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Narrow or Broad? Questioning the Scope of Public Reason¹

ABSTRACT

This paper considers a fundamental issue set against the backcloth of John Rawls's political theory, namely the issue of the proper scope of public reason. The concept of the scope of public reason refers to situations when publicly accessible reasons have moral priority over other normative considerations. The case is worth considering because, although making several remarks, Rawls's position on the problem is ambiguous. In the paper, the author reconstructs the accurate scope by invoking two criteria: person oriented and issue oriented. The philosophical discussion on the subject is dominated by two interpretations of the breadth of public reason; however, the author believes we may indicate four plausible answers to the stated question.

KEYWORDS

political liberalism, public reason, political justification, John Rawls, constitutional essentials

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Introduction

According to the common view, the first influential book by John Rawls, *A Theory of Justice*, focuses on the problem of justice, whereas his second work, *Political Liberalism*, concerns the issue of legitimacy. This assertion is accurate, but only to a certain extent. In *A Theory of Justice*, Rawls aims at formulating the principles of justice. In the later book, he strives to show that the standards proposed in his earlier works fulfil the requirement of legitimacy in contemporary societies. This is because the view of justice may be easily reconciled with fundamental ideas implicit in public political culture. Nevertheless, the details of the relations between justice and legitimacy are much more complex than the common view indicates, and, in many areas, both problems are closely linked to each other. The function of the main *linker* of the theory is performed by the concept of public reason.

Based on Rawls's account, public reason is a way of formulating plans, setting goals, and making decisions characteristic of democratic societies.² The concept requires citizens to submit proposals of legal solutions and justify them by reference to reasons that are publicly accessible. Only arguments formulated in such a way can be understood by adherents of different conceptions of the good (comprehensive doctrines). Rawls claims that being guided by principles of public reason within the political domain is desirable and morally obligatory. However, to what extent do public reasons have moral priority over other considerations? Where are these borders? What is the scope of public reason? The purpose of this paper is to confront these crucial problems.

These questions will be answered in the following sections of this paper. In section 1, I will argue why the issues related to public reason philosophy are so significant. In section 2, I will indicate two main criteria that shed light on the problem of the scope of public reason. The first criterion, which I call *person oriented*, relates to the question of who is obliged to obey the rules of public reason. The second criterion, *issue oriented*, concerns types of matters that should be covered by these moral standards. Section 3 of this paper is aimed at considering possible answers to stated doubt. I will consider the most plausible interpretations of the Rawlsian account, including the arguments that may be given in favour of each standpoint. In the concluding part I will answer the basic questions: first, about the borders of public reason in keeping with Rawls's intentions; and second, about the most accurate view according to my opinion.

² J. Rawls, *Political Liberalism*, New York 1996, p. 212.

1. The Significance of Public Reason

Before moving on to the crux of the matter, I should explicate why this detailed analysis of the idea of public reason is so important for contemporary political philosophy. However, this would be impossible without introducing some basic concepts of political liberalism; one cannot fully comprehend the significance of public reason without invoking the fact of reasonable pluralism, the liberal principle of legitimacy, and the concept of coercion.

The public reason project is based on the recognition of the social fact of reasonable pluralism.³ It is undeniable that contemporary societies face a challenging problem of moral disagreement. People who live in the same society differ deeply from one another in their values, beliefs, and attitudes; they hold distinct moral ideals and pursue different conceptions of the good life. According to Rawls, this diversity constitutes a normal result of the exercise of human reason in circumstances of freedom. He concludes that the social sphere is divided among adherents of various comprehensive doctrines, which are complex and contentious worldviews containing conclusive responses to crucial metaphysical, religious, and ethical questions (e.g., utilitarianism, Christianity, natural law, socialism, etc.). Because these responses are, by their essence, contentious and questionable, none of the comprehensive doctrines is commonly followed, and none may be unanimously accepted by citizens in a pluralistic society.

