be some concrete application of the concept.

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Where does Larmore's idea of neutrality stand within this conceptual framework? Larmore thinks that neutrality is the

central feature of the liberal state. The state should not promote any conception of the good life because of its intrinsic superiority, whenever these conceptions of the good are controversial in society. Here, two aspects should be emphasized. In the first place, Larmore does not think that non-controversial personal ideals of the good should be included in the restrictions of neutrality. Ideas of the good which may be shared in society may be promoted by the state. Secondly, the avoidance of promoting any controversial ideal of the good life for intrinsic reasons does not prohibit the state from doing exactly that, but for extrinsic reasons. This is both a familiar and a difficult point.[170] Nevertheless, it is part of Larmore's doctrine of neutrality that extrinsic reasons may justify the interference in specific ideals of the good through state action.

These two aspects are important because they show that Larmore's idea of neutrality is less restrictive than it seems to be at first glance. Take the example of state policies to prevent drug abuse, including "moralist" publicity campaigns and legal penalties for drug users (and not only for drug dealers). Although neutrality seems to exclude this kind of state action, these policies could easily be justified because, in some contexts, they are consensual or because, more commonly, there is an array of extrinsic reasons to support them. Invoking the effects of drug abuse at the level of public health, criminality, public nuisance and disorder may suffice to justify those policies, with no need to argue with the superiority of drug-free human lives. This does not mean that neutrality invites these kinds of policies. However, it does mean that neutrality does

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[170] The first author to confront this kind of difficulty was probably John Locke in *A Letter Concerning Toleration.* Accordingly, killing of animals for religious purposes should not be prohibited by the magistrate on religious reasons. However, the magistrate may invoke non-religious reasons like the need of the

not prohibit such policies. At this level of abstraction, no further considerations are needed. Although some may find this kind of justificatory operation too manipulative, nothing forbids considering it acceptable insofar as the use of the idea of neutrality is candid. Neutrality is not intended to lead to very specific lines of action. Neutrality is a political principle, or perhaps a meta-political principle, but not an all-purpose decision-making criterion.

So far, I have shown the meaning of neutrality for Larmore within the conceptual framework that I previously defined. However, the main contribution of Larmore to the semantic of the word is at the level of the distinction between neutrality of outcome and neutrality of procedure. Unlike so many writers who confuse these two interpretations, Larmore traces a clear distinction between them.[171] Accordingly, he states that "neutrality is not meant to be one of *outcome* but rather one of *procedure*"[172] regarding political justification. There is not such thing as a condition of neutrality of society which the state should try to achieve. The domain of application of the idea of neutrality has to be found at the level of justification of political choices. According to this constraint, the state may legitimately pursue many different goals as long as they are justifiable in a neutral way. If a given justification is procedurally neutral, the action of the state conforms to the ideal of neutrality, whatever the actual consequences.

5. The Neutrality of Neutrality

community to increase the stock of cattle. The first kind of reason is intrinsic, whereas the second kind of reason is extrinsic. See Locke (1689: 36-37).
[171] One author who does *not* make the distinction is Joseph Raz. See Raz (1986: Captor 5).
[172] Larmore (1987: 44).

It is a distinguishing feature of Larmore's political liberalism that he conceives of the idea of neutrality as being in itself neutral. In other words, Larmore believes that he can provide a neutral justification of the neutrality of the liberal state. This justification forms the public morality of the state and the ultimate basis of its legitimacy. Two norms do the necessary justificatory work.

In the first place, there is the *norm of rational dialogue*:

> In discussing how to solve some problem (for example, what principles of political association they should adopt), people should respond to points of disagreement by retreating to neutral ground, to the beliefs they still share, in order either to (a) resolve the disagreement and vindicate one of the disputed positions by means of arguments that proceed from this common ground, or (b) bypass the disagreement and seek a solution of the problem on the basis simply of this common ground.[173]

The retreat to common ground - whether to resolve a disagreement or simply to bypass it - shows the "pragmatic role" of neutrality in deciding about the actions of the state. There is clearly the need of finding this common ground to decide about matters that bind us all together. However, this necessity does not preclude the public expression of disagreements linked with conceptions of the good and comprehensive doctrines which are often incompatible. According to Larmore, there must be both full-disclosure and self-

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[173] Larmore (1996: 134-5).

restraint whenever it is necessary to decide about the principles that are imposed to us all by the coercive power of the state.[174]

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The norm of rational dialogue is not enough. Another and more fundamental norm requires that rational dialogue goes on: the *norm of equal respect for persons*. Larmore states:

> The norm I have in mind comes close to the kantian rule that we should never treat other persons solely as means, as mere instruments of our will; on the contrary, people should always be treated also as ends, as persons in their own right.[175]

In spite of the obvious similarity with one of Kant's formulations of the categorical imperative, this norm should be read politically, not metaphysically.

Larmore recalls that the basic problem for political philosophy is the question of coercion. According to the political principle of equal respect for persons, compliance with the dictates of the state - i.e., the legitimacy of coercive power - does not rest on the brute use of force, but rather on the agreement of equal persons. To think differently would amount to treat people like means for the power of the state. To treat others as equals means that political principle should be acceptable by all, independently of their different ideals

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[174] At first glance, this norm of rational dialogue seems close to Jürgen Habermas' idea of validity of institutional arrangements through the consensus of individuals engaged in the argumentative practices of an ideal-speech situation. In this idealized situation, principles are valid when all the participants may endorse them on the basis of a non-constrained and rational motivation. Nevertheless, Habermas' view seems even more indeterminate than Larmore's (and certainly more indeterminate than Rawls'). Moreover, Habermas is not a political liberal but a comprehensive democrat. For Larmore on Habermas, see Larmore (1996: Chapter 10).

of the good life. This interpretation of the norm of equal respect for persons disconnects it from the Kantian ideal of autonomy, which is a comprehensive moral view and not just a political principle.

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These two norms presuppose that people - citizens in any given political community - want to comply with them. Larmore is aware of the fact that this is often not the case. Nevertheless, political principles may still be justified "though with the justification premised on the (counterfactual) supposition that they do prize most highly the norms of rational dialogue and equal respect."[176] So, our old friend 'ideal agreement' (from the first chapter) is still at work in the ultimate justification of Larmore's principle of neutrality.

However, Larmore also emphasizes the need for a community with a common life, to safeguard liberal neutrality. This common experience "must be the life of a people united by what they have learned together from the things that came once to divide them."[177] A shared history and memory, then, are of fundamental importance for a people to become a political community in which liberal neutrality may thrive. Justification, as we saw in a previous section, is always contextualized. If no common life exists, disagreements cannot be superseded through neutrality. Instead, they will give rise to the clash of the parties or the exit of the weak.

6. Problems of contamination (I): fallibilism

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[175] Larmore (1996: 136).
[176] Larmore (1996: 142).
[177] Larmore (1996: 144).

Larmore clearly tries to overcome the problem of contamination (in my words, not in his words) in his account of "a context of pluralism". This is why he says that what Rawls calls "pluralism" is, in fact, "disagreement". However, I have already suggested that the question is not merely terminological. Had Rawls replaced "pluralism" by "disagreement", nothing would have changed in my critique. Nevertheless, Larmore is helpful when he disconnects pluralism of the Berlinian kind from his account of disagreement. Moreover, Larmore also rejects a contamination by scepticism and this one must examine more carefully.

The recognition of reasonable disagreement, Larmore contends, amounts only to the expectation of finding controversy whenever ideals of the good life are in discussion. From here, there is no need to conclude scepticism. Faced with disagreement, I may still affirm the truth or correctness of my views. Other people's views may be false, yet reasonable, i.e., held in good faith and with common reason.

The idea of reasonable disagreement may, as it does in Rawls' theory, already contain a contamination. However, Larmore does not develop a theory of the reasonable like Rawls does. He swiftly links the recognition of reasonable disagreement with the need to retreat to neutral ground, which in its turn is justified by the two norms of rational dialogue and of equal respect. Thus, the detection of contamination must be done at the link between disagreement and neutrality.

It is again Brian Barry who leads the attack against the disavowal of scepticism by Larmore.[178] Why - asks Barry - should one proceed like Larmore and decide to go from the recognition of

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[178] See Barry (1995: Section 28).

reasonable disagreement to the stage of neutrality? The answer must be, he contends, because one has some scepticism toward his or her own views. Even sympathy towards others' views or the desire for civil peace invoked by Larmore establish no privileged link with the idea of neutrality. For instance, the conversion of the other in a religious dispute may be an alternative to neutrality.

However, Larmore's main point is the ultimate justification of neutrality by the norm of equal respect. One has to be neutral in order to show equal respect for everyone. Only this norm establishes the neutrality of neutrality. Nevertheless, Barry thinks that the idea that rational dialogue should proceed because of equal respect must also be accompanied by moderate scepticism. Otherwise, equal respect could mean to affirm politically the superiority of one's ideal of the good life. One shows equal respect for others by providing them with the political framework in which they may have good lives. It is because people admit that they cannot produce a rationally compelling argument in favour of their conception of the good that the continuation of rational dialogue backed by the idea of equal respect points to neutrality. Thus, Larmore does need scepticism.

Of course, it is already clear from the previous chapter that what Larmore really needs is, like Rawls, fallibilism. Without the admission of fallibilism about ideas of the good life and the arguments that support them there is no reason to take pluralism or reasonable disagreement seriously. Instead, there is a motivation to deny the moral relevance of this pluralism or disagreement, even if one cannot ignore its sociological reality. A normative liberal theory may then proceed without any kind of justificatory restraint.

7. The indeterminacy of justice

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Neutrality based on the two norms of rational dialogue and equal respect is the central political principle of the liberal state, but it does not have to be the only one. Accordingly,

> Neutrality understood procedurally leaves open to a large extent the *goals* that the liberal state ought to pursue ... I do not think that the protection of life and property are the only goals that will satisfy this condition. The ideal of neutrality would not prevent a state from undertaking to ensure a particular pattern of wealth distribution, so long as the desirability of this pattern does not presuppose the superiority of some views of human flourishing over others held in society.[179]

A liberal conception of justice - such as justice as fairness - may be justifiable as long as it conforms to the principle of neutrality. Because the idea of neutrality is too abstract and empty, some principles of justice are required in order to assign the rights and duties of individuals in society. Neutrality leads to justice and justice requires neutrality. Larmore elaborates this latter point invoking the Humean doctrine of the circumstances of justice (see Chapter I, section 7.).

The internal circumstances of justice show that people's ends are multiple and conflicting. This situation translates into conflicting claims about the advantages of social cooperation. Thus, the need of justice to assign rights and duties to individuals. Whereas Hume associated these circumstances to the limited

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[179] Larmore (1987: 44).

benevolence of individuals (which implies a comprehensive moral view), Larmore - like Rawls - interprets the same facts at the light of the reasonable disagreement that characterizes our modern condition. The solution, then, must be some kind of neutral principles of justice.

Nevertheless, Larmore does not develop a theory of justice of his own, and he does not even present a liberal political principle of legitimacy. The principle of neutrality remains extremely abstract and with a weak substantive content.

Although he does not have a theory of justice nor a theory of political legitimacy, Larmore suggests that the Rawlsian device of the original position is a way of articulating the principle of neutrality. Indeed, individuals in the original position ignore their particular conceptions of the good, as we saw in the previous chapter. The conception of justice chosen in the original position is a neutral conception of justice because it is chosen on neutral grounds.

Larmore further thinks that his norms of rational dialogue and equal respect for persons are followed by Rawls in his political constructivism. In fact, Rawls sees freedom and equality of citizens as the most basic aspects of political constructivism. Moreover, the idea of rational agreement plays an important role in the argument of the original position and in the overlapping consensus.

8. Problems of contamination (II): perfectionism

On the face of it, Larmore's political liberalism evades the problem of contamination by perfectionism by not conceptualizing justice. Instead of entering the specifics of a liberal political conception of justice, he places his theory at a high level of

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abstraction. In view of reasonable disagreement, principles of justice must be neutral. These can be the principles of justice as fairness formulated by Rawls, but they can also be different. There is no argument in Larmore's writings that favours one liberal political conception of justice over others. Nevertheless, Larmore acknowledges that political liberalism is not only about disagreement and neutral justification but also about principles of justice. He simply does not specify them.

Nevertheless, the lack of a substantive moral conception that citizens can affirm together, to paraphrase Larmore, may still hide a perfectionist view. Not surprisingly, William Galston thinks it does. He finds implausible that the continuation of neutral dialogue the way Larmore conceives it may be based on equal respect. As he says, "We show others respect when we offer them, as explanation, what we take to be our true and best reasons for acting as we do."[180] Accordingly, one must deny that there is "any generalized link between coercion and breach of respect."[181] Here, Barry would conclude the need for scepticism. Galston correctly understands that this is not enough.

According to Galston, what actually sustains Larmore's idea of neutrality is, as in the political liberalism of Rawls, a certain view of the good life. This view affirms the primacy of the political and is unacceptable to people whose ways of life do not include such primacy. Whereas for Larmore the overridingness of political principles is not really problematic, Galston points to the fact that there is no sharp distinction between "overridingness" and "pervasiveness" (of political principles). In the long run, the former becomes the latter. Although the core political morality may be

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[180] Galston (1991: 109).

minimal, as Larmore pretends, "the more seriously one takes liberalism as a core moral commitment, the less likely it is that one's other personal commitments will emerge unscathered."[182] Moral commitments tend to adapt to the overrindingness of the political as opposed to the overridingness of our communitarian attachments.

