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Alternative Approaches to Public Reason in Pluralistic Societies

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Abstract:

John Rawls asserts that the form of public reason appropriate to modern pluralist contexts is one that seeks to avoid divisive issues of ethics and the good by removing them from the political public sphere, and by grounding public discourse instead in citizens' reasonableness expressed in a consensus on a conception of liberal justice. One objection to this account has focussed on its apparent over-dependence on the assumption that all "reasonable" citizens of a liberal polity "share" a political identity that can ground a consensus on justice and public reason. I examine this objection and conclude that the objection to Rawls' account of reasonableness is valid; however, it must be directed not at the overlapping consensus but at the foundational level of justification, i.e. his understanding of practical reason. I also point to Onora O'Neill's alternative interpretation of Kantian practical reasoning, which shares insights with discourse ethics, as a more promising approach to public reason in pluralist contexts.

Key words: *ethical pluralism; John Rawls; political liberalism; practical reason; public reason; Onora O'Neill; discourse ethics; Rainer Forst*

Introduction

The modern context of justice is marked not by a convergence of perspectives towards a liberal consensus but by deep forms of diversity and pluralism. The "comprehensive doctrines" described by John Rawls have not retired once and for all from the public sphere; rather in some instances, citizens of modern liberal democracies have rejected the privatisation of their "non-political" identities. One example is the renewed debate within philosophy around the role of religion in the public sphere.²

In this context, the liberal project has been criticised as a substantive ideal that *excludes* other discourses from the public sphere and opposes democratic aims of equal participation. Rawls's *Political Liberalism*, which attempts to ground an impartial perspective for resolving political conflict in pluralist societies, is often viewed as an archetypal representation of this hegemonic form of liberalism. Rawls argued that his liberal conception of justice could ground the justification of justice in pluralist societies by removing the contribution of ethical discourses from the public sphere. In an attempt to analyse what role, if any, *can* be played by such discourses in relation to public reason, the focus of this

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² The discourse ethicist Jürgen Habermas, who for many years eschewed any substantial role for religion in the public sphere, sparked much debate when he revised his position and (while not endorsing the content of such traditions as rational) argued for the semantic and motivating potential of distinct ethical traditions (Habermas 2008, 2010).

paper will be an investigation into the grounds on which Rawls asserts the validity of his account of public reason and *reasonableness*.

After briefly reviewing the development of the political conception of justice and public reason in *Political Liberalism*, I will discuss Onora O'Neill's critique of Rawlsian public reason. O'Neill offers a unique interpretation of Kantian practical and public reasoning that not only sheds light on fundamental issues with Rawls's account of "accessible" reasons but may also offer a starting point for overcoming the seeming incompatibility of concrete ethical traditions and universal moral norms. I will also draw on the critique of James Bohman, whose radical criticism parallels O'Neill's in its diagnosis of the tension between Rawlsian liberalism and democratic principles of openness and tolerance. Both suggest that by grounding public reason in the already shared identity of *liberal* citizens, Rawls' theory is incapable of providing an impartial or *accessible* standard of reason in pluralist societies. I suggest that such an objection will only hold if it can be shown that the context-dependent citizens' perspective is the *foundational* basis for reason and reasonableness. The discourse ethicist Rainer Forst, while also critiquing Rawls for presenting a "substantive" form of liberalism that rests on principles rather than reasons, argues that Rawls attempts to offer a moral-universal foundation for his theory in the form of his account of practical reason. I suggest, however, based on Rawls's own explication of the grounds of practical reason, that his account of practical reason *itself* faces an accusation of context-dependence, and as such is not fit to ground as morally justified a consensus on reasonableness. I further argue, returning to Bohman and O'Neill, and drawing on the discourse-ethical perspectives of Forst and Jürgen Habermas, that this approach is unsustainable in democratic contexts of deep pluralism. Finally, I turn to O'Neill's alternative interpretation of Kantian practical reason and public reason. For O'Neill, constraints on reason and discourse are not derived from a fear of conflict that seeks criteria that may motivate actual agreement but from a consideration of the conditions that make *human agency*, and hence reason, consent and agreement, *possible*.

John Rawls' "Political" Conception of Justice and Justification

Rawls's aim when writing his highly influential *A Theory of Justice* (1971) was to present an alternative vision of justice than that of the preeminent philosophical trend of the time, Utilitarianism. His account of justice rejected Utilitarian arguments in favour of principles that secured the distinctiveness of persons and prioritised the right over the good.

