

I. GLEN NEWEY'S CRITIQUE OF RAWLS'S POLITICAL LIBERALISM

Glen Newey's philosophical analysis focuses extensively on the concept of toleration, proposing an original and non-mainstream account of this notion. In his works Newey insists on the double-edged nature of toleration and liberty. According to his view, the very same liberal institutions that grant freedom of conscience and provide the social context for toleration to be enjoyed can be endangered by an excessive toleration of the intolerants. Newey, then, calls into question whether a general justification for political toleration (i.e. a version of toleration in which political institutions are involved) is available claiming that: a) the condition of dislike is absent in relation to the neutral attitude of liberal institutions; and, b) liberal institutions should be careful in tolerating anti-liberals.¹ His conclusion is that political toleration can be reduced and supplanted by the coercive power of the state (Newey 2013). Vertical forms of toleration, according to Newey's analysis, which establishes a triadic relation where the state institutions are involved as referee, give rise to a replication problem where the opposite parties are caught in a circular system of reciprocal accusations of intolerance. According to Newey, toleration in its political version is undermined in its core meaning, thereby becoming a superfluous concept.²

¹ "This is no less than the claim that liberal institutions were proving to be self-disembedding, in that they fostered sedition by anti-liberals who exploited those very institutions in order to subvert them" (Newey 2009, 134, n. 22).

² For a wider analysis of Newey's criticism of normative accounts of toleration, see Galeotti in this issue (15-39).

In this work my goal is to analyse Newey's critique (2009) of the role played by toleration within Rawls's system. Since toleration is one of the historical tenets of liberalism, this concept is central in the theory developed by Rawls starting from *A Theory of Justice* (1971, from now on TJ) and proceeding with *Political Liberalism* (1993, from now on PL). Newey claims that Rawls "treats toleration as a corollary of his wider theory of justice" (2009, 132). In TJ, Newey observes, Rawls provides two arguments in favor of toleration. A direct argument rests primarily on the general principle for equal liberty behind the veil of ignorance, showing the strategic advantage of vetoing any political system which would restrict someone's liberty on the basis of the disapproval of others. A second, indirect argument supports a tolerant attitude by citizens on the assumption that the search for stability requires an institutional context in which intolerants are tolerated for the sake of fostering the allegiance of all the members of the constituency. Rawls believes that institutions legitimated on liberal grounds are *self-embedding*, namely, that over time they will obtain the support even of allegedly illiberal (and intolerant) citizens that have been benefitting from the widely tolerant social environment. Newey is right in highlighting (2009, 133) the strict symbiosis between justification and stability in TJ. Only political institutions that are just – according to the justificatory expedient of the original position coupled with the method of reflective equilibrium – will prove stable over time. In this picture toleration plays a key role. It provides a pragmatic solution to conflicts among citizens not publicly solvable once for all.

Interestingly, Newey suggests that one of the main shifts from TJ to PL consists in Rawls acknowledging that the symbiosis between justification and stability is not as strong as he once argued. Recognizing the deeper roots of disagreement among agents (i.e. the burdens of judgment), Rawls in PL admits that establishing a justified principle of justice will not be sufficient to guarantee stability for the right reason.³ What then is the role that Rawls envisages for toleration in this more conflictual context? First, methodologically, Rawls claims that "political liberalism applies the principle of toleration

³ Rawls (1993; 1995) distinguishes between the stability for the right reasons and *modus vivendi*. If the latter is the case, then "society's stability depends on a balance of forces in contingent and possibly fluctuating circumstances" (1995, 147). On the contrary, stability for the right reasons is reached when citizens are motivated to support a theory of justice thanks to the achievement of a reasonable overlapping consensus.

