

Why not Extend Rawls' Public Reason Beyond Fundamental Issues? A Defence of the Broad-Scope View of Public Reason

Rubén Marciel Pariente¹

RESUMEN

El alcance de la razón pública determina qué decisiones deben atenerse a ella. En este artículo defendiendo una concepción de la razón pública de amplio alcance, según la cual todas las decisiones políticas deberían estar justificadas por razones públicas. Primero sostengo que, aunque la postura de Rawls es confusa, es compatible con una razón pública de amplio alcance. En las tres siguientes secciones rechazo los argumentos principales en favor de una razón pública restringida. Después ofrezco un argumento a favor de la concepción amplia y concluyo que ésta es preferible desde el punto de vista del liberalismo político.

PALABRAS CLAVE: *Rawls, liberalismo político, razón pública, alcance, argumentación pública.*

ABSTRACT

The scope of public reason determines which political decisions should be taken according to its standards. In this paper, I defend a broad-scope view of public reason, according to which every single political decision should be justified by public reasons. In the first part, I argue that, despite the unclarity of Rawls' position, it is compatible with the wide-scope view. In the three following parts, I refute the main arguments in favour of the narrow-scope view of public reason. Finally, I offer an argument for the wide-scope view and conclude that it is preferable from the point of view of political liberalism.

KEYWORDS: *Rawls, Political Liberalism, Public Reason, Scope, Public Argumentation.*

I. PUBLIC AND NON-PUBLIC REASONS

Rawls defines reason as a specific way to formulate plans according to an order of priorities and to make decisions on the basis of such plans [Rawls (1996), pp.212-13].² Reason belongs to individuals but also to collectives, such as a family, an association, or the citizenry. According to

Rawls there are no private reasons but only public and non-public reasons [PL, p. 220, note 7].³

Non-public reasons connect with the liberal notion of citizens as members of communities where different comprehensive doctrines are professed. Indeed, a *non-public reason* is a way of formulating and justifying plans that appeals to the standards of such doctrines. Insofar as some individuals agree on a set of truths and values, they agree on their priorities and can therefore make plans to accomplish their shared goals collectively. This is so because, sharing a comprehensive doctrine, they appeal to the same standards of correctness and justification when discussing what is worth doing. Arguments produced in this way may also be called a non-public reason, given that each of them is a *reason* to act in a specific way that is not publicly justifiable. Thus, sharing a comprehensive doctrine with others implies sharing a specific non-public reason with them.

The ideal of public reason can be constructed by abstraction from this notion of non-public reason. If we removed all singularities from individuals and avoided the actualization of the specific characteristics human beings may possibly be endowed with, we would limit the available standards and justifications to the minimum, since the set of truths and values that all agree on is considerably reduced.⁴ Imagine believers of religion X deliberate about how their priests should dress during ceremonies. In this case, the pool of truths and values with which X-ians can build arguments is limited to those shared by X-ians. However, now imagine religious believers were deprived of their specific religions X, Y, and Z, and left only with what the three confessions share. If they had to make a collectively binding decision, the pool of arguments available to them would be limited to common truths and values. If we extend this procedure generally across a democratic pluralistic society, the pool of available reasons would eventually be reduced to those standards shared by every single citizen. Accordingly, arguments appealing to such standards would not aim at convincing believers of any specific religion – be it X, Y, or Z – nor, for that matter, any given subset of citizens, but rather at convincing all citizens as such. This is how public reason appears as a form of arguing that provides justifications for every citizen despite irreconcilable disagreements among them.

Public reason is, along with reflective equilibrium and the original position, one of Rawls' key concepts on justification [Scanlon (2003)]. When applied to discussions preceding political decisions, it guarantees that the conclusions reached – i.e., the decisions finally favoured – are supported by reasons that everyone can accept.⁵ Thus, public reason en-

ables profoundly divided individuals to reach agreements on binding decisions that involve the exercise of political power over themselves, precisely because it fulfills the requirement of impartiality owed to free and equal persons.