However, by the time of his next major work, Rawls's core concern had shifted dramatically. *Political Liberalism*, published over twenty-one years later in 1993, was focussed on what he termed "*the fact of reasonable pluralism*" (Rawls 1993: 55). The challenge now, as he identified it, was the ever-increasing plurality of moral, philosophical, ethical and religious doctrines and discourses, or "*comprehensive doctrines*", within modern liberal democratic societies. In the context of such a diversity of conceptions of the good, the "*burdens of judgment*" (Rawls 1993: 55) dictated, according to Rawls, that no agreement could be found on the *content* of any particular comprehensive doctrines. However, rather than admit defeat on the possibility of a stable and just conception of justice, Rawls pointed to the existence of a "*reasonable*" plurality of doctrines as the context for modern liberal democratic societies. While citizens of such societies held to diverse beliefs, as Rawls saw it, they also acknowledged the burdens of judgment and agreed to tolerate others'

perspectives and to not *impose* their own doctrines upon the polity. *Reasonable* citizens, Rawls argued, understood and accepted that no such doctrine could be expected to “*serve as the basis of lasting and reasoned political agreement*” (Rawls 1993: 58).

However, given that no such doctrine could supply the basis for the justification of a social order, on what basis then could one attempt to justify a conception of justice for a modern pluralist liberal democratic regime? It is important to note again that it is *stability*, along with justice, that guides Rawls’ revised theory of justice. For a conception of justice to be stable *for the right reasons*, there must be political *agreement* on its content, i.e. it must receive the endorsement of all reasonable citizens.

For this reason, Rawls concluded that the philosophical demands of his earlier work were too great. *A Theory of Justice* deployed rational methodologies for constructing principles in a hypothetical thought procedure (the original position), and justified these principles further via “our” “*considered convictions*”. However, it also relied on the notion that “our” fundamental nature was that of free and equal persons, and correspondingly that principles of justice reflected this nature and so expressed an aspect of “our” good. In particular, Rawls felt that the Kantian notion of the person expressed in this understanding of our fundamental nature and in the “*congruence of the right and the good*” could not hope to ever achieve political consensus in a pluralist context (Rawls 1971: 389).

Instead, consensus could only be achieved by bracketing all controversial assumptions and premises relating to the “good”; in other words, by removing or eliminating any content that might *conflict* with citizens’ deeply held conceptions of the good. In attempting to develop such an account, Rawls sought to revise and amend the problematic elements of his earlier work. Firstly, he set out to *detach* his starting points and premises from controversial and consequently unacceptable premises that relied on any aspect of the “good”. To achieve this, he revised his starting points and presented them now as “freestanding conceptions”, the salient feature of such conceptions being that they could be *integrated* into a plurality of reasonable doctrines rather than conflicting with them.

For the conception of the moral person, Rawls aimed to articulate this conception in such a way that avoided any metaphysical claims about the nature of persons as free and equal. For this reason, he now presented a conception of the person as a *citizen*. It is the *citizen* now, and not the *person*, to whom these attributes of freedom and equality are ascribed. Furthermore, these revised attributes were narrowly interpreted in relation to citizens’ *needs*.

Freedom now related to the conception of the good, to the freedom to pursue and revise that conception and to make claims for oneself on the basis of such a conception (Rawls 1993: 30-34). Equality is now defined in similar relation, being designated on the basis of each citizen having a capacity to formulate and revise a conception of the good, and on the assumption of a minimum threshold for participation in social life (Rawls 1993: 19).

The revised conception of the person as citizen can fulfil its role as a purely political conception, detached from controversial premises and concerned only with how freedom, equality and autonomy affect persons’ rights, liberties and obligations in relation to the basic social structure. Hence, its basis could be identified in the “public political culture” of a liberal democratic society. When discussing the basis for or derivation of the attributes of freedom and equality, Rawls asserts that “[w]hen we describe a way in which citizens regard themselves as free, we are describing how citizens actually think of themselves in

a democratic society, should questions of justice arise. In our conception of a constitutional regime, this is an aspect of how citizens regard themselves” (Rawls 1985: 242-3).

He comments that *“the conception of person as having the two moral powers, and therefore as free and equal, is also a basic intuitive idea assumed to be implicit in the public culture of a democratic society” (Rawls 1985: 234).* Justification for such a conception then, while still linked to the role it plays in justice as fairness, derives from it being the intuitive and implicit conception that persons, as citizens in a liberal democratic society, *already and actually* endorse or accept.