to philosophy itself” (1993, 10). In this sense, toleration becomes a sort of meta-justificatory normative commitment: political decisions ought to be justified by way of arguments that do not rely on any specific comprehensive doctrine, allowing each citizen the autonomy to find some form of coherence between her own personal view and the political conception autonomously. Second, being tolerant is among the fundamental features of the political virtue of reasonableness. Here Newey introduces what I believe is his principal critique of the Rawlsian model in PL. He correctly points out that agential motivation is a constraint to justification and consequently to the possibility of reaching stability for the right reasons. In line with a realist sensibility, Newey speaks of the *facticity of motivation*, an empirical and independent check on the force of the justificatory setting laid out by Rawls. Newey defines Rawls shift in PL as a “stipulative turn” (2009, 143-145) in which the tensions between desirability and feasibility (or, as Habermas would say, between justified acceptability and actual acceptance)⁴ is solved by limiting the scope of the theory to those agents that show the right motivation to adhere to it. If political liberalism turns out to be a justified and stably accepted conception *only* for reasonable citizens, then the tolerant attitude of these reasonable citizens can be stipulated without requiring further investigation.

In my opinion, Newey’s concerns regarding the scope of Rawls’s political liberalism are well posed. If political liberalism does not engage with those lacking the right motivation (i.e. unreasonable and/or intolerant citizens), then the Rawlsian model ends up overlooking the empirical constraints related to the search for stability, justifying a theory that speaks only to those who are already liberal.⁵ This reading of PL is somehow counterintuitive, and

⁴ “If I understand Rawls correctly, however, he does not wish to distinguish in this way between questions of justification and questions of stability. When he calls his conception of justice political, his intention appears to be rather to collapse the distinction between its justified acceptability and its actual acceptance [...] In my view, Rawls must make a sharper distinction between acceptability and acceptance. A purely instrumental understanding of the theory is already invalidated by the fact that the citizens must first be convinced by the proposed conception of justice before such a consensus can come about” (Habermas 1995, 122).

⁵ Similar concerns are raised by other authors. Some authors stress that justificatory arguments directed specifically to an idealized constituency are detrimental to the agential autonomy of real citizens, imposing upon them a standardized way of reasoning on political matters (Gaus 1999; Vallier 2014). Others, more in line with Newey’s way of reason-

yet sharp and profound (as is often the case with Newey), arguing that Rawls outlines a political conception of liberalism that does away with the empirical world, therefore defending a theory even more idealized than in TJ.

In this context, it would be useful to turn to Jonathan Quong (2011), who has provided one of the most complete and coherent revisions of Rawls's paradigm. In his *Liberalism without Perfection* Quong shows that the first decision that should be taken when dealing with political liberalism is the definition of the political constituency. Here he lays out two possible readings of the overall scope of political liberalism. An *external conception of political liberalism* takes the constituency as an external constraint on the definition of the content of liberal theory. From this perspective, pluralism is described as a brute fact of reality that political deliberation should accommodate in the best possible way. Thus, even though the fact of pluralism is a fact of contemporary democracies, still the ideal justification might be able to overcome the differences and accepted as valid by the widest constituency possible. From another perspective, the *internal conception of political liberalism* views pluralism as a natural effect of tolerant liberal institutions. Hence, pluralism is interpreted as an internal challenge to political contexts that are already driven by liberal commitments. Following the internal conception of political liberalism, Quong claims that the justificatory scope of political liberalism should be circumscribed to an idealized constituency in which the members already share some liberal premises (2011, 135-160).

This distinction between an external and an internal conception of political liberalism is indeed consistent with Newey's analysis I briefly outlined. It seems to me that both readings are available to Rawls's scholars. Quong, for example, defends the internal conception, arguing that political liberalism can be properly justified if and only if the justificatory constituency is limited to reasonable citizens.⁶ Quong soundly defends the strategy of dividing the constituency among reasonable and unreasonable citizens, claiming that introducing strong idealization in the model is the only way to justify political

ning, suggest that a theory of justice should primarily focus on real constituencies, rather than build up a theory for idealized citizens (Horton 2010; Rossi 2013; Sleat 2015).

⁶ "The legitimacy of political principles does not depend on whether current liberal citizens do accept them, or whether the principles are congruent with their current beliefs. Instead principles are defined as legitimate if it is possible to present them in a way such that it could be endorsed by rational and reasonable citizens" (Quong 2011, 144).

liberalism as the most viable and coherent theory of justice within a context of reasonable pluralism. The external conception, by contrast, is at the same time less demanding and more ambitious than the internal conception. On the one hand, the external conception takes political constituencies as external constraints on the justificatory processes, which fits with Newey's suggestion that the facticity of motivation is "a datum with which the outputs of the theory have to contend" (2009, 145, n. 68). On the other hand, this approach is much more ambitious than anything Newey would accept, as it claims to be able to achieve an agreement starting from nothing but unrestrained disagreement.

