

**Commonwealth, Conversion and Consensus: An Examination of the Medieval
Icelandic Free State and Political Liberalism**

Roderick Kennedy

Acknowledgements

I would like to thank Huw Griffiths and Anik Waldow, the Honours Coordinators, for all of their availability and assistance. I would also like to extend my gratitude to my supervisors, Geraldine Barnes and Thomas Besch, for the help and guidance they have been on hand to offer all year long.

Chapter One: Introduction and Exposition

1.1 - Introduction

John Rawls' *Political Liberalism* opens with a question: “how is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?”¹ Rawls regards this question as the heart of modern political philosophy within the democratic tradition, and his own work can be understood as an attempt to answer it successfully. It is also the heart of this joint honours thesis, and I shall refer to it as *the fundamental question*.² My aim is to evaluate the answer that Rawls provides to this question in his *Political Liberalism*. To do so, I turn, rather unusually, to the medieval Icelandic Free State (‘the Commonwealth’ as I shall call it hereafter) as an example to enrich my critical response to Rawlsian thought. Of course, the use of such an unusual example requires a good deal of explanation, which is compounded by the fact that I attempt to offer a new understanding of the Commonwealth along the way. As such, this thesis is located at the intersection of two distinct disciplines: Old Norse studies and contemporary political philosophy.

In the Old Norse portion with which the thesis commences, I attempt to show that in the Commonwealth there existed what I label a public and political *notion of justice*. This idea, which I sketch in greater detail shortly, is inspired by Rawls’ writings, in which he appeals to ideas “implicit in the public culture of democratic

¹ John Rawls, *Political Liberalism*, exp. ed. (New York: Columbia University Press, 2005), 4. All subsequent citations refer to this edition.

² Rawls calls this question the “combined question” and something else the “fundamental question”, but I stick to my own terminology; *ibid.*, 20, 44.

society.”³ The *notion of justice* can be understood as an implicit part of the public culture of the Commonwealth. Focusing primarily upon the Commonwealth’s conversion to Christianity in 1000AD, I discuss the ways in which I perceive traditional accounts to be deficient, before introducing the *notion of justice* more fully. I suggest that the *notion of justice* consisted of five understandings, widely shared by the Commonwealth’s citizens (*landsmenn*), about their status as members of a society, the nature of that society, how social interactions should take place and so on. As I outline these shared understandings, I provide evidence to support my view that they were a prominent cultural feature of the Commonwealth. Lastly, I sketch the way in which the *notion of justice* can provide a deeper explanation of how the conversion occurred. My overall contention is that the conversion was able to occur not because of prudential, ritualistic or other reasons, but because the public acceptance of the shared understandings in the *notion of justice* proved more motivationally forceful than any contrary desires.

I move in the second portion of the thesis towards solidifying the links between the two disciplines. From a philosophical perspective, the intended culmination of this portion of the thesis will be the conclusion that the characteristics of the Commonwealth render it, at the very least, not irrelevant to Rawls’ thinking. It can plausibly be characterised, I argue, as a society divided by reasonable religious doctrines which possessed a shared fund of implicit cultural ideas which helped to regulate political life. It can therefore be understood as pertinent for the sake of philosophical discussion by virtue of its sufficient similarity to the sort of society about which Rawls theorises. No further explanation given now will make sense, but the aim of the second portion is to

³ Ibid., 15.

show that, insofar as there are differences between the Commonwealth and a modern democracy, they are not so grave or of such a type as to make the example inherently useless.

The final portion of the thesis will focus upon the earlier elements of the fundamental question: “how is it *possible* for there to exist over time a *just* and *stable* society ...?”⁴ Just as my examination of the Commonwealth is influenced by Rawls’ conceptual armoury, my discussion of Rawlsian philosophy is interwoven with strands of thought drawn from the Commonwealth. The example of the Commonwealth shows, I contend, that something like Rawls’ solution is *possible*. I argue, however, that Rawls’ solution fails to achieve *justice* because, to be justified, it requires what I call an *external justification* which cannot be obtained in a manner consistent with the theory as a whole. There, I use the Commonwealth to explain why the only potentially consistent *external justification* fails. Lastly, I turn to *stability* and claim that, without an *external justification*, Rawls’ solution is not as stable as it should be. Again, I use the Commonwealth as an example to support my hypothesis. Given that the pertinence of the Commonwealth to Rawls is what justifies my approach, and given the lack of secondary literature which uses this rare approach, I rely heavily on discussion of Rawls’ ideas directly and less than usual on what his critics have to say.

This thesis aims to constitute a worthwhile contribution to scholarship in both of its fields. The Old Norse portion should, I hope, shed new light upon the fascinating question of how such an unprecedented event as Iceland’s conversion was possible, while the portion about Rawls should evaluate political liberalism in a way which will hopefully be of philosophical merit. I have chosen to discuss both of these areas

⁴ Ibid., 4. Italics added.

together, rather than writing each its own paper, because I believe that there is sufficient scope for overlap. Rawls' ideas have been instrumental for me in the development of my understanding of the Commonwealth, while the Commonwealth has offered me many interesting examples while discussing some vexed issues in political philosophy.

1.2 - Iceland: Society and Sources

The settlement period of Iceland is said to have begun around the year 870AD. Most immigrants came from the various Norse settlements and nations in the North Atlantic. Although the historical reasons for the settlement are complex, one major cause of emigration was oppressive use of power in other Norse lands.⁵ Norway, for example, prior to the settlement of Iceland, was ruled by many petty kings, until Haraldr Fine-Hair began a war of conquest and united the country by violence. Many of those dispossessed by the war, unwilling to bend the knee to a new overlord or sceptical of the merits of centralised kingly power emigrated from Norway to Iceland to preserve their freedom. The same was true of many non-Norwegian settlers. Unnr or Auðr the Deep-Minded, one prominent settler, travelled from Scotland to Iceland with a large following when she feared violence from her Scottish and Norse rivals.⁶ In the wilds of Iceland, these settlers took up land and distributed it amongst their followers, and soon established laws and district assemblies to settle potential disputes between them. They created a kingless society with no executive power, in which all free citizens (*landsmenn*) were equal before the law. The law was preserved by memory, with one third of them recited in public each year by a figure called the lawspeaker

⁵ Gunnar Karlsson, *Iceland's 1100 Years: History of a Marginal Society* (London: C. Hurst & Co., Ltd., 2000), 15.

⁶ *Ibid.*, 14.

(*lǫgsögumaðr*). Over the course of every three years, therefore, the lawspeaker would have recited the entire body of Icelandic law, but his role otherwise included little but settling disputes about what the law entailed.

Every year, beginning at the end of the settlement period, people travelled from all over the country to assemble at Þingvellir for the Alþingi, the national assembly.⁷ Power was divided into a group of chieftaincies called *goðorð*. Fascinatingly, these chieftaincies – though hereditary – were actually property, and could be bought, sold, passed on or shared by multiple people at once. Even more interestingly, they were not associated with any given territory. Each chieftain (*goði*) had followers called assemblymen (*þingmenn*). Importantly, the *goði-þingmenn* relationship was a voluntary association. Each person could freely choose his own *goði*, and could switch to another one if disgruntled. *Goðar* were expected to support the interests of their *þingmenn* and provide them with legal support and so on – essentially using their political clout on their own and their followers' behalf. In turn, this political clout was constituted primarily by how many *þingmenn* could be persuaded to choose a given *goði*. With no standing forces, power and authority in the Commonwealth depended upon the consent of those without it, with laws upheld only by citizens' willingness to comply with them, backed up only with the threat of private sanctions. There are many more interesting features of the Commonwealth, and I can only afford to provide a brief sketch here. So far as possible, I have tried to avoid mentioning anything that does not come under this outline, but, inevitably, there are a few cases where I have needed to assume at least some degree of cultural familiarity.

⁷ Ibid., 20.

When discussing the Commonwealth, the main sources on which I rely are *Íslendingabók*, *Kristni saga* and *Brennu-Njáls saga* (or *Njála* for short), in order of reliability.⁸ All of these sources were written more than a century at least after the events they record, and so must be used cautiously. Notably, though *Íslendingabók* is the result of the meticulous work of medieval Icelandic historian Ari Þorgilsson, two of these three sources are sagas. I will additionally appeal for evidence to several other sagas in the course of this thesis. There are legitimate concerns to be had about the historical veracity of the sagas, given, in particular, their status as literature. This concern does not render their use invalid, though. As William Ian Miller writes, “to reject a source merely because it is good literature is a luxury of those historians who have what ... are assumed to be better sources, if for no other reason than that they are duller.”⁹ He goes on to say that, if “early Icelandic social and cultural history is to be written”, then “literary sources will have to be used.”¹⁰ Pithily, he calls this justification of his approach “hardly a revolutionary claim outside saga studies, as the examples of biblical history, Frankish history, or the history of Homeric Greece amply illustrate.”¹¹ Recognising the shortcomings of sources, it is still possible to use them, so long as one does so with an appropriate degree of caution.

⁸ Dag Strömbäck places them in this same order, though admittedly with much greater pessimism about the usefulness of *Njála*. Dag Strömbäck, *The Conversion of Iceland: A Survey*, trans. Peter Foote (London: Viking Society for Northern Research, 1975), 20-3. The translations of these texts I use are Siân Grønlie, trans., *Íslendingabók – Kristni saga – The Book of Icelanders – The Story of the Conversion* (Exeter: Short Run Press, Ltd., 2006), and Robert Cook, trans., *Njal's Saga* (London: Penguin Books, 2001). Hereafter, I cite these texts as *Íslendingabók*, *Kristni saga* and *Njála*, respectively, even though the first two appear in the same book. Page numbers from these editions are given alongside chapter numbers of their Íslenzk Fornrit versions: Jakob Benediktsson, ed., *Íslendingabók Landnámabók*, Íslenzk Fornrit I (Reykjavík: Hið Íslenzka Fornritafélag, 1968); Sigurgeir Steingrímsson, Ólafur Halldórsson and Peter Foote, eds., *Biskupa Sögur I*, Íslenzk Fornrit XV (Reykjavík: Hið Íslenzka Fornritafélag, 2003), and Einar Ól Sveinsson, ed., *Brennu-Njáls saga*, Íslenzk Fornrit XII (Reykjavík: Hið Íslenzka Fornritafélag, 1954), respectively.

⁹ William Ian Miller, *Bloodtaking and Peacemaking Feud, Law and Society in Saga Iceland* (Chicago: The University of Chicago Press, 1990), 45. Miller's persuasive full defence of the (careful) use of sagas as evidence can be found in 43-76 of that same book.

¹⁰ *Ibid.*

¹¹ *Ibid.*

A final, linguistic point: unlike in English, uniformity of tenses was unnecessary in Old Norse. In almost any Old Norse prose text, the tense switches between past and present frequently, sometimes even within the same sentence. Nonetheless, in most cases the required sense is abundantly clear. Still, I ask that readers unused to Old Norse forgive what might otherwise seem peculiar.

1.3 – Rawlsian Exposition and Terms

People in modern democratic societies hold all sorts of competing views about very fundamental matters. Widespread disagreement about religious, philosophical and moral issues results in *pluralism*: the existence of a range of incommensurable general and comprehensive doctrines. Importantly, this *pluralism* does not just come about because people can be irrational, ill-informed or capricious, but because reasonable people are capable of disagreement. Reasonable people can disagree about such matters because there are *burdens of judgement*: evidence can be ambiguous, our understandings can depend to some extent upon the specifics of our life experiences, and so on.¹² There obtains, then, the fact of *reasonable pluralism*, which, as the inevitable result of the free operation of human reason under free institutions, is a “permanent fact” which can be understood to be “rooted ... in human nature itself”.¹³ The fact of reasonable pluralism makes the project of ordering society more difficult, because of fundamental divisions between citizens.