Finally, Rawls presented a freestanding conception of justice itself, in the *“political conception of justice”*. Only a political conception, he argued, could function as the basis of a lasting political agreement on justice. Such a conception was political in the sense that it was strictly limited to the *political domain* of a liberal democratic society, in other words to a particular set of basic political and civil rights and liberties, and their order of priority (Rawls 2003: 166). Rawls argued that a political conception must be limited in this way in order to avoid *encroachment* into ethical domains, which would deprive it of the potential to ground a stable consensus. As we have noted, such a conception must be a *module* capable of inserting or embedding itself within a variety of reasonable comprehensive doctrines. A political conception that was limited in this way was the only possible basis for an *“overlapping consensus”* on justice. This overlapping consensus he referred to as the *“public basis of justification”* (Rawls 1993: 388), as it reflected the perspective of reasonable citizens and secured a just and stable polity.

Rawls identifies the content of a political conception of justice as those *“ideas implicit in the public political culture”* (Rawls 1993: 100) of a liberal democratic society, or more specifically: *“[s]ociety’s main institutions, and their accepted forms of interpretation, are seen as a fund of implicitly shared ideas and principles”* (Rawls 1993: 14). In other words, the political conception is constituted by those ideas and principles that are *already shared* by all reasonable citizens. Just as the conception of the citizen is derived from what citizens already and implicitly endorsed, so too are the basic rights, liberties and obligations of the basic structure that constitute the political conception of justice.

At the core of the political conception of justice lay Rawls’ conception of public reason. In addition to providing a basis for the justification of fundamental rights and obligations, the political conception of justice also functioned to provide *“a reasonable framework of principles and values for resolving questions concerning [constitutional] essentials”* and other matters of basic justice (Rawls 2003: 166). The pluralistic liberal democratic society therefore required a public sphere where such matters could be debated and decided. In the same way that the political conception could not derive the public basis of justification from comprehensive doctrines of truth, right or the good, public debate could not proceed with the inclusion of these values, now designated by Rawls as *“private”* or *“non-political”* reasons. Citizens could not hope to reach agreement *“or even approach mutual understanding”* on such values, and irreconcilable conflict would be the inevitable outcome (Rawls 1993: 441).

The solution for Rawls was that such issues must be bracketed or *avoided* (Rawls 1993: 151). As a citizen, he argued, it was one’s duty to accept that the content of one’s deeply held beliefs, whether ethical, religious or other, must be circumscribed within the private sphere, and only *“public”* reasons admitted to the public domain. Because political power implied a coercive power to enforce laws and policies upon fellow citizens,

public justification and public reasoning must be limited by the criteria of reciprocity and legitimacy (Rawls 1993: 139-40). Citizens' *reasonableness* was central to public reasoning. By virtue of this reasonableness, citizens agree to abide by fair terms of cooperation and to offer reasons for action that all others could, or *would*, accept (Rawls 1993: xlii). This meant a commitment to not offer reasons or make claims that were dependent on their particular belief systems, or at least a willingness to *translate* such arguments into those *accessible* and *acceptable* to other citizens.

Furthermore, Rawls argued that the content of such doctrines were inadmissible, because *public reasoning must begin from shared premises*. Hence, it is the overlapping consensus on liberal principles, derived from that fund of implicitly shared principles and ideas that constitute the political conception, that must serve as the basis for public reason. For Rawls, no other content could possibly hope to engender agreement, because "*justification is addressed to others who disagree with us, and therefore it must always proceed from some consensus*" (Rawls 1993: 229).

Further agreement can only succeed where there is some shared basis on which to proceed. Citizens must begin from some common starting point, and hence public reasoning must be grounded in a *pre-established consensus*. According to Rawls, it is this common understanding that makes further agreement *possible*. Just as stability is maintained through the overlapping consensus, political agreement is *facilitated* by this same common set of values and principles. The role then assigned to public reason is to provide answers to divisive questions of fundamental political importance (Rawls 1993: 241). It is in this way that a *shared political identity* becomes the basis of public reason in pluralist liberal democratic societies.

Critical Perspectives on Rawlsian Public Reason

Several objections have been raised to this account of public reason as the shared identity of citizens. The moral philosopher Onora O'Neill argues that, on Kant's understanding, the form of public reason put forward by Rawls is in fact a form of *private* reasoning. O'Neill offers an alternative approach to Kantian constructivism which is unique in that it understands the justification of abstract universal principles in a way that *affirms* the role of distinct ethical discourses in shaping public discourse about shared moral norms rather than viewing abstract principles and concrete values in radical opposition. For that reason, O'Neill's arguments are central to this critique of Rawls, as she offers an understanding of "accessibility" that preserves the basis of universal justification *without* jettisoning the contribution of diverse and concrete perspectives on justice.

