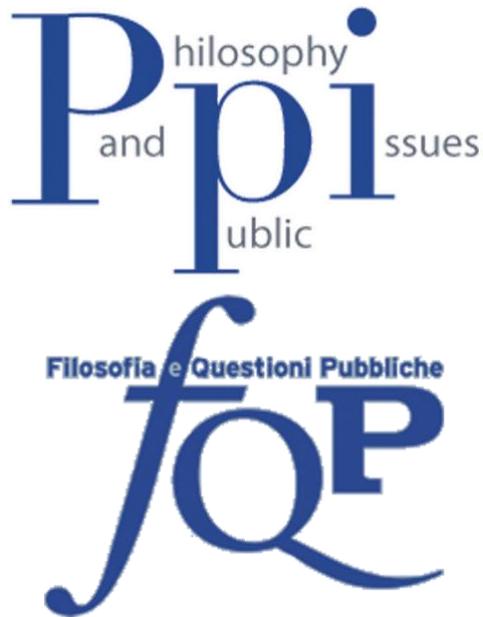


SYMPOSIUM
PARTISANSHIP AND PUBLIC REASON



PARTISANSHIP AND THE BOUNDARIES
OF THE POLITICAL LIBERAL PROJECT

BY
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Partisanship and the Boundaries of the Political Liberal Project

Steven Wall

In his forceful commentary on Rawls's conception of liberalism, Jürgen Habermas expressed a concern many have had about it. On this conception of liberalism, Habermas charged, too many political questions are settled in advance, leaving insufficient space for real world citizens to determine the character of their political life.

For the higher the veil of ignorance is raised and the more Rawls's citizens themselves take on real flesh and blood, the more deeply they find themselves subject to principles and norms that have been anticipated in theory and have already become institutionalized beyond their control. (Habermas 1995, 128).

On this critique, democratic citizens in a Rawlsian polity debate the policy details of Rawlsian justice. The scope of democratic contestation is severely confined. Does this economic policy or does that one offer the best prospect for realizing the Difference

Principle, for example? In light of Rawls's later work, this critique is less compelling. Since the publication of *Political Liberalism*, Rawls allowed that his favored conception of justice is not the only conception of justice that could legitimate the basic structures of the kinds of societies with which he was concerned. Democratic debate in a Rawlsian society, accordingly, can center on competing conceptions of justice as well as policy proposals for implementing justice.

In his insightful study of political liberalism and partisanship, Matteo Bonotti calls attention to some further and less often noted features of Rawlsian political liberalism that also should not be overlooked in assessing the Habermasian critique. Not only does this form of liberalism not “try to fix public reason once and for all in the form of one favored political conception of justice,” but also it does not try fix the content of public justification, or the forms it can take, once and for all.¹ For to do so would threaten to suppress voices that are entitled to be heard and could lead to improvements in a society's understanding of what justice requires of it.

Given the unpersuasiveness of many of the arguments that Rawls offered in support of his own views about justice and legitimacy, this broadening of the political liberal project is a welcome development. It also makes Bonotti's study of political partisanship a valuable addition to the political liberal project, one that enables the political liberal to offer a fuller reply to the kind of critique that Habermas voiced. In what follows I propose some modifications to the political liberal project that further expand the domain for political partisanship in a politically liberal society. These modifications press up against the boundaries of the project that Rawls himself articulated but are motivated by the underlying

¹ Bonotti 2017, 51-52 (quoting Rawls from “The Idea of Public Reason Revisited”). See also Bonotti's discussion of these ideas *ibid.*, 133-136.

Rawlsian concern to come to terms with the pluralism of modern democratic societies.

I

Partisanship as a normative idea

Before proceeding, I wish to clarify the nature of the inquiry I will be pursuing. In the introduction to his study, Bonotti writes that partisanship in politics “involves a commitment to the common good rather than the sole advancement of merely partial interests” (Bonotti 2017, 5). This characterization helpfully distinguishes partisans from members of interest groups or factions.² Bonotti immediately adds that a commitment to the common good “implies a commitment to public reasoning” (*ibid.*). I agree that a commitment to the common good implies a commitment to public reasoning, but only in an attenuated sense of that pregnant term.