This difficulty posed by the fact of reasonable pluralism is at the heart of John Rawls’ *Political Liberalism* and its *fundamental question*. Rawls thinks that the answer

¹² Rawls, *Political Liberalism*, 56-7.

¹³ *Ibid.*, 144; Charles R. Beitz, “Rawls’s Law of Peoples,” *Ethics* 110, no. 4 (July 2000), 671.

lies in the idea of an “overlapping consensus.”¹⁴ He hopes that there is sufficient common ground between citizens, in spite of reasonable pluralism, on which a strictly political conception of justice might stand. To be subject to an overlapping consensus, this conception must not stray into territory where there is room for reasonable disagreement. The hope is that, in spite of the number of conflicting beliefs that people hold, all citizens will be able to affirm the same political conception of justice, even if they do so for different reasons. In this way, if the ideas of all people were graphed, it might look like a (rather complicated) Venn diagram, with the public political conception of justice in the middle. It seems very unlikely that there is any actual overlap at all between doctrines, particularly of the sort for which Rawls hopes. Even definitionally, the idea of overlapping consensus seems far-fetched: why should one assume that incommensurable doctrines have any common ground at all, especially sufficient for such a major issue? As Rawls himself notes, the “most intractable struggles ... are for the sake of the highest things”.¹⁵

To counter this problem, Rawls allows himself some extra material. He begins his article, “The Idea of an Overlapping Consensus”, with the statement: “The aims of political philosophy depend on the society it addresses.”¹⁶ It is apparent that the sort of society Rawls is addressing is a modern democracy, since he explicitly states his intention to “start within the tradition of democratic thought”.¹⁷ Implicit in the public political culture of a constitutional democracy are three interconnected ideas: the fundamental idea of society as “a fair system of cooperation over time, from one

¹⁴ Introduced in John Rawls, “The Idea of an Overlapping Consensus,” *Oxford Journal of Legal Studies*, 7, no. 1 (1987): 1-25, and then further explained in Rawls, *Political Liberalism*, 133-72, though the term first appears with a different sense in *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 388.

¹⁵ Rawls, *Political Liberalism*, 4.

¹⁶ Rawls, “Overlapping Consensus,” 1.

¹⁷ Rawls, *Political Liberalism*, 18.

generation to the next” and two associated basic ideas, first of citizens “as free and equal persons” and secondly of “a well-ordered society as a society effectively regulated by a political conception of justice”.¹⁸ Collectively, I refer to these three ideas as the *organising ideas*. Rawls conceives of his argument as the natural teasing out of the implications of these *organising ideas*. To summarise it as technically as possible, then: Rawls begins with a particular type of society in mind, in which certain *organising ideas* may be taken as universally held, and therefore uncontroversial. Based solely upon these ideas held in common, it is possible to argue conclusively that a public political conception of justice capable of gaining the support of an overlapping consensus of reasonable general and comprehensive doctrines is the most appropriate answer to the *fundamental question*. Overlapping consensus becomes more realistic with this proviso in mind: people will want to live in a well-ordered society, and so will want to establish a political conception of justice. Recognising each other’s reasonableness and rationality and the validity of the conflicting views of others, and knowing that society is to be fair, fellow citizens will seek to justify the terms of their cooperation with each other. The force of these desires, which citizens have *qua* citizens, should help to establish an overlapping consensus even when no desire to do so necessarily arises out of citizens’ own broader beliefs.¹⁹

I end this introduction with the explanation and justification of a few key terms. I have chosen the term *notion of justice* (hereafter *NoJ*) to differentiate it from a *public political conception of justice* (hereafter *PPCoJ*). In the Commonwealth, there was no *PPCoJ* in the sense that Rawls would require. Such a conception must be completely explicit, clear, perfectly elucidated and so on. Further, its justificatory basis must be

¹⁸ Ibid., 14.

¹⁹ Rawls, “Overlapping Consensus,” 17.

open for public scrutiny. I do not contend that these qualities characterised the Icelandic *NoJ*. Nonetheless, it was present, and its substantive content perhaps broader and deeper than the *organising ideas* implicit in the public political culture of a modern constitutional democracy. To clarify, then: I do not claim that there was a publicly debated, explicit set of principles to which all people in the Commonwealth adhered. There was no public political conception with the support of an overlapping consensus in the strict Rawlsian sense. Undeniably, if the principles of a public political conception of justice are to fulfil their proper function, they will have to be explicitly stated and perfectly clear. The absence of philosophical debate, however, does not necessarily reflect the absence of shared ideas. It does not mean that the shared conception is vague, either. I return to these matters later.

Chapter Two: Commonwealth

2.1 – The Conversion and its Explanations

In this chapter, I succinctly outline the generally accepted story of the Commonwealth's conversion. Within this story, there are two elements in particular that are difficult to explain. Focusing upon these two elements, I discuss the ways in which traditional explanations are deficient. I then leave them aside briefly, and argue that there existed in the Commonwealth a widely held *NoJ*. This *NoJ* was composed of a small, interconnected group of shared understandings, which collectively enabled the Commonwealth to function without civil strife. After outlining the content of the *NoJ* and providing evidence that it was prevalent, I move on to explaining the role that the *NoJ* played in the conversion. In the subsequent chapter, I discuss the implications of my argument regarding the *NoJ*, and why it may be of philosophical use and interest.

Accounts of the conversion of Iceland indicate that the process began with the arrival of missionaries from Norway.²⁰ The missionaries succeeded in making some conversions, but also met with hostility. Upon returning to Norway, their report of how their missionary efforts had gone led the Norwegian king, Óláfr Tryggvason, to imprison all Icelanders in his kingdom, with the intention of killing them. Two Icelanders volunteered to renew the conversion efforts, however, so King Óláfr relented. These two Icelanders returned home and began trying to convert their countrymen. Shortly thereafter, the Alþingi for the year 1000AD approached. It was said that the

²⁰ *Íslendingabók*, ch. 7, pp. 7-9; *Kristni saga*, chs. 1-13, pp. 35-50.

pagan faction had gathered together with weapons and intended to attack the Christians.

Ari Þorgilsson's *Íslendingabók* reads:

[The Christians] send word to the assembly that all their supporters should come to meet them, because they had heard that their adversaries intended to keep them from the assembly field by force. ... And then they rode to the assembly, and their kinsmen and friends had come to meet them beforehand as requested. And the heathens thronged together fully armed, and it came so close to them fighting that no one could foresee which way it would go.²¹

Yet both sides restrained themselves, and there was no fighting. The two factions then declared themselves legally sundered from each other. The Christian faction appointed Síðu-Hallr as their new lawspeaker, and asked him to announce the law for them. Síðu-Hallr then asked the original lawspeaker, whose name was Þorgeirr, to declare the law on behalf of both factions. Þorgeirr, the sources claim, hid himself under a cloak for a full day and then elicited oaths from both sides that they would honour his decision.²²

He then made a speech about the value of legal unity before proclaiming the law:

... that all people should be Christian, and that those in this country who had not yet been baptised should receive baptism; but the old laws should stand as regards the exposure of children and the eating of horse-flesh. People had the right to sacrifice in secret, if they wished, but it would be punishable by the lesser outlawry if witnesses were produced.²³

Despite whatever resentment may have been felt by the pagans at this outcome, both factions accepted the decision and lived by it. The nation became Christianised completely, with the result that “a few years later” the last vestiges of “heathen provisions” were declared unlawful, “like the others.”²⁴ The two occurrences which are difficult to explain are the two which have been directly quoted from *Íslendingabók*.

²¹ *Íslendingabók*, ch. 7, p. 8.

²² *Íslendingabók*, *Kristni saga* and *Njála* all agree about the hiding under the cloak, but only *Njála*, ch. 105, p. 181, records the extraction of oaths and pledges from both sides.

²³ *Íslendingabók*, ch. 7, p. 9.

²⁴ *Íslendingabók*, ch. 7, p. 9.

It is surprising that fighting did not break out before the Alþing, and perhaps even more surprising that the pagan faction accepted a legal decision which jeopardised their beliefs. I focus on the traditional explanations of these two events in turn.

Regarding the first event, Siân Grønlie writes that there are “many plausible suggestions as to why fighting did not break out”, listing in particular “that the Christians were more numerous than the heathens had expected, that news of Icelandic hostages in Norway prevented it or that moderate men on both sides intervened”.²⁵ I contend that these accounts (the deterrent explanation, the hostage explanation and the intervention explanation, as I call them) are not quite as satisfactory as Grønlie believes. Of course, it is impossible in the circumstances to form a remotely reliable estimation of the numbers present in each of the factions. At any rate, it is at the very least highly implausible, given the time frame of the conversion and the size and difficult terrain of Iceland, that the pagan faction might have been greatly outnumbered by the Christians. Jón Hnefill Aðalsteinsson argues convincingly that, at best, “Christianity had gained a firm foothold in the country a year before the Conversion, but ... the opposition against it was active and powerful” and the “majority of Icelanders were heathen.”²⁶ Surely, though, there would have to be a large margin of difference between the sizes of the two forces for the deterrent explanation to work. In *Njála*, a fight breaks out at the Alþing between two roughly equal (and large) groups over the result of a prosecution for a burning.²⁷ There, the magnitude and equality of the forces does not serve as a sufficient deterrent.²⁸ There is a great deal of hot blood over the court case, because of the

²⁵ Grønlie, *Íslendingabók – Kristni saga*, p. 25, n. 70.

²⁶ Jón Hnefill Aðalsteinsson, *Under the Cloak: The Acceptance of Christianity in Iceland with Particular Reference to the Religious Attitudes Prevailing at the Time* (Uppsala: Borgströms Tryckeri AB, Motala, 1978), 77.

²⁷ *Njála*, ch. 145, pp. 270-4.

²⁸ *Njála*, ch. 145, pp. 270-4.

popularity of the burned man and the atrocious nature of the crime. Presumably, the depth of public feeling about the issue was sufficient to override whatever other concerns there may have been. To suggest that the same would not apply for the conflict of religions is absurd. Whatever reasons the two factions may have had for not fighting, cowardice or squeamishness cannot be counted among them.

The news of Icelandic hostages in Norway is a difficult explanation to examine. The account in *Íslendingabók* states that, upon hearing of the treatment of his missionaries in Iceland,

Óláfr ... determined to have those of our countrymen who were there in the east maimed or killed for it. But that same summer, Gizurr and Hjalti travelled there from out here and got the king to release them²⁹

As *Kristni saga* narrates:

Then the king became so angry that he had many Icelanders seized and put in chains, threatened some with death and some with maiming, and others were stripped of their possessions.³⁰

When Gizurr made appeal to the king in this account, he responded by saying:

‘Everyone shall have peace, if you and Hjalti pledge that Christianity will make progress in Iceland. But I will take hostage those men who seem to me most highly bred among the Icelanders until it is found out which way this matter will go.’³¹

Once Gizurr and Hjalti made their pledge, though, “all the Icelanders who were there were released and baptised.”³² It seems a major flaw in this proposed explanation that two of the main sources which record the conversion indicate that all the Icelanders who had been imprisoned were released *before* the conversion occurred. Concern for hostage kinsmen can hardly have been an important factor, when there appear to have been none. Again, it is possible that the sources are inaccurate or incomplete, or that the

²⁹ *Íslendingabók*, ch. 7, p. 8.