It is an irony, Galston adds, that Larmore wants to resolve the dispute between enlightened individualism and communitarian romanticism "on the basis of an avowedly Kantian conception of equal respect."[183] Neutrality and rational dialogue grounded in equal respect are the main values of Larmore's liberalism. These are also individualistic and enlightened views, which are not less controversial than the views that Larmore wants to supersede.

In the end, Larmore's political liberalism seems also contaminated by liberal perfectionism. This is a moral comprehensive doctrine that goes well with fallibilism in the account of reasonable disagreement and the need to retreat to neutrality.

9. Why ask for less rather than justice?

Charles Larmore's political liberalism is more formal and less substantive than Rawls'. Instead of pointing to a liberal political conception of justice that may be the focus of an agreement by citizens despite all their differences in ideals of the good life, Larmore prefers to settle the conditions - of neutrality - for a

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[181] Ibid.
[182] Galston (1991: 297).
[183] Galston (1991: 299).

conception of justice in a context of reasonable disagreement. Larmore's focus, then, is on neutrality rather than justice.

However, the two theories - Larmore's and Rawls' - fit together in the sense that the political liberalism of Larmore may be considered the meta-theory of Rawls' political liberalism. Whereas Rawls centers his efforts on the definition of the liberal political conception of justice, Larmore shows the most correct way to interpret the pluralist context and to understand the strictly political nature of Rawls' principles: as neutral and based in equal respect (Rawls would say "reciprocity").

The problem with Larmore's political liberalism is that it does not solve the inconsistencies in Rawls' political liberalism and, therefore, is open to the same kind of criticism summarized in the idea of contamination by comprehensive doctrines both fallibilist and perfectionist. Moreover, while the political liberalism of Larmore does not do better than Rawls', it does also less than its theoretical companion. This is a consequence of the indeterminacy of justice attached to the idea of neutrality. This indeterminacy, on its turn, results from the less idealized and more pragmatic strategy of Larmore's political liberalism. However, if this strategy is unable to correct the failures in Rawls it would perhaps be better to return to the rejected solution of the Rawlsian theory.

A Rawlsian-like solution to the problem of political liberalism has the advantage of providing us with a methodology and a conception of justice that tries to accommodate as much pluralism as possible. Even if it is not really freestanding and breaks the initial promises of uncontaminated justification, a Rawlsian-like solution is still better than the empty hands of Larmore's political liberalism. If the problems are the same with both theories, why ask for less rather than justice?

10. Final remarks

The political liberalism of Larmore may be interpreted as an attempt to escape the gaps in Rawls' political liberalism. Contrary to Rawls, Larmore does not start with a conceptualization of justice but by setting up the basis of tolerance in a pluralist society. In other words, he starts with a pragmatic view of disagreements about the ideal of the good life. However, he does not explain them sufficiently. Moreover, he immediately concludes on the need for neutrality, without seeing the concurrent need for fallibilism.

When Larmore establishes the constraints of neutrality for a political conception of justice, his theory is already contaminated by fallibilism and the contamination evolves smoothly in the form of liberal perfectionism. Neutrality is not neutral in terms of its justification and the full justification of neutrality requires a form of liberal perfectionism. The contamination of Larmore's political liberalism is as serious as in Rawls', but Larmore delivers less. Neutrality is not justice. Although Larmore admits principles of justice similar to the Rawlsian conception, his conception of justice remains indeterminate. Neutrality is not even a principle of political legitimacy because it remains at a very abstract and meta-theoretical level.

However, a reading of Larmore's political liberalism as unable to correct the problems in Rawls' will not lead back to the Rawlsian solution of the central problem to which political liberalisms attempt to answer. The next chapter will show why a return to Rawls will not work.

CHAPTER IV

PLURALISM WITHIN JUSTICE

1. Pluralism J: a fact

2. No conceptualization? No dialogue?

3. Return to *ad hoc* centralism

4. Reasons for belonging

5. Reasons for belonging to oneself

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If the solution to our central problem provided by the political liberalism of Rawls is, all things considered, more satisfactory than the alternative or complementary solution presented by Larmore, there is a strong motivation to go back to Rawls or to a Rawlsian-like solution. However, this strategy is not advisable and the reason for this lies in deeper difficulties - not analyzed so far - to be found in the theory of Rawls. The thrust of this chapter is to make apparent that these deeper difficulties derive from another form of pluralism.

Pluralism of world views or comprehensive doctrines (from now on: pluralism D) is still, in a sense, a simplified perspective. This kind of pluralism may be considered in relation to the same conception of justice and a compatible idea of the reasonable. However, in this case, the pluralist challenge is too modest. The restriction of relevant pluralism to some forms of pluralism D prevents the theory from addressing pluralism of the conceptions of justice themselves (from now on: pluralism J), which is not just a product of contamination.

Current political liberalisms barely touch this problem. Instead, I will argue that pluralism J should be taken seriously from the outset. The question I am concerned with is not the simple acknowledgment of actual pluralism J - mentioned in section 1. - but an *a priori* view which locates this pluralism *within* the procedure of conceptualization of justice, as explained in sections 2. and 3. I will exemplify this new form of pluralism in sections 4. and 5., referring to the work of well-known - but not Rawlsian - liberal philosophers. However, the main argument will be presented in section 6. Pluralism within justice amounts to a form of fallibilism in the process of conceptualization. This fallibilism results from the working of the burdens of reason[184], which affects justice and not only comprehensive doctrines. According to this bootstrap argument, it would make no sense to take seriously pluralism D - as one must - and not to do the same with pluralism J.

In sections 7. and 8. the idea of a well-ordered and transparent society is criticized and the implications of that critique are outlined in section 9. The argument from pluralism within justice leads to the abandon of the ideal of a well-ordered and transparent society, where one conception of justice is the public Charter. However, this abandonment does not imply the lack of usefulness of the work of conceptualizing justice. People should strive for a better society, guided by their own conceptions of justice.

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[184] Rawls used to employ the expression "burdens of judgment" (which I employed in Chapter II), but he now prefers the expression "burdens of reason". On this, compare Rawls (1993) with Rawls (1999). This terminological shift is interesting insofar as it suggests that these burdens do not influence only the link between the universal and the particular in a moral judgment, but also the working of reason in more abstract terms. For instance, in the conceptualization of justice. I welcome this terminological shift.

The conclusion drawn in section 10. reminds one that the argument from pluralism within justice leads to the collapse of the theory of political liberalism as an acceptable solution to our central problem, i.e., the conciliation between a common justice and pluralism in society through the use of argumentative restraint regarding comprehensive doctrines. In fact, even if there were no contaminations of justice by pluralism D, a consensus on the principles of justice and their policy implications would not be feasible due to pluralism within justice.

1. Pluralism J: a fact

The political arena is a place of conflict and clash of different ideas about justice, whether argumentatively developed or not. This may be non-controversial. However, there are two basic ways of making sense of it.

The first consists of some reductionist strategy. In this case, political argument may be seen as a manifestation of a more fundamental reality which may be referred to as "the essence of the political" - whatever that may mean. For instance, according to Carl Schmitt, the "dialectic friend-enemy" defines the essence of the political.[185] Conflicts of ideas about justice are only epi-phenomena. Its true explanation lies elsewhere. Only capturing the essence of the political can one accede to the truth of conflicts about the idea of justice.

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[185] See Schmitt (1932).

Along the same lines, it is possible to go a little further and situate the final explanatory *locus* not in the political itself but rather outside. Accordingly, Marx thought that the political - including questions of rights and justice - belongs to the superstructural level.[186] The fundamental facts, the ones that lie behind historical change and explain it, are to be located at the socio-economic level. The sharpest version of this story, which may be attributed to Marx, contends that the true source of historical change - and, therefore of changing and conflicting views about justice - is the deterministic development of the "forces of production". Other examples of reductionism could be given, whether taken from inside the political life, or from outside.

Another basic possibility, however, consists of avoiding this reductionist strategy and taking the conflict and clash of ideas about justice as something worthy of attention in itself. For that purpose, it is not necessary to argue against the reductionist strategy (actually it is doubtful that one can argue against the reductionist strategy at all, without being interpreted in reductionist terms). Where the essence or the true reality of conflicts about justice is to be found - and whether or not this is a genuine intellectual problem - I shall leave aside. More modestly, I presume that any phenomenological account of the political discourse reveals the conflictual character of ideas about justice. Rawls could call this "the fact of pluralism J".

The fact of pluralism J is what actually triggers the work of justification of justice. The recognition of this fact of pluralism as such may (perhaps) be considered theoretically neutral. However, once the work of justification unfolds, it must provide an

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[186] A good illustration of this is Marx (1848).

interpretation of the plurality of conceptions. I.e., each conceptualization of justice must explain why and how its competitors are wrong. In this case, the fact of pluralism J is overcome from the point of view of the justified conception. Nevertheless, this work may prove difficult or even unfeasible, as the next section shows.

2. No conceptualization? No dialogue?

My question is: what can be done, theoretically, with the fact of pluralism J? Although conceptualizing justice implies ruling out the views about justice which do not fit into a favoured conception, what is usually taken as justice should also be taken into account. The relevance and even the meaningfulness of the conceptualization of justice seems to depend on its capacity to address the others who are concerned with justice.

Aristotle thought that the best place to start in order to make sense of some phenomena - in our case, conflicting arguments about justice - is the *endoxa*, i.e., "the common conceptions" acceptable for "the many and the wise".[187] The *endoxa* is not the collection of meanings that are given to a certain term by a philosopher or a number of philosophers. Instead , it is the collection of meanings given in the ordinary usage. When the work of conceptualization begins, a good number of *endoxa* should be addressed, whether approvingly or critically. In other words: a conceptualization of justice is supposed to contain or reject many of the intuitive ideas which we usually associate with 'justice'. In

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[187] Swanton (1992: 23).

this process, however, a first problem arises which Aristotle did not consider.

The problem I have in mind is raised by Wittgenstein's views on the grammar of a term, and applied by Elisabeth Wolgast to 'justice'. The grammar of a term reveals its use and application in context. For Wolgast, this grammatical approach shows that "justice is not an original notion from which injustice is derived but vice versa, and this fact is what makes it so difficult to say what justice is."[188] Accordingly, she denies that a sense of injustice would imply the identification of some state of affairs that would be considered just (i.e., a well-ordered society, in the Rawlsian jargon). The sense of injustice is the capacity to feel the wrong. This is a basic moral phenomenon, which does not imply a definition of justice. The idea of justice becomes understandable only against the background of injustice as the moral feeling of wrong. Thus, one should not look for a positive conception of justice as a model to assess injustice.

If the message behind the *endoxa* is fully conveyed by this grammatical approach, to conceptualize justice amounts to missing the target. Justice is an indefinite corrective of injustice and it cannot be expressed as a conception. This is Wolgast's thesis. Nevertheless, it seems to me that a conception of justice is important, even if injustice is primordial. The conceptualization of justice is the elaboration of the sense of injustice and the attempt to give it a discursive reality. Wolgast's argument leads to the conclusion that, because there is "no Archimedean point" (a ready-made conception of justice), the work of conceptualization makes no sense. People do have diverse and conflicting ideas about

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[188] Wolgast (1987: 132).

justice. This is the fact of pluralism J. However, the idea that this situation should prevent one from conceptualizing justice is mistaken. It is important to know how the sense of injustice is formed and expressed in context; but it is also important to know what to do with this moral feeling. The conceptualization of justice provides the guidance. Through the principles that specify a conception of justice, one thinks how to solve the practical problems related to the reform and construction of social institutions. Without the work of practical reason and the conceptualization of justice, one's sense of injustice would be invisible. It could neither be coherently expressed in the public forum, nor applied to legislation and policy. These are good enough reasons to persevere in the attempt to figure out what justice is.

<div align="center">*</div>

However, there is a second Wittgensteinian challenge, as it were, which may be stronger than the first. This second challenge is related with the idea of "form of life". It is not clear what a form of life meant for Wittgenstein. It probably meant the fusion of biological capabilities and social training which work as the background of the speaking of language in general, and of the grammar of justice in particular. The sense of injustice - like all moral feelings - is not inborn. It is part of a form of life.[189] Now this implies a good deal of sharing, but also the possibility of closeness inside a form of life. Thus, Wittgenstein thinks that communication through language may be precluded because of disagreement in forms of life. If the latter occurs, conceptual common ground is lacking. This is where the troubles begin.

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[189] On this, see Wolgast (1987: Chapter 9).

Suppose that those who start conceptualizing justice realize the fact of pluralism J. Moreover, they have confidence on the meaningfulness of that fact. On the face of it, they must find disagreements about justice, whenever they are not able to find agreements. However, Wittgenstein's views as I have just expressed them deny this and may make the debate of justice meaningless, when many different *endoxa* are addressed, formed in diverse contexts of human lives. If conceptual common ground does not exist in different forms of life, people may seem to talk to each other when they are, in fact, talking past each other. In this situation, they cannot disagree about justice because their disagreement is not about the same 'thing'.