It is important to note, however, the following two remarks. First, public reason is not how actual individuals always think. It is only part or a specific mode of the whole human reason, which consists of both public and non-public reasons and thus “encompasses all that individuals have reasons to believe and care about” [Williams (2000), p. 201].⁶ This means that the same person may follow the standards of non-public reason when she behaves as an *individual* and those of public reason when she behaves as a *citizen*. Second, and importantly, public reason is not the sum of reasons given in public. As Freeman [(2007), pp. 383-84] points out, the idea of public reason cannot be equated to “the reasons that people in a society share in common” nor to “the will of the majority”. This would mean that a theocratic society in which everyone argues in terms of a specific religion would honour public reason when making decisions based on fundamentalist arguments. Yet this cannot be the case, since for Rawls public reason is an ideal exclusive of democratic societies.⁷

Public reason is a tool for addressing legislation and political decisions which includes “a set of guidelines to regulate the behavior of legislators, judges, and *ordinary citizens*” [Quong (2014a), p. 265; italics added]. It concerns not only actions supported by the recourse to coercive force, paradigmatically those by officials and courts [Rawls (1997), p. 767], but also political deliberation even when it is not to be followed by actual decisions. In this sense, public reason is also an ideal way of arguing and thinking about politics which provides standards for ordinary citizens [Quong (2017), p. 1].⁸ The ideal not only demands a sort of public justification for decisions on those who make them. Crucially, it also offers a standard of public argumentation for those who, despite not making such decisions, discuss about them. This insight is key for the debate on the scope of public reason.

II. THE SCOPE OF PUBLIC REASON

A preliminary issue, before entering the debate on the scope of public reason, is to distinguish it from another related debate: that on the permissiveness of political discussion. Whereas the scope of public rea-

son determines *which decisions should abide by its standards*, the question of permissiveness tells us *which kinds of reasons are allowed to enter into public debate*. Regarding the latter, Rawls clearly adopts a permissive stance, allowing both public and non-public reasons as long as the latter are eventually translated into public ones when taking a decision [Rawls, (1997), p. 776].⁹ Regarding the former, as I will argue, Rawls' stance is less clear. Notice that while the question of permissiveness refers to public debate, the question of scope refers to political decisions. This, however, does not only imply that final decision-makers are the only ones who should offer public reasons, since the ideal of public reasoning might also be used as a standard of public argumentation among ordinary citizens.

There are two major views on how wide the scope of public reason should be. According to the *narrow-scope view*, public reason must be applied to fundamental issues only. By fundamental issues, I refer to those involving what Rawls calls matters of fundamental justice and constitutional essentials. The remaining issues, which I call *non-fundamental issues*, are to be addressed by ordinary legislation or political action and may, on this view, be justified by non-public reasons. The narrow-scope view does not demand that non-fundamental issues be addressed by non-public reasons. It merely claims that they *could* be justified in this way.

Contrarily, the *broad-scope view* blurs the normative difference between fundamental and non-fundamental issues. Indeed, this view claims that all political and legislative actions must comply with the requirements of public reason no matter how insignificant they may seem. The broad-scope view, which has been said to be *naturally* connected to deliberative conceptions of democracy [Gargarella (1999), p. 205], demands that every instance of political power should be justified as publicly as possible, even when related to non-fundamental issues.

To appreciate the difference between both views, consider we had to decide how to build a new highway.¹⁰ A defender of the narrow-scope view would claim that since this decision does not involve fundamental issues, it does not require public justification and could thus be justified by non-public reasons. On the contrary, a defender of the wide-scope view would claim that it should rest on public reasons, just as decisions on fundamental issues. Since the wide-scope view is indifferent to how significant political decisions are, it is more demanding and, according to it, even the colour of traffic signs should be publicly justified.

Despite looking implausible, I will argue that the wide-scope view is both compatible with Rawls' stance and preferable from the point of view of *Political Liberalism*.

III. A PLAUSIBLE READING OF RAWLS' STANCE

Rawls' stance on the scope of public reason is ambiguous. He states that:

the limits imposed by public reason do not apply to all political questions but only to those involving what we may call "constitutional essentials" and questions of basic justice. (...) This means that political values alone are to settle such fundamental questions as: who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity, or to hold property. These and similar questions are the special subject of public reason. Many if not most political questions do not concern those fundamental matters (...) [PL, p. 214; italics added].¹¹

Accordingly, he later concludes that, when non-fundamental issues are involved, public justification is not needed:

Citizens and legislators may properly vote their more comprehensive views when constitutional essentials and basic justice are not at stake; they need not justify by public reason why they vote as they do or make their grounds consistent and fit them into a coherent constitutional view over the whole range of their decisions [PL, p. 235; italics added].