"Private" forms of reasoning, according to Kant, are not so because they derive from comprehensive doctrines but because they are those that are not *in principle accessible* to others who do not start from "our" shared premises (O'Neill, 1986: 535). Hence, Rawlsian public reason, which is *restricted* to a particular group and its way of thinking, is a form of private reason. Agreements, or shared reasons, are "*unvindicated premises*" and as such not suitable as properly public reasons; they are not capable of reaching "*the world at large*" (O'Neill, 1986: 531). According to O'Neill, such private forms of reasoning in fact *exclude* others who do not begin from these premises. Under conditions of *real* pluralism, she argues, "*we cannot presuppose the contingencies of a specific sense of political identity in asking the most basic questions about justice*" (O'Neill: 1997: 415). Actual modern

liberal societies are constituted by a multiplicity of perspectives, many of which do not *already* share or endorse a liberal conception of justice. Where political identity is not already shared, it must be a “*central domain of thinking about justice rather than its fixed parameters*” (O’Neill 1997: 420).

The values and principles that constitute political identities, where not already shared, must be open to criticism and critique. Accounts of public reasoning that do not accommodate such criticism exclude not only “*others*” from outside the domestic social order but also “*citizens who stand back from the way things are, and ask whether they should be that way*” (O’Neill 1997: 415). It does not appear that Rawls has resolved the problems presented by pluralism; instead, he has *limited* the plurality in such a way that a priori removes the possibility of disagreement. By removing actual conflict *between* identities from the agenda, he has removed the grounds for disagreement, and hence also the context for public reasoning.

Like O’Neill, the philosopher James Bohman points out that modern pluralist democratic societies are marked by a conflict *between* identities rather than the presumption of a shared political destiny. While Bohman does not offer the same Kantian insight into the connection between universal justification and public reason as O’Neill, his comments reflect some key aspects of her critique of Rawlsian public reason, and his articulation of the radical challenges pluralism and diversity present to liberal frameworks is elucidating. According to Bohman, Rawls’ account of public reason cannot ground the form of reasoning appropriate to a society marked by “*deep*” cultural diversity and value pluralism that is “*no longer the expression a single political subjectivity*” (Bohman 2003: 775). In these contexts, Bohman suggests that there is in fact a tension between liberal ideals and democratic principles such as freedom and equality. Reciprocity may be an inappropriate criterion for reasonableness where the democratic equality of citizens is contested (Bohman 1995: 253).

Further, we cannot appeal to a restricted and exclusive liberal conception of reasonableness where it is the *framework* for reasoning that is itself in dispute. In these contexts, Rawlsian public reason has little to offer, as it fails to distinguish between those who may legitimately be labelled as unreasonable and others who may only seek “*to extend and modify reasonable political consensus*”, such as the “*abolitionists, feminist, and civil rights movements*” (Bohman 1995: 264). Such a restricted (or in O’Neill’s terms “*private*”) form of public reason is incapable of distinguishing democratic from unreasonable dissenters. And, even where oppositional voices may in fact be unreasonable, the liberal ideal of reasonableness may still be inappropriate because, Bohman argues, “[n]ot to offer justification even to the unreasonable is to exclude them from the community of judgment and thus to violate the democratic commitments to political egalitarianism and nondomination” (Bohman 2003: 768). By grounding itself in consensus or shared values, the liberal ideal of reasonableness fails to justify itself to those who challenge it, and as such it violates conditions of freedom and equality.

While O’Neill and Bohman differ in their understandings of what might constitute an appropriate “*objective*” or “*reasonable*” perspective,³ both object to Rawls’ attempt to ground reasonableness in a supposedly “*shared*” citizens’ perspective. Both suggest that modes of reasoning that rely on the agreement of particular groups cannot ground

³ Bohman rejects any appeal to Kantian impartiality, whereas O’Neill offers a radical re-interpretation of Kant’s principle of universalizability.

dialogue *between* perspectives; as such, they risk being identified or interpreted as arbitrary by those who are excluded and whose perspectives are rejected as unreasonable.

Rawlsian Practical Reason and the Conception of Reasonableness

Mere agreement or endorsement, i.e. the contingent acceptance of certain principles by a particular community, is no basis for reasoning about justice in a pluralistic context, whether in the domestic or international domain. Consensus can be iniquitous, and hence further grounds are required to justify its legitimacy. However, it is not immediately certain that Rawls's political account of reason and justice is liable to this objection. An objection of the sort raised by O'Neill and Bohman can only stand so long as one can show that the conception of reasonableness that *legitimises* the citizens' perspective also fails to justify its legitimacy.