These two conceptions of political liberalism differ in their understanding of the scope of a liberal theory of justice. The internal conception stresses the reconciliatory aspects of the justificatory enterprise, taking a stance from the beginning about *who* is the adequate recipient of justification and which normative constraints these citizens should meet. By contrast, the external conception faces the motivational constraint imposed by actual constituencies, having faith in the ability of the justificatory strategy to overcome unleashed disagreement and to achieve consensus (or principled compromise) over political decisions with a majority of the constituency. In my opinion, the internal conception is a plausible reading of Rawls's PL, sustaining a version of political liberalism that is coherent and stable, but one that is less powerful, since it does away with the wager of including even citizens that are not properly (or not in every circumstance) reasonable in the wide justificatory processes. The external conception, if taken seriously, would, I believe, take us *beyond Rawls*, establishing a balance between realistic insights and the normative tenets of liberalism. Newey's critique of Rawls's political liberalism is an important starting point toward this second path, emphasizing the tensions between motivation and justification – tensions that the internal conception waters down through strong idealizations – and the double-edge nature of concepts such as freedom and toleration.

2. THE EPISTEMOLOGY OF TOLERATION

In the previous section, I outlined Newey's concerns regarding the general scope of political liberalism, as envisaged by Rawls. As I said, I share some of the general remarks pressed by Newey. I think Newey is correct to highlight the

relevance of the facticity of motivation, therefore criticizing versions of liberalism that impose burdensome idealization. Now, in the second section of this contribution I shall concentrate on a second set of *analytical objections* raised by Newey against Rawls's account of toleration. Correctly, Newey connects the concept of toleration as employed by Rawls with the concept of reasonable disagreement. To recall, Rawls in PL argues that reasonable disagreement among agents is a genuine possibility, and not merely the outcome of flawed procedures of reasoning, nor a fact provoked by the unreasonable attitude of citizens.⁷ In order to explain why reasonable disagreement is a genuine possibility, Rawls introduces the notion of the burdens of judgment, that is "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). Thanks to the description of the burdens of judgement as a stable circumstance of our social life, Rawls can then proceed in defining disagreement as an inescapable fact of liberal and democratic political domains and, even more precisely, as a proof that liberal and democratic societies function well, allowing citizens to enjoy equal liberty of conscience and freedom of thought. In this sense, the burdens of judgment are related to the concept of reasonableness that ground the ideal of liberty of conscience and freedom of thought appealing to epistemic reasons. Hence, Rawls's arguments in favour of toleration as a horizontal virtue stem from his analysis of reasonableness as a civic virtue, characterized both morally and epistemically. Reasonable agents, aware of the burdens of judgment and respecting the ideal of equal respect, are motivated to publicly deliberate without trying to impose their own comprehensive doctrine upon the whole constituency, therefore assuming a general tolerant attitude toward others.

Newey strongly criticizes the epistemic grounds of toleration as defended in PL. He claims that if we really take the burdens of judgment seriously, then such burdens "tend to undermine the reasonableness of any disagreements they may explain" (Newey 2009, 141). According to Newey, if epistemic complexity really does explain genuine disagreement among agents, then epistemically reasonable agents are compelled to take a stance of *epochē*, rather than keep

⁷ As Rawls (1993, 58) states: "Many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion. Some conflicting reasonable judgments (especially important are those belonging under peoples' comprehensive doctrines) may be true, others false; conceivably, all may be false".