The fact of reasonable pluralism places citizens in a predicament because, although they differ in their worldviews, at the same time they have to act collectively and make decisions as one body. The clue of this situation is that, on the one hand, citizens agree that having no common rules governing the essential social matters is inadmissible; however, on the other hand, no comprehensive doctrine can be accepted by everyone. Rawls's solution to this moral dilemma is expressed in his formulation of the liberal principle of legitimacy. As he states:

[...] our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. This is the liberal principle of legitimacy.⁴

³ See: *ibidem*, pp. xvi–xxx; *idem*, *Justice as Fairness. A Restatement*, Cambridge 2001, pp. 3–5. For further explanation on the concept of reasonable pluralism, see: J. Cohen, “Moral Pluralism and Political Consensus”, [in:] *The Idea of Democracy*, eds. D. Copp, J. Hampton, J. E. Roemer, Cambridge 1993, pp. 270–291; Ch. Larmore, *The Morals of Modernity*, Cambridge 1996, pp. 156–174; J. Waldron, “Toleration and Reasonableness”, [in:] *The Culture of Toleration in Diverse Societies. Reasonable Tolerance*, eds. C. McKinnon, D. Castiglione, Manchester 2003, pp. 13–37; M. Matravers, S. Mendus, “Toleration and Reasonableness”, [in:] *The Culture of Toleration in Diverse Societies...*, *op. cit.*, pp. 38–53.

⁴ J. Rawls, *Political Liberalism*, *op. cit.*, p. 217.

The meaning of the principle is clearly explained by Larmore⁵ and Gaus,⁶ among others. Both authors explicate the role of legitimacy by invoking the concept of coercion. They notice that exercising political power is essentially coercive. Following Rawls (and Mill), they claim that personal freedom is a primary and appropriate moral state of individuals; hence, every external constraint on freedom needs to be properly justified. However, what does 'properly justified' mean in this context?

According to Rawls, proper justification means justification from every publicly reasonable point of view. Thus, citizens should not justify decisions and demand laws by appeals to their comprehensive doctrines, because doing so is equal to forcing others to accept values of which they do not approve. Imposing values derived from any contentious doctrine on other citizens manifests disrespect to their status as free and equal. Solely supporting the demands and enacted laws by publicly accessible reasons may be recognised as morally valid and proper. Because of the irresolvable and permanent disagreement among comprehensive doctrines, public reason is the best proposition to perform the role of a common standpoint. It should be emphasised that public reason does not constitute any kind of legal obligation. It is certainly a moral standard based on moral premises – the legitimate way to reconcile values of reciprocity and equality with the modern circumstances of justice.

The last necessary remark in this section aims at putting in order two closely related concepts: public reason and public reasons. We can presume that public reasons are types of proper arguments and considerations that may be invoked in democratic political life. They are the reasons that fulfil the requirement of the liberal legitimacy principle⁷ and may be recognised as acceptable by democratic citizens. On the other hand, public reason is something more than just a collection of public reasons; first of all, it contains general norms of reasoning, which are principles determining the relations between public and non-public reasons and standards of evidence. We can conclude that public reasons are first-order arguments, whereas public reason is a higher-order standard regarding the proper use of public reasons – referring to their priority and weight in a given political problem.

Taking this distinction into consideration, the problem of the scope is one of the fundamental questions that need to be decided on the higher level, the stage of public reason. The next section will focus on this issue in more detail.

⁵ Ch. Larmore, op. cit., pp. 121–151; see also: W. Sadurski, *Equality and Legitimacy*, Oxford 2008, pp. 27–38.

⁶ G. F. Gaus, *Justificatory Liberalism. An Essay on Epistemology and Political Theory*, Oxford 1996, pp. 130–193; idem, "Coercion, Ownership and the Redistributive State: Justificatory Liberalism's Classical Tilt", *Social Philosophy and Policy*, 2010, No. 27, pp. 233–275; idem, *Contemporary Theories of Liberalism: Public Reason as a Post-Enlightenment Project*, London 2003, pp. 177–204.

⁷ S. Freeman, *Rawls*, London 2007, p. 385.

2. Two Criteria of the Scope of Public Reason

By *scope of public reason*, I understand all situations where public reasons have moral priority over other considerations (comprehensive reasons, non-public reasons). I believe the scope is determined by two criteria: person oriented and issue oriented. The first criterion answers the question of *who* is supposed to obey the rules of public reason, and the second criterion aims at clarifying *what matters* should be covered by these requirements.