To be sure, at first glance, one might come to conclude from reading these excerpts that Rawls fully rejects the wide-scope view. However, that conclusion may be too hasty. To see why, consider the three following points.

To start with, notice that Rawls nuanced this latter fragment by adding that it is the role of justices to find public justifications or fit decisions into a coherent constitutional view, a role in which "they have no other reason and no other values than the political" [PL, p. 235]. From this one might infer that, even if citizens and legislators need not offer public reasons when addressing non-fundamental issues, ultimately public justifications must be offered when decisions are made. Presumably, if

citizens and legislators do not offer public reasons for a decision, the Supreme Court will either find them or strike it down.

Second, when he explains why not all political questions should be judged by public reasons, Rawls offers a rather illustrating passage on what his view on the scope of public reason might be. Here, he declares:

my aim is to consider *first* the strongest case where the political questions concern the most fundamental matters. If we should not honor the limits of public reason here, it would seem we need not honor them anywhere. *Should they hold here, we can then proceed to other cases.* Still, I grant that it is usually *highly desirable to settle political questions by invoking the values of public reason.* Yet this may not always be so [PL, p. 215; italics added].

This quote shows that in *Political Liberalism* Rawls limits himself to endorsing the narrow-scope view. However, the excerpt also suggests that such confinement is not the result of his rejection of the alternative wide-scope view, but rather a methodological strategy. What is more, both Rawls' claim that it is "highly desirable to settle political questions" by public reasoning and his invitation to "proceed to other cases" beyond fundamental matters seem to feed the thesis that he is sympathetic to the wide-scope view.

Finally, nowhere does he declare that the narrow-scope view would fit better into his theory than the wide-scope view. Indeed, other ideas spread along the book indirectly support the wide-scope view, such as the *ideal* of democratic citizenry as public-reasoning citizens [PL, VI, §2], the Supreme Court as an *exemplar* of public reasoning [PL, VI, §6], or the importance of publicity.¹²

On the basis of these passages one may conclude, *contra* initial hypothesis, that Rawls in fact favours the wide-scope view but *strategically* limits himself to endorsing the narrow-scope view. I suspect that Rawls adopts this less demanding stance not because he believes that public reason should apply to fundamental issues only but rather because, had he straightforwardly endorsed the wide-scope thesis, his theory would have faced difficulties which might have reduced its appeal. Adopting the less defeasible narrow-scope thesis, he protected *Political Liberalism* from critiques such as the ones I will later present, which apply only to the more ambitious wide-scope thesis.¹³

I hope this suffices to show that, even if not explicitly endorsed by Rawls, the wide-scope view is compatible with his ambiguous stance and, at least *prima facie*, with *Political Liberalism* too. Having settled this matter, in the remaining sections I will defend that the wide-scope view is not

only compatible with, but also preferable from the point of view of, *Political Liberalism*. I will do so by refuting the three main arguments in favour of the narrow-scope view, and then offering another one in favour of the wide-scope view.

IV. THE LEGITIMATION-BY-CONSTITUTION ARGUMENT¹⁴

The first argument for the narrow-scope view claims that the wide-scope view is incompatible with the liberal principle of legitimacy, which is a basic tenet of Rawls' theory. This principle states that:

our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational [*PL*, p. 214].

One might argue that, according to this principle, resorting to public reasons to justify decisions is unnecessary, given that political action can be legitimized simply by appealing to the constitution. This point challenges the whole case for the wide-scope view: if appeal to the constitution suffices to justify political action, then not every instance of political power would need to be justified on public reasons. And if at least some political actions could be justified without appealing to public reasons, then the wide-scope view would fail.

Notice, however, that the dilemma between legitimation by constitution and legitimation by public reasons is not a real one for, in the former case, the ultimate source of legitimacy are also public reasons. This is so because the constitution itself must be acceptable to reasonable and rational citizens - which requires precisely that it be justified on public reasons. The liberal principle of legitimacy thus offers a justification shortcut: political action may be justified by appeal to the constitution rather than to first-order public reasons, i.e. reasons directly applying to the issue at stake. Ultimately, though, this means that in the case of legitimation by constitution, political action is also justified on public reasons, even if indirectly. Therefore, the legitimation-by-constitution argument cannot show that the wide-scope-view is contradictory with the liberal principle of legitimacy.

In the following section, I will argue that second-order public justifications should be avoided whenever first-order public justifications are available.