Public reason, I am happy to grant, has its own subject matter. It is reasoning about the public good of one’s society, especially regarding matters of “fundamental justice.”³ In this minimal sense of public reason, a concern for the common good does imply a commitment to public reasoning, since anyone who is concerned with the common good of his society will need to be concerned with the fundamental justice of his society. But partisans in a liberal political society can accept this minimal understanding of public reasoning and reject the raft of further ideas that Rawls packs into

² Note, however, that this characterization papers over a potentially significant tension between partisan political engagement and commitment to common good political deliberation. See Mutz 2006.

³ Some writers claim that ‘public reason’ is a pleonasm, since reason is inherently public (See Finnis 2011, 4.) Even so, if public reason is understood to pick out a distinctive subject matter, then the adjective ‘public’ is informative.

the notion.⁴ Such partisans remain committed to the common good of their society, while rejecting the project of political liberalism. Indeed, they, or those who were interested in explaining their role in politics, could articulate a set of further ideas that inform the activity of public reasoning in a liberal political society that contrast with the set of ideas advanced by Rawls. We could then critically investigate which understanding of public reasoning, the Rawlsian understanding or the envisioned contrasting understanding, has a stronger claim to acceptance by those who were committed to the common good of the liberal societies under consideration.

This investigation is not one that Bonotti pursues, however.⁵ His book is not designed to persuade those who are not already broadly on board with the political liberal project. The soundness of political liberalism is largely assumed in his study. This is fine, as far as it goes. There can be a division of labor between those who seek to defend political liberalism against rival conceptions of politics and those who aim to work out its details on the assumption that it is a sound project. But the reader should be careful not to be misled. The notion of normative partisanship that is articulated by Bonotti does not provide any independent support for political liberalism. When, for example, he claims that “partisanship itself, understood as normative conception, embodies an intrinsic commitment to public reason” and that,

⁴ Rawls articulates five aspects of public reason, only one of which concerns its subject matter. See Rawls 1997.

⁵ Bonotti observes that “there seems to be a discrepancy between the commitment to the common good that defines partisanship and the one that characterizes the ideal of public reason” (Bonotti 2017, 106). Immediately after this observation, he asserts that the common good of a liberal society is “deeply rooted in what Rawls calls the ‘public political culture.’” This assertion either assumes the soundness of the political liberal view or fails to close the noted discrepancy.

accordingly, political parties that reject the constraints of Rawlsian public reason lie “outside the realm of partisanship” and are better viewed as “factions rather than parties,” this may look like an argument for political liberalism. But it is not. For the claim in question can be translated as follows. ‘The specific normative conception of partisanship that is appropriate for political liberalism embodies an intrinsic commitment to public reason in the specific sense understood by political liberals.’ This is a true claim, but it is true by stipulation.

Having noted the nature of Bonotti’s project, I propose to engage with it on its own terms. Setting aside the soundness of political liberalism, I want to consider the role political partisans might play in a recognizably politically liberal model of politics. I will argue that the role for partisanship here is substantially more robust than Bonotti envisions. My discussion is less a critique of his account of political liberal partisanship and more of an invitation for him to extend his ideas further.

II

Pluralism’s dynamic

‘Political liberalism’ can refer to the specific conception of politics that Rawls proposed, or it can refer more broadly to a research program that builds on the key ideas and concerns that animated his post-*A Theory of Justice*-political theory. To some degree, the latter research program is forced upon any friend of political liberalism. Since the Rawlsian texts contain conflicting claims and unresolved tensions, efforts at interpretation invariably shade into efforts at rational reconstruction. The political liberal must decide to be more Rawlsian (or less Rawlsian) than Rawls.⁶

⁶ A point not lost on Bonotti. See 2017, 97.

