

Political liberalism, deep moral disagreement, and higher-order commitments to cooperation

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ABSTRACT

Rawlsian political liberalism claims that citizens are reasonable if, among other things, they are committed to society as a system of mutual cooperation. In the public political sphere, this commitment gives citizens reason to restrict the moral justifications they invoke in defense of their political proposals to those justifications that are shared by all. According to political liberalism, citizens who face conflicts between the demands of citizenship and other deeply held, but nonpublic, moral convictions – such as religious or otherwise controversial moral beliefs – can be expected to discount these in the public sphere. In this article, I challenge that assertion. I argue that for it to be true, political liberalism must assume citizens' commitment to cooperation to be of a higher-order status than other moral commitments that affect their political views. I conclude that such an assumption is one that the structure of Rawlsian political liberalism cannot sustain because the theory relies on individuals' private comprehensive moral doctrines as sources of its moral authority.

KEYWORDS

Political liberalism; public reason; moral disagreement; pluralism; Rawls;

1. Introduction

Rawlsian political liberalism does not address itself to those citizens who reject core liberal ideals and principles. Liberal theorists in the Rawlsian tradition usually define their intended audience in terms of *reasonableness*. As a substantial moral concept, Rawls (2005, 49) associates reasonableness with “first, the willingness to propose and honor fair terms of cooperation, and second, with the willingness to recognize the burdens of judgement and to accept their consequences.” He further argues that “[p]ersons

are reasonable in one basic aspect, when among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose.” In their political conduct, reasonable people are thus conceived as regarding each other as moral equals, who owe each other fair terms of cooperation.

Much has been written about how political liberalism should respond to unreasonableness of a very fundamental kind: to those citizens who reject those values that are central to the liberal project, specifically the ideal of persons as free and equal. While some argue that there is no question that unreasonable views have no place in the constituency of public justification of any liberal society (Quong (2004), Friedman (2003), and Rawls (2005)), others insist that liberal societies still owe justifications to persons who hold unreasonable views (Kelly and McPherson 2001). The question at the heart of much of this work is whether there is a conflict between the exclusion of these fundamentally unreasonable people from the constituency of those who are owed justifications with the liberal commitment of conceiving of *all* citizens as free and equal and thus entitled to being coerced only for reasons that they can accept.

In this article, I examine a different kind of unreasonableness. I consider the case of a set of people who find themselves outside the constituency of public justification, not for rejecting the ideal of persons as free and equal as such, but for more subtle infractions of the norms of reasonableness. That group consists of those who are, on the one hand, committed to the core values of the liberal project – key among them the freedom and equality of all – while, on the other hand, holding fundamental moral convictions which are *not* shared by all citizens of society. On morally charged matters of public policy, these citizens may encounter situations where the demands of their public and nonpublic moral reasons are in conflict. To prioritize their nonpublic moral commitments in these situations makes them run afoul of a key liberal commitment: to respect the freedom and moral equality of their fellow citizens by refraining from coercing others for reasons that those who are coerced do not consider to be valid reasons for them. From the perspective of political liberalism, this renders those who

fail to discount their nonpublic moral convictions less than fully reasonable and thus places them outside the constituency of public justification.

The key question I address in this article is whether there is a way for political liberalism to restrict the constituency of public justification to those who are *fully* reasonable without running afoul of the commitment to treating all citizens as free and equal. In other words, can political liberalism justify the exclusion of those who fail to be fully reasonable in terms of reasons that the excluded can accept? As a seemingly promising path to provide such a justification, I consider the idea that reasonable people share a higher-order commitment to cooperation among equals in society which supposedly gives them reason to prioritize their public liberal commitments over their nonpublic moral convictions. I examine the idea of a higher-order commitment to cooperation under the circumstances in which it is most plausibly invoked: where publicly shared reasons are incomplete, failing to yield determinate or conclusive guidance on controversial matters of public policy which are in need of political resolution.

I conclude, however, that this appeal to a higher-order commitment of cooperation cannot justify the exclusion of those who are fully reasonable because political liberalism deprives itself of the *philosophical resources* to argue that the citizens that populate its imagined liberal societies can be expected to share such a commitment. It lacks the resources to adjudicate on a theoretical level between individuals' shared liberal commitments specifically and the moral commitments rooted in their private comprehensive moral doctrines more generally. Ultimately, this leaves political liberalism with a justificatory gap.

I first discuss what it means for citizens to fall short of full reasonableness, and detail the circumstances of deep moral disagreement under which this is likely to occur (section 2). I then expand on how such deep disagreements give rise to gaps of legitimacy within political liberalism in cases where liberal values do not offer determinate or conclusive support for concrete policies, and describe possible responses by liberals, most fundamentally that of a higher-order commitment to cooperation (section 3). I finally argue that this strategy is in fact unavailable to political liberalism, which leaves a key pillar of the theory – the foundations of liberal principles as political, rather than metaphysical – dangerously unstable (section 4).