Rawls links reasonableness to the conception of the citizen discussed earlier, and grounds *public* justification in the overlapping consensus constituted by this shared understanding. However, if a deeper level of justification can be identified that does not appeal to a context-dependent account of reason, then the form of reasoning expressed in the citizens' perspective may not be *in principle* inaccessible, and the grounds on which the reasonable and unreasonable are distinguished in *Political Liberalism* may hold.

Like O'Neill, the discourse ethicist Rainer Forst also rejects Rawls' account of public reason and justification. In contrast, however, he argues that this account does attempt to appeal to a moral-universal foundation. In *Contexts of Justice*, Forst notes that the "*public*" level of justification in *Political Liberalism* is presented as a *third* level of justification. The primary level of justification offered is what Rawls refers to as "*pro tanto*" justification.⁴ Forst (2002) suggests that the contextual aspect of Rawls' theory relates to the level of *public* justification, which is in turn subordinate to a "*freestanding*" level of justification that is *not* reliant on a particular context.

In relation to the objection that this "*freestanding*" justification is itself grounded in a particularist self-understanding, Forst points to Rawls' assertion that his conception of justice is a "reasonable" one. Such an emphasis, Forst argues, is incompatible with an appeal to a contextual understanding of justice (Forst 2002: 174). Forst rejects further the objection that this fundamental justification, while maybe reflecting more than the mere immanence of certain principles and values, still appeals to a commitment to a liberal *ideal*. According to Forst, Rawls's theory cannot be interpreted in this direction because his fundamental ideas are in fact "*ideas of practical reason*", and this implies that they "*cannot be reasonably rejected*" in a moral sense (CJ, 174-175). In other words,

"the conception of 'justice as fairness' begins not with contingent 'shared understandings' because they are contained in a particular political culture, but with conceptions of person and social cooperation that must be contained in such a culture – and indeed necessarily so if the culture raises the claim to being a democratic one that rests on a shareable, reasonable foundation." (Forst 2002: 175)

⁴ The intermediary stage is referred to as "*full justification*", and involves the reflective endorsement of the conception of justice by *individual* citizens, as opposed to citizens taking account of each other's endorsement, which is the "*public*" level described by the "*overlapping consensus*". (Rawls 1993: 386)

In this way the contextual objection may be avoided because these conceptions, now understood as *ideas of practical reason*, in the sense that they are necessary complements of the principles of practical reason, receive moral-universal justification as essential elements of a legitimate democratic society. Practical reason here is a *reconstruction of the right* from particular and contextual elements, rather than the mere endorsement of such particularist understandings (Forst 2002: 175). The constituting principles of practical reason, for example of reciprocity and impartiality, are *universally shareable* principles and ideas of practical reason. Forst here interprets Rawls's theory as sharing a basis with his own account of justification, which emphasises that "*general norms must be generally justified*" both recursively and discursively (Forst 2002: 176). This implies an *intersubjective* process of universal justification that rules out *unshareable*, rather than *unshared*, principles.

However, Forst objects to Rawls's account on the grounds that these conceptions of person and society, whilst deriving from universally justifiable principles of practical reason, *also* include *substantive* conceptions that are political in a context-dependent sense. By loading the conceptions of person and society with references to the "*implications of 'citizenship'*", in particular with regard to the needs of citizens through the theory of primary goods, Rawls does in fact introduce context-dependent assumptions into his foundational level of justification (Forst 2002: 188). It is Forst's conclusion that Rawls could resolve this issue by more clearly distinguishing the different *contexts* or levels at which the theory applies. Rawls must clearly delineate between the moral-universal and legal-particular contexts of justice, and correspondingly he must distinguish the *moral person* from the *citizen* (Forst 2002: 189).

I would suggest, contrary to Forst, that such a move still may not be sufficient to sustain the universal-moral aspirations of Rawls's "freestanding" justification. I would concur with Forst that Rawls's theory aims at something deeper than the "public level of justification" that relies on the *mere* existence of an overlapping consensus on certain contingent principles, and further that this level is reliant upon principles and ideas of practical reason. However, further investigation into this account of practical reason and reasonableness raises the possibility that this account is *itself* substantive and contextual in more ways than the problematic sense identified by Forst for the account of primary goods. Much depends on how Rawls interprets or defines the role and content of practical reason. If Rawls ultimately defines practical reason in contextual terms, further vindication of its premises will be required to preserve the universalist-moral status of this account. Unvindicated substantive content is opaque in relation to justification, hence inaccessible, and cannot therefore be viewed as "*not reasonable to reject*".