2.1. PERSON-ORIENTED CRITERION

Two general groups should be considered as answers to the person-oriented criterion: ordinary citizens and public officials.⁸ It is indubitable that the liberal principle of legitimacy imposes requirements on *citizens'* political conduct. Rawls indicates explicitly that public reason is the reason of free and equal citizens of democratic society.⁹ Particular obligations addressed to citizens are derived from the so-called duty of civility:

[...] duty to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason.¹⁰

The principle states that, first, one should be able to offer his fellow citizens a sound argument for his political activities, and second, that this justification should follow the framework of public reason. It is important to note that the duty covers a rather broad spectrum of conduct, including actions such as voting in elections or making collective decisions, and also participating in public discussions or taking part in manifestations. Freeman claims that, according to the duty, a citizen should independently assess if his argument offered to others fulfils the requirement – one should sincerely believe that it does in order to provide a valid justification for his action.¹¹ The claim is consistent with the Rawlsian remark that before taking an action, a citizen should ask himself if his reason might be as sound as the legislator's argument or judicial justification for the sentence.¹²

Furthermore, *public officials* should also comply with the requirements of public reason. By officials, I mean different types of public servants: government

⁸ Rawls is also explicit that the idea of public reason does not apply to media of any kind, see: J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review*, 1997, No. 64, p. 768.

⁹ *Idem*, *Political Liberalism*, op. cit., p. 214; *idem*, *Justice as Fairness. A Restatement*, op. cit., pp. 90–92.

¹⁰ *Idem*, *Political Liberalism*, op. cit., p. 217.

¹¹ S. Freeman, *Rawls*, op. cit., p. 373.

¹² J. Rawls, "The Idea of Public Reason Revisited", op. cit., p. 770.

agents, judges, public representatives – all subjects who exercise executive, judicial, or legislative power in the name of the state. One standard derived later from the liberal principle of legitimacy applies directly to officials' conduct. This is a duty to publicly justify political enactments, which expresses itself in justifying to citizens the legal regulations and decisions in terms of public reason.¹³

In "The Idea of Public Reason Revisited," Rawls specifies three spheres of the political forum that should be governed by the political morality of public reason: (1) the discourse of judges in deciding cases, (2) the discourse of government officials (especially the president and congressmen), and (3) the discourse of candidates for public office (particularly in their public statements and party platforms).¹⁴ This division is non-accidental, because moral requirements apply with different strengths to different dialogues. Special attention and significance are ascribed by Rawls to judicial discourse. Employment of the rules is more explicit and strict in judicial argumentations than in any other. In *Political Liberalism*, Rawls characterises the supreme court as the exemplar of public reason,¹⁵ which means that justices of the court are to justify their decisions consistently and solely in accordance with publicly accessible arguments.

2.2. ISSUE-ORIENTED CRITERION

It is clear that the public reason domain is restricted solely to the political sphere, thus to the area of human activity, which is characterised by two main features. First, it is governed by political values (as opposed to the private sphere, e.g., family); second, participation in it is involuntary (as opposed to the associational sphere, e.g., churches). Nevertheless, problems that arise in the political sphere, pursuant to Rawls's writings, may be distinguished into two possible types of issues: those regarding fundamental questions and those concerning the other, non-fundamental matters.

It is beyond doubt that the rules of public reason apply to *fundamental political matters*. With special emphasis, Rawls considers constitutional essentials and matters of basic justice. Constitutional essentials, generally speaking, cover all the laws that control the structure of state powers and basic rights of citizens. In particular, they involve the arrangement of government and the political process; the powers of the legislature, the executive, and the judicature; the scope of the majority rule; as well as equal basic rights and liberties, such as the right to vote and to participate in politics, freedom of thought and of association, liberty of conscience, and the protections of the rule of law.¹⁶

¹³ Ibidem, pp. 769–770.

¹⁴ Ibidem, p. 767.

¹⁵ Idem, *Political Liberalism*, op. cit., p. 231.

¹⁶ Ibidem, p. 227; idem, *Justice as Fairness. A Restatement*, op. cit., p. 28.

In turn, matters of basic justice concern the main features of the socio-economic order, such as economic justice, equality of opportunity, and social minimum to the less advantaged. They are very general moral guidelines. Rawls does not forejudge what is the appropriate level of social minimum; however, he claims that at some degree it should be provided by the state.¹⁷ In combination with constitutional essentials, the guidelines shape each society’s basic structure.