2. Reasonableness and deep moral disagreement

2.1. *Failure to be fully reasonable*

In which sense precisely can citizens fall short of being fully reasonable? Reasonable people, regarding each other as free and equal, realise that a society which embodies these values must be a cooperative one. Members of such a society, who are aware of their fellow citizens' likewise commitment to cooperation, will not see any moral disagreement that persists after debate has weeded out any factual errors or blatant mistakes of reasoning as an indication of disrespect. If all are committed to engaging and deliberating with each other out of respect for their fellow citizens' status as free and equal, to persuading each other of the merits of their proposals and to be persuaded whenever they can, any lack of success on that account cannot be explained by an unwillingness to find common ground for political decisions. Among people who see each other as free and equal, and hence see society as a cooperative endeavour, failure to come to an agreement on a contested matter does not render people unreasonable in the eyes of their fellow citizens. If individuals cannot think of their co-citizens as merely mean-spirited or obviously incompetent reasoners, they must explain their persistent disagreements by other means. In political liberalism, reasonable people account for such disagreements with reference to what Rawls calls the *burdens of judgment*: these burdens are "the many hazards involved in the correct and conscientious exercise of our powers of reason and judgment in the ordinary course of political life" (Rawls 2005, 56). They include, but are not limited to, the complexity of empirical and scientific evidence, the vagueness and indeterminacy of all concepts, and discrepancies of individuals' overall life experience which affect their assessment and balancing of moral and political values in a manner and to a degree which individuals themselves cannot account for (2005, 56-57).

How are people who recognise these burdens supposed to act in the public political sphere? If we recognise that small differences in the information we have, the weight we assign to specific values, and other factors we cannot consciously and actively account for in our reasoning can lead to substantial differences in our considered moral judgements, it seems that we must not expect others to agree with our conclusions on

what would be the right thing to do (Rawls 2005, 58). Therefore, acting our part as members of a cooperative society cannot simply boil down to ineffectively attempting to convince others of the merits of our own position when no common ground is in sight. As Rawls argues, “those who insist, when fundamental political questions are at stake, on what they take as true but others do not, seem to others simply to insist on their own beliefs when they have the political power to do so” (2005, 61). He insists that “reasonable persons see that the burdens of judgement set limits on what can be reasonably justified to others” (2005, 61). Instead, we must refer to *shared* values to justify our political decisions and refrain from drawing justifications from the content of individuals’ private comprehensive moral doctrines, which are certain to be contested. Rawls concludes that “[t]here is no reason [...] why any citizen, or association of citizens, should have the right to use the state’s police power to decide constitutional essentials or basic questions of justice as that person’s, or that association’s comprehensive doctrine directs” (2005, 62). Thus, in virtue of their acceptance of the burdens of judgement, reasonable people must never insist that their *non-public* reasons – that is reasons which are not shared by all members of society – are appropriate grounds for adopting a particular policy. Instead, they seek shared foundations to justify political decisions. For reasonable persons who are committed to the idea of society as a cooperative endeavour, the burdens of judgement specify the meaning of cooperation.

By this standard of reasonableness, a person can fall short of being fully reasonable without *rejecting* the value of freedom and equality of their co-citizens as such, as is the case with fundamentally unreasonable individuals. As I am going to argue, a person’s failure to offer only shared reasons is not necessarily indicative of a lack of commitment to that value, if we take into account the full complexity of her moral commitments more generally. I will explore the experience of individuals who encounter moral conflicts that are rooted in deep moral disagreement and which induce them to diverge from the path of full reasonableness despite their commitment to the ideal of persons as free and equal. However, since within political liberalism the constituency of public justification is the domain of the reasonable, all persons who fail to be fully reasonable must face exclusion from said constituency. In the further course of this

article, I will argue that political liberalism must account for the exclusion of those who fail to be fully reasonable by means of justification.

2.2. *Deep moral disagreement*

One of my key contentions in this article is that fundamentally reasonable persons, who regard their co-citizens as free and equal and are thus committed to offering them only shared, public reasons for proposed policies, may sometimes have reason to discount that latter commitment. Instead, they may be tempted insist on a particular nonpublic moral reason as the only valid basis for political action.

As I will show in this section, this temptation arises when individuals encounter conflicts which involve *deep moral disagreement*. I use this term to refer to conflicts among citizens' moral convictions that are characterised by *inaccessibility* of their respective sources of moral authority, and, in addition, possess a *foundational quality*. The moral authority that a particular conviction has for Alice's actions is *inaccessible* to Bob if Bob does not share her commitment to the source of said authority, such as a particular religious or philosophical worldview. He cannot come to recognise Alice's conviction as a valid reason for him, since the reasons that she presents him with do not hold any moral authority in his view.

Alice's and Bob's conflict has a *foundational quality* if any of their conflicting convictions constitutes, or is closely tied to, a foundational tenet of their comprehensive doctrine – such as, for example, the sanctity of life in Christian religious doctrine. Given that relinquishing or compromising such a core conviction may fundamentally affect an individual's conscience, as well as her conception of herself as a moral person, conflicts of such a foundational quality do not easily lend themselves to pragmatic or principled compromise. What is imperative to a person in cases where foundational matters are at stake is to do the right thing, and the right thing in their eyes may well be to defend and act on their nonpublic moral conviction. For example, Catholic Alice may be highly reluctant to act against her private convictions about the moral status of human fetuses, which is rooted in her religiously grounded belief in the sanctity of all life. Under these circumstances, she may well be unimpressed by other reasons such as political expediency (*e.g.*, Bob offering to vote in her favour on another issue), or

by principles which she considers to be subordinate to her foundational conviction in this case (*e.g.*, Bob appealing to her promise at an earlier occasion to support him in a future policy-proposal, or a commitment to the bodily autonomy of human persons in general).