V. THE PRIORITY ARGUMENT

A second argument for the narrow-scope view is the priority argument. It draws from what Hodgson [(2012), p. 303] called Rawls' *basic structure restriction*, according to which the principles of justice apply only to the major social institutions. The priority argument claims that once the basic institutions are adequately justified on public reasons, all remaining institutions and political actions conforming to them are by extension justified [Quong (2004), p. 236; Scanlon (2003), p. 162]. The underlying intuition assumes that, just as the influence of the basic structure extends to all minor issues, its justification will too - provided decisions are taken in accordance with it. The main virtue of the priority argument is that it simplifies justification: instead of having to appeal to first-order reasons for each decision being taken, one could appeal - like in the case of legitimation by constitution - to higher-order procedures derived from the basic structure.

Nevertheless, the priority argument fails to explain why we should not extend first-order public reasons beyond the basic structure. Ordinary political decisions could vastly impact people's lives. Appealing only to higher-order justifications seems hardly acceptable when alternative first-order reasons are available.

Recall the highway case. Suppose now we had only two ways to build the road. In each case, the road would pass near a temple, either of religion X – majoritarian – or of religion Y – minoritarian –, disturbing its ceremonies. According to the priority argument, the decision will be acceptable if taken in accordance with a well-justified basic structure. Therefore, the decision may be taken by the legitimate authority simply in virtue of legislative majority. It is likely then that the road is built disturbing the temple of Y-ians, given that X-ians are the majority. However, offering first-order public reasons specifically applying to the case seems morally preferable. Indeed, restricting justification to second-order procedures might involve a tactic to hide deciders' non-public reasons. It is hard to see how the decision could be acceptable to all the parties involved without first-order public reasons backing up a majority-based decision. This would amount to telling Y-ians that their ceremonies are

disturbed because they are less powerful than X-ians, which is a hardly convincing non-public justification.

The highway-temple case shows that the basic structure restriction allows deciders to hide their non-public reasons under well-justified decision-making processes, thus yielding decisions whose acceptability is at odds with neutrality.¹⁵ If decisions complying with second-order justifications can remain unjustified, as seems to be the case, then the priority argument is wrong: that the basic structure be justified does not suffice. As a corollary of the rebuttal of the priority argument, we might add that, when first-order public reasons are available, declining them in favor of second-order public reasons tends to undermine public justification.

VI. THE COMPLETENESS ARGUMENT

A third argument for the narrow-scope view is the completeness argument [Quong (2004), p. 241], which is grounded on Rawls' statement that a political conception of justice needs to be complete. What Rawls meant by the completeness of justice is that “[f]or an account of public reason we must have a reasonable answer, or think we can in due course find one, to *all, or nearly all* those cases” [PL, p. 225; italics added]. Otherwise, public reason would fail to accomplish its main function, which is to provide a common basis to resolve political questions [Quong (2014b), p. 267]. The completeness argument claims that public reason could not offer answers to all questions arising during politics, but only to those involving fundamental issues. Therefore, the argument concludes, in order to meet the criterion of completeness, the scope of public reason must be narrowed.

Judging from the previous quote, it seems that for Rawls completeness would be met even if public reason provided answers to *nearly all* questions only. However, it is unclear which, or how many, questions it could leave unanswered before becoming incomplete. To simplify things, here I will work with the assumption that, in order to be complete, public reason must be able to provide answers *to every single question it faces*. Conceived this way, completeness is more demanding than in Rawls' original formulation and, consequently, the completeness argument becomes stronger - to reject it, one would have to show that public reason can provide answers to *every question* it faces, not merely to *nearly all*. This is what I will argue in the remainder of this section.

Before turning to that, however, let me note that my notion of completeness, like Rawls', does not require public reason to solve every kind of conflict.¹⁶ Indeed, such a notion does not change the *quality* (i.e. the kinds) of conflicts that public reason needs to settle, but only their *quantity*: what it states is that public reason should solve every conflict *of the kind it faces*. And the conflicts public reason faces are *practical questions*, i.e. questions about what should be done by a group of free and equal citizens who exercise political power among each other. To claim that a notion of public reason offers answers to every question it faces, then, means only that it can provide a *practical solution* to every conflict of this *practical* kind. What is necessary, then, is that despite enduring conflict we can find public reasons that make us agree on what to do *for all, and not merely nearly all*, the practical problems on which as citizens we have to decide. Strictly speaking, this does not require agreeing on all facts, values, or metaphysical ideas, nor does it require suppressing the sources of conflicts — an impossible task.¹⁷

I now turn to refuting the completeness argument, which may take two forms that I call the subjective and the objective forms.