believing their position while being tolerant of others' positions as well.⁸ In a less sophisticated form, this argument recalls a debate in the field of epistemology of disagreement concerning the right epistemic reaction to deep qualified disagreement with an epistemic peer.⁹ Epistemologists tend to support two different views. The *Steadfast View* claims that agents can keep believing the truthfulness of their beliefs, regardless of the qualified disagreement with a peer. Given the absence of an external epistemic authority acknowledged by all, an adequate doxastic response is to 'stick to my own guns' and not revise or reconsider the trust in my belief. Authors provide different reasons in support of this strategy, such as the fact that higher-order evidence concerning the other party's epistemic standpoint does not count (Kelly 2005), or they refer to the ineliminability of the first-person standpoint, according to which we have good epistemic reasons to trust our beliefs as long as they are ours (Enoch 2011; Van Inwagen 1996; Wedgwood 2010). By contrast, according to the *Conciliatory View* (Christensen 2007; Elga 2007; Feldman 2007; Lackey 2010), the fact that an epistemic peer disagrees with me with regard to the evaluation of the same piece of evidence is a good second-order reason to 'bite the bullet' and at least question the epistemic processes that led me to believe that p . A strong interpretation of the conciliatory view calls for a revisions of my belief in the attempt to split the difference and give an equal weight in the evaluation of both mine and others opinions (Feldman 2006; Gelfert 2011). It seems to me that this stricter interpretation of the conciliatory view goes in the direction of Newey's suggestion, namely that in the face of reasonable disagreement an epistemic adequate reaction is suspending the judgment. Newey actually reaches a further point, claiming that "if what Rawls has said about the burdens is right, then acceptance on any comprehensive doctrine is under-determined by reason, and so Rawls's last step does seem unreasonable" (Newey 2009, 142).

⁸ "Since p and not- p are inconsistent, and inferences drawn using the law of non-contradiction are presumably reasonable, then each of us, to the extent that we are reasonable, should abandon or qualify our original belief" (Newey 2009, 142).

⁹ Epistemologists concentrate on ideal circumstances in which epistemic peers, namely agents that possess similar epistemic abilities and are also more or less equal with respect to their familiarity with the body of evidence and the informational set, reasonably end up sustaining different conclusions. Obviously, the circumstances of politics are not at all ideal and hardly citizens can be considered epistemic peers. However, this debate is relevant to capture the meaning of Newey's criticism of Rawls's epistemic account.

In this section, my goal is to rescue Rawls from the analytical objections raised by Newey. First, let me say that I take Newey's criticisms to be fair, in the sense that Rawls's strategic decision to do away with any technical epistemic analysis (in order to meet the standard of applying toleration to philosophy itself) leaves the theory hostage to well-posed criticisms (see for example Gaus 1996; Habermas 1995; Raz 1990). In the attempt to outline a strictly political account of liberalism, Rawls employs the method of avoidance to epistemology as well as metaphysics. However, this decision produces a methodological weakness, because it is not possible to provide a fully-fledged account of political legitimacy (and public justification) while avoiding any references to the epistemological framework that supports such project. I argued elsewhere (Liveriero 2018) that an analytical analysis that clarifies the epistemological commitments of PL can be laid out while remaining consistent with the Rawlsian project overall. I will try to do the same here, briefly touching on a few epistemological themes that I believe can help clarify the epistemological roots of toleration as an intrinsic liberal civic virtue.

Newey claims that taking seriously the burdens of judgment implies accepting a skeptical *epochē* as the reasonable outcome of disagreement among agents. This conclusion would actually deprive toleration of any profound meaning, because the decision between sustaining p or not- p would be undetermined from the epistemological point of view. In my opinion, this is an interesting, but extreme reading of the burdens of judgment. More consistently with the actual phenomenology of disagreement, we can read the burdens of judgment as epistemological features derived from a fallibilist general theory of knowledge.¹⁰ If I am right, reasonable citizens, in acknowledging the existence of the burdens of judgment along with the acceptance of mutual terms of cooperation, should prove able to sustain their belief in accordance with a *fallibilist proviso*. According to the proviso, an agent S can be doxastically justified in holding the belief that p , even if S 's full body of evidence for p does not necessarily entail that p is true. Consistently, S can be justified in believing that p , even when counterfactually, she might actually be not justified in believing that p . Reasonable citizens, including the burdens of judgement among their epistemic set of beliefs, have reasons to accept the fallibilist proviso, therefore assuming an epistemic modesty stance toward their doxastically