For citizens to promote a particular policy on the basis of their nonpublic values is only ever problematic in cases where political liberalism considers advocacy for policies on the basis of nonpublic values to be unacceptable. Specifically, this may happen in political liberalism's realm of *public reason*, where policies must be justified on the basis of public values that are shared among all citizens, and only there, a person would face a conflict between her allegiance to the principles governing political decisions and her foundational moral convictions. Hence, it is important to ask whether matters which are likely to be subject to deep moral disagreement fall within the realm of public reason. For Rawls, the purpose of public reason is to determine constitutional essentials (procedures and basic rights) and matters of basic justice (2005, 227-229). These are matters where the chosen norms affect citizens in the most fundamental of ways, which is why it is imperative that they be acceptable to all. Within the consensus conception of public reason, this is ensured by requiring them to be justified with reference to shared, public values. Hence, not all public policy backed by coercive force must necessarily meet the high standards of justification by public values. As Andrew March observes, "having one's own share of the collective disposable income diverted to something we would not have chosen is not the same kind of assault on our dignity and autonomy as having the criminal law brought to bear on our personal choices or being excluded for arbitrary reasons from public goods or institutions" (2015, 121).¹

Yet, which political matters precisely are fundamental enough to be subsumed under the labels "basic rights" and "basic justice" is not obvious. Rawls (2005, 227-228) indicates that questions pertaining to citizens' participatory rights in politics, liberty of conscience, freedom of thought and of association, as well as basic matters of dis-

¹Note that March's proposed taxonomy of such matters is orthogonal to Rawls's. Nevertheless, his comment aptly captures what is implied by Rawls's distinction between basic rights and matters of justice on the one hand, and less fundamental political decisions on the other: namely, that not all coercion must necessarily trigger the same justificatory response.

tributive justice are sufficiently fundamental to be subject to public reason. In one example, he discusses the interaction of public values on the question of abortion, indicating that questions of respect for human life and bodily autonomy are also within the scope of public reason (Rawls 2005, 243, n. 32). It is not my intention to settle the question of what matters should count as matters of *basic* rights and justice. Neither do I intend to give a comprehensive account of all conceivable issues that could be subject to deep moral disagreement. That said, many issues that give rise to deep moral disagreement among citizens are likely to fall within the realm of basic rights and justice, if we take Rawls's examples as a rough indication of its scope. For example, this is certainly true of conflicts on bio-ethical matters which raise questions about what respect for (human) life and the person requires. These include, but are certainly not limited to, the regulation of genetic engineering, assisted suicide, and abortion. Other disagreements that draw on similarly fundamental values concern the morality of torture, the death penalty, and the ethics of war. The task of balancing the values of privacy, free speech, and national security is another basic matter that may well be subject to deep moral disagreements.

It should not come as a surprise that the sites of deep moral disagreement are likely to fall into the realm of basic rights and justice. Part of the depth of these disagreements – their persistence and immunity to political compromise – stems precisely from the fact that they concern decisions that some citizens see as *basic* matters of rights and justice. Decisions on these matters affect current and future members of society in some of their most basic functionings, such as their capacities to exercise their bodily autonomy, liberty of conscience, or freedom of expression. Therefore, in the eyes of some citizens, these are decisions that any adequate political system must get *right*. If they accepted any less, the resulting moral wrong would be too grave to make compromise a satisfactory option.

Why does such deep moral disagreement present a challenge to political liberalism? One could argue that reasonable persons share a commitment to political cooperation in virtue of their respect for persons as free and equal, and that a resolution which has been achieved by way of public reason or other cooperative procedures should therefore possess legitimacy in the eyes of those who are reasonable. If we want to know whether

political liberalism can successfully address deep moral disagreements, we must ask precisely how this commitment can claim priority over individuals' foundational moral commitments, which are rooted in their private comprehensive doctrines. More specifically, do citizens need to defer their commitment to those values which they merely hold privately – no matter how pressing their demands – to their allegiance to those values which are shared by all? This is the crucial question that this article aims to address.

Among the confrontations between shared public and foundational private reasons, we can distinguish between those that involve substantive public values lending support to a particular policy, and those in which the public value invoked is the shared commitment of mutual cooperation in the public sphere. The latter situation arises when public reason proves to be incomplete, that is, when the set of reasons which are publicly shared does not provide any guidance with regard to some contentious issues of public policy. Under such circumstances of incompleteness, procedural strategies, premised merely on a commitment to cooperation, present themselves as politically neutral methods to resolve the conflict.²

I will consider such cases of incompleteness in the following section, assessing whether reasonable citizens' commitment to cooperation in the political sphere does override their private commitments when they are in deep moral disagreement with their co-citizens' policy proposals.

3. Deep moral disagreement and incompleteness

3.1. *Indeterminacy, inconclusiveness, and gaps of legitimacy*

At the very heart of liberal political theory lies a commitment to respecting the individual person as a free and equal, morally autonomous agent. For liberals, this means respecting and protecting the capacities she is endowed with by virtue of her autonomy and capacity to reason, which are the bases of her agency (Waldron 1993, 36, 62). What liberalism recognises as crucially valuable to an individual is her capacity as a subject to freely determine her actions according to her ends (Waldron 1993,

²See, for example, Schwartzman (2004, 209-114), and Williams (2000, 210-211).