VI.1 *Subjective Form*

The lack of publicly justified answers might, first, be caused by *subjective motives*, i.e. not because public reason fails to offer an adequate answer but because it is implausible to expect citizens to reach one through their ordinary argumentative exercise. In this subjective form, the completeness argument could be presented as a complaint against the demanding character of the wide-scope view [Quong (2004), p. 245; Horton (2003), p. 15]. This view would be excessively demanding because, when discussing political issues, individuals often cannot detach themselves from their private interests. Assuming for the sake of argument that this were the case, should we then endorse the narrow-scope view and, therefore, allow citizens and officials to turn to non-public reasons, as some [Reidy (2000), p. 69]; Horton [(2003), p. 14] suggest?

I think not. To be sure, it is *understandable* that some citizens appeal to non-public reasons when public reason standards are difficult to honour. However, that they do so is still *unacceptable*. As Forst [(2012), chap. 1] has explained, the rational grounding of an action does not entail its moral justification. In these cases, disagreement on what to do “shows only that reasonable individuals are likely to come to incompatible political conclusions or, arguably, that some will lack the capacity to discover what public reason decisively favours” [Williams (2000), p. 206]. Just as

we should not say that cars are useless because some people do not know how to drive them, we should not blame public reason for some individuals' incompetency. As stated above, public reason is not the reason of actual individuals, but an ideal.¹⁸ Legitimate options are those meeting the standards of an ideal procedure of argumentation and justification, not those with wide popular support - otherwise, anything that a bigoted majority imposed over a reasonable minority would be justified. The only motive not to apply the standards of public reason in such cases would be fear of conflict with unreasonable and potentially dangerous majorities, not the incompleteness of public reason. But fear should not make anyone refrain from the task of justice.¹⁹

I suspect that the completeness argument is attractive in its subjective form because we do not like to fail to our normative standards. Hence, we prefer having easily satisfiable ideals. By narrowing the scope of public reason, the cases in which we could fail are reduced and, consequently, the ideal of public reason becomes easier to satisfy. That is why Reidy [(2000), p. 65] is right when he calls Rawls optimistic for expecting that citizens and officials honour public reason. Nevertheless, difficulties in honoring an ideal do not necessarily invalidate the ideal. Ideals are not simply to be accomplished. They are also to lead us towards a better world. Not being able to fully honor the ideal of a democratic citizenship by detaching oneself from self-centered argumentative standards does not suppress the ideal of public reason nor its demand to offer mutually acceptable arguments.

The task of normative democratic theory is not to adapt normative demands to actual citizens' conducts but to describe the normative demands to which the conducts of actual citizens should adapt. As Rawls said, the ideal of a democratic citizenry which honours public reason "describes what is possible and can be, yet may never be" [*PL*, p. 213]. Thus, the concern of a theory of public reason is not how people argue but how they *should* argue.

In its subjective form, the incompleteness argument fails because it tries to define the scope of the ideal on the grounds of how real people argue. In doing so, it confuses how things are with how they should be, and it misses the point of normative theory.

VI.2 *Objective Form*

The incompleteness argument may take another form, the *objective* one, which is stronger. In this form, the argument claims that the lack of

public justification arises *due to objective motives*, i.e. the incapacity of public reason to answer a question adequately [Larmore (2003), p. 163]. This might happen either because public reason cannot offer any answer or because it offers different answers but is unable to conclude which is preferable. In the first case, public reason is *indeterminate*; in the second, it is *inconclusive* [Schwartzman (2004), p. 193].