Susan Hurley has addressed this challenge, which she calls a "non-centralist" view of reason-giving. In the non-centralist view, no general prior concept exists; but if one does not possess the specific reason-giving concepts of the others, substantive disagreement cannot obtain. Thus, Hurley concludes, "non-centralism threatens to deprive us of a sense in which to disagree about things we seem to want to disagree about."[190] Now there are two ways of overcoming this threat. The first one consists of showing that real disagreement is possible, even within a non-centralist view. The second one consists of adopting a "centralist" approach.

Let us consider the non-centralist approach. Susan Hurley contends that, if one knows the different criteria of the other parties and if one appeals to "exemplary applications that display relationships"[191], one does not need a core concept, which is a constraint from the outside of the reason-giving process. As Hurley puts it: "Any disagreement about what ought to be done, all things

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[190] Hurley (1989: 30).

considered, requires that there be some conceptual *locus* of disagreement, but there need not be one conceptual *locus* of all such disagreements."[192] Moreover, this way of making sense of substantive disagreement about justice without a core concept makes relativism in practical reason impossible. In fact, there is no standpoint from which judgments about what ought to be done may be relativized.

By contrast, the way to proceed within a centralist approach is through the distinction between the core concept and the conception of justice. This approach is different because an agreed concept is much more than a "display of relationships". The latter assures the mutual relevance of the conflicting ideas. Differently, a core concept establishes a fixed point from which disagreement may proceed in an orderly form.

3. Return to *ad hoc* centralism

I think that both non-centralist (in a non-relativist interpretation, such as Hurley's) and centralist views are useful in the reflection on justice and pluralism. Both are ways of overcoming what I have called the second Wittgensteinian challenge. Whereas non-centralism keeps us closer to the large spectrum of the *endoxa,* centralism allows for a necessary theoretical breakthrough. In fact, both views may be seen as different stages of an interpretative process in *continuum,* according to a suggestion by Ronald Dworkin previously explored in Chapter I. According to Dworkin, recall, justice is an institution - i.e., a socially shared practice, usually descending from other practices -

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[191] Hurley (1989: 47).
[192] Hurley (1989: 49).

that we interpret. Whereas the first and pre-interpretive stage allows the identification of the institution and the assurance that disagreements about justice are genuine, the second and interpretative stage is the philosophical one, which triggers new forms of disagreement. At this second stage, philosophers capture the *plateau* from which conflicting arguments about justice proceed. However, there are many *plateaus*. The final stage is the post-interpretative or reforming one. It establishes what a practice requires.

Dworkin thinks that the pre-interpretive stage is more important than the sharing of the same *plateau*, or core concept. I agree with him. A meaningful debate about justice should not set up borders for our understanding of a practice. However, for the purpose in this chapter - i.e., the argument from pluralism within justice - something similar to the 'core concept or *plateau* / conception' distinction is more interesting. Only a centralist view gives a first theoretical definition to the idea of justice, placing the argument at an *a priori* level. Within a centralist view we will not be facing the *endoxa* (i.e., "the fact of pluralism J") anymore. This is the *a posteriori* level that triggers the justificatory practices. Nevertheless, the kind of pluralism J we are about to find, starting from a definition of justice, is not empirically detectable.

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Let us suppose that conceptions of justice are specifications of a basic idea of justice as *the first and substantive standard for assessing social institutions, considering the benefits and burdens which the entire set of institutions carries out for equal individuals.*

What I wrote in previous chapters about this basic idea of justice still stands. Accordingly, justice is prior and allows for a substantive assessment of institutions (and policies). Here, I want

to concentrate on the the content of individual benefits and burdens arising out of the institutional framework. This content is open to specification in the different interpretations of justice. However, the most important feature of the concept for the argument here is the idea of 'equal individuals'. Recall that a basic idea of equality is also present in the model of justification adopted in the first Chapter. Justification addresses equal individuals, who are also sources of justification. An idea of equality is derived from the requirement of justification and incorporated in the concept of justice.

Let as suppose that there is freestandingness and that no contamination will influence the specification of the basic idea of justice. What kinds of reasons should this justification take into account when addressing equal individuals? Apparently, the idea of justification to equal individuals means something substantive. Thus, it should be easy to establish the kinds of reasons which meet each and every individual basic interests. However, this is not the case. Disagreements about justice start at this most fundamental level: the definition of the relevant reasons is already a matter of contention. Two examples illustrate this idea in the two following sections.

4. Reasons for belonging

The first case arises from the communitarian critique of Rawls, which is particularly clear in the work of Michael Sandel.[193] Whereas Rawls presents a view of the parts in the original position as rational choosers, under the constraints of reasonableness built in the description of the initial situation,

Sandel considers this picture of the self as "disembodied" and "disembedded". Moreover, Sandel argues that the Rawlsian view is too individualistic and independent from our constitutive ties and attachments (on this, see II, 7. above). Although I consider this judgment wrong - because Rawls is not committed to any ontological view of the person, or of the self - I want to focus on a particular consequence of Sandel's argument. Sandel points out that membership in groups is important for individuals and that they may want to share with some groups and not with others. Rawls seems to presuppose that the principles of justice chosen in the original position apply only to a single uniform society, where special ties already exist. Nevertheless, if membership in a specific society (a closed system, where people enter by birth and exit by death) is so important, why not to concede to Sandel the importance of other special groups besides the society at large?

Here, the selection of relevant reasons is paving the way to a conception which is likely to differ from Rawls'. A different weight is given to considerations related to belonging, perhaps because of an experience (ours, in the societies of "real liberalism") where bonds of friendship are weak. Whether or not this kind of diagnosis of liberal societies is superficial, I shall leave aside. Furthermore, I will not even take into consideration the unfortunate communitarian assumption that Rawls (or Kant) is to be held responsible for a social context where the sense of belonging would be, as it were, "withering away". I take the importance of membership in groups as a normative consideration which could - but was not - taken into account by Rawls in the conceptualization of justice. Accordingly, it seems reasonable to acknowledge that this kind of suggestion derived from Sandel deserves the benefit of the doubt,

[193] See Sandel (1982).

even from a strictly Rawlsian standpoint. This is precisely the standpoint of Will Kymlicka, who is sensitive to the emotional appeal of Sandel's communitarianism, albeit denying explicitly its theoretical worth.[194]

Reasons related to belonging become central. Once these relevant reasons are taken for granted, Kymlicka's argument may proceed without major obstacles. Kymlicka argues that culture should be considered, in Rawlsian terms, a social primary good. The system of liberties in Rawls - and in liberalism in general - is not an end in itself. One of its aims is to allow individuals to choose (and modify) their conceptions of the good without being discriminated against by social institutions. For Kymlicka, this implies a context of choice in which our conceptions of the good are formed. This context is the cultural community.

The idea of cultural community in Kymlicka does not include an unchangeable historical character. Accordingly, a given culture continues to exist even when norms, values and institutions are reformed because of the changing views of the members of the community. However, Kymlicka writes, "People *are* bound, in an important way, to their own cultural community."[195] Thus, the need to preserve the particular context of choice to which each individual *is* bound since his or her birth. The way to do it (theoretically) is to accord to the different cultural communities the *status* of a social primary good.

Kymlicka goes on to argue that only the allocation of special rights to endangered cultural communities may secure their survival, and that this is what our best interpretation of liberal

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[194] The philosophical argument of Kymlicka which I will be referring to was made in Kymlicka (1989). He developed his theory of multicultural politics in a more sociological and political way in Kymlicka (1995).

equality actually requires.[196] What is interesting for my argument in Kymlicka's thesis is that the fundamental reasons of the 'equal individuals' whom we have to consider in justification may include cultural belonging. If this is so, however, a conception of justice will be necessarily different and conflicting with another one which does not consider belonging to a specific cultural community (whatever that may mean) a social primary good.

The choice of Kymlicka's theory to illustrate one among other contentious interpretations of a similar basic idea of justice is important because his approach is very close to Rawls'. One does not need to go very far from the Rawlsian theory of justice to find formulations that, through a different but appealing and perhaps convincing balance of reasons drive us quite far from the conception of equal rights that is central to the Rawlsian approach.

5. Reasons for belonging to oneself

The second example I want to give is Robert Nozick's critique of Rawls' "communitarianism" in the question of personal assets.[197] Whereas the previous example illustrates a critique of Rawls from a collectivist point of view, this new example is intended to show an objection from an individualist point of view. In the latter, belonging is not part of "equal person's" reasons. On the contrary, those kind of reasons are seen as violations of personal integrity. Entitlements are protections against that possibility. They

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[195] Kymlicka (1989: 175).
[196] For a version of this multiculturalist argument which does not rely on liberal equality, see Taylor (1992).
[197] I am referring to Nozick's argument in Nozick (1974: Chapter 7).

prevent talents and other characteristics of persons from being treated as common assets.

Rawls thinks that personal assets are a product of the natural lottery. Nobody deserves them. Accordingly, they are arbitrary from a moral point of view. From this premise, Rawls concludes that nobody should suffer from their natural disadvantages. Special benefits linked to different personal assets are justified only if they are for the advantage of the less fortunate. This is precisely one of the main arguments in favour of the difference principle.

Rawls' reasons may be appealing. However, they are unacceptable for Nozick and, what is more, Nozick's objection has a strong intuitive appeal. Once again, the selection of relevant reasons is done from the outset. For Nozick, Rawls' selection of reasons will not even be taken into account. Although natural assets are arbitrary, Nozick emphasizes that the persons who possess them are moral entities. Thus, any attempt to reallocate natural assets is objectionable as a violation of personal integrity, something like treating people as means (to the welfare of the community) rather than ends. Accordingly, individual talents and abilities may lead to special benefits for those who possess them. The community is not entitled to more that it already has, namely the benefit of including talented or gifted people among its members.

Interestingly, Rawls does not consider the "system of natural liberty", which may represent Nozick's view, in the argument of the original position. This shows the contestability of the argument presented against it in Chapter Two of *A Theory of Justice*.[198] Although the choice argument in the book is the argument of the

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[198] See Rawls (1971: 65 f.).

original position, the "system of natural liberty" is contested by Rawls in a much more intuitive way. It is as if Rawls were admitting that he has no definite argument against the moral force of that specific interpretation of the second principle of justice.

To sum up: Nozick, like Rawls or Kymlicka, is trying to justify justice to equal individuals. Kymlicka thinks that reasons related to belonging should be given more weight. Nozick argues that reasons related to belonging to oneself - as opposed to belonging to the community - should be given priority. Rawls has an individualistic conception of the person - as noticed by communitarians and quasi-communitarians - and a collectivist difference principle that puts natural assets of individuals at the service of the community - as libertarians have remarked. In this sense, Rawls tries to arbitrate between reasons for belonging and reasons for belonging to oneself.

These and other disagreements show that justice pluralism unfolds easily, once the work of specification of the concept of justice is set in motion. Moreover, the content of any conception of justice cannot be separated from further interpretations. Once the principles of justice are spelled out, the natural outcome of the hermeneutic circle will, again, be diverse and new interpretations will arise.

6. Pluralism from within

Now it is obvious that these are things we want to disagree about. As far as I am concerned, I want to disagree with both the quasi-communitarian view of Kymlicka and the view of Nozick. Pluralism within justice does not prevent this kind of disagreement. On the contrary, it shows that we are in presence of *true*

disagreement (not just talking past each other). Nevertheless, I have to admit that the views I want to disagree about are reasonable, and that those views may even be more persuasive for someone equally committed to liberal justification. I must admit that a thin line divides these different theories in the overall weighing of reasons, which nevertheless carry extreme differences in the outcome conception and for the assessment of public policies. The reason for this situation may be found in the Rawlsian epistemological doctrine of the burdens of reason.

Recall from the second chapter that the burdens of reason include the complexity and conflict of evidence, the difficulty in determining the relative weight of relevant considerations, the vague character of concepts and their subjection to hard cases, and the influence of the total experience of each individual in her assessment of evidence and weighing of values. These burdens influence all fields of argument. Other burdens, bearing only on questions of value, include the difficulty of overall assessments due to the existence of different normative considerations, and the difficulty of selecting values, establishing priorities and making adjustments between them.

In its original context, the idea of the burdens of reason explains why people who are willing to find the best common terms of cooperation cannot always agree. Rawls thinks that the burdens of reason apply to comprehensive doctrines but he is not equally clear about the conceptions of justice themselves (I will have more to say about this below). Accordingly, he solves the problem which the burdens of reason raise with the idea of a freestanding, or political, conception of justice being the focus of an overlapping consensus. While agreement on this liberal and political conception of justice is established, disagreement in reasonable comprehensive

doctrines is expected to remain. For Rawls, the latter does not raise problems for the justification of a just basic structure of society.

However, the two examples above suggest that there is not only reasonable doctrinal pluralism but also reasonable justice pluralism. The burdens of reason should be taken into consideration in the very process of conceptualizing justice. When one starts with the definition of justice which I have advanced above, the specification of the idea of equality of individuals as agents of justification in terms of benefits and burdens, or of rights and duties, attributed to citizens by the institutional arrangements of society is necessarily under the influence of the burdens of reason. In order to specify this idea of equality, one has to select the kinds of reasons which have justificatory force. Now there is probably not a single one of the above referred burdens which does not make contentious that selection of the right reasons.