41). Rawls argues that one “respect in which citizens view themselves as free is that they regard themselves as self-authenticating sources of valid claims” (2005, 32). Respecting this value could be framed as treating all individuals as ends to one’s own self-determination, imposing upon oneself the requirement not to interfere with their process of self-determination without appealing to them to include one’s reasons for interfering among their ends. Equal respect for persons requires them to be treated never solely as means, or instruments to the will of others, but always *as ends in themselves*, as Charles Larmore emphasises in a Kantian vein (1990, 348). The ideal of public reason exemplifies the conditions which the public political discourse must meet in order for potentially coercive decisions to be compatible with this commitment to the individual person. What should be the bases and conditions of such discourse, if it is to ensure that individual citizens can be said to recognise political decisions as the object of their autonomous judgement? To this end, consensus conceptions of public reason emphasise the value of mutual justification based on shared grounds. Individuals are expected to be able to explain to their fellow citizens their reasons for supporting a given policy on terms which their interlocutors can *also* recognise as applicable to themselves. Hence, the need emerges for public reason to be conducted on the basis of a set of values that are shared by all. Rawls may be interpreted to endorse a consensus conception of public reason³ when he argues that

[...] our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. [...] [T]he ideal of citizenship imposes a moral, not a legal duty – the duty of civility – to be able to explain to one another on those fundamental questions how the principles and policies they advocate can be supported by the political values of public reason. (Rawls 2005, 217)

If, broadly speaking, the decisive reason for adopting a particular policy is shared by all citizens, each individual citizen can be said to have a reason to support the policy in question. While it may well be that said reason would not have been the most

³Further proponents of a consensus conception include Jonathan Quong (2011, 261-273) and Stephen Macedo (2010).

salient one for some citizens had they alone been asked to decide on the matter, their recognition of the need for a collectively justifiable compromise on a contested matter and the fact that they attribute *some* value to said reason should allow them to regard that decision as worthy of their reasoned support (Quong 2011, 208, 212).

This source of legitimacy for political decision making is, however, lost if the shared values providing such public reasons turn out to be *incomplete*. Incompleteness in public reason occurs if shared values fail to guide citizens towards a reasoned consensus of judgements on a proposed policy. Considering more closely the roots of such failures to reach a reasoned consensus based on shared reasons, it is useful to differentiate between cases of incompleteness in which public reasons are *inconclusive* and those in which they are *indeterminate*.⁴ In cases of inconclusiveness, shared values do indeed yield support for a variety of different policies, but do not provide *decisive* reasons to choose one over the others. As Schwartzman explains "[t]his happens when citizens justify their political decisions on the basis of public reasons but disagree with one another about which of their positions is most reasonable" (2004, 194). In cases of indeterminacy, shared values do not provide any sufficient reason for choosing a particular policy, either because they do not yield support for any position at all, or because they can be interpreted to advocate a number of mutually exclusive positions (nested indeterminacy) (Gaus 1996; Schwartzman 2004).⁵

At first glance, failures to resolve instances of indeterminacy appear to be a more obvious threat to public reason's capacity to confer legitimacy on a given policy than persistent conflicts characterised by inconclusiveness. This is because the former allow for unmediated deep moral disagreement: where public reason is silent because

⁴This distinction was first introduced by Gaus (1996, 151-158) and restated by Schwartzman (2004).

⁵Matters are further complicated by potential disagreement on whether a particular conflict in public reason is characterised by inconclusiveness or indeterminacy. For instance, individual persons may well disagree on whether some shared value can be interpreted to allow for substantive conclusions to be drawn on a particular contested issue. For example, liberal values are sometimes considered indeterminate with respect to the moral status of fetuses, given that they are said to merely demand equal respect for human *persons* as opposed to respect for human life as such. However, as Jeremy Williams (2015) argues, the apparent silence of liberal values with regard to human life which does not amount to personhood must not be interpreted as indeterminacy. Rather, it should, in isolation from other considerations, be assumed to signify a deliberate rejection of the status of non-persons. The same controversy arises with respect to the question of the indeterminacy of liberal values on the moral status of non-human animals.

publicly shared values are indeterminate, disagreements on what policy to choose are necessarily rooted entirely in nonpublic reasons. That said, such disagreements do not have to be deep moral disagreements. Deep moral disagreements are, as previously defined, characterised by a resistance to compromise due to the foundational nature of the values at stake and the inaccessibility of their respective sources of normative authority. We may well imagine citizens to disagree on the basis of foundational values whose respective normative authority remains inaccessible to others, yet still discount the significance of said values with regard to a decision on the policy in question. Individuals may be deeply unconvinced by their interlocutor's substantive case for said policy, yet decide to endorse it for pragmatic reasons or in order to live up to a higher-order commitment to political cooperation.⁶

Consider the following example: Alice, a practising Catholic, and Bob, a humanist, disagree fundamentally on whether animals should be granted some protective rights, such as rights against the deliberate infliction of pain short of human self-defence. Alice, drawing on her commitment to the sanctity of life as such, sees value in animals' dignity and hence their freedom from pain and torture, and therefore privately supports legislation which would grant them these rights. Bob, on the other hand, whose private comprehensive moral doctrine does not extend its scope to animals, rejects such a value. Looking for shared reasons to support or reject a policy that would impose far-reaching restrictions on humans' treatment of animals, they conclude that publicly shared liberal values can merely be said to be concerned with the value and rights of *human* persons. Hence public reasons are indeterminate on this particular question, which is not concerned with human persons. Their private disagreement is – at least as far as Bob is concerned – characterised by an inability access their interlocutor's sources of normative authority. Still, their disagreement does not need to be foundational, as long as neither of them considers their respective nonpublic values to be of ultimate significance to the issue at hand.