Any investigation into Rawls' approach to practical reason must begin with his rejection of what he interprets as Kant's "*transcendental claim*", or the assertion that "*practical reason itself can constitute the moral or political values*" (Rawls 1993: 99). Rawls is suspicious of the suggestion that *pure practical reason* can supply its own grounds, instead asserting that "[t]here is no such thing as the point of view of practical reason as such" (Rawls 1993: 116). Reason, he claims, must always be "*from somewhere*" (Rawls 1993: 116). Hence, Rawls argues that practical reason must be understood as the reason of embodied, or partially contextualised, *agents* (Rawls 1993: 107).

Rawls suggests that Kantian practical reason can be understood as reflecting "*common human reason*", and draws a parallel with his grounding of reason in "*the point of view of free and equal citizens*" (Rawls 1993: 115). For him, then, the principles of practical

reason are those that reflect the perspective of moral persons, now defined as *citizens*. This embodied form of reason provides the “*fixed ideas*” or conceptions that ground the constructivist procedure. The “*agents who reason*” and “*the context for the problems and questions*” are defined by the principles of practical reason; the ideas of practical reason derive *necessarily* from the principles of practical reason. Consequently, then, while practical reason may be common to human reason, it is also inextricably tied to conceptions of *citizenship* and specifically *liberal* democracy. It is in this way that Rawls translates the considered convictions of abstract moral persons, as defined in *A Theory of Justice*, into the perspective of citizens articulated in *Political Liberalism*. In other words, Rawls’ revision of his earlier account of justice involves the claim that “*common human reason*” is now more specifically articulated as the shared reasoning of citizens.

Practical reason is the practical reasoning of *citizens*, and it is this that grounds the claim to reasonableness in the political conception of justice. In his later work on international justice, *The Law of Peoples*, Rawls reiterates his rejection of a disembodied account of “pure” practical reason. He comments that:

“at no point are we deducing the principles of right and justice, or decency, or the principles of rationality, from a conception of practical reason in the background. Rather, we are giving content to an idea of practical reason and three of its component parts, the ideas of reasonableness, decency, and rationality. The criteria for these normative ideas are not deduced, but enumerated and characterized in each case... There is no list of necessary and sufficient conditions for each of these three ideas... We do conjecture, however, that, if the content of reasonableness, decency, and rationality is laid out properly, the resulting principles and standards of right and justice will hang together and will be affirmed by us on due reflection. Yet there can be no guarantee.” (Rawls 1999: 86-7)

What is suggested by the above passage is that the content of practical reason on Rawls’ understanding does not derive from a reasoned account of necessary moral conceptions, such as that argued for by Forst. In contrast to Forst’s suggestion, practical reasoning itself in Rawls’ account appears to be justified via the factual agreement of particular persons understood as citizens.

At this point it is possible to identify the potential circularity in this approach to justification. Rawls recognises that a mere consensus may be unjust, and he therefore grounds the overlapping consensus in a reasonable perspective that, he argues, can be justified to all citizens. It was Forst’s assertion that this conception of reasonableness is ultimately grounded in a universal-moral account of what *cannot* be reasonably rejected. Our investigation of Rawls’ understanding of practical reason, however, indicates that this idea of reasonableness is *itself* a conception that derives from the latent or intuitive reasoning of citizens. In other words, the moral or necessary nature of the content of citizens’ reasonableness has not been *argued for* on this account. In place of such reasoning, it is *asserted* as *present* in citizens’ reasoning about justice. Because the conception of reasonableness is itself reliant on the citizens’ perspective, it cannot then justify the reasonableness of this perspective.

By grounding practical reason in consensus or shared content, Rawls' theory is guided towards a contextualisation, and consequently a *relativisation*, of his account of justice and public reason. To reiterate Bohman's criticism, such a strategy excludes some from the community of reason and justification. In contexts of real and deep pluralism, it is insufficient to appeal solely to the shared identity of *particular* persons in debates over fundamental political questions, in particular over what constitutes the "*reasonable*". Such a strategy cannot hope to ground an *accessible* perspective that could arbitrate between the claims of persons who hold diverse conceptions of the good and who also do not share a political identity.