All political matters that are not identified as constitutional essentials or questions of basic justice comprise *non-fundamental issues*. As they are placed beyond the scope of fundamental issues, Rawls includes most tax legislation, many laws regulating property, statutes protecting the environment and controlling pollution, acts establishing national parks, and funds for museums and the arts.¹⁸ As one can see, the category is very broad – it contains the majority of legislative questions, including coercive policies laying legal duties on citizens. It is important to note that, according to Rawls, a detailed demarcation between fundamental and non-fundamental matters can be fixed only with regard to a concrete society holding an actual interpretation of these concepts.¹⁹

3. Views of the Scope of Public Reason

The previous considerations are summed up in Table 1. Let me assume that ‘1’ signifies a situation where principles of public reason requirements are valid; one should ascribe moral priority to public reasons over other considerations. By *situation*, I understand it to mean the circumstances in which a subject (a citizen or a public official) acts in a given issue (fundamental or non-fundamental in character). Let me also assume that ‘0’ signifies a situation where there is no moral duty of compliance with the rules of public reason, and public arguments do not have moral priority over non-public considerations.

		ISSUE-ORIENTED CRITERION	
		Fundamental Matters	Non-fundamental Matters
PERSON-ORIENTED CRITERION	Citizens	0/1	0/1
	Public Officials	0/1	0/1

Table 1. The Criteria of the Scope of Public Reason

Source: own work.

¹⁷ Idem, *Political Liberalism*, op. cit., p. 230.

¹⁸ Ibidem, p. 214; idem, *Justice as Fairness. A Restatement*, op. cit., p. 91.

¹⁹ Idem, “The Idea of Public Reason Revisited”, op. cit., p. 776.

Having agreed to the above framework, we get 16 different views regarding the scope of public reason. However, some of them are highly implausible. Which answers can we rule out on the basis of the analysis in section 2? We know that public reason applies to both citizens and public officials; besides, it is quite clear that it should be applied first to fundamental political considerations. Rawls states it explicitly in many places, e.g., in the formulation of the duty of civility.²⁰ The question that should be addressed is: How broad is the scope of public reason beyond fundamental matters? We can indicate four possible answers to this question.

3.1. THE BROADENED VIEW A

	Fundamental Matters	Non-fundamental Matters
Citizens	1	1
Public Officials	1	0

Table 2. The Broadened View A
Source: own work.

The first possible answer claims that public reason should regulate only the questions of fundamental political matters decided by public officials and all political questions considered by citizens (Table 2). The broadened view A imposes stricter duties on citizens' conduct than on public officials' conduct, and it seems to be dubious in this aspect. It implies that citizens constitute the higher power of the democracy and officials are only public servants whose sole purpose is to accomplish the citizens' general will. This relation of powers secures legitimate laws. On the other hand, it calls into question the need of imposing constraints on officials' acting and reasoning also in fundamental matters.

Besides, we should be aware that it would be difficult to reconcile the broadened view A with Rawls's concept of legitimacy. Although this interpretation may be suggested by the formulation of the liberal principle of legitimacy and by the fact that the first practical requirement derived from this principle is addressed to the citizens (duty of civility), this suggestion is misleading. Rawls both explicitly and implicitly (by reformulation of the legitimacy principle in his later works) rejects this interpretation.²¹

²⁰ Idem, *Justice as Fairness. A Restatement*, op. cit., p. 41.

²¹ Ibidem, p. 91.

3.2. THE NARROW VIEW

	Fundamental Matters	Non-fundamental Matters
Citizens	1	0
Public Officials	1	0

Table 3. The Narrow View
Source: own work.

According to the narrow view, both citizens and officials should honour the requirements of public reason only while considering fundamental issues. When discussing non-fundamental matters, they may refer to both public and non-public evaluative standards (Table 3). Arguments supporting this answer are gathered by Quong in his analysis.²²

Quong indicates three arguments in favour of the narrow view: (1) moral priority, (2) basic interests, and (3) completeness. Rawls himself refers to papers concerning the first two argumentations; however, he does not adduce them. The moral priority argument states that because fundamental political matters profoundly affect the life of each individual, it is of great importance that relevant legal rules should be justifiable to all citizens in reasonable terms.²³ The right degree of justice is achieved within a society by securing proper justification on the level of basic institutions. The second way to defend the standpoint involves the basic interest argument first formulated by Marneffe.²⁴ According to this line of thought, the border between fundamental and non-fundamental matters is drawn in compliance with the basic/non-basic interest distinction. Basic interests are those necessary for all persons; they constitute personal well-being to a great degree. The fact that we can indicate some commonly needed values makes citizens' conceptions of the good partially alike and justifies why similar rules should guide the reasoning in these spheres. Beyond this scope, imposing such strict requirements is unnecessary because none of the basic interests is at stake.²⁵ The third argument focuses on Rawls's remarks on the idea of legitimacy. According to the Rawlsian account, public reason needs to be complete in order to be valid. In this sense, *completeness*