Now, consider the case of a proposed ban of the use of animals in circuses. Alice's and Bob's shared commitments to the dignity of the human person are indeterminate

⁶Whether or not political liberalism can be said to prescribe such a higher-order commitment will be central to my discussion on whether indeterminacy can legitimately be resolved by procedural means. At this point, however, I merely state that a person may herself believe to be bound by such a commitment.

in this case, while Alice's private commitment regarding the dignity of animals and Bob's belief in the cultural value of the use of animals in performances clash. It is, however, at least conceivable that Alice does not value her private belief in animal dignity more than the prospect of an alternative, cooperative solution to the conflict. She may thus find it acceptable to agree to decide the matter by means of a vote. That is, Alice may well be prepared to discount her substantive moral concerns when presented with the possibility of a solution which avoids prolonged conflict. This may, for example, be the case if she believes that it will be more promising to advocate a less radical policy which merely sets high standards for the welfare of animals in circuses, or, pragmatically, if she hopes that by accommodating Bob in this case, he will be more likely to support her on a different, more important matter at another time. That said, their disagreement *can* be characterised as deep moral disagreement if at least one of them insists that their respective commitments with respect to the moral status of animals is foundational to her or his conception of what morality requires and must therefore not be discounted.

In more general terms, when deep moral disagreement occurs under circumstances of indeterminacy, proponents of one particular policy are not only unable to recognise any genuine substantive value in their opponents' proposal, but also care too much about their own respective nonpublic commitments to discount them. In these cases, any political decision which does not pay heed to these latter commitments may crucially affect citizens' belief in the fundamental justice of the political institutions and the legitimacy of their exercise of power. As shared substantive reasons are unavailable to bridge deeply divergent private convictions about the appropriate course of action, indeterminacy ultimately leaves individuals' substantive moral judgements on those policies to be guided by their nonpublic private reasons alone. The policy which ultimately emerges from political procedures may not lay any *substantive* moral claim to all citizens' allegiance. In cases of indeterminacy, deep moral disagreement hence seems to reveal gaps in the capacity of public reason frameworks to ensure the legitimacy of public policies.

Such gaps may appear to be less likely to occur in cases of inconclusiveness in which all qualifying policies are supported by substantive moral values that are shared by the

constituents of the realm of public reason. This means that individual citizens recognise the moral reasons supporting any of these policies as worthy of their allegiance and hence as generally valid grounds for action. As Schwartzman (2004, 199) argues, if we further consider “the limitations of practical reason” to which individual citizens are subject,⁷ it seems “far too demanding to require that they act only on the best of all possible reasons”. In other words, inconclusive public reason yields policies which should be recognised as reasonable enough by all members of the constituency of public justification, because they are rooted in shared values, and citizens understand that limitations of human reasoning diminish the chances for a collective consensus on a single, most reasonable policy.

But even in these cases, disagreement may be fuelled by deep, foundational commitments and hence affect citizens’ perceptions of a given policy’s legitimacy. Even if a person generally endorses all the publicly shared reasons that lend support to different conflicting policies, she may not only have some preference for a particular reason and the course of action it recommends. Her assessment of the respective validity or relevance of any of these values with regard to the particular case at hand may well be rooted in more foundational considerations. These considerations may render a given public reason not only inferior to other conflicting public reasons, but discount or even deprive it entirely of its normative force in that particular instance.

To illustrate, imagine Alice, who is committed to the shared values of freedom of expression and the dignity of persons. On the inconclusive issue of restricting freedom of expression by outlawing some kinds of speech which are thought to violate some individuals’ or groups’ dignity (such as racist or sexist speech, or other instances of what is often classified as “hate speech”), she attributes a higher value to freedom of expression and is hence inclined to reject any policy which proposes to restrict it. In fact, it is her particular private interpretation of the dignity of the person which sustains her opposition to restrictions of free speech: a conception of dignity which conceives of individuals’ capacity to express their autonomy in active self-determination as the crucial trait of personhood and thus deserves of the highest protection. In this case, it

⁷Schwartzman (2004, 199) mentions the “complexity of the evidence, the need to balance and sometimes trade off values that are vague or otherwise difficult to interpret, and the differences in life experience which inform the judgements that people make about such issues”, as well as “limited time to process relevant information”.

is not obvious that Alice's general recognition of the value of human dignity will sufficiently console her to consider restrictions on freedom of expression to be worthy of *her* support. In fact, she may hold the certainly controversial view that permitting speech of any kind is far less dangerous to the dignity of persons than any infringement on the principle of freedom of expression. Under these circumstances, Alice's concern for the dignity of persons can hardly serve as a reason to justify restrictions on freedom of speech to her. It is therefore questionable whether inconclusiveness in public reason is, unlike indeterminacy, immune to gaps in public reason's capacity to confer legitimacy to political decisions. Both forms of incompleteness may lead to situations in which some citizens' actions may become subject to restrictions by political decisions which cannot faithfully be rendered as acts of morally autonomous self-determination. As with cases of indeterminacy, inconclusiveness may also conceivably lead to situations in which public reason fails to live up to the liberal ideal of protecting individual moral autonomy.

All this is not to say that we should disregard the distinction between indeterminacy and inconclusiveness. There are, however, reasons to believe that, at least in some cases, deep moral disagreement may affect both of these dimensions of incompleteness in a way that threatens public reason's capacity produce policies which can claim legitimacy on the grounds that each citizen can be said to have genuine, substantive reasons to accept them.