It is possible to discern these limitations of the Rawlsian approach in the broader context of the often antagonistic relationship between the substantive *ideal* of liberalism and the demand for free and equal participation in modern *pluralist* democratic societies, as identified by Bohman. This conflict is expressed in debates between various positions on the politics of identity, recognition and difference in pluralist societies; between those who assert the validity of an impartial liberal perspective, or who doubt the supposed universality of such a conception, for example in the exchange of Seyla Benhabib and Iris M. Young. A liberalism such as that argued for by Rawls, by committing to a substantive and relative account of reason, is legitimately open to accusations of false universality, and could not be identified with the flexible and tolerant form of liberalism that Benhabib, for example, argues for.⁵

Liberalism, if understood fundamentally as a set of substantive principles, as opposed to a reasoned account of justice, is not open to challenge and hence conflicts with the political autonomy of citizens. Forst has also argued that Rawlsian liberalism prioritises "*moral over political autonomy*" (Forst 2001: 347), and that "[d]emocracy, according to this Rawlsian model, is ideally seen as the rule of principles of justice", rather than "*reasons*" (Forst 2001: 347). The discourse ethicist Jürgen Habermas expresses a similar criticism, suggesting of Rawls' account that "*the two-stage character of his theory generates a priority of liberal rights which demotes the democratic process to an inferior status*" (Habermas 1995: 128). Consequently, the public use of reason is limited to the "*nonviolent preservation of political stability*" and does not reflect "*present exercise of political autonomy*" (Habermas 1995: 128). The paradoxical implication of Rawls' underlying emphasis on actual or probable consent appears then to be a downgrading of the value of the *actual decisions* of the members of a democratic polity.

Habermas offers a valuable critique here regarding the risks of Rawls' account to democratic decision-making. And, as noted earlier, he has in recent debates asserted a meaningful role for ethical discourses in the public realm. However, Habermas' approach is arguably more limited than O'Neill's in its understanding of the potential of such discourses to express rational-normative content⁶, and hence it is appropriate at this point to return to her account.

⁵ Benhabib defends a more "*flexible*" and "*tolerant*" liberalism than that identified with Rawls (Benhabib 1999). In response, Young has argued that a "*politics of difference claims that hegemonic discourses, relations of power, role assignments, and the distribution of benefits assume a particular and restricted set of ruling norms, even though they usually present themselves as neutral and universal*" (Young 1999: 416).

⁶ The philosopher and theologian Hans Joas' critique of Habermas explicates the salient distinction between Habermas' approach and other approaches that do not view the content of ethical discourses as inherently incompatible with universal moral norms on the other. Joas notes that "*Habermas himself concedes that when it comes to values it is impossible to make as clean a distinction between questions of genesis and validity as it supposedly is with respect to cognitive and normative validity claims... But for him all this means is that values are inherently particular and cannot be subject to the kind of universalization that he considers possible in the case of cognitive and normative validity claims. For him, moreover, the particularity of values*

Onora O'Neill's Modal Interpretation of Kantian Practical Reason

O'Neill suggests that neither a transcendental nor an embodied-contextual interpretation of Kant's account of practical reason are appropriate. She argues instead that Kant's claims regarding the capacity of practical reason to supply its own point of view must be interpreted *modally*. Practical reason itself is interpreted as the capacity of reason to legislate itself according to modal considerations, i.e. practical considerations about the possibility or impossibility of a plurality of *agents* acting on certain principles. Where Rawls appears to use possibility and *probability* interchangeably, O'Neill draws a careful distinction that separates *motivational* from modal considerations. Furthermore, O'Neill argues that Kant's account must be interpreted as politically orientated, though political is understood to relate to the abstract social context within which all persons find themselves, and not to a specific liberal democratic society. She describes this social context as a plurality of interacting agents who *do not share* any prior or transcendently given principles.

It is therefore the context of ethical pluralism *itself* that provides the conditions or criteria for constraining reason and action: "*the constraints on possibilities of construction are imposed by the fact that the principles are to be found for a plurality of possible voices or agents who share a world*" (O'Neill 1989: 27). Because no shared basis of reason can be assumed a priori, O'Neill argues that the only necessary requirement is that agents not *preclude* the possibility of discovering shared standards (O'Neill 1989: 20). In contrast to Rawls' suggestion, the context of "reasonable" pluralism does not imply that ethical discourses must be banished from the public sphere. Rather, it leads to the criterion that reasons and reasoning, whether about theory or action, must in principle be "followable" and "shareable" by all relevant others. While this requirement has considerable implications for reasoning about justice, I will here mention only some implications for the contribution of ethical perspectives to public discourse.