²² J. Quong, "The Scope of Public Reason", *Political Studies*, 2004, No. 52, pp. 233–245.

²³ See: T. Scanlon, "Rawls on Justification", [in:] *The Cambridge Companion to Rawls*, ed. S. Freeman, Cambridge 2003, pp. 139–167.

²⁴ P. de Marneffe, "Liberalism, Liberty, and Neutrality", *Philosophy & Public Affairs*, 1990, No. 19, pp. 253–274.

²⁵ *Ibidem*, pp. 258–259.

signifies the capability of providing reasonable answers to political questions concerning constitutional essentials²⁶ without invoking comprehensive doctrines. To fulfil this requirement, the content of public reason has to be complete. If the content is to be defined by a univocal agreement of all reasonable citizens, at best it is attainable only at the level of fundamental matters.²⁷

It is commonly held that Rawls himself was an adherent of the narrow view. In one of his last remarks on the problem, he writes about the credible scope of public reason:

If we define a justification as publicly based when it is based solely on political values covered by the political conception of justice, then we strive for publicly based justifications for questions regarding the constitutional essentials and basic questions of distributive justice but not in general for all the questions to be settled by the legislature within a constitutional framework. We should distinguish, then, between these two cases, the first attainable (we hope) and desirable, the second *neither attainable nor desirable*.²⁸

However, in what sense is the second case neither attainable nor desirable? Rawls strongly states the problem; nevertheless, he does not develop this idea at all. We can only guess why broadening the scope appears unattainable and undesirable.

I believe the threat of unattainability refers to the fact that invoking public reasons in every political dispute may be too burdensome for ordinary citizens. Their religious and moral beliefs derived from comprehensive doctrines are very often in conflict with public reason requirements. Contradictory commitments put them in a predicament. Moreover, very often citizens do not have enough information and knowledge to support their beliefs in complicated economic or legal cases, and because of that they justify opinions by reference to personal moral convictions.

I understand that the threat of undesirability acknowledges at the same time that there are such political disputes where referring to non-public reasons may be desirable. In fact, there are situations where appealing only to the inherent (though controversial) value of a given solution is acceptable, or even advisable. For example, we approve public support for art because we believe that art is valuable in itself. Many political actions are approved because of their intrinsic value and do not need to be supported by public reasons. I believe the same arguments may be invoked while considering, for example, the state's support for museums or national heritage.

²⁶ J. Rawls, "The Idea of Public Reason Revisited", op. cit., p. 777.

²⁷ S. Freeman, *Rawls*, op. cit., p. 405; idem, "Deliberative Democracy: A Sympathetic Comment", *Philosophy & Public Affairs*, 2000, No. 29, pp. 371–416.

²⁸ J. Rawls, *Justice as Fairness. A Restatement*, op. cit., p. 91.

3.3. THE BROAD VIEW

	Fundamental Matters	Non-fundamental Matters
Citizens	1	1
Public Officials	1	1

Table 4. The Broad View
Source: own work.

The broad view of public reason states that the norms of public reasoning should guide both officials' and citizens' discourses concerning all political issues (Table 4). Supporters of this view (e.g., Quong²⁹ Solum³⁰ and MacGilvray³¹) state that arguments in favour of the narrow view are insufficient to justify restricting the scope. Two main reasons supporting this statement ought to be invoked.

First, all three arguments seem to disregard the rationale of public reasoning, which is performed by the fact of coercion. Postulating legal regulation only on the basis of one's comprehensive doctrine signifies demanding the use of coercion against other citizens in the name of this doctrine; consequently, it disrespects the fact of pluralism and the reasonableness of other citizens. On the other hand, it is beyond doubt that non-fundamental matters include cases that require coercive means. Rawls himself cites tax legislation and laws concerning property rights,³² which are the most characteristic examples of employing state coercion. If rules of public reasoning do not apply to such matters, then it appears morally permissible to impose taxes solely on the basis of one's religious beliefs, for example.