Consider first the case of inconclusiveness. Inconclusiveness happens when public reason “fails to generate convergence among reasonable people on a single political outcome” [Schwartzman (2004), p. 194]. The alternative decisions are mutually exclusive, and their justifications are equally strong. These stand-offs occur when questions have “a plurality of incompatible maximally reasonable answers and have no *uniquely* reasonable answer” [Williams (2000), p. 204; italics original]. Going back to the highway-temple case, imagine now that there was no majoritarian religion, both temples were architectonically equally valuable, each option comprised equal environmental and economic costs, and so on. In other words, imagine that after considering all the relevant first-order public reasons both options were tied. Why not invoke non-public values to break the stand-off?²⁰

My answer is that in cases of alleged inconclusiveness, public reasons are actually available. When first-order reasons are inconclusive, we can recur to higher-order public reasons which might include, for instance, random decision-making processes [Williams (2000), p. 210; Schwartzman (2004), pp. 209-14]. Having these options available, the accusation of inconclusiveness against public reason vanishes. Moreover, we should reject non-public reasons if public ones are available. Breaking a stand-off seems more reasonable, legitimate, and convincing when done through a decision-making process supported by public reasons rather than through a partisan one. In the highway-temple case, the parishioners of the affected temple would presumably find the decision more acceptable and justified if, given a tie between first-order public reasons, they were taken through a procedure settled independently of non-shared beliefs. Otherwise such a decision could hardly be justified before all upon whom it is imposed.

Consider next the accusation of indeterminacy. Indeterminacy consists in public reason failing to provide “a sufficient reason for selecting between two (or more) responses to some issue” [Schwartzman (2004), p. 196]. Whereas inconclusiveness consisted in failing to determine which among several acceptable options was best, indeterminacy consists in failing to offer any acceptable option whatsoever. In this form, the

completeness argument states that there are cases in which it is impossible to find any mechanism that manufactures decisive reasons without recourse to sectarian first-order reasons [Williams (2000), p. 211]. The most common case of alleged indeterminacy is abortion: since the moral status of the foetus cannot be determined by public reason, we seem to lack any publicly justifiable answer to how abortion should be legislated. My answer to this argument is two-fold.

First, note that the accusation of indeterminacy takes for granted precisely what it wants to show: it relies on the assumption that a reasonable agreement is impossible in some cases, but this simply begs the question [Williams (2000), p. 207]. The best way to test whether or not there is indeterminacy is precisely to engage in public debate, applying the norms of public reasoning to the controversy at stake, in order to figure out whether a reasonable agreement is possible, instead of considering some issues as inherently refractory to public reason [Quong (2004), p. 243]. And, in fact, it is doubtful that public reason cannot guide us in every case. Despite not being able to answer some questions relevant to a decision, for instance that of foetuses' moral status in the case of regulating abortion, public reason may still provide answers to other related questions which can ultimately help us reach an acceptable solution.²¹ This might also apply to controversies such as stem-cell research or prostitution.

Second, even if public reason were incomplete, this would not justify fully rejecting the wide-scope view. Just because power could not properly be justified in *some* cases, we would not need to renounce to the aspiration of applying public reason as far as possible - that is, to every instance of power, like the wide-scope view claims. Indeed, this aspiration is more in line with the spirit of liberalism, which assumes that a society in which political power is always exercised on the basis of mutually acceptable reasons is preferable to one in which power is exercised arbitrarily. A wholehearted liberal would not renounce to this aspiration as a result of a few cases of indeterminacy; she would simply lament that sometimes we are doomed to decide following bad - i.e. nonpublic - reasons. It is true that this may imply renouncing to the Rawlsian belief that ideals express feasible things, and that we might need to accept tragically that, at least sometimes, ideals are unattainable. We should then conclude that life contains a degree of bitterness, for we are doomed to fail to our ideals, no matter how hard we try. But as I said before, difficulties in honouring an ideal are not good motives to discard it.

VII. THE BLURRED-DISTINCTION ARGUMENT

So far, I have adopted a defensive strategy. First, I have argued that the wide-scope view is compatible with Rawls' stance on the scope of public reason. Second, I have rejected the main arguments for the narrow-scope view: the legitimation-by-constitution argument, the priority argument, and finally the completeness argument. It is now time to move from defence to attack.

In this section I will offer an argument, which I call *the blurred-distinction argument*, supporting the thesis that the narrow-scope view is unsound. This argument is inspired in a critique by Greenwalt [(1993), pp. 685- 88] claiming that some of the concepts used by Rawls rest on distinctions which are difficult to draw. According to the blurred-distinction argument, because the line dividing non-fundamental from fundamental issues is not clear enough, the narrow-scope view cannot succeed, as there is no way to determine on which side of the alleged divide the relevant issues fall. This argument takes two forms, which I call the weak and the strong form.