³⁰ *Kristni saga*, ch. 11, p. 46.

³¹ *Ibid.*, ch. 11, p. 47.

³² *Ibid.*

converted Icelanders still in Norway were in a rather precarious position in spite of their release. Nonetheless, there is no indication at any point that most Icelanders were aware of what had occurred in Norway, or that they were influenced by it if they did know. It also seems to be a large conjecture to say that it would have swayed them, too. It could be just as likely that knowledge of a foreign king's threats simply would have hardened resistance, given the "evident nationalism" that manifests itself in the conversion accounts.³³ After all, Gizurr apparently told Óláfr that his chief missionary "behaved ... in a very unruly manner ..., and people thought it hard to take that from a foreigner."³⁴ The hostage explanation seems unconvincing.

The claim that the parties refrained from fighting because of the intervention of moderate men also seems problematic. The peacemaker held a curious position in Commonwealth society. On the one hand, peacemakers could endanger themselves by acting as go-betweens between hostile groups. One group might easily come to the conclusion that the peacemaker, by not wholly supporting them in feuds or other conflicts, was more of an enemy than a friend. In *Njála*, the Njálssons eventually kill their foster brother, Hǫskuldr Hvítanessgoði, who has previously acted as a peacemaker in a series of their disputes.³⁵ Despite the malicious influence of Mǫrðr Valgarðsson, who helps to turn the Njálssons against Hǫskuldr, the motivation behind this killing can seem baffling. Since the Njálssons and Hǫskuldr were once on such good terms that they "never disagreed about anything" and their friendship was "fervent", one would conjecture that Mǫrðr's conniving would have been insufficient to turn the Njálssons,

³³ Siân Duke, "Kristni saga and its Sources: Some Revaluations," *Saga-Book of the Viking Society for Northern Research*, 25, part 4 (2001): 365.

³⁴ *Kristni saga*, ch. 11, p. 46.

³⁵ *Njála*, ch. 111, p. 188.

usually stalwart in friendship, against their foster brother.³⁶ William Ian Miller provides a powerful and convincing explanation of their conduct by examining the hostility that Höskuldr engendered by acting as a go-between.³⁷ Given the danger that a peacemaker could potentially face, stepping into the middle of a religious conflict is unlikely to have been an effective manoeuvre.

On the other hand, intercession could be effective in some extreme cases. In *Njála*, as mentioned previously, a full-scale fight erupted at the Alþing.³⁸ The two parties in this fight were only reconciled when Síðu-Hallr offered to let his son – who had only been an innocent bystander, but had been killed nonetheless – lie without compensation, if only they would set aside their differences.³⁹ In the end, after the settlement was established, the *landsmenn* each made a personal donation as compensation to go to Síðu-Hallr, which amounted to four times the usual amount.⁴⁰ The fame of such events indicates that, in momentous circumstances, the role of an effective peacemaker, though necessarily involving a sacrifice of some kind, was widely lauded. Therefore, if the intercession of moderate men were responsible for the lack of religious violence at the Alþing, it would be reasonable to expect the names of those men to have been recorded.

Admittedly, it is possible, however unlikely, that there were moderate men whose intervention succeeded in preventing the eruption, and that their intercession was never recorded. *Kristni saga* does say that “there were some who wanted to prevent

³⁶ Ibid., ch. 94, p. 167; ch. 97, p. 167.

³⁷ William Ian Miller, “The Central Feud in *Njáls Saga*,” in *Sagas of the Icelanders: a Book of Essays*, ed. John Tucker (London: Garland Publishing, 1989), 318.

³⁸ *Njála*, ch. 145, pp. 270-4.

³⁹ Ibid., ch. 145, pp. 275-6.

⁴⁰ Ibid., ch. 145, p. 278.

trouble, even though they were not Christians.”⁴¹ This statement reads as a qualification of the condemnation of the pagans, though, than as an explanation. If it were *because* of these people that fighting was prevented, the saga author might be expected to say so directly. At any rate, such intervention can only accomplish so much. For it to work, the parties to whom one appeals to avoid bloodshed must already be partially willing to do so. They must acknowledge the soundness of any argument for peace that is presented them. In other words, even if the explanation of the intervention of moderate men is true, it is insufficient. To all intents and purposes, the willingness of the parties to be persuaded by arguments from the *NoJ* that were posed to them by intercessors amounts to much the same thing as their own possession of those ideas. Any argument for peace that could be made would necessarily have to butt up against the desire for religious bloodshed. It is immaterial *who* posed these arguments. All that matters is that, when they were made, their force exceeded the compulsion to fight. The traditional explanations of the first occurrence, then, are insufficient.

Regarding the second occurrence, none of the sources makes any mention of any resistance on the part of the pagans. Presumably because the lawspeaker Þorgeirr was pagan himself, *Njála* mentions that the “heathens considered that they had been greatly deceived, but the new law took effect and everybody became Christian in this land.”⁴² This brief and economical statement is the full extent of any mention of pagan rebelliousness, suggesting that there was no resistance worth narrating. Like Ari Þorgilsson himself, Siân Grønlie is curiously silent on the issue of why the pagans were so willing to comply. Strömbäck goes so far as to say that the acceptance of Christianity

⁴¹ *Kristni saga*, ch. 12, p. 48.

⁴² *Njála*, ch. 105, p. 181.

“leaves us perplexed, mystified.”⁴³ As before, I shall list possible explanations and then dismiss them in turn. The first relies upon the significance of the action of hiding under the cloak, while the second depends upon the unwillingness of the pagan faction to break their pledges. I call these explanations the cloak explanation and the oath explanation, respectively.

Jón Hnefill Aðalsteinsson gives the cloak explanation a long and thorough defence.⁴⁴ He argues that Þorgeirr’s action of hiding under the cloak without speaking for such a long time was a religious ritual, essentially an act of divination through communication with spirits.⁴⁵ This action would have been of particular significance for the pagans, and may therefore have been a major element in their compliance with his decision.⁴⁶ This explanation is brilliantly elucidated and quite plausible. The first obvious objection to it, which mirrors the objection to the oath explanation below, is the paradox of one religious belief denouncing itself. On reflection, though, the objection is weak in this case. Polytheistic beliefs are often not organised into a coherent and interdependent system. The *Æsir* could not be the source of an instruction to cease worshipping the *Æsir*; but the *landvættir* could, and so on. Particularly given Þorgeirr’s provisions regarding private pagan worship, it seems possible that the pagans could view the acceptance of Christianity as not wholly incompatible with the entirety of their beliefs.

The reason why the cloak explanation ultimately does not seem entirely satisfying is that it would be incongruous for the religious ritual in question to have the sort of significance the cloak explanation requires. Duelling is a good example. While

⁴³ Strömbäck, *The Conversion of Iceland*, 26.

⁴⁴ Jón Hnefill Aðalsteinsson, *Under the Cloak*.

⁴⁵ *Ibid.*, 103-25.

⁴⁶ *Ibid.*

other medieval societies may have viewed the outcome of a trial by combat as the choice of God and therefore a clear indication of the *truth* of a matter, there is little reason to believe that this sort of thinking existed in Iceland. Certainly, duels were legal in the early stages of the Commonwealth, but I would suggest that they were not seen as anything more than, at best, an impartial and final means of adjudication when all other means failed: in *Njála*, for example, advisors often talk their friends out of duels because of the fearsomeness of the opponent, with no appeal to whether or not the cause is just.⁴⁷ Icelanders, it seems, valued legal process, fairness and so on, rather than appeal to metaphysical considerations. Jón Hnefill Aðalsteinsson tries to get around this issue in *Under the Cloak* by providing a series of examples to demonstrate that there was widespread cultural respect for this sort of divination.⁴⁸ One of these examples is Njáll himself, whose advice is always good and effective, and who often appears to indulge in this activity.⁴⁹ Advice giving, though, is very much measured by its effectiveness. It is not that merely that Njáll seems to engage in some sort of respected ritual that makes his advice worth following. Instead, it is the fact that his advice is always good. Bare ritual is insufficient. In fact, it is not only insufficient, but perhaps unnecessary. There is effectively an opposite character to Njáll in *Njála*: Mǫrðr Valgarðsson. Njáll is the wise and benevolent giver of advice, while Mǫrðr is the manipulative and cunning schemer. Mǫrðr does not appear to participate in any of these rituals, yet his advice always proves effective.⁵⁰ It seems most reasonable, then, to think that the *landsmenn* would have assessed Þorgeirr's decision on its own merits and from their own standpoints, rather

⁴⁷ *Njála*, ch. 8, p. 17; ch. 24, p. 42.

⁴⁸ Jón Hnefill Aðalsteinsson, *Under the Cloak*, 110-25.

⁴⁹ *Ibid.*, 112.

⁵⁰ *Njála*, ch. 49, pp. 82-3.

than accepting it for spiritual reasons. On the whole, the cloak explanation, though ingenious, does not suffice.

The oath explanation seems massively flawed. The first reason for rejecting it is that only *Njála* mentions the lawspeaker's solicitation of prior allegiance to the decision.⁵¹ Even if oaths were given, however, it seems reasonable to assume that oaths about religion lose their force. For example, Hrafnkell in *Hrafnkels saga Freysgoða* supposedly acts "with the belief that nothing good comes to those men who bring solemn oaths upon their own heads".⁵² Oaths have, in other words, a metaphysical force. An oath taken by a pagan, however, to convert to Christianity, cannot be fulfilled without betraying what makes it worth fulfilling in the first place. To reject a belief system on the basis of a motivation that arises from within that belief system is inherently paradoxical. Of course, it is possible that *landsmenn* felt a personal, moral commitment to their pledges irrespective of any superstition, in much the same way that an atheist can believe in a moral obligation to fulfil promises. The explanation still fails, though. In many respects, the manner of the decision mimics a dispute resolution more than a matter of law. The role played by the lawspeaker was very specific.⁵³ The lawspeaker was able to clarify laws where they were unclear, and to consult legal experts for assistance.⁵⁴ Where no law existed, law was created by the law council, not unilaterally by the lawspeaker.⁵⁵ The decision taken by the lawspeaker most clearly

⁵¹ *Ibid.*, ch. 105, p. 181.

⁵² The translation is my own, based on the text as it appears in E.V. Gordon's *An Introduction to Old Norse*, ed. A.R. Taylor, 2nd ed., (Oxford: Clarendon Press, 1956). Lines and pages refer to this edition, while chapters refer to the text in Jón Jóhannesson, ed., *Austfirðinga Sögur*, Íslensk Fornrit XI (Reykjavík: Hið Íslenska Fornritafélag, 1950). I shall refer to it hereafter as *Hrafnkels saga Freysgoða*. This quote is from ch. 3, p. 64, lines 177-8. I follow Gordon in adding the word 'good' to this sentence because, though lacking in the original, it is contextually clear that this meaning is intended; see p. 222 of his book.

⁵³ Jesse Byock, *Viking Age Iceland* (London: Penguin Books, 2001), 175.

⁵⁴ Strömbäck, *The Conversion of Iceland*, 27.