3.2. *Procedural strategies*

The lack of determinate or conclusive shared reasons cannot simply translate into legislative restraint. In some cases, the moral acceptability of the status quo is as controversial among citizens as any policy that would change it. In other words, the status quo is not necessarily morally neutral. Whenever legislative restraint translates into the permissibility of some morally charged actions, such restraint may be as unacceptable to some citizens in certain cases as any particular decision would be in others. Hence, there is a reason to look for alternative procedures for resolving the legislative deadlock of incompleteness – procedures which do not require the availability of shared substantive reasons. Schwartzman (2004, 208-211) argues that “citizens should

not abrogate their duty of civility even when it is difficult or impossible for them to decide how to resolve political issues”. He proposes strategies which enable citizens “to respond to incompleteness without sacrificing the weighty moral and political values that support their commitment to public justification”. He argues that “rather than impose their nonpublic reasons on others, citizens can choose to submit their disputes to various forms of procedural adjudication.” In this context, Schwartzman considers both democratic as well as arbitrary decision procedures, such as lotteries.⁸ Though these second-order decision making procedures are not sensitive to citizens’ substantive reasons for preferring one policy option over another, they nevertheless reflect other shared values, such as, for example, fairness (Schwartzman 2004, 213): both kinds of procedure equally grant a platform to all citizens and attribute equal weight to each citizen’s preferred policy.

There is no doubt that these virtues can generally be assumed to be of value to liberal citizens. However, whether citizens *must* consider the *outcomes* of such a cooperative solution to be acceptable in spite of their conflicting substantive reasons to reject it, is less obvious. Their cooperation can only be expected by liberal theory *in general* if citizens can be said to share a *higher-order* commitment to mutual cooperation, which would give each individual a reason to discount the status of their private substantive concerns when public reason is deadlocked. Given liberalism’s core commitment to respecting individual persons’ moral autonomy, the status which individuals assign to their convictions cannot be dismissed lightly. Without a higher-order commitment to cooperation, procedural solutions are not *guaranteed* to prevail in their moral deliberations on how to act in light of their other substantive moral commitments.

In other words, without such a higher-order moral commitment to cooperation, procedural strategies and their outcomes are not guaranteed to be *morally* effective. That is, individual citizens may well fail to recognise them as a relevant input to their moral deliberations when assessing the acceptability of a given policy. This individual act of *judgement* is fundamental to a liberal conception of legitimacy which is committed to protecting and fostering individual autonomous self-determination. A widely recog-

⁸On the use randomising devices for resolving indeterminacy, see also Williams (2000).

nised distinguishing feature of liberal political theory consists in its commitment to respecting the individual person as an agent, respecting and protecting the capacities she is endowed with in virtue of her moral autonomy. Hence, the moral effectiveness of any given strategy, its capacity to affect an individual's distinctly moral judgement as to whether a particular policy is compatible with her ends, is indeed of crucial importance.

One such potentially morally significant reason for attributing value to procedural solutions consists in a shared commitment to resolving conflicts in public reason in a fair and cooperative manner, rather than ultimately allowing the matter to be decided by the respective distribution of power and resources among the proponents of conflicting positions. Importantly, as I have argued, in order for the results of cooperation to take precedence over citizens' private moral convictions, they must attribute to their commitment to cooperation the status of a higher-order norm.

While the proponents of procedural strategies for resolving incompleteness do not make this premise explicit, there is nothing to suggest that they would *deny* that these strategies are premised on such a commitment to cooperation being shared among citizens. Neither does said premise appear to be overly controversial, given that political liberalism specifically highlights that the willingness to cooperate with others on fair and mutually acceptable terms is a core characteristic of reasonable persons. My reason for highlighting this premise, however, is precisely to question whether reasonable citizens' general commitment to mutual cooperation can be used to substantiate a norm which may require them to discount their private substantive moral convictions. In the next section, I will examine the position of the commitment to cooperation within the theoretical framework of political liberalism, arguing that political liberalism lacks the resources to assign to it the status of a higher-order norm.

4. Cooperation and the structure of political liberalism

There is no doubt that a shared commitment to cooperation is an integral element of political liberalism. A core characteristic of a reasonable citizen is her willingness to cooperate with others on terms acceptable to fair and reasonable citizens such as

herself. According to Rawls,

[p]ersons are reasonable in one basic aspect, when among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose. (Rawls 2005, 49)

In their political conduct, reasonable people are conceived as restricting themselves to draw upon what they have found to be mutually acceptable, striving for governance based on shared political principles, rather than insisting on the validity of their individual private convictions as suitable norms for regulating the public sphere. Individuals qualify as members of the constituency of public justification precisely because they are committed to the idea of society as a forum and project of mutual cooperation. Given that they are selected based on said commitment, it could be argued that they can be expected to discount the significance of their individual nonpublic substantive reasons for accepting or rejecting a given policy in cases when insisting on their priority would be an obstacle to achieving a decision which is acceptable to others as well. In other words, according to this interpretation, citizens' commitment to a *higher-order* norm of cooperation constitutes an integral element of the basic theoretical framework of political liberalism. Following this line of argument, it seems that we can assume that procedural strategies aimed at resolving the legislative deadlock arising from incompleteness are indeed justified and rendered morally effective by an appeal to the higher-order status of one of the most fundamental of shared values.