Second, each of the arguments for the narrow view ignores the disputes over non-fundamental matters where fair settlements require considering public reasons. Quong gives an example of a political conflict between art connoisseurs and football fans.³³ The former group postulate building an art gallery with public

²⁹ See: J. Quong, "The Scope of Public Reason", op. cit., pp. 233–250; idem, *Liberalism without Perfection*, Oxford 2011, pp. 256–289.

³⁰ See: L. Solum, "Constructing an Ideal of Public Reason", *San Diego Law Review*, 1993, No. 30, pp. 729–763.

³¹ See: E. MacGilvray, *Reconstructing Public Reason*, Cambridge, London 2004, pp. 153–179.

³² J. Rawls, *Political Liberalism*, op. cit., p. 214.

³³ J. Quong, "The Scope of Public Reason", op. cit., p. 240.

funds, and the latter group propose building a football stadium with the same supply. Art appreciators defend their demand only by invoking non-public reasons, particularly that art is inherently good and should be promoted as widely as possible. Football fans argue that the town already has an art gallery but no place where a match could be held. They also point out that building another gallery will not improve the local economy, but a new stadium will. The value of justice in such situations requires that the final decision should be based on public reasons rather than perfectionist considerations.

These two factors lead advocates of the broad view to the more sophisticated formulation of the scope principle. They invoke that public reason ought to be applied, whenever possible, to all political questions where citizens exercise coercive power over one another.³⁴ Such interpretation denies that public reason should never impose moral duties regarding non-fundamental matters, as the narrow view claims. Hence, the statement is consistent with the coercion-based rationale provided by Rawls for his idea.

An argument in favour of the broad view is also found in Rawls's account of the public reason given in *Political Liberalism*. In his own words, the main aim is to consider fundamental matters as 'the strongest case' of the application of public reason's requirements:

If we should not honour the limits of public reason here, it would seem we need not honour them anywhere. Should they hold here, we can then proceed to other cases. Still, I grant that it is *usually highly desirable* to settle political questions by invoking the value of public reason.³⁵

This quotation seems to be contrary to his one supporting the narrow view. Nothing is said about the possible problems concerning the attainability of public reasoning. Rawls clearly emphasises that in most cases it is desirable to justify political postulates and decisions in terms of public reason. What is more, several pages later he suggests the possibility of extending the scope to the issues of intergenerational justice, global relations, and health care, concluding that his conception can be reasonably developed to cover these problems.³⁶

³⁴ This is Quong's perspective (J. Quong, "The Scope of Public Reason", op. cit., p. 247), but see: E. MacGilvray, op. cit., p. 157.

³⁵ J. Rawls, *Political Liberalism*, op. cit., p. 215.

³⁶ *Ibidem*, p. 245.

3.4. THE BROADENED VIEW B

	Fundamental Matters	Non-fundamental Matters
Citizens	1	0
Public Officials	1	1

Table 5. The Broadened View B
Source: own work.

The last possible answer states that public reason should govern, on the one hand, all political questions considered by public officials and, on the other hand, citizens' discourses only when constitutional matters are at stake (Table 5). Nevertheless, this differentiation of the range of imposed duties is much more acceptable than the one introduced by the broadened view A. I believe this occurs because we can easily recognise a plausible rationale that supports the distinction.

Nowadays, it is a widely accepted standard that public servants, especially judges and government officials, conform to stricter moral requirements than ordinary citizens. Higher moral expectations are, definitely, a consequence of the special status performed by officials in public life. These officials are commonly seen as the agents acting and making decisions in the name of the state, not as private persons. Their role makes them more responsible for the public good; therefore, the constraints imposed on their actions are reasonably justified. It is important to note that the restrictions are approved not only as a moral but also as a legal standard. Consequently, this permits the limitation of some of the officials' basic liberties, such as freedom of speech, freedom of assembly, or right to privacy, for the sake of the status of public servants (obviously, it applies solely to situations where they exercise their judicial, legislative, or administrative power).³⁷

It may be argued that similar restrictions towards officials' freedom are equally advisable regarding the range of reasons taken into account while considering political decisions. In particular, officials are required to justify their actions not