In the two examples of the two previous sections, the influence of the experience of each individual in the assessment of evidence and weighing of values - the last of the more general burdens of reason, in Rawls' list - may be decisive. Kymlicka's theorization perfectly fits the problems of his home country (Canada), with all its national, indigenous and immigrant minorities. Nozick's defence of libertarian rights is a distinguished American tradition (much more than Rawlsian egalitarianism).

The other burdens related to questions of value are also present in the two examples: the difficulty of selecting and prioritizing values, and the existence of a diversity of points to take into consideration in a global assessment, also lead to a situation in which, for some, a special priority should be given to belonging while, for others, priority should be given to belonging to oneself.

To sum up: once one starts with some definition of justice which includes an idea of equality, one is bound to justify *in which sense* each person's reasons matter equally. In Rawls' language, each individual has to be taken as "a source of valid claims". The problem is that these claims are necessarily different and conflicting. Accordingly, there are a number of possible conceptions of justice which should be considered non-rankable, at least for political purposes.

I am not stating that all conceptions of justice derived from a same *ad hoc* concept are worth the same. In this context, non-rankability means that they are equally reasonable, not that they are equally defensible for a given individual. However, if one wants to take pluralism seriously, I see no reason why pluralism D should be taken into consideration, and pluralism within justice should not.

Justice pluralism, seen as pluralism from within, leads to a form of fallibilism. This fallibilism is homologous of the fallibilism found in the Rawlsian theory of doctrinal pluralism. It does not require what is usually understood as scepticism (on this, see section 4. in Chapter II). A conception of justice may still be justified, just as doctrinal pluralism does not prevent people from holding the comprehensive doctrines which they consider to be the better doctrines. Although the conceptualization of justice remains as important as ever, the idea of a transparent society does not. To this point I now turn.

7. The transparent society

The problem I have been dealing with has not gone unnoticed. Jeremy Waldron points out that Rawls spends a great deal of time

dealing with reasonable disagreement about comprehensive doctrines, but that he does not address reasonable disagreement about justice. I take Waldron to be saying with this objection that, if Rawls applies the burdens of reason to the fact of pluralism of comprehensive doctrines, he should do the same to the fact of pluralism J. Waldron further suggests that this fact exists even in a well-ordered society, unless Rawls thinks that the burdens of reason do not apply to *public* reason. If this is the case, however, we are left, according to Waldron:

> with the rather uncongenial conclusion that there is no such thing as reasonable disagreement in politics. The burdens of judgment explain how reasonable disagreement is possible. But the ideal of public reason seems to presuppose that the explanation does not apply to the public issues of justice and right that are under discussion in politics.[199]

Rawls answers Waldron with a quick dismissal. He says that "Jeremy Waldron's criticism of political liberalism as not allowing new and changing conceptions of justice is incorrect."[200] Furthermore, Rawls admits that "there are many [political] liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions."[201] He insists on this point in his more recent comments on the idea of public reason, but he wrote basically the same in *Political Liberalism.*[202]

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[199] Waldron (1999: 153).
[200] Rawls (1999: 583, n. 30).
[201] Rawls (1999: 581).
[202] See Rawls (1993: 164) and Rawls (1999: 581 f.).

However, it seems to me that the family of political conceptions that Rawls admits is extremely narrow. In the first place, these conceptions must all assume the same idea of the reasonable exposed and analyzed in Chapter II. Secondly, these conceptions have to be the product of a political constructivism starting from the ideas of free and equal citizens with their two moral powers. Thirdly, the content of these conceptions must affirm basic rights, liberties and opportunities and assign them priority with respect to the general good or perfectionist claims. Finally, these conceptions must ensure that all have the means to give effective use to their freedoms.

If what was said in the previous paragraph is not convincing enough to show the narrowness of the kind of justice pluralism considered by Rawls, it must be added that Rawls also thinks that "the role of justice as fairness will have a special place within conceptions defining the focus of the consensus."[203] This special place is given by justice as fairness being "based on more central fundamental ideas" and being more stable.[204] So, in the end, Rawls' political liberalism does not give a lot of space to many "new and changing conceptions".

In the framework of Rawls' theory, this approach is probably only logical. Rawls' account of the fact of justice pluralism is necessarily restricted because he works within ideal theory and, thus, characterizes a well-ordered society in which a consensus on the same conception of justice - his conception of justice - already exists. Recall that the political liberalism of Rawls is born to address pluralism in a well-ordered society and explain how political agreement on the conception of justice as fairness is

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[203] Rawls (1993: 164).

feasible in this context. Rawls can go as far as to consider a society in which such a consensus *almost* exists and in which the discussion occurs within a family of liberal political conceptions. However, in his ideal approach Rawls needs not go farther than this and, what is more, he cannot go farther. If he admitted that political liberalism does not create consensus he would be assuming its failure.

Waldron is well aware of this and he admits that Rawls' strategy of idealization is what one has to do when one's theoretical endeavor consists of constructing a theory of justice. Thus, he thinks that Rawls is only "occupying all the logical space that the content of his conception [of justice] requires". Waldron goes on to say that "I have no objection to this as a way of thinking about justice. But I have misgivings about it as a way of thinking about politics, certainly as a way of thinking about the politics of justice".[205] Because Rawls is not thinking about the politics of justice, one may deduce that Waldron agrees to disagree with Rawls.

I want to place Waldron´s objection to Rawls under a different light. Waldron is right in contrasting the reality of disagreement about justice with the theoretical imagination of a consensus on justice. This way, he proves to be more concerned with the world as we know it than with speculations about the well-ordered society. However, Waldron's objection does not go far enough. My contention is that his objection should be radicalized in order to include the way of thinking about justice that one finds in Rawls. Waldron talks about the situation of justice pluralism that triggers the work of justification. Instead, I am concerned with fallibilism

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[204] Rawls (1993: 168).
[205] Waldron (1999: 159).

within justice. In other words: Waldron writes about the fact of pluralism J whereas my argument focuses on pluralism within the conceptualization of justice.

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Before proceeding with the argument, one may ask why Waldron has maintained his objection to Rawls at an empirical level, rather than developing it as an *a priori* argument. The reason seems to lie on the fact that Waldron's views on justification are strictly Rawlsian. Rawls is, precisely, an example of what Waldron thinks characterizes the foundations of liberal thought. So, let us consider this point in more detail.

Unveiling the foundations of liberal thought, Waldron argues that justification has to be addressed "to each person's reason, in his or her own terms" and that "if there is an individual to whom a justification cannot be given, then so far as he is concerned the social order had better be replaced by other arrangements, for the status quo has made out no claim to his allegiance."[206] Each individual, then, has an equal power of veto which may block, from his or her point of view, the legitimacy of social institutions.

The influence of Popper's account of the logic of scientific discovery in this view of justification is clear. For Popper, one case is enough to falsify a theory. In hypotheses with empirical content, refutation is possible through empirical evidence. Accordingly, all scientific (empirical) theories are of the type "all swams are white". If a black swam is discovered, the theory is false.[207] Waldron applies the same logic to political justification. In this case, theories have a normative content and, therefore, cannot be falsified empirically. For a liberal theory of justice, the potential falsifiers, as

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[206] Waldron (1993a: 44). See also Chapter I, section 8, above.

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it were, are human individuals. The availability of a justification to each person implies taking into account each person's reasons, in his or her own terms. However, liberals may invoke both actual and hypothetical (or ideal) consent to take into account people's reasons. Both forms of agreement are found in the liberal tradition.

Waldron also expresses the liberal view of justification in the ideal of a transparent society. For liberals, "Society should be a *transparent* order, in the sense that its workings and principles should be well known and available for public apprehension and scrutiny."[208] This is also the Marxist view. Unlike liberals, Marxists think that the market order is opaque. However both share a commitment to transparency, rooted in the Enlightenment. Liberals diverge from Marxists insofar as Marxists stop short of postponing the ideal of transparency to the end of class struggle, or to some other Brave New World. Liberals seem to want transparency, here and now.

8. Transparency opaque

In order to assess Waldron's views, let us recall some considerations of justification. The work of justification of justice arises out of disagreement - with the others and/or within ourselves - in a situation of choice about social institutions. The purpose of justification is to achieve some kind of agreement. Nevertheless, actual agreement does not form a justification. Even if it did, it would be unfeasible in a context of pluralism (D and J). Justification proper addresses real people but *also* a universal audience. The former requirement should not be forgotten but,

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[207] The classic version of this view is in Popper (1959). See also Popper (1963).
[208] Waldron (1993: 58).

without the latter, justification could be confused with an attempt to convince, and the success of a justification could be confused with the fact that many people were convinced. However, justification is not sophistry and has to be assessed for its own merits. All these points are, I hope, clear enough.

How do these considerations shed light on the above-described transparency view of justification? If justification of justice addresses both a universal audience and actual interlocutors, the question arises of how to take *each person* into account with this double justificatory demand. If one addresses each person in his or her own terms without any further definition of those terms, justification collapses into actual consensus (which is not, I insist, a real justification). So, one has to address what *one thinks* each person's reasons and interests are. A justification of justice does not imply - and cannot imply - an empirical account of each person's reasons. In this case, however, transparency must be understood only in terms of ideal agreement. One should not expect factual agreement.

Not only one should not expect actual agreement, but one cannot possibly achieve it because of pluralism within justice. Ideal agreement - which is only a methodological device for the theorist - should not be taken as a social ideal and, thus, confused with actual agreement in the future. These are different things. Ideal transparency must exist, by definitional fiat, in the conceptualization of justice. Actual transparency cannot be achieved. The social ideal of a transparent society, whether now or in the future, does not hold.

My objection is not only about feasibility. I am not just stating that transparency of 'real liberalism' is as illusory as transparency of 'real socialism' (although that is also true). My argument consists

of saying that the very social *ideal* of transparency is inconsistent. Rawls was clearly right when he concluded that his idea of a well-ordered society with strict consensus is inconsistent with doctrinal pluralism. The same applies to justice pluralism, regarding any idea of the well-ordered society. Accordingly, I am not blaming transparency for being utopian, although desirable. I am rather saying that transparency as a social ideal is not even desirable because it does not take into account the pervasiveness of pluralism within justice. In reality, what is transparent for some equal individuals involved in the procedure of justification will *always* be opaque for others. Transparency, as it were, is not transparent. The burdens of reason are to blame for this unintended opacity.

To conclude: what is one to make of the transparency view of justification explained by Waldron? The idea of ideal transparency is necessary in the conceptualization of justice. However, the idea of an ideal transparency that becomes actual in society is not, because of pluralism within justice. My guess is that Waldron's sympathy towards transparency as a social ideal - and not just as a methodological device - prevents him from taking farther his thoughts on pluralism J. If his critique of Rawls was radicalized, Waldron would not only point out the fact of justice pluralism as such, but also the idea of an insurmountable pluralism within justice. This, however, would undermine the ideal of the transparent society.[209]

9. Implications of the argument

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[209] I also think that the proposed radicalization is what better fits Waldron's own theoretical developments regarding his concern with legal and political

Pluralism within justice has no apparent consequences for the work of sorting out abstract principles of justice. Conceptualizations of justice are still needed for the reasons exposed in section 2. above, namely because conceptions of justice give visibility to our sense of injustice. However, it must be recognized that there is a fallibilism embedded in the thesis of pluralism within justice. This is not just a methodological and provisional fallibilism like the one we admitted in the first chapter. This is rather a theoretically-established fallibilism conveyed by the idea of non-rankability.

However, pluralism within justice has broader consequences for the definition of a social ideal. Contemporary liberal theories of justice - such as Rawls' - are very much in the tradition inaugurated with Plato's *Republic,* at least in one important point. They are forms of ideal theory and they presume that a social ideal - which is more than the principles of justice - has to be defined in the terms of "strict compliance theory". Accordingly, one has to imagine a perfectly just society, where all the individuals comply with the social order. This is the way to show all the work that the principles of justice are supposed to do. In Rawls' terms, without the "companion idea" of the "well ordered society" the conception of justice is incomplete. Moreover, one cannot deal with matters of "partial compliance theory", such as civil disobedience, without a previous development of a social ideal with the presumption of strict compliance.

Now, if pluralism within justice is unavoidable, not only likely, and necessary, not simply contingent, there is a strong

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institutions to address justice disagreement. On this, see Waldron (1999a) and Waldron (1999b). I will briefly come back to this on chapter five.

argument against the ambitions of ideal or strict compliance theory. Pluralism about justice - "the fact of pluralism J" - has no special consequences for the ideal of the just society. Pluralism within justice, however, is not equally "harmless" because it lies on the recognition of the pluralization of the conceptions, all things considered. Accordingly, what one thinks that justice is, is certainly different from what justice really is. One's conception of justice cannot be presented as a number of principles which justify a well-ordered society. One has to distinguish between one's conception of justice and the ideal of the just society, which cannot be defined. Conceptions of justice define a substantive standpoint which gives critical sense to one's sense of injustice. Their role consists in opening the way to the critique of the existing basic structure. However, conceptions of justice cannot coherently define a social ideal, or a well-ordered society.