This interpretation of reasonable persons' commitment to cooperation, however, fails to be backed by a closer analysis of the specific sources of normative authority that political liberalism relies on. Asking why individuals recognise such a commitment to be normatively authoritative to them, political liberalism refrains from attributing to it the status of an independent, foundational moral truth, or of a derivative of such a truth. In fact, this is the very claim which *political* liberalism seeks to avoid. One of the virtues of political liberalism – as opposed to a morally comprehensive liberal theory – consists in its compatibility with a wide range of comprehensive moral doctrines,

which citizens individually recognise as sources of moral authority for themselves. Political liberalism requires these doctrines to be compatible with, and supportive of, a commitment to mutual cooperation. But said commitment does not necessarily have to be *foundational* to these doctrines. Within political liberalism, the value of cooperation may be rooted in other elements of a person's comprehensive doctrine.

Political liberalism draws on these comprehensive doctrines as sources of normative authority for its core principles. Liberal principles' claim to legitimacy rests on the idea that each citizen has an individual comprehensive reason to embrace them, which *she* considers to be morally authoritative. It is by steering clear of publicly rooting its core ideals in a particular comprehensive moral doctrine that modern liberal political theory can widen the scope of its appeal. It thus allows citizens to commit themselves to honouring liberal values in the political sphere for sets of reasons that are specific to each person, rooted in her particular understanding of the good life. To put it in Rawlsian terms as set forth in *Political Liberalism* (2005, 10-11), liberal values draw their legitimacy from being subject to an overlapping consensus, gathering support from a variety of comprehensive moral doctrines which are compatible with said values. Liberalism thus conceived does not need to assume the same status as a comprehensive doctrine. Rather, liberal values and principles can be framed as free-standing, publicly detached from potentially divisive roots in comprehensive moral doctrines (Rawls 2005, 10), while remaining individually rooted in a variety of such doctrines, which furnish them with normative authority for each person.

For the individual, these liberal values may assume the status of moral truths or commands which they freely recognise as normatively authoritative for them. Fundamentally, the normative authority of liberal values and principles is drawn from the fact that citizens have reasons to accept them. Hence, political liberalism conceives of reasonable individuals' public personality as rooted in their private comprehensive doctrines (Quong 2011; Rawls 2005). When applying their moral autonomy in giving or withholding their assent to a political principle, that decision is imbued with normative authority because, ultimately, it is supported by a reason they recognise as a source of normative authority over *them*. Political liberalism itself is neutral with regard to the diversity of such sources among reasonable citizens, as long as the partic-

ular principle they furnish with normative authority is the subject of an overlapping consensus. Collectively, liberal values must only acknowledge the political status of liberal values and principles as consensually chosen tools for regulating public affairs, which enjoy normative authority for each individual in virtue of their support by that individual's comprehensive doctrine.

This strategy relieves political liberalism of the necessity to account for the moral authority of its core principles by means of a specific – and potentially controversial – comprehensive moral theory, which would threaten its compatibility with a variety of comprehensive doctrines. At the same time, however, said strategy undermines the alleged higher-order status of the value of mutual cooperation, as I will argue in the following.

For the commitment to cooperation to gain the status of a higher-order norm, political liberalism's reliance on individual comprehensive doctrines as sources of normative authority for each individual requires the assignment of higher-order status to be supported by said individual comprehensive doctrines. In other words, the assertion of a higher-order commitment to cooperation presupposes that, *within individuals' comprehensive moral doctrines*, said commitment enjoys precedence over other convictions they hold. While likely to be empirically accurate in many cases, this assertion is out of the theoretical reach of political liberalism. This is because its alleged normative authority to attribute a higher-order status to specific values depends on the very status that is actually attributed to those values by individual persons' comprehensive doctrines.

At first glance, political liberalism appears be able to prevent potential conflicts within individuals' comprehensive doctrines from surfacing on the theoretical level by refusing to attribute normative significance to the substance of such comprehensive doctrines themselves. Comprehensive doctrines are assumed to privately provide normative authority to the political principles that they support – such as a higher-order norm of cooperation – without themselves gaining substantive validation within the political sphere.

As Habermas observes with respect to Rawlsian political liberalism in *The Inclusion of the Other*,

[o]nly the lucky convergence of the differently motivated non-public reasons can generate the public validity or "reasonableness" of the contents of this "overlapping consensus" that everyone accepts. Agreement in conclusions *results* from premises rooted in different outlooks. It is significant for the design of the theory as a whole that the participants can only register this convergence as a social fact: "The express contents of these doctrines have no normative role in public justification (Habermas 1998, 84, original emphasis).⁹

Political liberalism operates on the basis that the citizens have agreed to reason publicly without referring to their private comprehensive doctrines, and while they may individually acknowledge their individual substantive fundamental reasons for doing so, political liberalism as a whole cannot, given that its key appeal to modern pluralistic societies lies in its doctrinal autonomy (Rawls 2005, 98–99).

This is significant. If political liberalism publicly acknowledged the normative authority of individual comprehensive doctrines as such, it could, from a theoretical perspective, no longer simply assert the priority of publicly shared values over non-public ones which are all equally supported by the same individuals' comprehensive doctrines. However, in failing to attribute normative significance to the contents of individual comprehensive doctrines as such, political liberalism deprives itself of the very sources it relies on when claiming that any shared public value is recognised as normatively authoritative by citizens. Ultimately, it is the content of individual comprehensive doctrines which motivates individuals to recognise a particular value as normatively authoritative for them.