⁵⁵ Byock, *Viking Age Iceland*, 174-5.

resembles the way in which private disputes were often submitted to third-party arbitration.⁵⁶ There, the parties to the dispute gave pledges to honour whatever decision the arbiter made.⁵⁷ Nonetheless, they did so on the understanding that the arbiter's impartiality would make the decision fair, much like, when they awarded self-judgement to an opponent, they expected him not to take advantage of it. The sagas demonstrate that individuals were willing to accept an outcome within a certain margin of their expectations: they might accept a decision which they felt unfair, so long as they did not feel it was *too* unfair.⁵⁸ When they did, they rarely felt compelled to honour it: Miller goes so far as to differentiate the “noncomplier [who] had never quite accepted the validity” of a settlement from the “settlement breaker” himself.⁵⁹ The pagans appear to have felt cheated by the decision, and could easily have claimed that the settlement was unfair.⁶⁰ If so, it would have been in keeping with the cultural norms of arbitration for them to find a way around or out of it. Whatever oaths may or may not have been taken appear to have no explanatory force.

2.2 – The *Notion of Justice*

Since the traditional accounts do not seem satisfactory, I now elucidate the idea of the NoJ. The group of five shared understandings which together constitute the *NoJ* can be stated as follows: first, it is a desirable feature of intra-societal interaction that it be publicly viewed as legitimate. Second, violence is to be avoided where possible. Third, people are to adhere to a (limited) form of the principle of discursive respect. In the

⁵⁶ Ibid., 300.

⁵⁷ Miller, *Bloodtaking and Peacemaking*, 261.

⁵⁸ Ibid., 280.

⁵⁹ Ibid.

⁶⁰ *Njála*, ch. 105, p. 181.

Commonwealth context, I take discursive respect to mean an eagerness to arrive at a shared understanding of appropriate conduct, social hierarchy and so on. Fourth, *landsmenn* are free and equal. Fifth, *landsmenn* and *goðar* are to conduct themselves with *hóf* (“moderation in the seeking of personal power”).⁶¹ The precise meaning of each of these shared understandings is unfolded alongside the evidence that demonstrates their widespread acceptance in the Commonwealth.

The first shared understanding is the most obvious. There is even an argument for suggesting that public acceptance of the legitimacy of one’s interactions is universally desirable, and not merely a feature of a certain kind of political culture. Rawls, for example, not only suggests that citizens seek to justify their actions to fellow citizens, but that public perception of the worthiness of one’s rational plan of life, of one’s ability to adhere to one’s own principles and so on is an integral part of the primary good of self-respect.⁶² Daniel McDermott also theorises that rights have two kinds of value: the value of the thing to which one has a right, and the value of the public recognition of the right itself.⁶³ Regardless of the accuracy of these views, which are essentially claims about human moral psychology, it is undeniable that this understanding was prevalent in the Commonwealth. Miller mentions “the law’s synonymy with legitimacy”, at least in the speech of saga characters, and it is tempting to treat them as intrinsically linked in the Commonwealth.⁶⁴ Given the lack of executive power in Iceland, law served little practical purpose. In *Hrafnkels saga Freysgoða*, for example, a man named Sámur has just successfully outlawed his enemy, Hrafnkell, who is much more powerful than him. Sámur’s influential ally, Þorgeirr, then asks him,

⁶¹ Jesse Byock, *Feud in the Icelandic Saga* (Berkeley: University of California Press, 1982), 28.

⁶² Rawls, *A Theory of Justice*, 445. See also Rawls, *Political Liberalism*, 180-1.

⁶³ Daniel McDermott, “The Permissibility of Punishment,” *Law and Philosophy*, 20, no.4 (July 2001): 411-3.

⁶⁴ Miller, *Bloodtaking and Peacemaking*, 230.

laughing, how he thinks the court case went, asking: “Do you think you have made any progress?”⁶⁵ The act of outlawing someone is of no practical consequence, as Þorgeirr’s jesting question reveals. Its purpose, then, must have been to establish legitimacy. That skilfulness at law (being *logkænn*) was a desirable quality receiving frequent mention in the sagas demonstrates that lawfulness, and hence legitimacy, was valued in its own right, even though laws without any force to defend them amount to little other than codified norms.

That violence is to be avoided where possible might seem a trivial and obvious point, but its significance will become clearer, particularly in the next chapter. Partly, it is a corollary of the first shared understanding, because in a society without any executive power, personal strength is the final court of appeal. To resist the urge to take everything to this final court was seen as a good quality, since personal strength is not a justification. That duelling was eventually outlawed may also seem indicative of the acceptance of this idea.⁶⁶ Legitimacy is valuable, and cannot be established by force, and so force is undesirable. Since there is evidence to suggest that the first shared understanding existed, little extra is needed to show that the second did, too.

Nonetheless, I mention one, briefly: *Hrafnkels saga Freysgoða*. There, it is said that Hrafnkell “fought in many duels and offered compensation to no man, because no one ever got compensation from him, no matter what he did.”⁶⁷ The saga does not relate, however, whether or not Hrafnkell was right or wrong to fight in those duels. It is simply taken as a sign of an overbearing character that his position is defended always with martial skill, and never legitimised.

⁶⁵ *Hrafnkels saga Freysgoða*, ch. 4, p. 74, line 517.

⁶⁶ Byock, *Viking Age Iceland*, 19.

⁶⁷ *Hrafnkels saga Freysgoða*, ch. 2, p. 60, lines 38-40.

That discursive respect is important is an interesting shared understanding. It is desirable to reach agreement with others on such matters, to justify the form of interaction with them, and so on, even when compromise is necessary to establish this agreement. The prevalence of this shared understanding may be traced back to the genesis of Icelandic law. Ari Þorgilsson writes in *Íslendingabók* that “an Easterner called Úlfljótr first brought laws ought here from Norway ... and they were ... for the most part modelled on how the laws of the Guláping were at the time”.⁶⁸ Byock notes, on the other hand, that Ari, being of Norwegian descent, may have overemphasised the influence of Norway in the creation of Icelandic law.⁶⁹ As evidence, he cites the fact that “the laws of the Guláping and the Free State’s *Grágás* show few consistent similarities.”⁷⁰ Moreover, it is unlikely that laws were imported wholesale from Norway, given that so many settlers were not actually Norwegian. Many of the settlers “had previously settled in the Hebrides, Orkney, Ireland, and Scotland.”⁷¹ Miller notes that there were also “an indeterminate number of Celts, as slaves, concubines, and wives.”⁷² Some of these Celts may have been of greater importance than Miller thinks, as Byock suggests by pointing out the existence of a large number of place names which are formed from Irish male names.⁷³ It seems likely that the unique circumstances of Iceland’s settlement necessitated a process of negotiation, compromise and debate which in turn gave rise to the unique nature of Icelandic law. Discursive respect also becomes important because of the next shared understanding.

⁶⁸ *Íslendingabók*, ch. 2, p. 4. The Guláping was a district assembly in medieval Norway.

⁶⁹ Byock, *Viking Age Iceland*, 93.

⁷⁰ *Ibid.*, 93-4.

⁷¹ Miller, *Bloodtaking and Peacemaking*, 14.

⁷² *Ibid.*,

⁷³ Byock, *Viking Age Iceland*, 93.

Landsmenn were, generally speaking, free and equal in the Commonwealth.

There were essentially only three ranks: slaves, *bændr* and *goðar*. Of course, in practice there were many rungs in society, just as there tend to be vast inequalities of class in a modern constitutional democracy despite each citizen technically possessing identical legal rights. The existence of slavery in the Commonwealth is an unfortunate fact about it, certainly. Most of these people, though, would not have been understood (and perhaps would not have understood themselves) as Icelanders, generally having been captured on raids or bought in foreign slave markets.⁷⁴ It is consistent with this account that slavery died out in Iceland around the time that the Viking Age ended.⁷⁵

Fascinatingly, though, the difference between *bændr* and *goðar* is minimal. In other Germanic societies, people were evaluated according to their class differences, as reflected in their legal codes regarding restitution. In late Anglo-Saxon England, for example, the amount of compensation to be paid for a churl was a sixth of the amount for a thane, and so on.⁷⁶ In Iceland, however, all free people were owed equal payment.⁷⁷ Of course, there were evaluations made based upon character, perceived desert and so on, such that a popular or well-liked man might receive more compensation than an overbearing troublemaker. There was, however, no technical legal differentiation between classes, or between farmers and chieftains. In the Commonwealth period a treaty was even established with Norway to establish the equal legal rights of all Icelanders abroad.⁷⁸ Icelanders were fiercely proud of their non-monarchical status, and saga authors seem to relish scenes in which Icelanders are

⁷⁴ Gunnar Karlsson, *Iceland's 1100 Years*, 52.

⁷⁵ Byock, *Viking Age Iceland*, 66.

⁷⁶ William Ian Miller, *Eye for an Eye* (Cambridge: Cambridge University Press, 2006), 109-10.

⁷⁷ Byock, *Viking Age Iceland*, 135.

⁷⁸ *Ibid.*

criticised for their perceived arrogance in the face of authority.⁷⁹ With no king, there is no higher secular authority to which one can appeal to resolve disputes. Citizens must evaluate everything with reference to each other.

The fifth shared understanding, regarding the desirability of *hóf*, may perhaps be seen as the culmination of the previous five, and also a natural result of the kind of society the Commonwealth was. To value legitimacy and not to rely solely upon violence are integral parts of the political notion of moderation, and a natural consequence of respecting one's fellows as free and equal, and vital for showing discursive respect. *Hóf* is a multi-faceted concept which appears to contain all of the others, and its positive evaluation in the Commonwealth is completely beyond reasonable doubt. There remains a certain quantity of contention about whether *hóf* is strictly a political value or whether it extends more broadly into morality in general. I avoid that question here and simply assume the former, since the latter assumes the former but is of no added use for the political discussion at hand.

Together, these five shared understandings constitute the *NoJ*, whose role in the conversion can now be explained. The existence of the *NoJ* explains both the non-violence at the Alþing and the willingness of the pagans to abide by the decision against them. Rebellion against the lawspeaker's decision would have conflicted with the first shared understanding of the value of legal legitimacy. Denying the Christians access to the Alþing in the first place would also have made the pagan victory the result only of brute strength, not merit. The second shared understanding would have added a second level of undesirability to the prospect of fighting or resisting, since holding onto paganism would have entailed widespread violence and strife. The desire for peace and

⁷⁹ Katrina Attwood, trans., "The Saga of Gunnlaug Serpent-Tongue," in *Sagas of Warrior-Poets*, ed. Diana Whaley (London: Penguin Books, 2002), 123. Sigurður Nordal and Guðni Jónsson, eds., *Borgfirðinga Sögur*, Íslensk Fornrit III (Reykjavík: Hið Íslenska Fornritafélag, 1938), ch. 6.

cohesion triumphed. The third shared understanding would have caused the pagans to, at the least, give the Christians the chance to be heard, and to “state their case” as well as possible.⁸⁰ The equality and freedom of *landsmenn* guaranteed by the fourth shared understanding would have made them loath to deny Christians access to the law. The fifth and final shared understanding, regarding *hóf*, would cause the idea of using martial superiority to seem repugnant to the *landsmenn*, especially given the large role played in the country’s settlement by the need to escape political violence.⁸¹ The idea, then, is that the currency of these ideas in the culture of the Commonwealth was sufficient to outweigh what must have been strong conflicting desires to defend the old religion.

By way of concluding this chapter, I wish to defend my account against a possible objection. It might be suggested that the fact that fighting was even a remote possibility demonstrates that the *NoJ* was ineffective or absent. One might expect, if the *NoJ* existed as I have argued, that the pagan faction would not even have bothered to arm itself. In response, I point out that it was a common feature of political competition in the Commonwealth for people to display the size and fearsomeness of their retinue.⁸² By demonstrating that one had an extensive network of support, one was more likely to bring about a favourable outcome, warning opponents of one’s political clout. The *en masse* non-violent confrontation between the two factions can therefore be seen, on my account, as little more than a hostile display. It does not necessarily follow that there was ever actually a genuine, premeditated intention to fight. As such, the fact that fighting *nearly* broke out is not indicative of the absence of the *NoJ*.