One of the driving forces, if not the driving force, behind the instability in Rawls's articulation of political liberalism is his embrace of reasonable pluralism. Essential to reasonable pluralism are the "burdens of judgment." These are factors that purport to explain reasonable disagreement as opposed to disagreement simpliciter.⁷ The latter can be explained sociologically, but the former requires a normative account of the limits of reason. The burdens of judgment purport to provide that account, thereby explaining how it is that "conscientious persons with full powers of reason, even after free discussion," can hold opposing views on important matters (Rawls 1996, 58). For Rawls, these factors explain reasonable disagreement over the good. But once the "burdens of judgment" have been introduced to explain the possibility of reasonable disagreement among conscientious people over the good, they exert their own momentum. If the burdens of judgment apply to ideals of the good, why would they not also apply with equal force to conceptions of the right, including conceptions of justice? We know that Rawls felt the force of this question. It led him to propose that the content of political liberalism, including both its conception of public reason and its conception of political legitimacy, is informed not by a uniquely correct conception of justice, but rather by a family of reasonable conceptions of justice (*ibid.*, xlix).

The extension of reasonable pluralism from ideals of the good to conceptions of justice was a major development in Rawls's thought, and it had ripple effects on his larger argument for political liberalism that he did not fully come to terms with. I will mention one example here, which will be relevant to the discussion in later sections of this paper. Rawls's treatment of the

⁷ In Rawls's parlance they refer to "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 1996, 56).

inadequacies of a mere constitutional consensus, when contrasted with an overlapping consensus on a political conception of justice, emphasized, among other things, the fact that constitutions require interpretation for their application to new circumstances. In a constitutional system with judicial review, judges will need “to develop a political conception of justice in the light of which the constitution, in their view, is to be interpreted” (*ibid.*, 165). Yet given reasonable pluralism over political conceptions of justice, no consensus on a political conception of justice to guide interpretation of the constitution can be expected. The most that can be expected is an overlapping consensus on a family of such conceptions.

This fact poses a problem for achieving the deeper social unity that an overlapping consensus on political justice supposedly enjoys over a mere constitutional consensus. Rawls was not completely unaware of the problem here, but his response to it was curious. He observed, first, that “different social and economic interests may be assumed to support different liberal conceptions,” and, second, that the less opposition there is among these different interests the more likely it will be that the family of reasonable political conceptions of justice will be narrow (*ibid.*, 167-168). This response is curious because it is entirely sociological. The fact that citizens endorse different reasonable political conceptions of justice in Rawls’s model of politics, however, is explained fundamentally by the burdens of judgment and not merely by the fact that conflicting social and economic interests can lead citizens to favor different conceptions of justice. Thus, while Rawls dimly recognized that reasonable pluralism regarding conceptions of political justice makes trouble for his defense of an overlapping consensus on political justice, he failed to take the full measure of the problem. Internal to Rawlsian political liberalism is a fault-line that threatens to crack its foundations.

I will apply some pressure to that fault-line myself in section IV below, but first I need to bring into view a further key respect in which Rawls, and political liberals who follow him, have failed to appreciate the dynamic of reasonable pluralism. If the burdens of judgment explain why no societal consensus on a single conception of political justice, such as justice as fairness, is to be expected, even under favorable conditions, then, it is fair to ask why we should expect there to be a consensus on a *family* of reasonable political conceptions in such a society. Reasonable citizens can disagree over how wide the family is, or whether there is, as Rawls sometimes intimates, a privileged (i.e. most reasonable) member of the family. This added dimension to reasonable pluralism over political justice is hard to deny, once the burdens of judgment have been allowed to apply to conceptions of justice; and this added dimension introduces further and more radical ripple effects into the Rawlsian model of politics.

III

Contesting civility

Recall that Rawlsian public reason must be open to revision, if it is to avoid the charge that it ossifies current understandings of public reason. This acknowledgment, I now want to argue, discloses how the duty of civility itself can become subject to reasonable controversy. To see how, suppose that two groups of partisans in a society are committed to political liberalism, but disagree over the family of reasonable political liberal conceptions of justice. The first group maintains that the family includes only three conceptions, while the second maintains that the family includes these three conceptions, but also a fourth, PL4. Suppose next that the members of this second group believe that PL4 is the best conception. When they debate matters of basic justice in the

public political forum, they frame their arguments in terms of PL4. From their reasonable standpoint, they honor the duty of civility, for they frame their arguments in terms of one of the reasonable conceptions of justice in the family of such conceptions. By contrast, from the first group of partisan's reasonable standpoint, these partisans violate the duty of civility, insofar as they defend political proposals in terms of a conception of justice that falls outside the family of reasonable political conceptions.