The paradox of Rawlsian-like theories of justice lies on the fact that their practical realization would lead to their unfeasibility. A well-ordered and transparent society is not a society of justice but rather beyond justice, like Marx's communist society. When there are no ideological obstacles (in the sense of "false conscience"), when the relationships between human beings are crystal clear, there is no need for a conception of justice. This is a theoretical remark, not a pragmatic remark. Nevertheless, this is also a situation in which the discovery of a feature in theory - namely 'pluralism within justice' - allows for the prevention of a practical flaw: the interpretation of a theory of justice as the definition of an ideal that one should achieve in order to have a just society.

One cannot possibly have a just society, but one should try to have a better society in the conditions in which we live, guided by

one's conception of justice. Disagreements within justice are not an excuse not to strive for ambitious social reform.

10. Final remarks

Let us sum up the essentials of the argument from pluralism within justice. The fact of pluralism J as such is not really a problem for a theory of justice. A justification of justice interprets this pluralism from the point of view of the justified conception. However, as some examples have shown, even when one starts from the same basic idea of justice and puts the issue of contamination in brackets, there is reasonable disagreement within justice. This disagreement is as relevant as reasonable pluralism D. It is also unavoidable. The upshot is the need to abandon the idea of a political liberal well-ordered or transparent society as a coherent social ideal.

Because of this pluralism within justice, a return to the Rawlsian solution to our central problem is not defensible. The argument in this chapter shows that, besides not being able to avoid comprehensive doctrines (as explained in chapter II), a Rawlsian theory of political liberalism cannot take justice seriously. In fact, taking justice seriously implies the recognition that pluralism both D and J is not only a context that the justification of justice has to face, but also an insurmountable feature of that same justification. It is not enough to say that justice and justification are contaminated. One must also say that justice and justification would be plural even if they were not contaminated by a diversity of comprehensive doctrines. Of course, one may not care about pluralism within justice and continue to affirm that a Rawlsian-like solution is the best one can do to affirm both justice

and pluralism. However, if the challenge is to address pluralism there is no reason to address pluralism D and not pluralism J. The source of both is the same, namely the burdens of reason.

If political liberalism as we know it fails to give a satisfactory answer to its central problem, what is to be done? How is one to look at the justification of the basic idea of justice in a pluralist context? Is the philosophy of argumentative restraint to be completely abandoned? I will address these questions in the next chapter. I will argue that pluralism within justice does not lead only to 'negative' conclusions - i.e., the rejection of the ideal of a liberal political well-ordered society - but also to 'positive' results, namely, the justification of institutional solutions to mediate between utopia and compromise. Principles of justice have to be complemented by institutions which work as the procedural background for the foreign policies of different conceptions amidst pluralism J. The intuition behind this solution is a division of labour between the conceptualization of justice and reasons for moral restraint. The theoretical background is the dichotomy between conviction and responsibility: the latter invites the definition of the responsible limitations of justice.

CHAPTER V

ANOTHER FORM OF RESTRAINT

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The argument from pluralism within justice leads to abandoning a substantive consensus on the same liberal political conception of justice or on a liberal political principle of legitimacy seen as part of this conception. Because the main endeavour of political liberalism implies such a moral agreement, pluralism within justice finishes the critical work which was initiated with the discovery of contamination in the analysis of the theories of both Rawls and Larmore. If a philosophy of restraint cannot justify a just and legitimate political order amidst pluralism, it may nevertheless have a role to fulfill. The determination of the nature and scope of argumentative restraint in a post political liberal view is the subject matter of this chapter.

The kind of restraint defended here amounts to a particular use of the idea of responsibility in political argument. However, the full explanation of this use will have to wait until section 8. Starting with the Weberian distinction between responsibility and conviction - in section 1. - the chapter goes on with a distinction between the former and two other and often equated notions: prudence - in section 2. - and compromise - in section 3. The Weberian

distinction is taken only as a suggestion, but 2. and 3. point already, albeit negatively, to a particular interpretation.

Section 4. rejects the retreat to a procedural conception of justice (in S. Hampshire) as an expression of responsibility. The latter should not be confused with justice as conviction. Section 5. analyses the translation of responsibility in the form of other principles which complement the virtue of justice (according to R. Dworkin). Section 6. presents a model of deliberative democracy (of Gutmann and Thompson) which aims at resolving moral dispute through principles of accommodation. The solutions of the two previous sections are also rejected because they trump the primacy of substantive justice with some alternative principles. In short, they do not maintain the integrity of conviction. In section 7. the idea of an umpire or arbitrator that may adjudicate when disagreement prevails is introduced in the version of G. Gaus. However, Gaus rules out of the umpire decision a number of political principles that, for practical purposes in view of pluralism J, should also be submitted to some kind of adjudication.

In section 8., all the above mentioned solutions are replaced by a form of consequentialism which is the companion of the various liberal conceptions of justice but does not lower people's convictions of justice through the justification of alternative or restrictive moral principles. This consequentialism is the best exercise of responsibility. Furthermore, it is a consequentialism which implies the support of specific procedural institutions - for example, elections and *referenda* - which work as the setting for a continuous exercise of responsibility. Such institutions set up the responsible limitations of justice.

In section 9. I explain why this model of restraint cannot be equated with a defence of a Hobbesian-like conception of justice

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based on self-interest and rationality, nor with a simple state of war. These views must be excluded and replaced by an approach that departs from agreement on justice but remains morally driven. This is why I call my favoured model of restraint "a moral *modus vivendi*". The current chapter is only a sketch of this model, exploring basic intuitions and suggesting significant comparisons. The final remarks come under section 10.

1. Justice as conviction, restraint as responsibility

Recall that in the process of political justification citizens must be seen as equals both as emitters and receivers of reasons. This aspect of justification does not prevent the existence of justified political beliefs amidst disagreement because the receivers of reasons must always be idealized as a universal audience. In other words, the fact of agreement is not the same as justified belief, whereas an idealized agreement may constitute an acceptable justification. Accordingly, a justified conception of justice is feasible in a pluralist context. Convictions about justice are one of the outcomes of this process.

However, the argument in the previous chapter has shown that justification of justice leads to internal pluralism due to the influence of the burdens of reason. If one is ready to admit that there is a pluralism within justice - and not simply many conceptions of justice, which is a truism - one must also find a way to address those who disagree on the conception of justice. The outcome of this must be some form of restraint in arguments for justice. For political liberals, restraint was seen as philosophical avoidance regarding comprehensive doctrines. Instead, the

argument from pluralism within justice suggests that restraint should be understood as responsibility in view of pluralism J.

Let us express the same idea in a different way: it has been said that a conception of justice must occupy all its "logical space". From the point of view of the justification of justice, there is no space left for concessions. This is why justice should be approached with an *ethos* of conviction. However, the "logical space" of justice is already too crowded from the outset. Pluralism within justice reminds the liberal-minded citizen that he or she will have to deal with disagreement in his or her equally minded fellow citizens. The internal pluralism of justice shows the boundaries of conviction and invites an *ethos* of responsibility which restrains the purity of conviction. To start with, let us consider the dichotomy conviction / responsibility in its classical form.

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Max Weber famously drew the distinction in his writings on politics as a personal vocation.[210] According to Weber, both conviction and responsibility are present in political action. In politics, like in other spheres of modern life, there are different and incompatible values, Gods and Demons, among which we have to choose. Political conviction is always implied in action, even when such conviction amounts to *machtpolitik*. The same endurance of presence applies to responsibility: only looking at the consequences of political action is responsibility taken into account and even the most "realist" politician must do it. Responsibility is not on the side of one particular value, one God or Demon, against the others. Responsibility is essential for the political man, whatever his convictions.

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[210] See Weber (1919a) and also Weber (1919b)

In the work of Weber, the conviction and the responsibility of the politician contrasts with the honour of the official. The honour of the official consists in always carrying out his instructions, as if they corresponded to his convictions, and on the responsibility of his superior. The latter acts in the same way in relation to *his* superior, and so on and so forth. Accordingly, the *ethos* of the official, unlike the *ethos* of the political man, departs completely from both conviction and responsibility.

The political man may also be contrasted with the religious man. The *ethos* of the religious man is constituted by absolute principles, i.e., by pure convictions. For instance, the true Christian thinks that violence or evil should not be resisted with force, whatever the consequences. For the political man, this absolutist ethic would be calamitous. The honoured politician must resist illegitimate violence and evil, or he will have to take responsibility for the spread of violence and evil. The state being defined by Weber as the monopoly of legitimate violence, the hands of the politician are always dirty, from the point of view of the religious man. However, the politician must not depart from the responsibility that the diabolical powers of politics bring with them.

Moreover, the political man cannot find relief in the coldness of scientific knowledge. For Weber, whereas different values stand in conflict in the political arena, scientific knowledge is value-free. Accordingly, it provides arguments for none of those conflicting values. In science, people also choose, but their choices are methodological, not substantive. Nevertheless, science is essential for the political man because it gives him the means to act as he must. In fact, only through the knowledge of the consequences which different actions imply may the political man take full responsibility for his action.

The dichotomy of conviction and responsibility in politics is unsurpassable. However, Weber does not extract moral guidance from it. He considers that "whether one *ought* to act on the basis of an ethics of conviction or one of responsibility, and *when* one should do one or the other, these are not things about which one can give instructions to anybody."[211] An individual with a genuine vocation for politics must combine both aspects, in some way, which is not specified. Weber does appeal to the "inner weight" of convictions as opposed to shallow "romantic sensations". He also appeals to responsibility felt with the "whole soul".[212] However, these are not moral maxims but only injunctions to those who want to assume the true vocation of politics in all its complexity.

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The Weberian dichotomy can be translated into my own terms. The content of political convictions is given by the conceptions of justice, and there are many of such convictions. For pluralism within justice convictions are our Gods and Demons. However, they cannot just fight against each other because the same argument from pluralism within justice requires that the others who disagree with us are addressed and the coercive imposition of our pure convictions prevented. This restraint of conviction is responsibility.

In the context of my argument, responsibility amounts to take seriously the consequences of political monism and its imposition to others. Responsibility does not allow that a conception of justice becomes the ideal of a well-ordered society, an image of Utopia, let alone a programme of utopian politics. Otherwise one would be ignoring the complexity of the justification of justice amidst

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[211] Weber (1919a: 367)

pluralism. However, the content of responsibility is more difficult to establish.

2. Responsibility, not prudence

From the point of view of pluralism within justice, the moral content of conviction is given by each conception of justice. Instead of the political liberal method of avoidance, restraint as responsibility consists of considering the consequences of one's actions and refuse to follow exclusively the demands of pure conviction. This assumption of responsibility is often equated with an individual virtue, namely *prudence*. However, prudence is not exactly the same as responsibility. The apparent proximity between the concepts of prudence and responsibility invites a clear distinction between them, before the argument may proceed.

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The virtue of prudence or *phronesis* was at the center of Aristotle's' Ethics.[213] The Philosopher states that: "Prudence is a truth-attaining rational quality, concerned with action in relation to the things that are good for all human beings."[214] In this sense, prudence is an intellectual virtue inviting good judgment and action, including in politics. The prudent act may be "in the middle" of two alternatives, but not necessarily so. In each situation, prudence helps to find the best solution. There is no general definition of prudence because such definition would be lacking,

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[212] Ibid.
[213] See Aristotle (IV b.C.).
[214] Aristotle (IV b.C.: 339)

precisely, in prudence. To figure out what prudence is one must observe it in exercise, in some specific setting.

Accordingly, Pericles was a prudent man because he acted with prudence. He could see what was good for himself as well as for other men. Although people usually think that Pericles was a prudent man, no general conception may be induced from his example. In different circumstances prudence will require different reasons and acts.

Aristotle goes farther in the sense that he denies - against Socrates - that prudence as a virtue belongs to the domain of science. For Aristotle, the lack of a conception of prudence is not really a defect but rather an advantage. Those who want to learn it will have to observe carefully and act accordingly. That is, they must act in accordance with prudence and not through the simple repetition of the acts of the their role models.

In spite of this indeterminacy, Aristotle and the time honoured tradition to which he gave rise, believe in the possibility of a link between reason and experience, between the universal and the particular. This belief seems possible for the Ancients because they live in an integrated *cosmos* in which both nature and the *polis* have embedded finalities. In this world, there is no disconnection between *praxis* and *theoria*. In fact, theory only formulates cosmic finalities to which practices must be adjusted.

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Now the world of the Moderns seems very different, and nobody has expressed that difference better than Max Weber. Recall from the previous section (and from I, 6. above) that, for Weber, the world in which we live is inhabited by Gods and Demons, i.e., different and clashing human finalities disconnected from any cosmic *telos.* In this world, the link between reason and

action, between the universal and the particular, is no longer possible. Prudence was that link, but it cannot be the solution in the modern world because there is no solution for the struggle of Gods and Demons. Instead, their contradictions have to be accepted and, together with them, there is the permanent tension between conviction and responsibility.