⁸⁰ Strömbäck, *The Conversion of Iceland*, 15.

⁸¹ Gunnar Karlsson, *Iceland’s 1100 Years*, 15.

⁸² E.g. *Njála*, ch. 142, p. 254.

Chapter Three: Conceptual Links

In the subsequent chapter, I intend to make use of the example of the Commonwealth when making a series of arguments about Rawls' political philosophy. It may appear that the workings of a unique but short-lived medieval political entity have little to do with the issues abounding in a modern constitutional democracy. As such, my approach requires a solid justification. Therefore, in this short chapter I attempt to demonstrate that the Commonwealth can be pertinent to philosophical discussion. I leave aside for the moment the question of whether or not the Commonwealth constitutes a *useful* example: this question can only be resolved by evaluating the success or value of the arguments I make in the subsequent chapter. For now, I need only show that there is nothing about the Commonwealth which necessarily invalidates its use as an example. It would be invalid if, for example, the polities in question are simply too different to be compared. I therefore attempt to argue towards two conclusions in this chapter: first, that there are relevant similarities between the Commonwealth and a modern constitutional democracy, and second, that where the two differ, the differences are philosophically unimportant.

I begin by reiterating the most important characteristics of the society about which Rawls writes. The most fundamental feature of such a society is the fact of reasonable pluralism: the existence of a variety of incommensurable but equally reasonable general and comprehensive doctrines.⁸³ This feature is the result of human reason at work under enduring free institutions which do not coercively bring about allegiance to any particular doctrine.⁸⁴ The other fundamental feature of the society

⁸³ Rawls, *Political Liberalism*, 4.

⁸⁴ *Ibid.*

discussed by Rawls is the prevalence of the *organising ideas* of society as a fair system of social cooperation from one generation to the next, citizens as free and equal and a well-ordered society as a society effectively regulated by a political conception of justice.⁸⁵ Modern constitutional democracies supposedly possess these two features.

The Commonwealth also possessed these features to a degree sufficient to make it relevant. The fact of reasonable pluralism obtained in a middle period, before the nation became fully Christianised but after the new religion had started to spread. It would certainly be implausible to argue that neither of these religions was reasonable. Undoubtedly, political liberalism would hesitate to do so.⁸⁶ Admittedly, though, reasonable pluralism in the Commonwealth was rather different to the reasonable pluralism encountered under a modern democratic regime, being both temporary and limited. It was temporary in that it effectively disappeared after the conversion, and limited in that it only existed between two religious doctrines. Neither of these facts should detract from the Commonwealth's pertinence, however. Indeed, the temporariness of the fact of reasonable pluralism in the Commonwealth is of particular interest, given that it was no state power to use coercively to bring about renewed doctrinal hegemony. The limited nature of the pluralism in the Commonwealth should actually be useful, in that it provides both an uncluttered clear and simple example of a political conception outweighing broader belief. It does not matter that there now exist doctrines which were absent in the Commonwealth. Rawls writes: "we do not look to the comprehensive doctrines that in fact exist and then draw up a political conception that strikes some kind of balance of forces between them."⁸⁷

⁸⁵ Ibid., 13-4.

⁸⁶ Ibid., 59.

⁸⁷ Ibid., 39.

The *organising ideas* (or ideas sufficiently similar to them) also existed in the Commonwealth. Their content, of course, was slightly different, but that does not matter for the purpose for which I use the Commonwealth. I shall outline the structure of my criticism of Rawls in the next chapter, but for now I note the following: the *organising ideas* are taken for granted in Rawls, in much the same way that the shared understandings of the *NoJ* were not based upon moral philosophy. They simply *were* accepted as a shared fund of ideas. The existence of the *NoJ* ensured social unity even when reasonable pluralism arose, in the form of a split into two competing, incompatible but reasonable religious doctrines. Peculiarly, the Commonwealth resolved the problem of reasonable pluralism by asserting one faith above the other, but, lacking executive power, it did so without coercion. The adherents to the ousted faith acknowledged and abided by the decree of conversion, motivated by the moral, political content of the *NoJ*, not by prudential reasons. None of these conclusions mean (necessarily) that the content of the *NoJ* was justified, or that the conversion was a good thing, but, as will become clear in the next section, that is exactly the point. The Commonwealth, I think, highlights the problems inherent in taking foundational ideas for granted.

Of course, the Commonwealth did differ in a number of respects: cultural hegemony, the fact that it put an end to reasonable pluralism within itself, lack of executive power and so on. Insofar as these differences are of any relevance whatsoever (unlike, for example, the fact that the *landsmenn* spoke Old Icelandic rather than English), they make the example more useful and more interesting. That there were undesirable features of the Commonwealth, such as the institution of slavery, should not constitute a major obstacle either, since slaves played no pivotal role in the

Commonwealth and do not affect our understanding of its functioning. To refuse to look at the Commonwealth on this basis would be to conflate not liking what one sees with not thinking there is anything interesting at which to look. There is, then, no major flaw inherent in the methodology of using the Commonwealth as an example relevant to discussion of the merits of political liberalism. Indeed, the Commonwealth was clearly a historical polity which should be of great interest to those familiar with Rawlsian political liberalism. It is with these points in mind that I begin the next chapter. In particular, I would like to stress that I assume throughout that my account of the Commonwealth is correct.

Chapter Four: Political Liberalism

4.1 – Assumptions and Interpretations

Imagine a hypothetical *ideal society*, characterised by the circumstances of justice, the fact of reasonable pluralism and the prevalence of the *organising ideas*. In this society there has been established an overlapping consensus on a *PPCoJ*, affirmed by all reasonable citizens. There is no reasonable dissenting voice.⁸⁸ The society is, therefore, effectively regulated by a set of principles concerning which all reasonable citizens agree. Those principles have been perfectly implemented and the basic structure of society fulfils them. As such, no one's life is affected by any feature of society which she has not freely accepted as just. Together, these features render the *ideal society* well-ordered.⁸⁹ Only unreasonable people find themselves coerced into accepting the basic structure, but they are in too small a minority to threaten it. Advancing the idea of such a society as an ideal of legitimate social cooperation is the goal of Rawls' theory, and, indeed, it seems difficult to locate any grounds on which a moral condemnation of this society might stand. Though I do not investigate this ideal situation further, I make a basic assumption that the *ideal society* is just. If Rawls attempts nothing deeper than outlining the practical and moral merits of such an *ideal society* in ideal circumstances, then, in my view, there is nothing wrong with his theory. I do not think, however, that Rawls is aiming for such a restricted goal.

⁸⁸ Rawls borrows from Cohen a list of how citizens act and think when an overlapping consensus is established: Joshua Cohen, "Moral Pluralism and Political Consensus," in *The Idea of Democracy*, ed. David Copp, Jean Hampton and John E. Roemer (Cambridge: Cambridge University Press, 1993), pp.283f, cited in Rawls, *Political Liberalism*, 127-8.

⁸⁹ Rawls, *Political Liberalism*, 35.

It is vitally important to point out that the evaluation of Rawls' theory that I undertake in this thesis is premised upon two related interpretations of his view. The first interpretation is that Rawls does not think that the conditions necessary for the *ideal society* actually apply in the real world as it currently is, because the *organising ideas* are not firmly and universally held by all citizens. The second interpretation is that Rawls is saying something more than the simple claim that the basic structure of this *ideal society* achieves political legitimacy, stability and so on; he is committed to claims about how this *ideal society* might be eventually be achieved, given current real world conditions. I shall explain and justify both of these interpretations in turn.

The first interpretation is based not upon any outright admission of Rawls', but can be teased out of what he does say. Concerned about the possible objection that his view is unrealistic, Rawls provides an account of the way in which an overlapping consensus may come to be established in society.⁹⁰ He does so by explaining that, at first, adherents of competing doctrines may accept as a prudential compromise (*modus vivendi*) certain liberal principles which lead to a *constitutional consensus*.⁹¹ In a *constitutional consensus*, principles "are accepted simply as principles and not as grounded in certain ideas of society and person".⁹² Over time, working within this system, citizens will develop these ideas of society and person (the *organising ideas*) and, eventually, an overlapping consensus might be possible.⁹³ I examine the plausibility of this account later. For now, I think it is important to question exactly why Rawls bothers to include it. He is, after all, focusing narrowly upon the problems of modern constitutional democracies, and leaves the questions of "just relations between

⁹⁰ Ibid., 158-68.

⁹¹ Ibid., 159.

⁹² Ibid., 158.

⁹³ Ibid., 158-68.

peoples” (e.g. how to handle illiberal societies, etc.) out of *Political Liberalism*.⁹⁴

Therefore, he has no present interest in explaining how an overlapping consensus is possible in non-democratic societies. As such, his account must be tied to democratic societies, as always, since he writes that the “aims of political philosophy depend upon the society it addresses.”⁹⁵ Rawls, though, assumes that the *organising ideas* are implicitly accepted throughout democratic society. If so, they can be taken for granted, so why explain how other people might come to share them? The fact that he does so indicates that he does not actually think that the *organising ideas* are quite as prevalent as he would like. Rawls appears to have concerns about how broadly and how deeply shared these ideas actually are. If so, a full overlapping consensus on the Rawlsian model is not yet conceivable, but might be reached in future, if the *organising ideas* become more deeply entrenched.

The second interpretation of Rawls on which I base my approach is dependent upon the first interpretation. Given that, according to the first interpretation, the circumstances do not currently exist in which an overlapping consensus can be achieved and its legitimacy established, it is important to ask how Rawls’ theory relates to the world as it currently is. This question is, essentially, an issue of what exactly Rawls is offering in his theory. If he is simply claiming that, in the right conditions, an overlapping consensus would be just and stable, then he may be right, but he is not saying much. If that were the case, I think it would be possible to argue convincingly that Rawls’ theory would be of purely academic interest but of no real relevance, and therefore he *should* provide an account explaining and justifying the means of attaining

⁹⁴ Ibid., 12. The idea of *justice as fairness* is applied to these international questions in John Rawls, *The Law of Peoples; with “The Idea of Public Reason Revisited”* (Cambridge: Harvard University Press, 1999).

⁹⁵ Rawls, “Overlapping Consensus,” 1.

such a goal. Such an argument about Rawls' theory is unnecessary, however, because it seems that Rawls himself wants his solution to the *fundamental question* to be more than abstract, since it is presented as an answer to a question deeply rooted in the here and now of democracies. Rawls also writes of his view that the "aim ... is practical".⁹⁶ It would be absurd to go on and claim that it is acceptable for a theory with a practical aim to be purely hypothetical. Rawls further admits the practicality of his goal when he wittily remarks that "the politician, we say, looks to the next election, the statesman to the next generation, and philosophy to the indefinite future."⁹⁷ His omission of this statement from *Political Liberalism* is, I think, an attempt to make it less explicit, rather than the result of a shift of perspective.

Having justified the two interpretations, I assume throughout this section that they are correct. Putting the two interpretations together with the main assumption about the legitimacy of the *ideal society*, we can say the following: Rawls thinks that the conditions which legitimise an overlapping consensus have not yet been reached, so an overlapping consensus, though legitimate in the right circumstances, is not justified here and now. This lack of present justification would not be a problem if Rawls were simply trying to make a limited, strictly hypothetical point, but I do not think that he is. I think that Rawls is trying to explain how a just democratic society can be reached, and so he has to provide an account, given that the right conditions do not exist, of how they can and why they should be sought.