Before discussing the consequences of this kind of situation for political liberal partisanship, it will be useful to say more about how it might arise. Let us stipulate that both groups of partisans in our example are committed to the freedom and equality of persons and they both work up conceptions of justice drawn from the fundamental ideas implicit in the public political culture of their society. In working up these shared ideas into more determinate conceptions of justice they perforce draw on their moral views. Suppose, for example, that the second group of partisans appeal to a moral claim, such as that expressed by the sanctity of human life doctrine, to articulate the content of PL4. This claim is not itself a comprehensive doctrine. It is, these partisans claim, detachable from any specific comprehensive doctrine and fully accessible to common human reason.⁸ The first group of partisans, however, are not persuaded. The moral claim in question, they think, is too closely associated with a specific comprehensive doctrine for it to qualify as a public political reason.

The disagreement envisioned here is a good faith disagreement among partisans committed to debating political questions within the terms of a reasonable political conception of justice. This kind of disagreement is to be expected, given the burdens of judgment. The disagreement has the potential to engender distrust among the

⁸ It is noteworthy that Rawls allowed that a moral doctrine can be comprehensive and accessible to our common human reason (Rawls 1997, 775).

two groups of partisans, thus leading to a breakdown of civil relations among them. But I want to suggest that it need not have this consequence. There is a difference between thinking that one's opponents are mistaken, and thinking that they are not fighting fair, or acting in bad faith. Since the first group of partisans in our example accept the burdens of judgment, they should be open to the possibility that the second group is making a reasonable mistake, and not furtively rejecting the political liberal project. Correspondingly, the second group should be open to the possibility that the first group of partisans are making a reasonable mistake in excluding PL4 from the family of reasonable conceptions of political justice.

The scenario presented thus discloses how trust among reasonable partisans, while likely strained by the type of disagreement depicted, can endure. It also brings into view an additional role for political liberal partisans. On Bonotti's view, partisans, and especially members of political parties, occupy a unique position. They are "the only organizations that operate both in the public political realm and in civil society" (Bonotti 2017, 117). As such, they have "horizontal" responsibilities to rival partisan groups and "vertical" responsibilities to their constituents. The horizontal responsibilities include both honoring the duty of civility in their own political advocacy and "monitoring" the advocacy of other partisans to ensure that they too comply with this duty. The vertical responsibilities include responding appropriately to their constituents' non-public reasons and helping them "to find an internal connection" between those reasons and public reasons. By discharging both sets of duties, political partisans help to bring about the dual justification essential to the stability of political liberalism. Rival partisans both ensure that public reasoning is honored in the public political forum and that their diverse constituents can integrate these public reasons, and

the proposals that they support, into their wider comprehensive doctrines.

It is an attractive picture. But how does it hold up in our example? Since, in our example, the content of the duty of civility is itself the object of reasonable disagreement, the rival parties cannot fully monitor each other, as there is no agreed upon understanding of the boundaries of political liberal justice. The second group of partisans can comply in good faith with the duty of civility, as they understand it, while the first group of partisans can in good faith charge them with factionalism. Relatedly, reasonable disagreement over the boundaries of political liberal justice significantly complicates the vertical task of responding adequately to constituents' non-public reasons. In our example, each group of partisans, working with a different understanding of the set of admissible public reasons, will be driven to forge internal connections between non-public and public reasons among their constituents that cannot be accepted as reasonable integrations by the other side.