VII.1. *Weak Form*

In its weak form, the argument says that Rawls did not provide a fully clear definition of concepts such as “matters of basic justice” or “constitutional essentials” [Greenwalt (1993), p. 686]. Since the narrow-scope view is constructed upon a distinction between these and non-fundamental issues, the lack of a sufficiently clear distinction makes a critical point against it, for we could not work out which kinds of reasons should come into play for each decision. The two kinds of cases would then seem to collapse into one, forcing us to use a single standard for every decision.

A defender of the narrow-scope view may rightly claim that the success of this view does not directly depend on the precision of Rawls' distinction. Indeed, others may work out a more nuanced distinction between fundamental and non-fundamental issues. Such a defender would certainly be right. Hence, the weak form of the blurred-distinction argument fails to show that the narrow-scope view is wrong. It merely shows that a narrow-scope view that rests on Rawls' underdeveloped distinction between fundamental and non-fundamental issues would be unsound.

VII.2. STRONG FORM

However, the blurred-distinction argument may be presented differently, in a way that truly shows why the narrow-scope view is uncon-

vincing. In its strong form, this argument claims that the distinction between fundamental and non-fundamental issues cannot properly be made. It asserts that even apparently minor decisions are connected - sometimes indirectly — with more important issues. Even if we could draw a clear theoretical line between what constitutes each kind of issue, in practice the distinction is too blurred to justify the shift from public to non-public justifications. Think again of the initial highway case. Apparently, fundamental issues are not at stake. But is the decision really disconnected from fundamental issues? I think not. Whether or not, and how, the highway is built will condition the possibilities that people have of moving from one place to another, which will affect their lives in fundamental ways. It might, for instance, enable people living in slums to access the city centre and increase their access to services and job opportunities. Thus, although the issue seems non-fundamental, it is ultimately connected with a fundamental issue such as freedom of movement, which is according to Rawls a constitutional essential [*PL*, p. 230].

I might be accused of cherry-picking. Since highways are major infrastructures, it seems easy to identify a direct impact on citizens' basic rights. But this does not prove that *any* decision could ultimately be connected to fundamental issues, as the blurred-distinction argument would want to defend. What about the colour of traffic signs in the highway? Earlier I said that for a wide-scope view even this decision should rest on public reasons. Yet it is hard to see how the colour of traffic signs could relate to any fundamental issue. It is certainly harder — but not impossible. Think that some people are colour blind. If the colours of traffic signs are indistinguishable for them, driving would be arduous or even impossible. Thus, the colour of traffic signs is in fact connected with a fundamental issue such as equal freedom of movement. If public reasons were not required for these apparently trivial decisions, the interests of all citizens would not be equally considered, and such decisions could be settled arbitrarily. For example, the traffic signs could be designed according to what the Ministry believes the colours of purity are. Designing signs through a process that considers public reasons, like which conditions affect human sight, would yield more acceptable and legitimate decisions.

If this is correct, then the blurred-distinction argument is right and the distinction underlying the narrow-scope view should be rejected. The two apparently detached categories of fundamental and non-fundamental issues would become a single one and their *fundamentality* would be a scalar rather than a discrete property.

From this, we do not need to straightforwardly conclude that the wide-scope view is the correct one: one might claim that after losing the distinction, no issue is fundamental and public reason should disappear altogether. But that would mean the end of liberal politics. It seems to me that the only prudent solution is to embrace the wide-scope view and try to justify every single political decision on public reasons, regardless of whether the issue seems fundamental or not.

VIII. CONCLUSION

Despite initial appearance, the wide-scope view of public reason is compatible with Rawls' *Political Liberalism*. The main arguments against it fail. The legitimation-by-constitution argument does not show how it would be incompatible with the liberal principle of legitimacy. The priority argument fails to show why we should restrict the use of public justification to fundamental issues. And the completeness argument fails to show both that public reason is inconclusive and that it is indeterminate. At the same time, the blurred-distinction argument shows that the distinction between fundamental and non-fundamental issues, upon which the narrow-scope view is constructed, is seriously doubtful. All these considerations suggest that the wide-scope view is preferable to its alternative. Therefore, the use of power should be justified by public reasons in every instance, and not merely in those cases involving fundamental issues.

*Law Department
Pompeu Fabra University
Ciutadella Campus
c/ Ramon Trias Fargas, 25-27,
08005 Barcelona, Spain
E-mail: ruben.marciel@upf.edu*

NOTES

¹ I am deeply thankful to Laura Sánchez de la Sierra for her meticulous reading, review, and correction of this article. Thanks to her suggestions and comments, the English text is much clearer for the reader and the whole article better structured and more precisely argued than in its initial drafts.