With these interpretations clearly laid out, I turn now to evaluating the *possibility, justice and stability* of the idea of an overlapping consensus of reasonable doctrines on a *PPCoJ*. *Possibility* refers strictly to whether such a consensus is realistic.

⁹⁶ Rawls, *Political Liberalism*, 9.

⁹⁷ Rawls, "Overlapping Consensus," 24.

The term *justice* is used in its normal sense: an overlapping consensus is just if we can be convinced on moral grounds that it is an appropriate solution to the societal problem Rawls identifies. I take *stability* to possess the sense in which Rawls uses it throughout his work: Rawls writes that *stability* is *stability for the right reasons* and “should usually be given that meaning in both *Theory* and PL, as the context determines.”⁹⁸ *Stability for the right reasons* can be understood as *stability* for moral rather than prudential reasons, or, to put it another way, a type of *stability* in which citizens over time freely affirm the *PPCoJ* as a moral conception and “are not simply going along with it in view of the balance of political and social forces”.⁹⁹ Together, *possibility*, *justice* and *stability* constitute the conditions necessary for Rawls’ proposal to be acceptable. A solution, however theoretically appealing, must be rejected on practical grounds if it does not meet the criterion of *possibility*. Similarly, a solution which fails to meet the criterion of *justice* must be rejected on moral grounds. A solution which does not ensure *stability* might not constitute a solution at all: even if it could be established, it cannot be guaranteed to persevere. If, on the other hand, an overlapping consensus on a *PPCoJ* is possible, just and stable, then it possesses all of the attributes one might reasonably desire in an answer to the fundamental question. My findings are mixed. First, I claim, in support of Rawls, that his account achieves *possibility*. Secondly, I argue that his account fails to achieve *justice*. Thirdly, I contend that, given that the *justice* of the idea of an overlapping consensus is not certain, *stability* cannot be guaranteed. Throughout the discussion, I use the Commonwealth as an empirical example, but in a slightly different way each time.

⁹⁸ Rawls, *Political Liberalism*, xxxvii, n. 5.

⁹⁹ *Ibid.*, xxxviii.

4.2 – Possibility

The issue of *possibility* is prior to those of *justice* and *stability*. There is no use discussing whether Rawls' answer is morally acceptable or stable over time unless one has reasonable assurance that it is realistic in the first place. Rawls' answer must be defended against the charge of utopianism: that it could only work in an ideal world, and real world conditions render his solution impossible to realise. As Rawls outlines it, the charge of utopianism claims that “there are not sufficient political, social, or psychological forces either to bring about an overlapping consensus (when one does not exist), or to render one stable (should one exist).”¹⁰⁰ In other words, the charge of utopianism states that Rawls' overlapping consensus is not *possible*. If it is not *possible*, it is of no merit or interest, in accordance with the well-known principle of ‘ought implies can’. Rawls responds to the utopianism charge by explaining how an overlapping consensus can be established and maintained.¹⁰¹ In this section, I aim to use the Commonwealth as evidence in support of Rawls' reply to the charge of utopianism, but first I provide a more detailed outline of this charge and emphasise its seriousness.

Rawls assumes that every citizen has “a comprehensive and a political view.”¹⁰² Ideally, all citizens would accept the *PPCoJ* as well as their own particular general and comprehensive doctrine. There are a number of ways in which they might do so, depending, in part, upon which comprehensive doctrine they happen to accept. In *Political Liberalism*, Rawls briefly explains how certain doctrines might form part of an overlapping consensus, but he does so only in a brief manner for the sake of illustrating

¹⁰⁰ Ibid., 158.

¹⁰¹ Ibid., 158-68.

¹⁰² Ibid., 140.

the concept itself.¹⁰³ A systematic examination of how citizens accepting given doctrines might come to affirm *justice as fairness* or some such *PPCoJ* would be overly time consuming and difficult. Moreover, for Rawls, it would be missing the point, since, as noted earlier, “we do not look to the comprehensive doctrines that in fact exist and then draw up a political conception that strikes some kind of balance of forces between them.”¹⁰⁴ For this reason, Rawls considers that it is best “left to citizens individually – as part of liberty of conscience – to settle how they think the values of the political domain are related to other values in their comprehensive doctrine.”¹⁰⁵ Though there are currently many reasonable comprehensive doctrines which actually exist, the quantity of reasonable comprehensive doctrines which could appear under free institutions is potentially limitless. It is therefore best to leave aside the otherwise Sisyphean task of linking them to a given *PPCoJ*.

Nonetheless, it is worth considering the ways in which the categories of comprehensive and political can interact. Rawls identifies three options when he writes that “citizens themselves, within the exercise of liberty of thought and conscience, and looking to their comprehensive doctrines, view the political conception as derived from, or congruent with, or at least not in conflict with, their other values.”¹⁰⁶ These three options of *derivation*, *congruence* and *compatibility* (understood in a minimal sense as absence of conflict) form a descending order of how interlinked the relationship can be between a citizen’s reasonable doctrine and the *PPCoJ*. Those citizens who view the relationship between the *PPCoJ* and their comprehensive doctrines as a matter of derivation will have twin reasons (arising from within both their political and their

¹⁰³ Ibid., 145-9.

¹⁰⁴ Ibid., 39.

¹⁰⁵ Ibid., 140.

¹⁰⁶ Ibid., 11.

comprehensive conceptions) to affirm it. Citizens who view the relationship as a matter of *congruence* will also have two kinds of reasons, but the connection between those reasons will not be quite as strong. Last of all, those citizens for whom the *PPCoJ* attains nothing more than *compatibility* with their comprehensive doctrine will only affirm it on its own merits. Though *derivation* might be motivationally more forceful than *congruence* and then *compatibility* in turn, it does not follow that *compatibility* is weak.

There is a further option, though. In the case of certain comprehensive doctrines, there might be *incompatibility* with the *PPCoJ*, as Rawls recognises.¹⁰⁷ *Incompatibility* does not arise simply between the *PPCoJ* and the “many unreasonable views” that necessitate “the practical task of containing them – like war and disease”.¹⁰⁸ The demands of the doctrine of utilitarianism, for example, a reasonable type of doctrine which is both fully general and fully comprehensive according to how Rawls defines those terms, will frequently conflict with a non-utilitarian *PPCoJ*.¹⁰⁹ Simply put, a conception of justice according to which the maximisation of utility is not a priority will directly conflict with utilitarianism, either entirely or at least in certain instances. Similarly, as Paul Weithman discusses, a deeply religious individual might consider “a religiously neutral society as failing in important ways”.¹¹⁰ Both the utilitarian and the deeply religious are expected to be able to be part of an overlapping consensus in spite of these differences. Scepticism about the *possibility* of this requirement is natural.

¹⁰⁷ Ibid., 160.

¹⁰⁸ Ibid., 64 and n. 19.

¹⁰⁹ Ibid., 13. Any manifestation of utilitarianism would fit this description.

¹¹⁰ Weithman, *Why Political Liberalism? On John Rawls's Political Turn* (Oxford: Oxford University Press, 2010), 309. Robert Talisse provides a few succinct examples of fundamental (and primarily religious) disagreements about political justice in Robert Talisse, *Democracy and Moral Conflict* (Cambridge: Cambridge University Press, 2009), 15-7.

Rawls' initial attempt to deal with this problem is ineffective. After acknowledging that doctrines can relate to a *PPCoJ* by *derivation*, *compatibility* or *incompatibility* (he leaves out *congruence* this time), he simply suggests that, in "everyday life", citizens "have not usually decided, or even thought much about, which of these cases hold."¹¹¹ He relies upon "slippage", hoping for ways that comprehensive doctrines and the *PPCoJ* might "cohere loosely".¹¹² Essentially, this way around the problem of *incompatibility* merely amounts to hoping that *incompatibility* will not exist, or, if it does, citizens will not notice. It is therefore no solution at all, but a way of ignoring the problem. Rawls summarises this line of thought when he writes that "many if not most citizens come to affirm the principles of justice incorporated into their constitution and political practice without seeing any particular connection, one way or the other, between those principles and their other views."¹¹³ To affirm or dismiss the truth of this claim would require access to non-existent empirical evidence, but, either way, it seems inconsistent with Rawls' approach. The very reason why a *PPCoJ* is supposedly necessary is that there are such deep divisions between citizens on so many issues of great importance. Deeply religious citizens, for example, will have to examine carefully the relative merits of the commitments of their faith and the demands of state neutrality.¹¹⁴ Relying upon "looseness in our comprehensive views" and hoping for the best is only going to be an effective strategy in circumstances of such great accord that a *PPCoJ* might be redundant in the first place.¹¹⁵ Even if Rawls' conjecture is accurate, it would drastically alter the picture of overlapping consensus that he so carefully sketches: there would no longer be an overlapping consensus of reasonable general and

¹¹¹ Rawls, *Political Liberalism*, p. 160.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Again, I point to Talisse's examples in *Democracy and Moral Conflict*, pp. 15-7.

¹¹⁵ Rawls, *Political Liberalism*, p. 159.

comprehensive doctrines, since those doctrines would essentially become irrelevant. There would instead be an overlapping consensus *regardless* of reasonable doctrines.

Of course, Rawls does not leave the issue here, but provides an alternative solution to the problem: if citizens notice *incompatibility* “between the principles of justice and their wider doctrines, then they might very well adjust or revise these doctrines rather than reject those principles.”¹¹⁶ As noted earlier, Rawls provides a hypothetical account of the way in which, over time, an overlapping consensus may come to be established in a society.¹¹⁷ This process essentially depends upon citizens accepting, originally as a *modus vivendi*, a minimal set of constitutional principles sufficient to bring about what Rawls calls a *constitutional consensus*.¹¹⁸ A *constitutional consensus* resembles an *overlapping consensus* but is narrower and shallower, essentially being what an *overlapping consensus* would be if it lacked the *organising ideas* beneath it.¹¹⁹ Over time, the *organising ideas* are developed and a *constitutional consensus* broadens and deepens into an *overlapping consensus*.¹²⁰ The lynchpin of this process is the recognition by citizens that “the values of the political are very great values”.¹²¹ This recognition occurs to citizens “as the success of political cooperation continues”.¹²² The strength of this recognition provides the motivational force for the alteration, over time, of reasonable general and comprehensive doctrines so that they accord better with the *PPCoJ* and avoid *incompatibility*. Weithman provides an illustrative example of how the notion of *incompatibility* with a religion can diminish over time as adherents who affirm the *PPCoJ* still cling to their self-understanding as

¹¹⁶ Ibid., 160.

¹¹⁷ Ibid., 158-68.

¹¹⁸ Ibid.

¹¹⁹ Ibid., 158-9.

¹²⁰ Ibid., 164-8.

¹²¹ Ibid., 169.