To address the problem the example illustrates, the terms of public reason may need to be revised. It is a virtue of Bonotti's account of partisanship that it carves out a legitimate role for political parties to change the content of public reason. This can be done either in a "top-down" fashion, whereby political parties seek to nudge the public political culture in a direction more inclusive of their comprehensive commitments, or in "bottom-up" fashion whereby social movements, to which political parties are accountable, seek to transform the public understanding of shared institutions and practices.⁹ Indeed, on Bonotti's account, political parties are well positioned to perform both of these functions. Applied to our example, the rival partisan groups each could work

⁹ Bonotti's discussion here draws on Flanders 2012.

to overcome the rift in public reason in their society by working to change the public political culture. But notice that, like Rawls's response to the problem generated by reasonable pluralism over justice for constitutional interpretation, this response is too sociological. The rival parties, on this account, believe that if they can just change the public political culture then they can vindicate in public reason what are now considered controversial commitments. But the reasonable controversy over the commitments among those seeking to transform the terms of public reason in their society is a product of the burdens of judgment as well as social facts and history. To adopt a Dworkinian idiom, Bonotti's account of how public reason can change and evolve pays too much attention to 'fit' and not enough to 'justification.'¹⁰ And when due attention is paid to justification, the dynamic of pluralism once again generates trouble.

IV

Two-tier legitimacy

So far, I have argued that the dynamic of pluralism in Rawls's thought puts into doubt both his focus on conceptions of justice as the basis of social unity in a political liberal order and his articulation of a shared commitment to a shared understanding of a duty of civility among the reasonable members of that order. Not surprisingly, these developments point to further modifications in the political liberal project, modifications that impose additional demands on political liberal partisans.

¹⁰ Dworkin 1986, describing the method of constructive interpretation – a method that, when applied to constitutional interpretation, Rawls appeared to endorse (see Rawls 1996, 236-237n33).

Consider the liberal principle of legitimacy. If there is reasonable disagreement among reasonable citizens in a political liberal model of politics over the family of reasonable conceptions of political justice and the content of the duty of civility, then this principle cannot be fully satisfied. In our example imagine that the second group of partisans succeed in establishing PL4 as the conception of justice that informs legislation and constitutional interpretation by the judiciary in their society. These partisans will then be able to accept that the exercise of political power in their society is legitimate. But the same will not be true for the first group of partisans and those they represent. Rejecting PL4 as outside the family of reasonable conceptions of political justice, they must reject the exercises of political power that it justifies as illegitimately sectarian.

At this point some might conclude that the game is up. Either the political liberal project must become dogmatic and insist that reasonable pluralism cannot be extended in the ways we have outlined, or it must allow the nondogmatic extension of reasonable pluralism and countenance the resultant breakdown of the social unity the project aspired to achieve. But I believe a third alternative is available. Recall that reasonable citizens in a political liberal model of politics can judge that their opponents have made a reasonable mistake in ascertaining the boundaries of political liberalism. They can judge them as committed to the project, despite this mistake, as opposed to ruling them out of court as sectarians opposed to the project. This requires trust and good will, but, as I intimated earlier, reasonable citizens, in light of their own recognition of the consequences of the burdens of judgment, ought to be disposed to extend this trust and good will, at least when there is no compelling evidence that their opponents are being insincere. Yet even when the requisite trust obtains, liberal legitimacy will remain elusive. Not all reasonable citizens will be able to accept that the exercise of political power in their society is

“fully proper.” Rawls says very little about the consequences of a judgment that the basic structure of a society is illegitimate, but Bonotti is helpfully more forthcoming. Legitimate political institutions, he claims, impose political obligations on partisans, but “non-publicly-justified political institutions imply no partisan political obligations at all.” (Bonotti 2017, 36). However, when applied to our example, this claim is too strong. To explain why, I need to introduce a supplement to the liberal principle of legitimacy, what I will refer to as Tier-2 legitimacy.

Tier-1 legitimacy is realized when the liberal principle of legitimacy is realized. But Tier-1 legitimacy is not fully realizable in our example. At most, it can serve as an aspiration, much as the full realization of justice is an aspiration.¹¹ True, in our example, the proponents of PL4 can view the exercise of political power in the society as fully proper, but they know that their rivals cannot. How then should we understand the situation of these rivals? My proposal is that they can view the constitution and the democratic process that has been established in their society as legitimate in a different, and weaker, sense. While not viewing it as legitimate according to the liberal principle of legitimacy, they can view it as imposing obligations on them. Specifically, they can view it as imposing obligations on them to work within the system that it establishes, seeking to reform it from within. To adopt a useful term from Philip Pettit, they can view the exercise of political power, and the constitutional decision-making process for authorizing the exercise of that power, in their society as

¹¹ The political liberal might be tempted to say that liberal legitimacy comes in degrees. But what would that mean if not that some, but not all, matters of basic justice/constitutional essentials were legitimate?