³⁷ See, e.g., the judgment of 2003 held by the German Constitutional Court (BVerfG) in the case 2 BvR 1436/02. According to the judgment, civil servants enter the state's domain, and for this reason they do not enjoy the fundamental rights like ordinary citizens because these rights are directed to protect citizens' freedom against the state; the judgment of 2011 held by the Supreme Court of the United States in the case *Nevada Commission on Ethics v. Carrigan* (No. 10-568), where the Court stated that voting by a public official on a public issue is not protected by the freedom of speech in the First Amendment.

by invoking comprehensive doctrines, but in terms of public reason. They should always be willing to provide reasonable grounds for their actions and decisions, as it is not permissible to use the state authority to promote privately adhered worldviews. In this sense, the claim is very close to public servants' duties of impartiality and neutrality, which are endorsed, among others, in the European law (e.g., The European Code of Good Administrative Behaviour³⁸ or The European Convention of Human Rights³⁹).

Some quotations from Rawls's works may suggest that he was favourable towards the broadened view B. Above all, as was mentioned in the section 2, he states that moral restrictions imposed by public reason apply with different strengths to different discourses.⁴⁰ Three of these discourses – of judges, of government officials, and of candidates for public offices – are listed explicitly in "The Idea of Public Reason Revisited." Therefore, we can deduce that more rigorous standards concern primarily the judicial and executive powers; the legislative power seems to be settled with lesser constraints. Nevertheless, the problem with such interpretation is that Rawls does not develop, in any way, the general specification of discourses, and in his other works we may find arguments that weaken the interpretation. In *Political Liberalism* he claims that legislators and the executive officials may employ reasons that are non-public in cases concerning non-fundamental political issues.⁴¹ In other places, it is emphasized that most legislative questions do not deal with constitutional essentials and matters of basic justice (although they often touch upon them); therefore, constraints imposed by public reason do not apply to these issues.⁴² Having in mind that not only parliaments but also government officials commonly fulfil at least some important functions in the legislative process, we should conclude that in a matter of non-fundamental questions, officials are morally free to invoke and balance between public reasons and other considerations.

It ought to be added that the duty of public reasoning is consistently ascribed by Rawls to the judiciary and, above all, to supreme court judges. In this sense, the position of legislative and executive powers is described as in opposition to the status of judicial power. Judges are expected, in any case, to follow the principle and thus to treat as irrelevant their private values and beliefs. By claiming that public reason is the reason of the supreme court, Rawls emphasises that the court is to reason solely in publicly reasonable terms on all issues raised before it.

³⁸ See, e.g., art. 8 (Impartiality and Independence) and art. 9 (Objectivity).

³⁹ See, e.g., art. 6 (Right to Fair Trial) and art. 10 (Freedom of Expression).

⁴⁰ J. Rawls, "The Idea of Public Reason Revisited", op. cit., p. 767.

⁴¹ Idem, *Political Liberalism*, p. 214.

⁴² Idem, *Justice as Fairness. A Restatement*, op. cit., p. 91.

Conclusions

I would like to address two questions on the most accurate view of the scope of public reason: first, according to Rawls's intentions and objectives, and second, in my opinion. In the section 3, I introduced arguments that support each of the different visions of the scope of public reason. Now it needs to be stated which argumentation I find decisive and for what reasons.

Having in mind that different quotations suggest different answers, I argue that the strongest reasons indicate Rawls's commitment to *the narrow view* of the scope. Accordingly, agents (both citizens and public officials) may justify political actions by referring to non-public reasons, as long as they do not undermine the agreement on fundamental issues. I claim that the conclusion becomes clear when we recognise the wider context of the Rawlsian theory of justice. First, it should be said that the theory was amended and improved by its author over time. Rawls was aiming at advancing the conception and working out a highly coherent and accurate version of it. He expresses this attitude several times in his writings. Thus, if we agree that the conception of political liberalism is being improved over the years, it should be acknowledged that the author is much more sympathetic and favourable towards the broader version of the scope in earlier writings (especially in *Political Liberalism* in 1993). In later works he explicitly distances himself from his previous perspective and criticises the broad view for its unattainability and undesirability.