¹²² Ibid., 168.

orthodox, and redefine the latter to justify their political affirmations.¹²³ Rawls simply hopes that political values are strong enough to outweigh whatever might oppose them, and considers this account to be “all that we need say in reply to the objection that the idea of overlapping consensus is utopian.”¹²⁴

It is important to know whether or not this account is accurate. As usual, Rawls leaves it up to the reader to decide for him- or herself. I entirely accept the account on the basis that the Commonwealth example demonstrates conclusively that political values can outweigh conflicting comprehensive doctrines: in the year 1000AD, they did. The fact that a *NoJ* is less explicit and less well developed than a *PPCoJ* might even make the example stronger: if a *NoJ* proved motivationally forceful enough, then a *PPCoJ* should be even more reliably effective, assuming that the *organising ideas* are held with sufficient vigour. Indeed, any *incompatibility* one can imagine arising in a modern context is likely to be weaker than the *incompatibility* that arose in the Commonwealth, since the latter involved wholesale rejection of a doctrine (rather than mere violation of one or more of its articles) and left no room for doctrinal alteration over time. The crucial point is that, since it is likely to be both frequent and intense, *incompatibility* is a serious problem. The likely frequency and intensity of *incompatibility* means, to borrow a phrase from Stephen Macedo, that there needs to be “not merely an overlapping consensus but a consensus that practically *overrides* all competing values.”¹²⁵ Nonetheless, the Commonwealth seems to provide good reason for being optimistic. The prevalence in society of certain ideas *does* seem able to overcome the issues posed by the widespread conflicts that are likely to arise between

¹²³ Weithman, *Why Political Liberalism?*, 309-11.

¹²⁴ Rawls, *Political Liberalism*, 168.

¹²⁵ Stephen Macedo, “The Politics of Justification,” *Political Theory*, 18, no. 2 (May 1990): 285.

comprehensive doctrines and a *PPCoJ*, *so long as* the requisite ideas are held strongly enough. An overlapping consensus, then, is *possible*, as the Commonwealth displays.

4.3 – Justice

To reiterate, so far I have accepted four main points. First, I have assumed that an overlapping consensus on a *PPCoJ* is indeed a legitimate solution to the *fundamental question*, under ideal conditions. Second, I have interpreted Rawls as believing that those conditions do not currently obtain. Third, I have interpreted Rawls as aiming to connect current, real world conditions to his theory of ideal conditions, to explain how and why we should progress from the former to the latter. Fourth, I have attempted to demonstrate that Rawls' explanation of *how* we could make this progression is correct. In this section, I argue that, though the *how* has been taken care of, the *why* is unanswerable in a way consistent with political liberalism.

Imagine that a group of people within a constitutional democracy accept the *organising ideas* and all that they entail. They accept the idea of citizens as free and equal, and, given the democratic nature of society, they also believe that “political power is the coercive power of free and equal citizens as a corporate body.”¹²⁶ For this reason, regardless of whatever comprehensive doctrines these people affirm, they think that “it is unreasonable or worse to want to use the sanctions of state power to correct, or to punish, those who disagree”.¹²⁷ To do so would essentially be to use the power of their fellow citizens against them. In other words, these people accept the liberal principle of legitimacy, which claims that:

¹²⁶ Rawls, *Political Liberalism*, 139.

¹²⁷ *Ibid.*, 138.

... our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.¹²⁸

This principle therefore depends upon the *organising ideas*. As Freeman writes, “political legitimacy depends upon acceptance *from a particular standpoint*, that of reasonable and rational free and equal citizens”.¹²⁹ It is because of the *organising ideas* that “we may with perfect consistency hold that it would be unreasonable to use political power to enforce our own comprehensive view, which we must, of course, affirm as either reasonable or true.”¹³⁰ Essentially, if we did attempt to enforce our own comprehensive view under those conditions, we would be using collective coercive power oppressively while simultaneously acknowledging that we have no greater claim than anyone else to doing so.

According to the principle as Rawls outlines it, an overlapping consensus on a *PPCoJ* is legitimate. Rawls theory is therefore internally consistent, in that (if one can forgive the repetition) an overlapping consensus *given certain conditions* fulfils the principle of legitimacy *given certain conditions*. Outside of those conditions – which, to stress the point again, I take Rawls as believing not to obtain currently – there is no similar criterion of legitimacy. The *organising ideas* need to become more entrenched. For everyone who *does* accept the *organising ideas*, there is a standard according to which legitimacy can be judged. Those who do not accept them, however, will not accept that standard any more than the ideas on which it stands. Simply, Rawls is committed to thinking that the *organising ideas* could themselves be the subject of reasonable disagreement. If not, there would be no need to look to the shared fund of

¹²⁸ Ibid., 137.

¹²⁹ Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Oxford: Oxford University Press, 2007), 236.

¹³⁰ Rawls, *Political Liberalism*, 138.

democratic cultural ideas for a firm foundation: he could simply state that anyone who does not accept the *organising ideas* is unreasonable, and then it would not matter whether his theory were located within the tradition of democratic thought or not. Rawls shies away from providing a definition of what might be termed *universal reasonableness*, utilising instead only a narrow, political variety which is itself based on the *organising ideas*: “the reasonable is an element of the idea of society as a fair system of social cooperation” within which the idea of reciprocity is located.¹³¹ The crucial point is as follows: if accepting the *organising ideas* and so on were a condition of reasonableness, then it would follow that every person who does not accept them is unreasonable. Rawls cannot say that, though, because he instead works out the very notion of reasonableness in *Political Liberalism* by building it up from the *organising ideas*. Other possible justificatory tools – such as the principle of reciprocity or the liberal principle of legitimacy – are also worked out from the *organising ideas*. As such, their use as potential justifications to support them would be invalid. I do not attribute this attempt to Rawls himself, by any means. I simply take note that such an approach would be fatally flawed.

How are those who accept the *organising ideas* to justify taking measures to ensure others do too, since political liberalism’s own justificatory tools are ruled out? The first option is to invoke a justification from within a comprehensive doctrine, which I shall call *comprehensive justification*. This sort of justification is unacceptable given the project of political liberalism, which is based upon the recognition of the fact of reasonable pluralism. It would be unreasonable for *Rawls*, on his own political conception of reasonableness, as one who presumably accepts the burdens of judgement

¹³¹ Ibid., 49-50.

and so on, to propose a *comprehensive justification* to force dissenters to accept ideas which in turn make it unreasonable to propose *comprehensive justification*. Even though those who reject the *organising ideas* would not accept the liberal principle of legitimacy that would make coercing them illegitimate, Rawls does. To use a *comprehensive justification* to establish the *organising ideas* in the hope of justifying political liberalism, then, would be to use political power illegitimately according to political liberalism itself.

Though I would avoid attributing this approach to Rawls, I note that Samuel Freeman seems to think that Rawls *does* provide a *comprehensive justification* in *A Theory of Justice*, and so, along with *Political Liberalism*, rounds off his account.¹³² To quote him at some length:

If people do not regard themselves as free and equal citizens, nor believe that freedom and equality are fundamental political values, then *Political Liberalism* may not be of much interest to them. ... Here Rawls's critics might say that this refusal to address in universal terms people with different values who do not think of themselves as free and equal citizens renders Rawls's argument relativistic, relevant to the political preferences of people in a democracy. But clearly Rawls thinks freedom and equality are universal values of justice and that every society in the world ought to strive to become a liberal democratic society. ... *A Theory of Justice* responds to critics' concern for an argument for universal justice that addresses reasonable people in all the world. It mistakes *Political Liberalism's* purpose to think that it must duplicate the ambitions of that earlier book. *Political Liberalism*, unlike *Theory*, addresses a problem *within* democratic and liberal theory; namely, how is it possible that there exists a stable and enduring liberal and democratic society that tolerates different views and ways of life when reasonable citizens disagree about fundamental moral and religious values?"¹³³

This view of Rawls is, I think, inaccurate. Rawls seems to reject parts of *A Theory of Justice* and seeks to revise it, rather than add to it.¹³⁴ The fact of reasonable pluralism invalidates it: "the argument in *Theory* relies on a premise the realization of which its

¹³² Samuel Freeman, *Rawls* (London: Routledge, 2007), 327.

¹³³ *Ibid.*

¹³⁴ Rawls, *Political Liberalism*, xl.

principles of justice rule out.”¹³⁵ In this way, *A Theory of Justice* cannot be understood as *Political Liberalism*’s counterpart with a larger audience. Rawls may still think his account in his earlier book is *true*, but, recognising the burdens of judgement and the fact of reasonable pluralism, he clearly thinks that reasonable people could *reject* his argument there. He does not, then, provide a *comprehensive justification* in this way.

The alternative way of justifying the *organising ideas* relates to the idea of *possibility*. As mentioned earlier, Rawls claims that an overlapping consensus is *possible* when he responds to the charge of utopianism by explaining that, over time, the *organising ideas* may become more widely shared and deeply entrenched, making an overlapping consensus possible. Given that Rawls thinks that *incompatibility* can be overcome thanks to citizens’ recognition of the value of political cooperation, he might be able to claim that the *organising ideas* are justified by some sort of objective benefit that fair social cooperation brings to everyone. The trouble with this potential account is that there are many forms of social cooperation, so saying that social cooperation is good cannot justify one form above another. To illustrate this point, I invoke the Commonwealth example again. Strömbäck outlines Þorgeirr the lawspeaker’s understand that “it is not possible to give judgement in accordance with two different codes of law, one for pagans, one for Christians; then the community, as a legal whole, splits into two and the country will be destroyed in lawlessness and strife.”¹³⁶ From within such a perspective, the deepening of Christian values would bring about enhanced social cooperation, at least in the short term. The benefits of social cooperation could therefore be used to justify a movement *away* from liberalism, rather than towards it. They are therefore argumentatively useless. For this reason, Rawls

¹³⁵ Ibid.

¹³⁶ Strömbäck, *The Conversion of Iceland*, 29.

cannot state (even if he wanted to) that the prevalence of the *organising ideas* is inherently desirable because of the enhanced practical benefits of the social cooperation they bring with them.

As such, I conclude that Rawls can argue that a society's liberalism can become more entrenched over time, and the *organising ideas* can become more deeply and more widely held, or that citizens' political values may grow to outweigh their comprehensive views in cases of *incompatibility*, but he lacks the means to demonstrate that these alterations are inherently desirable. A shift of ideas is not always positive, and one can only know for certain that a cultural shift in attitudes is an improvement if there is an objective standard which makes appraisal possible. Without such an objective standard, and given my interpretations, the idea of an overlapping consensus cannot be considered to meet the criterion of *justice*.

4.4 – Stability

Lastly, I turn to the issue of *stability*, noting an important and subtle way in which *stability* relates to the problem of *justice*. Given that Rawls is unable to provide a means of justifying the acceptance of the *organising ideas*, the *stability* of an overlapping consensus on a *PPCoJ* can only be as reliable as the prevalence of those ideas. Again, I refer to the Commonwealth example to illustrate and defend my account.

As noted in the introductory portion of the chapter, *stability* of the type required by Rawls can be understood as *stability for the right reasons*. Rawls has two reasons for relying upon this notion of *stability*. The first of these reasons is a moral commitment to avoiding the coercive use of state power, which Rawls views as illegitimate. Much more

important for the discussion at hand is the second reason: that, for Rawls, real *stability* must necessarily be moral just to fulfil its practical purpose. The very reason that Rawls states that, unless the context indicates otherwise, *stability* is synonymous with *stability for the right reasons* in his work, is because *stability not for the right reasons* is no true *stability* at all.¹³⁷ As Rawls writes, “a basis of justification that rests on self- or group-interests alone cannot be stable” because it is “dependent upon a fortuitous conjunction of contingencies.”¹³⁸ Practical, prudential motivations are invalidated when circumstances change, so it is impossible to rely upon them. If people have moral reasons for accepting principles, though, then they will be motivated to act in accordance with them even when opportunities to neglect them arise. An overlapping consensus encourages *stability* because citizens will have moral reasons to endorse and protect the *PPCoJ*. On the whole, these reasons seem compelling, and I agree with Rawls that, even for practical reasons, *stability* must necessarily be a moral affair.