“legitimizable,”¹² even if not legitimate. This would suffice for Tier-2 legitimacy.

Tier-2 legitimacy does not require partisans to agree on the criteria of liberal legitimacy for matters of basic justice in a political liberal order. But it does require agreement on the presumptive authority of the order itself. It requires something akin to what Rawls had in mind when discussing a constitutional consensus.

The example I have used to illustrate my points posits only two groups of rival partisans, and it depicts a situation in which one group succeeds in establishing its favored conception of justice. A more realistic example would include a wider plurality of partisan groups and would depict a situation in which the established structure was more of a compromise between their competing views than one in which one side prevails. Rather than viewing the exercise of political power in their society as publicly justified or not, the different partisan groups would need to make piecemeal assessments about the (Tier-1) legitimacy of particular laws and institutions. These assessments plausibly bear on the political obligations that they would have reason to recognize. This contrasts with the account of political obligation presented by Bonotti. On his account, partisan groups have political obligations that are grounded in consent and fair play. In a well-ordered political liberal order, there is no differentiation of obligations among them. But once the terms of the political liberal project itself become the object of contestation, then the account of partisan political obligations needs to be revised. Political measures that were recognized to be Tier-1 legitimate would be viewed as publicly justified and thereby generative of obligations under the principle of fair play. But not so for measures that were not recognized to be Tier-1 legitimate, even though they were

¹² That is, capable of being made legitimate by being treated as if it were worthy of support. Pettit 2012, 139-140.

authorized by procedures that were recognized to be Tier-2 legitimate. To be sure, some of these measures, if not complied with, could threaten to disrupt the functioning of the system as whole. As such, Tier-2 legitimacy would suffice for grounding an obligation of obedience. But plainly not all political measures that were judged to be Tier-1 illegitimate would have this consequence. Accordingly, a political liberal account of politics needs a bifurcated account of political obligation to go with its bifurcated account of political legitimacy.

In closing, I mention one final consequence of attending to the dynamic of pluralism in political liberalism. Recognizing the futility of efforts to secure public agreement on a family of acceptable conceptions of political justice, and the consequent futility of efforts to publicly justify all matters relevant to public justification in their society, partisans might aspire to achieve broad-based, rather than full, public justification for their proposals. This would complicate the horizontal responsibilities of partisans. They would now need to distinguish those partisans who were potential partners, as it were, and with whom they would aspire to reach mutual justification on their proposals, from other partisans, who while remaining political liberal citizens in good standing in their eyes, would not be potential partners. The responsibilities owed to the former group would mirror the horizontal responsibilities Bonotti highlights, but the responsibilities toward the latter would differ. With these latter groups, the partisan responsibilities would encompass fostering and maintaining trust among them, and efforts to reassure them that they are not viewed as unreasonable members of the society despite their reasonable disagreement over the boundaries of political liberalism.

I said at the beginning of this paper that the role of partisanship on my proposal is substantially more robust than that provided by Bonotti. Once the dynamic of pluralism is given its due, partisan

contestation extends to the very terms of the political liberal project. This pushes political liberalism back toward a constitutional consensus, and perhaps even back toward a moralized *modus vivendi*¹³, but the model of politics remains genuinely politically liberal insofar as the reasonable members in it are committed to regulating their political life by a public, political conception of justice and to working respectfully with those who share this commitment, but reasonably disagree over how it can be achieved.

Bonotti's valuable discussion of partisanship in political liberalism goes a long way toward putting to rest the Habermasian critique. I have tried to show that it also provides resources for making the content of political liberalism even more open to democratic contestation than his discussion envisions. Doing so requires a fundamental rethinking of the boundaries of the political liberal project, but one that aims to be more faithful to the deeper motivations that launched it.

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¹³ For discussion of the general idea of a moralized *modus vivendi* see Wall 2013.

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