Thus, the main difference between prudence and responsibility consists in the fact that, in the modern world, one cannot aspire to restore the supposed harmony of the ancient world. Unlike prudence, responsibility is tragic. It reveals a situation in which conceptions of justice are not *prima facie* rankable and in which one has to choose, one has to decide. However, to take responsibility seriously does not resolve this problem of decision, it does not restore the intrinsic *teleos* of society. The exercise of responsibility can only aspire to mitigate the sacrifice of values which may result from the choice of some principles of justice at the exclusion of others.

3. Responsibility, not compromise

Should responsibility be understood as willingness to compromise with those who disagree with us about what justice is? Political compromise has both a positive and a negative meaning. It is negative insofar has it implies the betrayal of cherished convictions. It is also positive because it advances mutual understanding and stability. Conviction admits no giving up; responsibility, though, requires an open-mindedness which may well lead to compromise in a process of bargaining. Accordingly, responsibility could be equated with willingness to compromise and the positive side of it should be emphasized. Probably, this is the

most common understanding of political compromise among experienced and wise men. Nevertheless, it must be rejected.

A preliminary question should be answered: compromise of what? There are two candidates: interests and values. In our sense, compromise does not refer to individual or group interests but rather to political values, i.e., different and irreconcilable conceptions of justice. When only interests are at stake among people who do not disagree on the fundamentals of the framework of social institutions, willingness to compromise is only a strategic decision. Some times it is a good decision for the parties because they all end up better off. Other times, at least one party ends up worse off, or not as well off as the others. However, no party loses face because no trade-off between principles or values is at stake.

On the contrary, when different conceptions of justice are at stake, compromise is pure betrayal. Rawls put it better than anybody else when he wrote that, being "the first virtue of social institutions", justice is "uncompromising". Accordingly, "the rights secured by justice are not subject to political bargaining"[215]. This may seem too rhetorical, but it is also logical. Since the beginning of this work, justice has been seen as the highest moral standard in social and political affairs. If one thinks this way, compromise is irresponsible and it must be ruled out. Otherwise, the highest values summarized in the idea of justice would be diminished in favour of the value of compromise.

However, what Rawls did not reflect upon is on the idea that justice, like comprehensive doctrines and ideals of the good, is always many rather than one. The situation of pluralism inside the conceptualization of justice invites a re-interpretation of the priority

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[215] Rawls (1971, pp. 3-4).

of this concept. Justice remains prior, as conviction. However, it must allow for the relevance of responsibility while avoiding the compromise of conviction.

4. The retreat to procedural justice

So far, the understanding of responsibility as a disposition to compromise or as the moral virtue of prudence has been rejected. However, nothing is lost because those notions are not helpful for the clarification of responsibility as the necessary complement of the demands of justice as conviction. Responsibility does not imply compromise and it does not provide the moral guidance of the virtue of prudence. If responsibility cannot be identified with these traditional notions, perhaps it may be translated in a set of procedures, empty of any particular content, that we can all accept without compromising in what each of us thinks substantive justice is.

One possibility along these lines would be the device of purely procedural rules of negotiation and adjudication for the different views found in the political community. Stuart Hampshire has proposed something like this, which he calls "basic procedural justice".[216] A procedural conception of justice is negative, when compared with substantive moralities positively affirming sets of virtues, conceptions of the good life and political values. Hampshire rightly asserts that substantive conceptions of justice cannot depart from including personal virtues and ideas of the good which are deemed to be polemical. On the contrary, a basic procedural

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[216] See Hampshire (1989). Hampshire thinks that a minimum universal justice applies inside single political communities, as well as in international relations. However, in this dissertation my concern has been only with the first case.

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conception affirms only a small number of mechanisms of bargaining and decision, independent from specific conceptions of good and justice.

According to Hampshire, one should not aspire to universal agreement about justice in general, but one may aspire to universal agreement about fair procedures to find the answers one needs for public purposes. From this recognition arise the duties to respect procedures of discussion, negotiation and adjudication which are usual in a society (or in the international society, see the previous footnote). Violation of these duties, injustice, can only be justified in specific cases like to prevent greater injustices or to save human lives. However, the uncompensated violation of this minimum procedural justice is pure evil.

Although procedural and minimal, the conception proposed by Hampshire is moral. Actually, it seems to be the most important part of morality. As he says:

> We should look in society not for consensus, but for ineliminable and acceptable conflicts, and for rationally controlled hostilities, as the normal condition of mankind; not only normal, but also the best condition of the mankind from the moral point of view.[217]

<div align="center">*</div>

The solution of Hampshire is interesting because it gives up - as one must - the idea of a substantive moral consensus. However, what he proposes is not a simple expression of responsibility, but rather a true conception of justice, albeit minimal. I think this

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[217] Hampshire (1989: 189).

<div align="center">199</div>

conception is, simultaneously, too restricted in its content and not expanded enough in its justification.

On the one hand, it is too restricted because it is only the idea of procedures of discussion, negotiation and adjudication. These procedures have no specific moral content and they do not ensure any specific results that could be considered just (actually, these procedures could also produce evil). However, a conception of justice in the sense adopted in this work must be a pattern to assess institutions and policies and, thus, it requires more substantive principles.

On the other hand, Hampshire's conception has a clear justificatory deficit. This is due to the fact that he wants to avoid substantive justification. However, argumentative support for even this minimum justice must be substantive. If one accepts to enter into procedures of discussion, negotiation and adjudication, this must be because one thinks that these are valuable procedures. Moreover, one must have deeper reasons - whatever they may be - to value those procedures. Otherwise, why should one support them? Why should one try to accommodate the views of the others rather than try to win a victory over them? The answer to these questions must involve substantive moral commitments.

So, Hampshire's procedural justice is not really a freestanding or neutral - as Rawls and Larmore would say, respectively - conception of justice that may be universally agreed too without further justification. Hampshire's procedural conception of justice is more substantive (in its justification) than he wants to admit and it is also less substantive (in its content) than it would be required to work as a true standard for the institutional ordering of society. As a consequence, it is an *empty* expression of comprehensive moral commitments which are not explicit, let alone justified.

Hampshire wants to put both conviction and responsibility in the same box. In his account, responsibility becomes a thinner form of justice. However, there is no reason why one should lower the demands of justice and make it thinner for the sake of restraint. The dichotomy between conviction and responsibility must be maintained and the conception of justice detached from the need for restraint.

5. Justice and other political principles

Another way of giving content to responsibility could be the device of social virtues not seen as a conception of justice but rather as something different from justice and able to accommodate justice pluralism. Accordingly, Ronald Dworkin takes the view that 'justice' and 'fairness' are in some degree independent of one another.[218] Whereas justice is about distribution of material and immaterial goods, fairness is about the structure of the political system, including procedures to elect officials. The idea of 'justice *as* fairness' in its strictest sense (which is not coincident with the Rawlsian sense) is the view that considers just whatever results from a number of fair procedures. However, Dworkin rightly points out that unjust outcomes may and often do result from fair procedures. The two virtues are clearly different. Moreover, Dworkin thinks that other virtues are equally important and different from justice and fairness, like 'procedural due process'. The latter concerns the right procedures to enforce laws and regulations produced by the political system.

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[218] See Dworkin (1986: 177).

Although these three virtues may be usefully seen as independent, they are all part of what one may think a just society is. Fairness and procedural due process are all part of an idea of justice in a wide sense, touching the political process as defined by the Constitution and the implementation of law by officials and the courts. Being procedural, these two virtues reinforce the content of justice.

Nevertheless, Dworkin also considers another virtue, which is at the centre of his concern and innovation, namely political integrity.[219] Integrity is a virtue of evolutionary - i.e., non utopian - politics. One may understand it at the image of personal integrity. States, like persons, should speak at one voice and act in a coherent manner. Political integrity implies a personification of the state, assuming its agency and responsibility. Thus, political integrity requires the state to think and act according to a coherent set of principles, even when the citizens are divided about the content of justice or other related principles.

Integrity should be present both in legislation and adjudication. In both domains, the clash of conceptions of justice is not eliminated but seen as a clash of different interpretations of the law. Whereas people disagree not only about the good but also about justice, the integrity of the state recognizes those substantive moral conflicts while protecting law's empire. This way, integrity increases the sense of fraternity or community (as a community of principle, not as a historical accident) and gives the state that practices it a better case for moral legitimacy.

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[219] For the virtue of integrity, see Dworkin (1986: 164-224).

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From the point of view of the primacy of justice as conviction, the problem in the recourse to other principles lies in the possible conflicts between the latter and justice. The ideal of integrity advanced by Dworkin is precisely an illustration of this problem. This is why it does not look like a good instantiation of responsibility.

There is no justified reason to defend a principle of integrity whenever it leads to injustice. Although the integrity of the state may be a valuable end, integrity (like welfare, stability, etc.) should be trumped whenever it does not serve justice as the first virtue of society. As Rawls would say, we want integrity for the right reasons, i.e., just integrity. We do not want integrity for its own sake. Thus, it is preferable for the state to be incoherent rather than being unjust.

The same reasoning applies when one moves from synchronic aspects to historical considerations. As a virtue of evolutionary politics, integrity makes a bridge with the past. However, justice may require that one cuts with the past and strives for a new - but just - integrity. Great historical changes are made in the name of justice, not to reinforce integrity. As the ultimate moral standard of society, justice must trump the historical weight of political integrity whenever this is required. Responsibility cannot consist in making integrity another first virtue of society.

6. Principles and deliberation

Amy Gutmann and Dennis Thompson also talk about something different from justice, namely "principles of preclusion" and "principles of accommodation".[220] Preclusion in some cases and accommodation in others may be the best way to practice restraint as responsibility when different conceptions of justice are sustained by equal citizens.

When the morality of public policy is an object of disagreement, citizens may agree on principles of preclusion in order to remove certain issues from the political agenda. The typical case is religious toleration. Disagreement is overcome not by some higher form of agreement but by precluding religious controversy from the discussion in the political domain. However, preclusion is forbidden if positions in dispute count as moral positions. I. e., when they express the moral point of view, are open to empirical and logical challenge and are based on plausible premises. Thus, preclusion is not authorized in the case of abortion, because both positions count as moral. However, it is authorized in the case of the racial discrimination or in the case of the discrimination of homosexuals. This was not the case until recently because issues to preclude change over time with the evolutions in public debate.

So, preclusion may or may not work and it depends on the issue and the situation. Contemporary societies need more than preclusion because they must deal with their pervasive *moral* disagreements. Principles of accommodation are agreed by citizens

when they practice the virtue of mutual respect. They open the way to resolve disputes on a moral basis. The question of abortion is an example when pro-life and pro-choice advocates end up agreeing that their disagreement is about cases in which pregnancy is voluntary. So, Gutmann and Thompson think that citizens may agree (or not agree) not only about the basic structure of society, but also on some substantive moral principles.

<p style="text-align:center">*</p>

More recently, these authors have expanded their views about principles of accommodation of moral disagreement through public deliberation.[221] In their deliberative model, disposition to seek agreement implies that reasons given are mutually acceptable in accordance with a principle of *reciprocity*. Moreover, justifications must be made accessible to all citizens and not just to officials, following the principle of *publicity*. One of the advantages of publicity is that it reinforces the principle of *accountability* of both officials and elected representatives involved in the public reason-giving process. These three principles constitute the conditions of deliberation. Although they place constraints on deliberation, other constraints are necessary involving the content of what is to be deliberated. In this model, deliberation does not depend solely of a set of conditions to produce the legitimate and just laws and policies. Instead, substantive principles regulate the content of deliberation.

For Gutmann and Thompson, the content of deliberation is to be guided by three further principles: basic liberty, basic opportunity and fair opportunity. Basic liberty protects the physical and mental integrity of persons and opens the way for the exercise

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[220] See Gutman and Thompson (1990).
[221] See Gutmann and Thompson (1996).

<p style="text-align:center">205</p>

of the liberties. However, a libertarian interpretation - such as Nozick's - of basic liberty is forbidden, because it would extend the demands of liberty to put in danger principles of opportunity. Of the two principles that regulate opportunities, the first one requires that government ensures basic resources needed to live a decent life to everyone (including personal security, education, health care, housing, food and employment). The second one - the principle of fair opportunity - regulates the distribution of highly valuable goods, such as skilled jobs. Gutmann and Thompson think it is important to distinguish basic opportunity to avoid an over-expansive conception of equal opportunities (such as Rawls').

The difference between these two sets of principles is not a difference between process and substance. The conditions of deliberation are morally substantive and the content of deliberation influences the procedure of deliberation. Furthermore, the two sets of principles interact one with the other. On the one hand, opportunity and liberty are restricted by the conditions of reciprocity, publicity and accountability which avoid more expansive claims of liberty (by libertarians) or opportunity (by egalitarians). On the other hand, the conditions of deliberation presuppose a minimum of liberty and equality in order to ensure equal respect among citizens.

Although the above-listed principles form the constitution of deliberative democracy they are not static according to its defenders. Deliberative democracy is a self-defining process which encourages change in its own meaning overtime. Both the conditions and the content of deliberation are open to revision in this process of change. Results of deliberation are also constantly subjected to correction.