Second, it is beyond doubt that public reason with the narrow scope fits accurately in the wider justification structure of Rawlsian theory. It is important to notice that particular concepts of his theory (e.g., public reason, original position, overlapping consensus) jointly constitute a sophisticated structure of justification of political principles within the society. The significance of links between various elements of the theory becomes apparent when we examine the relation of public reason and overlapping consensus.⁴³ The justification of political settlements in publicly reasonable terms constitutes a crucial but not the sole element of the structure, for the role of the final stage of approval is performed by the idea of overlapping consensus. According to Rawls, the process of justification is not full until we show that the principles and solutions worked out on the basis of public reason can become the subject of an overlapping consensus among reasonable comprehensive doctrines. Each reasonable doctrine is expected to provide comprehensive reasons to support and secure the preceding consensus. In other words, advocates of each doctrine are morally responsible for achieving congruence between the adhered worldview and commonly agreed political

⁴³ See: idem, "The Idea of an Overlapping Consensus", *Oxford Journal of Legal Studies*, 1989, No. 7, Vol. 1, pp. 1–25; idem, "Reply to Habermas", *The Journal of Philosophy*, 1995, No. 92, pp. 142–150 ; idem, *Justice as Fairness. A Restatement*, op. cit., pp. 120–122.

conclusions. Such convergence of distinct visions, if it is possible at all, is likely to occur only regarding minimal and basic constitutional principles. It seems highly implausible that each political decision can develop into a subject of overlapping consensus and subsequently be incorporated by each comprehensive doctrine. If Rawlsian structure of justification is aimed to secure public reason conclusions by an additional stage, then such consensus is much more likely to arise concerning only a limited and fundamental set of issues.

The ongoing development of Rawls's theory and the location of public reason in the justificatory structure are decisive reasons for the conclusion that the narrow view is the closest to the philosopher's intentions. Nevertheless, it does not mean that Rawls was totally uninterested in the problem of legitimacy at the level of non-fundamental issues, or that he was committed to leave the reasoning within this sphere with agents' arbitrary discretion. Instead, Rawls may have reasonably hoped that in a society governed by properly and publicly justified constitutional essentials, people will successively develop their sense of justice, and that imposing moral constraints on their conduct will not be needed. In this sense, citizens who want to attract new followers of their ideas should persuade them in commonly understandable terms. Continuing to act in accordance with the directive would be a matter of prudence and would not necessarily be based on a moral duty. In the political domain of a well-ordered society, appealing to public reason is likely to be more persuasive and effective than reasoning in comprehensive terms.

I find Rawls's answer concerning the narrow view of the scope as an attempt to compromise his theory with the reality of political life. His choice is coherent and compelling; however, it is not the most accurate one. I believe the most reasonable vision of the scope of public reason is the view presented as the last one – the broadened view B.

If we set aside, for a moment, the issue of connections between public reason and overlapping consensus, then we are able to discern that *the broadened view B* constitutes a plausible and effective answer to many charges raised against the broad and the narrow visions of the scope. Thus, broadened view B is immune to the weaknesses of the alternatives and respects most of the Rawlsian concerns regarding the main problem. On the one hand, it lessens doubts connected with the undesirability and unattainability of the ideal of public reason by allowing citizens to bring up their comprehensive and perfectionist ideals. According to this view, while performing many political actions, such as referendums, demonstrations, or strikes, citizens are morally free to appeal to their doctrines and act in accordance with them (obviously, as long as they do not undermine the agreement on fundamental issues). Comprehensive worldviews on politics are not excluded from the public sphere; their role is just limited. At the same time, this view approves Rawls's remarks about the high desirability of public reason by acknowledging that public officials (e.g., judges, government employees,

public servants) should always justify their actions and decisions in accordance with the requirements of public reason. The principle is aimed at minimising the impact of partial viewpoints while exercising political power and, subsequently, at providing the proper degree of reasonableness and justice within a society. Finally, this view is consistent with the intuition (also indicated by Rawls) that moral duties apply with different strengths to different dialogues. This diversity is a consequence of specific social roles performed by contributors to the political dialogue. In this sense, this view fits very well with the commonly recognised standard of contemporary liberal democracies, saying that political morality imposes more stringent duties on actions of public officials than on those performed by ordinary citizens.

The broadened view B reconciles all these remarks – crucial in the philosophical discussion concerning the scope of public reason – and does it in a way that is plausible and even closer to the standards of democratic culture than the narrow view advocated by Rawls.

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