The trouble with this idea of *stability* is that the moral reasons citizens have for affirming the *PPCoJ* are dependent upon the *organising ideas*, but, even in the *ideal society*, citizens do not necessarily have moral reasons for affirming those ideas in turn. As it were, the upper layer of the idea – that of overlapping consensus itself – is stable so long as the *organising ideas* are affirmed, but the lower layer – the *organising ideas* – cannot be stable in the same way, because, as I have argued in the previous section, they have not been justified. Of course, by making this point I do not mean to imply that the *organising ideas* are *unlikely* to remain a constant part of citizens’ thinking. Perhaps they are very likely to do so. The fact remains, though, that mere likelihood is insufficient to meet the exacting criterion of *stability* that Rawls accepts. If real world

¹³⁷ Rawls, *Political Liberalism*, xxxvii, n. 5.

¹³⁸ Rawls, “Overlapping Consensus,” 1.

events can render unstable a *modus vivendi* which is based on prudential rather than moral considerations, the fact that there is no moral justification for the *organising ideas* should make us concerned about an overlapping consensus, too.

Importantly, the *NoJ* in the Commonwealth was not a *PPCoJ* subject to overlapping consensus. It was, I have argued, a set of shared understandings which gained widespread acceptance – and moral affirmation – without the basis of that acceptance being philosophically explored. Now, the Commonwealth did not achieve *stability*. I have not so far made any points about the decline and fall of the Commonwealth, and it is difficult to give the matter all the treatment it deserves. In 1262-4, two and a half centuries after the conversion, the Icelanders gradually relinquished their independence and accepted Norwegian crown. Giving up their independence was essentially a *modus vivendi* itself: the alternative was a continuation of widespread civil strife.¹³⁹ Those who built churches on their land were owed tithes from locals, which permitted the amassing of sufficient wealth and influence that powerful families began to retain standing groups of followers, to “monopolize the control and ownership of many of the original chieftaincies” and to invade each other’s territories.¹⁴⁰ Partly, then, the Commonwealth’s decline was a matter of logistics and practicalities. Still, I would like to suggest that the decline into civil strife was also due to the erosion of the *NoJ* over time. With the introduction of tithes, power relationships ceased to be voluntary associations and became legal requirements for one person to render unto another. This shift helped to undermine the fourth shared understanding of freedom and equality between *landsmenn*, in turn undermining the fifth shared understanding of the necessity of *hóf*. It is easy to picture how the loss of the second

¹³⁹ Byock, *Viking Age Iceland*, 351.

¹⁴⁰ *Ibid.*, 341-2.

shared understanding of the *NoJ* might follow from the loss of the previous two: violence became a more integral part of politics, with the role of *gođar* no longer to act moderately and wield political influence but to fight, protect and avenge.

Going any further into the specifics is not useful. For present purposes, it suffices to say that there was a *NoJ* which ceased to be effective. People originally acted in accordance with the demands of the *NoJ* for moral, political reasons, but, since the shared understandings themselves did not have a firm moral basis, changes of historical circumstance were able to undermine them. The same may be true of the *organising ideas*, which, like the *NoJ*, lack a firm justificatory foundation. The Commonwealth raises serious concerns, therefore, that if *justice* in non-ideal circumstances cannot be guaranteed, then neither can *stability*.

Chapter Five: Conclusion

The Commonwealth in Iceland was a unique historical entity, and the events of its conversion in particular were unprecedented. In this thesis, I hope first of all to have offered an innovative (though perhaps not radical) understanding of medieval Icelandic society and one of its most pivotal events. Most explanations of how the conversion occurred overemphasise the role played by practical concerns, or attribute to the *landsmenn* a willingness to allow the course of their nation to be determined by religious beliefs about divination rituals or oathbreaking. Naturally, considerations of this kind may have played some part. It would be overzealous to claim that they could not have done so. Such major historical events are, after all, always complicated affairs. Nonetheless, I think that the Rawlsian notion of ideas implicit in the public political culture of a society is of great assistance in appreciating how the Commonwealth functioned so well and underwent a peaceful, political conversion. There are virtues and principles which, though political, are moral too. Thanks to the prevalence of a set of shared understandings constituting a *NoJ*, the *landsmenn* were able to maintain social cooperation in the face of potential religious strife.

This way of looking at the Commonwealth highlights the ways in which it can constitute a useful historical lens to shed light on political liberalism from a new angle. In the Commonwealth, we have a comparatively simple, proto-democratic society in which to see both the strengths and weaknesses of implicit cultural ideas in action. Insofar as Rawls' theory is tied to such implicit ideas, the Commonwealth offers a new perspective on it. The ways in which the example of medieval Iceland differs from a modern democratic society make it interesting, not irrelevant.

The Commonwealth can therefore be used as a tool for critically examining Rawls' answer to the *fundamental question*: "how is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?"¹⁴¹ My evaluation of Rawls' answer is highly critical. A just and stable society of reasonably divided citizens is only possible in the way Rawls imagines if political virtues can gain sufficient force to outweigh what opposes them. The Commonwealth shows that they can, so Rawls' answer achieves *possibility*. *Justice* and *stability* may remain beyond his grasp, though, except perhaps in a merely hypothetical *ideal society*. To make this *ideal society* a reality, the *organising ideas* need to become more embedded, but the attempt to bring that about must itself be justified. A *comprehensive justification* is illegitimate from the perspective of political liberalism. An alternative justification of them would be to point out on practical grounds the objective benefits of social cooperation, but, as the Commonwealth again demonstrates, such benefits can justify a slide away from liberalism as much as towards it. If the *organising ideas* lack a moral justification, though, then any conception founded upon them can only be as stable as they are, since true *stability* depends upon morality. The *NoJ*, though moral in content, also lacked moral justification, and steadily degraded over time as practical changes wore it down. The Commonwealth therefore seems to arouse suspicions about the *stability* of Rawls' solution.

Of course, these conclusions can only be taken in a certain limited way. In particular, Rawls spends all of *Political Liberalism* answering the *fundamental question*, and I have only fixated upon specific elements of this answer. My approach is therefore

¹⁴¹ Rawls, *Political Liberalism*, 4.

somewhat narrow, but focuses, I think, upon some of the main areas where the Commonwealth example is most relevant. Admittedly, my conclusions are contingent upon certain interpretations of Rawls. If these interpretations are inaccurate, my criticisms collapse. Even if they are accurate, it would be possible for a defender of Rawls simply to claim that the points about the *ideal society* are all that are necessary. From my perspective, to do so would be – to borrow an image from Schopenhauer – to retreat into a “fortress that could not be taken by attack from without.”¹⁴² Besides the concerns I raise about the *stability* of an overlapping consensus, I offer no means of capturing that fortress. Still, though largely safe within its walls, I believe that Rawls must sally forth in order to tell us anything meaningful.

¹⁴²Arthur Schopenhauer, *The World as Will and Representation*, trans. E.F.J. Payne (Indian Hills: The Falcon Wing’s Press, 1958), Vol. 2, p.195.

Bibliography

Primary Sources

Attwood, Katrina, trans. “The Saga of Gunnlaug Serpent-Tongue.” In *Sagas of Warrior-Poets*, edited by Diana Whaley, 109-50. London: Penguin Books, 2002.

Cook, Robert, trans. *Njal's Saga*. London: Penguin Books, 2001.

Einar Ól Sveinsson, ed. *Brennu-Njáls saga*. Íslenzk Fornit XII. Reykjavík: Hið Íslenzka Fornritafélag, 1954.

Gordon, E.V. *An Introduction to Old Norse*. Edited by A.R. Taylor. 2nd ed. Oxford: Clarendon Press, 1956.

Grønlie, Siân, trans. *Íslendingabók – Kristni saga – The Book of Icelanders – The Story of the Conversion*. Exeter: Short Run Press, Ltd., 2006.

Jakob Benediktsson, ed. *Íslendingabók Landnámabók*. Íslenzk Fornrit I. Reykjavík: Hið Íslenzka Fornritafélag, 1968.

Jón Jóhannesson, ed. *Austfirðinga Sögur*. Íslenzk Fornrit XI. Reykjavík: Hið Íslenzka Fornritafélag, 1950.

Sigurður Nordal and Guðni Jónsson, eds. *Borgfirðinga Sögur*. Íslenzk Fornrit III.

Reykjavík: Hið Íslenzka Fornritafélag, 1938.

Sigurgeir Steingrímsson, Ólafur Halldórsson and Peter Foote, eds. *Biskupa Sögur I*.

Íslenzk Fornrit XV. Reykjavík: Hið Íslenzka Fornritafélag, 2003.

Secondary Sources

Beitz, Charles R. "Rawls's Law of Peoples." *Ethics* 110, no. 4 (July 2000): 669-696.

Byock, Jesse. *Feud in the Icelandic Saga*. Berkeley: University of California Press, 1982.

—. *Viking Age Iceland*. London: Penguin Books, 2001.

Cohen, Joshua. "Moral Pluralism and Political Consensus." In *The Idea of Democracy*, edited by David Copp, Jean Hampton and John E. Roemer, 270-91. Cambridge: Cambridge University Press, 1993.

Duke, Siân. "Kristni saga and its Sources: Some Revaluations." *Saga-Book of the Viking Society for Northern Research*, 25, part 4 (2001): 345-366.

- Freeman, Samuel. *Justice and the Social Contract: Essays on Rawlsian Political Philosophy*. Oxford: Oxford University Press, 2007.
- . *Rawls*. London: Routledge, 2007.
- Gunnar Karlsson. *Iceland's 1100 Years: History of a Marginal Society*. London: C. Hurst & Co., Ltd., 2000.
- Jón Hnefill Aðalsteinsson. *Under the Cloak: The Acceptance of Christianity in Iceland with Particular Reference to the Religious Attitudes Prevailing at the Time*. Uppsala: Borgströms Tryckeri AB, Motala, 1978.
- Larmore, Charles. "Political Liberalism." *Political Theory*, 18, no. 3 (August 1990): 339-60.
- Macedo, Stephen. "The Politics of Justification." *Political Theory*, 18, no. 2 (May 1990): 280-304.
- McDermott, Daniel. "The Permissibility of Punishment." *Law and Philosophy*, 20, no.4 (July 2001): 403-32.
- Miller, William Ian. *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland*. Chicago: The University of Chicago Press, 1990.

—. “The Central Feud in *Njáls saga*.” In *Sagas of the Icelanders: a Book of Essays*, edited by John Tucker, 292-322. London: Garland Publishing, 1989.

—. *Eye for an Eye*. Cambridge: Cambridge University Press, 2006.

Rawls, John. “The Idea of an Overlapping Consensus.” *Oxford Journal of Legal Studies*, 7, no. 1 (1987): 1-25.

—. *The Law of Peoples; with “The Idea of Public Reason Revisited.”* Cambridge: Harvard University Press, 1999.

—. *Political Liberalism*, exp. ed. New York: Columbia University Press, 2005.

—. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.

Schopenhauer, Arthur. *The World as Will and Representation*. Translated by E.F.J. Payne. Indian Hills: The Falcon’s Wing Press, 1958.

Strömbäck, Dag. *The Conversion of Iceland: A Survey*. Translated by Peter Foote. London: Viking Society for Northern Research, 1975.

Talisse, Robert. *Democracy and Moral Conflict*. Cambridge: Cambridge University Press, 2009.

Weithman, Paul. *Why Political Liberalism? On John Rawls's Political Turn*. Oxford:
Oxford University Press, 2010.