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Deliberative democracy presents itself as essentially distinguished from utilitarianism, libertarianism, liberal egalitarianism, communitarisms, republicanism or other political outlooks. Instead of urging citizens to adopt one of these conceptions of justice (or varieties of conceptions) because it is the right conception, deliberative democracy seeks to address moral disagreement more seriously and put moral argument in the centre of political life. However, it seems to me that deliberative democracy is not really an alternative to all these political outlooks but rather one more competitor for the right conception.

Although many political results are left open to deliberation, the substantive principles adopted - concerning both conditions and content - clearly imply a number of important theoretical decisions. Take the example of the idea of equality of opportunities, referred to above. It is the adoption of two specific principles regarding opportunities that allows Gutmann and Thompson to define a 'third way' between libertarianism and egalitarianism and, thus, to deny both. On the face of it, the question is not open to deliberation.

Moreover, the model of deliberative democracy presented here requires what looks very much like a comprehensive and perfectionist moral justification. A view of human excellence is at the centre of the conception. This distinctive view

> is the character of individuals who are morally committed, self-reflective about their commitments, discerning of the difference between respectable and merely tolerable differences of opinion, and open to the

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possibility of changing their minds or modifying their positions[222]

Because of the demands of this deliberative excellence, education is the most important institution, apart from government. Through education, the moral character of citizens must be formed to favour deliberative skills.

In fact, these authors could try to escape the problem of an excess of moral substance by excluding principles regarding the content of deliberation and sticking to the conditions that, when verified, would produce the preferred interpretation of equality of opportunities. However, they explicitly deny this option, which would place their position close to pure proceduralism.

If deliberative democracy implies substantive political and comprehensive ideas, it is also ready to give them up in the process of deliberation. I find this difficult to understand. If this means that one may always change his or her own views, it is only obvious. However, if this means that deliberation *per se* is the first virtue of society, this is a view that empties political disputes from the outset. Deliberation must be topical. It must be deliberation about something *and* it must include different substantive views - conceptions of justice - of what should be actually deliberated. Societies may need deliberation because they have different convictions, not the other way round.

To sum up: Gutmann and Thompson develop a conception which is not just an exercise related to responsibility but a true competitor with other conceptions of justice. Other conceptions deny the substantive principles proposed by these authors and also

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[222] Gutmann and Thompson (1996: 79).

the idea of modification or compromise of those principles through public deliberation.

Thus, the problem with this model of deliberative democracy is that it presents substantive principles and, simultaneously, implies not just practical devices of accommodation but also forms of compromise of principles, including the compromise of its own principles. What I am looking for in this chapter is rather a view that not only admits the pervasiveness of the plurality of people's beliefs about justice, but gives also space to the exercise of responsibility. Self-limitation must not arise from justice but rather from responsibility. One needs responsibility, but one needs not compromise the principles of justice in face of the demands of others.

7. A limited umpire

So far, I have suggested that restraint as an *ethos* of responsibility must be the companion to our convictions on justice. In this context, responsibility is neither the same as prudence nor compromise. Moreover, responsibility should not be confused with a less demanding conception of justice. Finally, one should not give up the demands of substantive justice for a principle of political integrity or the deliberative compromise of moral disagreement.

Gerald Gaus makes an alternative proposal when he admits that, in areas of inconclusive public reasoning, one must resort to the umpire solution.[223] Gaus rightly prefers comprehensive reason-giving in order to achieve what he calls "victorious public justifications" of a liberal morality. In this sense, he is committed to a public justificatory process which opposes both the politics of

self-interest and the politics of populist consensus (a view which he attributes to Rawls). Here, I can only list the principles which Gaus thinks are victoriously justified in public: freedom of speech, religious toleration, anti-establishmentarianism and privacy. One could also think of other justified principles, like a full conception of justice.

However, Gaus also considers that disagreements remain in areas of "undefeated and unvictorious judgments". These areas do not concern the principles themselves but rather their interpretation. Because societies cannot be frozen, one cannot wait until a single interpretation of a principle is established. There must be another way of resolving these disputes, namely through the appeal to an umpire.

The definition of an umpire is that of a judge or an arbitrator aimed at solving practical disputes. The umpire must not be seen as a moral authority but rather as a coordinating authority. In other words, the umpire is *in* authority but it is not *an* authority. [224] People accept the decisions of the umpire as a reason to act but they do not accept them as a reason to believe. From the point of view of the citizen, the authority of the umpire is purely practical.

Nevertheless, the decision of the umpire must be based on the principles or rules which are already victoriously justified. What is at stake is the application of those principles or rules, which implies epistemological controversy of unvictorious but undefeated justifications. Gaus states that,

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[223] See Gaus (1996).
[224] On the distinction between "in authority" and "an authority", see Friedman (1973).

We turn to an umpire to resolve the practical dispute about what is to be done. But the umpire model of political authority also requires that the umpire's decisions be within the range of reasonable (i.e., inconclusive) opinions about what is publicly justified.[225]

Thus, Gaus thinks that he can victoriously justify an umpire through law, which will serve to arbitrate the remaining clashes of private judgment. This umpire solution is a continuation of the justificatory project presented by Gauss. On the one hand, it prevents the simple imposition of some people's moral views to others with the use of coercive power. On the other hand, it provides a way of resolving disputes in a publicly justified way. This umpire includes a legislative procedure that adjudicates through law the clash of private judgments, a judicial system which adjudicates this clash in the application of the law and the justification of the executive which enforces the judgments adjudicated by law. In short, the umpire is the juridical state.

Citizens should obey to the umpire even when they think the laws enacted are morally wrong, as long as they are in regard to inconclusive aspects of justification. However, if the laws include the denial of morally-justified principles, citizens are not compelled to obey.

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Gaus is certainly right about the need of full - not just political, or neutral - justification of fundamental liberal principles. They require an epistemological and moral grounding. Where I stand apart from Gaus is in the idea that some fundamental principles must not be submitted to an umpire, whereas other

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[225] Gaus (1996: 190).

matters of conflict should. The fact that I may consider some principles to be victoriously justified - as any theory of liberal justice must - does not invalidate the practical need of solving disputes about those principles. So, any disagreement, whether concerning fundamental principles or interpretations of those principles, may be submitted to an umpire. All kinds of disagreements must be open to adjudication by an umpire, not just disagreements which one considers inconclusive.

Once again, one should distinguish sharply between the conviction of people's principles of justice and the moral force of responsibility. In accordance with their convictions, people's principles need not seek adjudication. If people should seek adjudication when strong disagreement prevails it is because they think it better from the point of view of responsibility, which should not be translated to further principles. So, there must be an umpire to which all principles may be submitted, not just a limited umpire.

8. Restraint as responsibility: from *ethos* to institutions

Where to look for a theoretical expression of restraint as responsibility, if not in a conception of procedural justice nor in principles of accommodation of difference? An answer to this question must point to the different conceptions of justice specifying the *ad hoc* basic idea of justice formulated above. In other words: principles of justice (minimum as they may be) and other kinds of principles (i.e., not principles of justice) are excluded because responsibility must not trump conviction and it must not be still another conception of justice taking part in the competition.

Responsibility is rather a consequentialist companion of any conception of justice specifying the basic idea of justice. The

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justification of this point lies on the fact that an idea of equality of citizens as reason-givers is present in the justification of justice. *This* equality must be preserved and the others addressed in their different reasons. The aim of justification is ideal agreement, not actual agreement; but because of pluralism within justice, people with different conceptions must be taken into consideration by avoiding the imposition of what one believes justice to be.

Therefore, each conception must be accompanied by consequentialist considerations about the relationship among conflicting conceptions and the holders of these conceptions. No conception of justice can be blind to its consequences, however strictly deontological it may be. These consequentialist considerations accompanying each conception imply the acceptance of institutional limitations of justice. The correct term *is* acceptance, as opposed to principled support of those limits. Unlike justice, responsibility has no independent or principled moral content. Thus, one thing is the justified need of institutions for responsibility, and another thing is the content of those institutions, which is not defined *a priori.*

Responsibility should be embedded in institutional settings, which arbitrate in different ways amid conflicting convictions of justice. This kind of institutional setting is like an umpire to which *any* principle or policy may be submitted. Unlike the institutions of the just society, institutions of arbitration are purely procedural. They define procedures but their functioning well is by no means dependent on the results to which they lead. There is no independent criterion for the assessment of such results. If the results are the product of the defined procedures, they are always acceptable from the point of view of responsibility. Of course, some people may still want to reject them from the point of view of

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conviction. How far these people will take their rejection is not a matter of theory, but a practical one.

Some times, some people will be led to reject the very institutional procedures because the political values which they are defending cannot be put in jeopardy by the winning faction. In certain moments, responsibility has to be postponed and one has to say "Here I stand, I can do no other"[226] and no umpire will make me change my views. It is desirable that these situations will not occur frequently and, most of all, that they will not lead to the simple abandonment of the purely procedural institutions in which responsibility is embedded.

Which are the procedural institutions that embed responsibility? They are all those mechanisms of suffrage that allow for democratic decision-making amidst political disagreement: *referenda*, universal election of officials and representatives, voting of laws by constituent and legislative assemblies. Through these mechanisms of suffrage, equal citizens (in the justificatory sense of equality) can have their say. The best way to do it may be through officials and representatives insofar as they are organized into political parties which stand for the main political outlooks in confrontation. However, citizens may also express their conceptions when they vote for representatives and officials and, in a more direct way, when they express their views in a *referendum*. Mechanisms of suffrage may follow proportional or majoritarian rules, majorities may be simple or qualified, and so on and so forth. There are many possibilities. The important point, however, is the acceptance of some of these institutions in order to strive for justice while responsibly acknowledging the pervasiveness of pluralism.

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[226] Weber (1919a: 367). This sentence is attributed by Weber to Luther.

In short: responsibility without justice would make no sense. People are willing to submit their convictions to the mentioned institutions because they have convictions. Political indifference needs no accommodation because it is ready for any kind of arrangements that grant positions and influence in political power. However, justice without public space for the exercise of responsibility is condemned by the argument from pluralism within justice. Institutions for responsibility - as opposed to the institutions that define the well-ordered or just society - are a moral requirement of the conceptualization of justice itself. Only the acceptance of the background institutions with this purpose does the work that an argument of restraint as responsibility is supposed to do.

9. A moral *modus vivendi*

For political liberals, the lack of a neutral or freestanding actual consensus on the fundamental principles of justice would lead to one of two situations: a prudential *modus vivendi*[227] or, even worse, the violent confrontation of parties. Both Rawls and Larmore give us a stark picture of this reasoning. In a *modus vivendi,* says Rawls, "social unity is only apparent, as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests."[228] If moral consensus is not achieved, we are left with the instability derived from purely self-

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[227] Prudence as instrumental rationality must be distinguished from prudence as a moral virtue. The latter, which was analysed in section 2. above, is part of a teleologically ordained cosmos. The former is characteristic of a cosmos with no immanent ends. One could call the former 'the prudence of the Moderns' and the latter 'the prudence of the Ancients'.

interested agents. Larmore thinks the same, but he seems more concerned with the worst situation: the confrontation of partisan views. If liberalism is one more partisan ideal, Larmore complaints, "our political future will indeed be one 'where ignorant armies clash by night'."[229]

This picture drawn by political liberals is far too exaggerated, to say the least. Although liberal political consensus on justice is not feasible, societies need not be dragged into some instable *modus vivendi*, nor into endemic war. The aim of this section is to explain how the idea of restraint as responsibility may be interpreted as an intermediate view between, on the one hand, moral consensus and, on the other hand, *modus vivendi* or political confrontation. The name of this intermediate view is 'a moral *modus vivendi*'.

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Terms of agreement in society need a moral basis. On this, political liberals are right to stand against the idea of a purely prudential *modus vivendi*, well-known in political philosophy, from Thomas Hobbes to David Gauthier. This strand in political philosophy defends that terms of agreement are feasible because they can be derived from self-interest and instrumental rationality (not reasonableness). The problem with this strategy, as political liberals point out, is that it is difficult to see how purely self-interested agents searching the maximization of their own good will comply with common terms of agreement - which may be temporarily advantageous - when these terms of agreement have ceased to maximize their individual good. In this occasion, it is clearly more rational to take advantage of the others rather than to

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[228] Rawls (1993: 147).
[229] Larmore (1996: 151).

cooperate with them. Thus, self-interested agents cannot really become "constrained maximizers", to use Gauthier's expression. If they are defined as maximizers, they cannot be constrained.

Political liberals are also right when they think that non-limited partisanship amounts to something like a state of war of all against all. The life of a society cannot be suspended. When societies need to decide on their public affairs and lack institutions to adjudicate in a context of disagreement confrontation may, indeed, occur. Thus, partisanship has to be restrained and moral reasons are required to restrict it.

However, political liberals are wrong in thinking that the absence of moral consensus on the principles of justice necessarily leads to pure *modus vivendi* or violent confrontation. Actual moral consensus, whether strict or overlapping, is unfeasible because of pluralism within justice. But moral demands need not lead to actual moral consensus. Instead, moral demands derive from two different sources: justice and restraint, or conviction and responsibility. The former needs no actual consensus (only ideal consensus). It is the latter that leads to the acceptance of the institutions of a non-limited umpire.