As previously noted, reason that appeals fundamentally to the prior agreement of certain groups is necessarily private, in the sense that it is not in principle followable by external others. What is significant in shareable reasons instead is that they embody a principle of respect for human agency or dignity, because to impede agency is to *preclude* the other from sharing, in a modal sense, in principles, reasons, etc. It is not apparent that the particular content of ethical discourses will always be unshareable in this sense. Furthermore, O'Neill points out that what counts as shareable can only be fully discovered *through* discourse, where reasons can be tested for whether they fulfil this criterion. Hence, toleration in public discourse cannot amount to the *avoidance* of questions that engender conflict, as Rawls advocates. Toleration instead is a *necessary* openness that facilitates the criticism needed to test the shareability of principles (O'Neill, 1986: 534). This form of tolerance creates space for individuals or groups who may be marginalised by a hegemonic conception of justice to challenge the dominant perspective on reason and reasonableness. Bohman comments that toleration is about "*taking up the perspective of the citizen who*

means the particularism of values, so logically there can be no universalist values. Yet this is unconvincing both philosophically and historically. The fact that the carriers of values are particular individuals and groups does not mean that the addressees of their value orientation can also only be particular individuals and groups". (Joas 2013: 176). These comments by Joas also reflect O'Neill's suggestion that distinct value sources may not be a priori inaccessible to others who do not begin from "our" shared premises.

seeks redress from forms of subordination and exclusion that inhibit her ability to give effective voice to her dissent" (Bohman 2003: 766).

However, O'Neill also points out that a radically free discourse is unsustainable. Such freedom can quickly become hostage to powerful interests or warped by rhetoric that seeks to manipulate and mislead. But an appeal for criteria to restrict the free use of reason must not simply fall back on what Forst identified as the "*rule of principles*", nor must it "*demote the democratic process*", as Habermas noted. Toleration as defined by O'Neill prevents the imposition of restrictions that exclude particular ethical *reasons* from discourse on the basis that they do not already find actual acceptance. Rather, the only acceptable constraints are those that *enable* communication, i.e. *modal* constraints that protect and preserve the conditions under which agents can reason, communicate, share, agree, object or dissent. For example, a radically free media could not be guaranteed to sustain a diversity of voices and perspectives, and a requirement for inclusive representation is frequently recognised as a legitimate constraint on an otherwise free media.

One insight of this account of public reason is therefore that fully public reason *pre-supposes* fundamental respect for agency, and hence *does not threaten individual liberty*. As we have seen, it is a concern to reject discourses that seek the coercive imposition of a particular comprehensive doctrine at the expense of individual rights that motivates Rawls to prohibit the inclusion of ethical discourses or "*private*" identity in the public sphere. However, O'Neill demonstrates that any discourse that aims at being "*public*" *must* entail the protection of basic rights and freedoms.⁷

Conclusion

On this account, public reason need not and ought not limit itself to the "*rule of principles*" and the exclusion of "*non-political*" reasons. Where ethical reasoning endorses and reflects the *modal* constraint of respect for the dignity of others, it does not threaten the foundations of discourse, nor does it jeopardise the possibility of agreement. There are grounds to conclude therefore that ethical discourses can contribute substantively to discussions of justice in the public sphere, provided they meet the level of public reason in O'Neill's sense. However, this requirement does not involve *translating* their content into supposedly "*neutral*" terms but rather the *testing* of reasons in discourse to discover whether they meet the condition of respect for human agency. On the other hand, neither does it guarantee the probability of a consensus, which Rawls argued was essential for the stability of a just regime. However, I have argued that Rawls' apparent motivational advantages undermine the possibility of agreement in pluralist contexts by reifying, *at the level of fundamental moral justification*, a particular view of justice and reason, and hence rule out the possibility of a universally accessible approach.

In rejecting Kant's assertion that reason can supply its own point of view, Rawls overlooks the *modal* concern for the preservation of agency implicit in this claim. Consequently,

⁷ This also reflects on one level an important insight of Habermas, who points out that "*the private and public autonomy of citizens mutually presuppose each other*" (Habermas 1995: 130). However, as noted earlier, this does not lead Habermas to conclude that value constructions can meet the level of normative validity claim. O'Neill does not quite reach this conclusion either, though her theory leaves space for a broader role for ethical discourses in shaping normative content.

he links moral reasoning to particular, contextualised agents and in doing so obscures the *accessibility* of the justification of basic rights, freedoms and equality. While an important consequence is the exclusion of ethical discourses from public reasoning, the impact is not limited to the marginalisation of other potentially reasonable value systems. Rawls' approach may also undermine justice itself by failing to offer a *reasoned justification* for basic rights and obligations. Without such a reasoned justification, an account of justice cannot legitimately criticise those who would reject justice; for example, it has little to say to those who dismiss the assertion of universal human rights as the imposition of "Western" ideals. These further consequences of the relativisation of reason in *Political Liberalism* do not become fully apparent however until Rawls turns to the question of international justice in *The Law of Peoples*.

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