Hence, in order to assert the higher-order status of some values, political liberalism must either locate reasons to support said assertion within the relevant evaluative framework – that is, individuals' comprehensive doctrines – or, alternatively, appeal to a shared epistemic authority which is independent of the latter. As Habermas (1998, 93, original emphasis) highlights, "a requirement of practical reason to which comprehensive doctrines must *submit* if an overlapping consensus is to be possible can only be justified by appeal to an epistemic authority that is itself independent of world-views". Both the appeal to individual comprehensive doctrines and the recognition of an independent source of epistemic authority would, however, force political liberalism

⁹Habermas's quote of Rawls refers to Rawls (1995, 144).

to drop the assertion that its principles are doctrinally autonomous.

Instead, political liberalism denies any need to acknowledge any further source of normative authority at all. Rawls (2005, 98) notes that “political values [...] are not simply presented as moral requirements externally imposed”. Rather, citizens are assumed to “understand those values as based on their practical reason in union with the political conceptions as free and equal and of society as a system of fair cooperation.” In short, political values are supposed to gain normative authority from citizens’ commitment to core liberal ideals.¹⁰ However, the question as to *why* citizens should confer a higher-order status to these ideals in particular is precisely what is in want of an explanation.

As demonstrated above, political liberalism in its current form lacks precisely the resources to provide such an explanation and to independently single out some principles. To paraphrase the argument set out above, it cannot but refer to citizens’ *decision* to commit themselves to said principles (Rawls 2005, 137). Hence, the reason why a higher-order norm of cooperation, as such a key principle, can claim some collective normative authority is that individual citizens have themselves ascribed to it such authority over each of them. If we assume that morally autonomous individuals act for reasons, this decision must be tied to some reason-giving source individual citizens can access. Its legitimate authority as a regulating attitude in the constituency of public justification is therefore a result of its position as the final link in each of a number of different chains of normative authority, ultimately linking to a person’s fundamental source of normative authority within her comprehensive moral doctrine.¹¹ These individual sources of normative authority may not matter to liberalism as a whole, but they do matter to each individual citizen. They provide citizens with their *reasons* to commit themselves to liberal principles.

For individual persons, political liberalism’s core principles can thus merely be seen to be co-emergent with a variety of further moral commitments, all of which are rooted in said persons’ individual comprehensive doctrines. A consequence of this specific re-

¹⁰For a similar argument along these lines, see Larmore (1999, 610).

¹¹Rawls (Rawls 1999, 432) seems to acknowledge this link, stating “[t]he fact that those who affirm the political conception start from within their own comprehensive view, and hence begin from different premises and grounds, does not make their affirmation any less religious, philosophical, or moral, as the case may be”.

lation between liberal ideals and private comprehensive doctrines that characterises political liberalism is that it cannot but attribute to individual citizens' nonpublic convictions the same status as to the shared commitment to cooperation in the political sphere. Any attempt to furnish some values with a higher-order status is thus hampered by political liberalism's reliance on individual private comprehensive doctrines as sources of normative authority.

Hence, even if, empirically, some citizens will accept a higher-order norm of mutual cooperation, political liberalism lacks the resources to assign to it the same higher-order status within the theory in general. It is unavailable as a theoretical resource to resolve conflicts of deep moral disagreement when public reasons have run out. As a result, procedural solutions designated to resolve such instances of incompleteness suffer from a lack of normative authority precisely under those circumstances in which they crucially require it.

5. Conclusion

In this article, I argued that, in modern liberal societies, citizens are likely to encounter moral conflicts between the consequences of their commitment to cooperation in their political conduct and other commitments, which are part of their comprehensive moral doctrines. Instances of deep moral disagreement, in which citizens' moral reasons point them towards prioritising the latter over the former, render citizens less than fully reasonable by the standards of political liberalism, and hence place them and the reasons they deem to be valid outside of the constituency of public justification. Yet, such exclusion warrants justification to those who are being excluded, if political liberalism is to live up to its commitment to treat individuals as ends in themselves.

In political liberalism, justification for political principles must draw on the values and principles individual citizens can be said to accept. It does not seek to assert the validity of its principles by tracing their roots to a particular coherent and comprehensive set of philosophical first principles. Instead, political liberalism leaves the grounding for its principles as a blank to be filled by individual citizens and their particular conceptions of the world, including their comprehensive moral doctrines. It

relies on the fact of support by individual citizens' reasonable comprehensive doctrines for its normative validation.

From the perspective of the theory, it is this social fact which, given political liberalism's metaphysical restraint, provides shared values with their normative authority. Political liberalism can claim that these values should govern individuals' conduct in the public political sphere because *individuals themselves* have reasons that render said political values normatively authoritative to them. For the individual citizen, however, liberal values and principles are not vindicated by the *fact* of support by their and others' comprehensive doctrines, but by the *support* of the latter. From citizens' perspective, said doctrines, as the foundations of their moral consciousness, are the substantive sources of values these citizens have come to accept as morally authoritative for them.

This is crucial to the central claim I have defended in this article: instances of deep moral disagreement reveal gaps in the capacity of political liberalism to confer legitimacy to public policies by drawing on a consensus of shared reasons. Said gap can only be bridged if political liberalism can assert priority for shared public values over nonpublic commitments. Although essential to the normative framework of political liberalism, said values cannot claim independence from their roots in the individual foundational beliefs and values, which are considered citizens' ultimate sources of normative authority. This lack of independent normative authority crucially affects political liberalism's internal coherence and capacity to confer legitimacy to a political system precisely when it is confronted with deep moral disagreement.

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