A moral *modus vivendi* departs from a principled mediation between *ethos* and institutions. Conviction is expressed in principles of justice; but restraint is not expressed in principles of responsibility. The *ethos* of responsibility leads to the moral support of mechanisms which work as a rule of conflict over principles and politics of justice. Because of their justification, these limitations of justice are moral. Because of their concrete instantiation, these limitations of justice may be seen as a *modus vivendi* which does not require moral consensus. Accordingly, there

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is a moral motivation to play the game in institutions that draw the limits of justice, but the game itself is not moral, let alone just.

10. Final remarks

The form of restraint as responsibility presented in this chapter is the natural companion of justice as conviction. Both ideas must be linked with the argument from pluralism within justice: conceptions of justice are necessary and they can be justified amidst pluralism, but there is an internal pluralism in the conceptualization because of the burdens of reason. Justice remains as expressing people's convictions, but responsibility must address the consequences of justice pluralism for citizens seen as equal agents in political justification.

Restraint as responsibility is not compromise of conviction and it cannot be the moral virtue that restores the unity of a fragmented political morality. But restraint as responsibility is a moral attitude or a true *ethos*. Nevertheless, this *ethos* must not be confused with the *ethos* of conviction typical of conceptions of justice. Moreover, this *ethos* should not be translated into moral principles like the virtue of integrity, the principles of accommodation in a deliberative democracy, or even the principles that justify an umpire which will solve some interpretive disagreements within a victoriously justified political order. Such principled accounts of responsibility do not make a clear distinction between what belongs to justice as conviction and what belongs to restraint as responsibility.

Whereas convictions must be substantive, responsibility is not translatable into moral principles. Instead, it supports institutional mechanisms of democratic suffrage because all

citizens must be equally taken into consideration. These mechanisms are supported *qua* procedures of peaceful decision, and nothing else. No moral contents mediate between the acceptance of those procedures and the moral attitude of responsibility. This is why the form of restraint which I favour - not the liberal political form of restraint - leads to a view of a pluralist society as a 'moral *modus vivendi*'. It is a *modus vivendi* because no substantive moral agreement is required about political principles and their necessary comprehensive justifications. It is moral because it advances moral reasons to support institutional mechanisms which are the responsible limitations of justice.

In this favoured model, everything is open to revision in the democratic process; but the entire political order is not supposed to suffer utopian engineering. The basic structure of society, to use the vocabulary of Rawls, is a patchwork of different conceptions of justice. Some laws result from a kind of principles, others from a completely different kind. There is no need to reduce this patchwork to a political and legal unity. Societies are plural historical products, not unitarian intended constructions. The pervasive doctrinal and political pluralism of liberal societies is an asset of these societies, not a problem to be solved. With the exercise of restraint as responsibility they can be stable and, hopefully, even closer to one's convictions of justice.

CONCLUSION

1. From the problem to the troubles of political liberalism

2. The breakdown of political liberalism and the right place of restraint

3. For a philosophy of assertion (final reflections)

1. From the problem to the troubles of political liberalism

Political liberalism is an answer, or a number of answers, to a central problem which was enunciated at the outset. The divide between justificatory reasons which political liberalism proposes (comprehensive / non-comprehensive or neutral) and the philosophy of argumentative restraint (non-comprehensiveness or neutrality in matters of basic justice) it defends are a thorough and at times impressive attempt to face the challenge in that initial problem.

The challenge is this: contemporary societies, certainly in Europe and America but also in other latitudes, exhibit a pluralism of ideas of the good and world views which makes it often difficult to devise, choose and accept common solutions about the political, social and economic arrangements of the community. I summarize in the idea of justice the principles that assess those arrangements, whatever they may be. However, people disagree about the justification of their specific conceptions of justice and this is the main concern of political liberalism. It is the concern with justification that leads to the differentiation and restraint of reasons, which are the common features of theories of political liberalism. Justice, political liberals sustain, may be justified, at least in a first instance, by non-comprehensive reasons alone.

Although political liberalism addresses what is an important problem in many societies, the argument was made throughout this dissertation that it fails to provide the right answers. The failure of existing political liberalisms is derived not only from their inability to provide a justification of justice with restricted reasons, but also from their specific way of formulating the problem which they address.

Accordingly, John Rawls formulates the problem of political liberalism in the framework of his ideal of a well-ordered society of justice as fairness or a similar conception. In this context, the kind of pluralism addressed is a narrow camp of reasonable comprehensive doctrines. This normative view is the product of a fallibilist outlook which, in its turn, may be deduced from a hidden liberal perfectionism in the construction of Rawlsian justice. The way Rawls conceives of justification of justice reinforces his liberal perfectionism and the ideal-theory approach of his work. When the overlapping consensus of a plurality of reasonable comprehensive doctrines enters the stage of the theory, the conception of justice is already in place and fully justified. Thus, the divide and restraint of reasons that Rawls considers takes place only within a society ordered according to a previously selected liberal perfectionist and highly idealized conception of justice (or family of conceptions, as he now stresses).

Charles Larmore frames the problem of political liberalism in a different way. Larmore does not build a theory of justice and he tries instead to draw the conditions of possibility of a liberal political conception of justice amidst reasonable disagreement in the ideals of the good life. These conditions of possibility are summarized in the idea of the neutrality (of justification) of the state, based on the ideas of rational dialogue and equal respect for

persons. Because he does not work within a full ideal theory, Larmore's view is more pragmatic than Rawls', but he cannot avoid the same kind of contamination by both fallibilism and a liberal perfectionist, partially comprehensive doctrine. The idea of neutrality should purify the justification of justice from contamination, but this *desideratum* is not achieved. In the end, the indeterminacy of justice in Larmore's theory does not allow for a more convincing account - than Rawls' - of the liberal and political divide and restraint of reasons.

All things considered, the Rawlsian solution to the central problem of political liberalism is more satisfactory than Larmore's. At least, the solution of Rawls does not pay lip service to the justification of substantive justice nor does it take refuge in a more abstract and meta-theoretical view of neutrality. Within the constraints of a theory of political liberalism, Rawls seems to have done the best that can be done, albeit not fulfilling the initial promises of the theory. However, even if the limitations and contaminations of the Rawlsian theorization could be overcome another difficulty arises which proves fatal to political liberalism.

2. The breakdown of political liberalism and the right place of restraint

Political liberalism is supposed to provide a justification of the same conception of justice for societies divided in so many other ways and ideas. Unfortunately, the justification of justice is also revealed to be plural, even if one accepts its ability to overcome the objections to Larmore and Rawls summarized above. In other words, there is not only a pluralism of world views that ends up contaminating the justification of justice. There is *also* a pluralism

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internal to any supposedly freestanding or neutral justification of the basic idea of justice. Moreover, these two pluralisms have exactly the same cause and explanation: what is called by Rawls "the burdens of reason".

Thus, a liberal political well-ordered society, a society united by the same conception of justice amidst doctrinal pluralism, would not be a coherent ideal even if the contaminations by doctrinal pluralism were overcome. What prevents the coherence of this social ideal is the fallibilist argument from pluralism within justice. No divide of reasons and argumentative restraint permits the justification once and for all of a consensual idea of justice in a context of pluralism. Accordingly, political liberalism does not and cannot provide a substantive and convincing response to the central problem it addresses.

After the breakdown of political liberalism, the initial problem remains unanswered. The question, then, arises of whether or not political liberalism contains some resources to resolve that problem. I think it does, once the restriction of reasons that characterizes political liberalism is used not to formulate the ideal of a just or well-ordered society, but to interpret the idea of responsibility in a way that maintains the integrity of convictions.

Liberal conceptions of justice must include consequentialist considerations that justify the support given to institutions that allow for political decision and stability amidst the pluralism of doctrines and conceptions of justice. In this manner, responsibility is embedded in specific institutions, whereas conviction remains intact in the different conceptions of justice. The result of this interpretation of responsibility is not any kind of moral consensus setting permanent political principles of justice or accommodation. The outcome of this reading of responsibility is rather a moral

modus vivendi, i.e., a situation in which there is no moral agreement but, instead, a morally justified - from within each conception - acceptance of institutions for responsibility. In this situation, both convictions about the just society and a responsible accommodation of pluralism are in place. This is the best one can hope in order to safeguard both the demands of justice and the remarkable pervasiveness of pluralism in our liberal democracies.

This being said, the best solution - as far as I can see - to our central problem cannot be a form of political liberalism. Nevertheless, it is still a philosophy of argumentative restraint limited to the consequentialist counterpart of the different conceptions that specify a basic liberal idea of justice. This divide of reasons and the practice of restraint do not provide the justification for a liberal political order in its entirety, but only the justification of some institutions that allow for a rule of conflict among different outlooks. The justice of a liberal political order in general does not find a full justification in a philosophy of restraint. This liberal order must be secured by comprehensive liberalism, or it will not be secured at all.

3. For a philosophy of assertion (final reflections)

Unlike political liberalism, comprehensive liberalism is a philosophy of argumentative assertion. It unveils and reveals what it stands for, which implies to spell out the deepest, various and incompatible religious, moral, philosophical, but also political commitments that characterize a defence of liberal justice or other liberal principles.

Usually, a philosophy of assertion requires a comprehensive moral doctrine, general conceptions of man and society, some

epistemological views and, eventually, a philosophy of history. A philosophy of assertion may even be non-metaphysical, but it cannot be non-comprehensive. Only in this way can a normative theory of liberalism consistently do all the work that it is supposed to do, i.e., to show the kind of society liberals would like to live in, the *ethos* of this liberal society, its framework of basic political, economic and other social institutions, and the rights and obligations of its citizens. Moreover, a philosophy of assertion does not avoid disagreements about political principles, even if there is agreement concerning their underlying foundations.

Accordingly, in the course of its arguments and theoretical decisions, an assertive defence of liberalism must make a number of contentious claims, both at the level of political principles and at the level of deeper (or wider) commitments. Often, actual consensus is not achieved and the best solution is a responsible but clear dissent. There is no reason why dissent should be avoided, unless one wants to give up the defence of liberal justice. This is why a theory of liberalism must be a "fighting creed".[230]

Defences of liberal values previous to the political liberalisms of Rawls and Larmore had always been philosophies of assertion and, thus, some kind of fighting creeds. This point, which I emphasized already in the Introduction to this dissertation, puts in evidence the novelty and even the oddity of the new theory of political liberalism. So the question arises out of the consequences of the deflationary account of liberalism that characterizes the views analyzed and criticized in this dissertation. On the face of it,

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[230] This useful expression is taken from Hollis (1999: 36). Hollis further writes that liberalism as a "fighting creed" implies "a defence against a charge of ethnocentricity" and, therefore, must "take a universalist and objectivist moral stand at home and abroad" (ibid.). Nothing like this is to be deduced from my

political liberalism is a purely academic event, with no further consequences in the real world of politics. However, one may also speculate that the theory of political liberalism is part of a trend that permeates our political common sense.

These days, liberalism became almost synonymous of the political establishment in Europe and America. Accordingly, liberalism is identified with modern constitutionalism, but not with a specific interpretation (or a number of specific interpretations) of the great values of modern constitutionalism, competing with other interpretations. Nevertheless, left and right wing non-liberal communitarians do not hesitate - and rightly so - in defending very contentious and comprehensive views about knowledge, man, society, morality and politics, against what they see as the liberal establishment. Because of their deeper and unashamed foundations, these communitarian views and concerns are better equipped to convince political agents and citizens in public *fora*. This is hardly surprising.

The life of the citizenry in a constitutional democracy requires that people recognize meaningful and deserving causes to strive for within - or from within - the existing legal and political framework. However, civic participation and struggle for the highest values does not seem compatible with the liberal political idea that what matters most in the *politeia* must be decided at a "political, non comprehensive" level, independently from the adhesion of people to the convictions that are their most cherished convictions.

Moreover, the idea that consensus on the basics of justice should be the central concern for liberals deprives liberal theories of their critical resonance in society. Both the idea that

own position. In fact, there are many different liberal fighting creeds, including non-universalist and non-objectivist ones.

"comprehensive, not strictly political" justifications are of second order in the political domain and the requirement of moral consensus end up emptying or at least impoverishing the life of the citizenry from a liberal point of view.

Meanwhile, the theoretically elaborated enemies of liberalism are not the only ones to gain from the deflationary strategy of some liberals. Even when civic life is emptied, political power - together with other forms of social power - remains in place. In other words, the crude reality of politics always imposes itself when there is no public support for just institutions. If liberals want to tame political power - and perhaps also other dimensions of social power - they must not accept the perverse effects of a political order without public. These effects are the free hands, so to speak, of one or several uncontrolled powers. If the latter are to be spotted, understood and tamed, this must be because civic life supersedes its passivity and regains momentum. For this, citizens need new liberal philosophies of assertion, new fighting creeds.

To sum up: political liberalism is the theorization of a novel and erroneous way of philosophizing about politics which is centered on the justification of consensual liberal justice amidst pluralism; but it is also the most sophisticated version of a phenomenon that is not limited to academic disputes and touches common sense outlooks. The last part of my conclusion amounts to saying that liberals should not take part in this tendency to be satisfied with an illusion of actual and shallow consensus. Instead, they should found their defences of liberalism in the practice of comprehensive philosophies of assertion that elaborate what they strive for and why they do it.

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