¹⁰ In general terms, fallibilism is an epistemic theory according to which genuine knowledge is compatible with the possibility of error because agents' epistemic processes for disclosing evidence can never achieve certainty. Consequently, for fallibilism the reasons an agent hold in her doxastic system of beliefs may possibly be very good, but never warranted as true.

justified beliefs. Being epistemically modest does not coincide with being sceptical. Rather, an epistemically reasonable citizen is ready to accept the possibility that in cases where the evidence at stake were directly and fully accessible and her epistemic capacities infallible, her present belief that p might indeed turn out to be false. I think that this conclusion is compatible with the epistemology of disagreement debate, even though it does not take a final stance concerning which is the best epistemic reaction to deep qualified disagreement. More modestly, the epistemic analysis is useful in the political theory domain in order to provide insights regarding what citizens owe to each other, both as moral and epistemic agents. In the political domain, at the horizontal level, the answer to this query is toleration more often than not. This is the reason why toleration is indeed a “core creed of liberalism” (Newey 2009, 131), notwithstanding its double-edged nature.

Pace Newey, I argue that a tolerant attitude among reasonable citizens can be supported by epistemic reasons that do not lead to skepticism, but rather to the more modest acceptance of the *fallibilist proviso*. This means that when inter-subjective deliberation is not useful in solving or mitigating disagreement, citizens can keep believing the truthfulness of their beliefs, and yet they have sound reasons for not disrespectfully dismissing others’ positions as utterly wrong and epistemically inferior. Hence, a tolerant horizontal attitude is morally grounded in the principle of equal respect as well as sustained by epistemic reasons derived from the recognition of our shared fallibility as epistemic agents. This conclusion is in my opinion perfectly compatible with Rawls’s main goals in PL. Yet, the method of avoidance, if interpreted in a strict way, would require us to avoid any reference to fallibilism as the most adequate model of knowledge. However, avoiding any clarification about the epistemic stances required by a justificatory framework can lead to unwilling confusions and to an overall perception of argumentative weakness. Against Rawls, I maintain that political liberalism cannot be robust vis-à-vis different theories of justification, because as theorists we must take a stance regarding the epistemological framework we use while developing a specific theory of political legitimacy.

3. POLITICAL LIBERALISM AFTER RAWLS

In conclusion, Newey’s dialogue with Rawls sheds light on some concerns regarding the Rawlsian paradigm that are worth further analysis. Leaving aside the debate concerning the best account of toleration – that is object of analysis

of other contributions in this volume in Newey's memory – my paper sought to clarify which of Newey's criticisms of Rawls are well posed and which can be rebutted. Briefly stated, I agree with Newey that in the passage from TJ to PL Rawls "gets lost" with regard to the theme of motivation. On the one hand, it seems that opening the theory to the fact of pluralism and highlighting the relevance of the search for stability should bring Rawls to pay even more attention to the facticity of motivation. On the other hand, the sharp distinction between reasonable and unreasonable citizens ends up watering down the motivational theme. An uncharitable reading can actually claim that Rawls's political liberalism cannot "accomplish more than merely the hermeneutic clarification of a contingent tradition" (Habermas 1995, 120), referring solely to citizens that are already liberal and therefore motivated to sustain such political system.

Newey's analysis is one of the most clever and well-posed available on the topic, clearly explaining the intrinsic tensions within PL with regard to the relationship between stability and motivation. I also believe that the right solution to this tension goes in the direction hinted by Newey, namely revising the justificatory strategy in order to include reasonable and unreasonable citizens alike. Naturally, this shift would impose profound changes in the general Rawlsian framework. For example, dealing with a less homogeneous constituency might suggest that political compromises often are good political solutions, rather than unrealistic consensus-based decisions. Moreover, political deliberations shall be open to partisan and strategic reasons, rather than focusing solely on justice-based reasons. To use a slogan, a post-Rawlsian political liberalism might try to achieve normative goals proving more flexible in dealing with the facticity of the real world. But this solution, not surprisingly, would require stipulative turns that Newey, for sure, would have identified and criticized. For one, extending the justificatory labour to include not reasonable citizens imposes a further rethinking of the limits of toleration. This conclusion proves once more that a satisfying theory of political liberalism should include an adequate theory of toleration among its fundamental tenets.*

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