² Henceforth, references to Rawls' *Political Liberalism* (1996) will be noted as *PL*.

³ Though at first sight this thesis might be surprising, denying the existence of private reasons fits well within the general conceptual framework of society as a cooperative system [*PL*, pp. 40-43]. Under this prism, it is coherent to think that a single individual cannot fulfil the second feature of reason - the accomplishment of plans — without others. Anyone would need the cooperation of others in order to achieve any priority-based plan.

⁴ The process of abstraction here described resembles that of the parties in the original position, for it also eventually leads to the abstract conception of the citizen, which Rawls expresses through the political conception of the person and whose incarnation are such parties [*PL*, pp. 22-35]. These, locked in the original position, cannot appeal to anything else than the general assumptions contained in the political conception of the person. Something similar seems to be the conclusion of the process of abstraction from non-public to public reasons.

⁵ This is precisely what the liberal principle of legitimacy claims. This is so because it states that “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason” [*PL*, p. 137]. For a similar account of legitimacy see Waldron (1987), p. 140.

⁶ Williams calls *right reason* what I have called *whole reason*. Both terms refer to a concept of reason that unifies the public and the non-public modes of reasoning. This dualism can be appreciated - interchanging the names — in Kant's [1784 (2004)] *What is Enlightenment?*

⁷ This is how I interpret his claim that it “is part of the idea of democracy itself” [Rawls (1997), p. 765]. Rawls does not seem to be thinking on how actual individuals would discuss were they forced to negotiate with opposed views. In this case, renouncing to non-consensual ideas and limiting them to whatever is shared through society would suffice. Rawls is thinking on a certainly idealised society whose members are also certainly idealised. They profess a variety of reasonable liberal doctrines and their way of arguing does not merely consist in contemporising with others' interests, but in appealing to what all reasonable citizens share. These considerations will be crucial for opposing the completeness argument in its subjective form (see section VI.1 below).

⁸ This intuition seems to underlie the duty of civility, which applies to citizens when they engage in political discussion about questions of basic justice and constitutional essentials [*PL*, p. 217].

⁹ For a debate on the translation of non-public reasons into public ones, see Habermas (2006).

¹⁰ I take the example from Scanlon (2003), p. 163.

¹¹ As examples of non-fundamental issues he refers to “tax legislation and many laws regulating property; statutes protecting the environment and controlling

pollution; establishing national parks and preserving wilderness areas and animal and plant species; and laying aside funds for museums and the arts” [PL, p. 214].

¹² Rawls says that “a political conception assumes a wide role as part of public culture. (...) *To realize the full publicity condition is to realize a social world within which the ideal of citizenship can be learned and may elicit an effective desire to be that kind of person.* This political conception as educator characterizes the wide role” [PL, p. 71; italics added].

¹³ Larmore (2003), p. 381, holds a similar intuition. Indeed, the wide-scope thesis “Public Reason should apply to every single political decision” is stronger and thus harder to justify than the narrow-scope thesis “Public Reason should apply only to the most important political questions”. The underlying motives for Rawls’ strategic limitation might ultimately respond to his concerns on how liberal institutions acquire stability through history [PL, IV, §§6-7]. In societies where liberalism is making its first steps, democratic forces should focus on building an appropriate basic structure rather than on minor questions which might be addressed after the main institutions are settled. Another explanation for Rawls’ stance, which is compatible with the first, would be that he is simply adopting a more realistic position on what could be agreed to in non-ideal circumstances. Moved by the belief that in real life citizens and officials would not honour public reason, as the wide-scope view demands, he might have adopted a normative standard that is more easily satisfiable. This realistic position might make his theory more attractive in terms of feasibility, but not so much in terms of moral preferability. In the following sections, I will argue along this line. Cohen (1991) has advanced a similar critique against Rawls’ difference principle on the grounds that its formulation responds to real-world circumstances, such as incentives and bargaining power, rather than to purely normative considerations.

¹⁴ I am thankful to the anonymous reviewer for his/her comments, which led me to develop this section. The name ‘legitimation-by-constitution’ is also inspired by the reviewer’s comments.

¹⁵ The same logic might be followed to justify the state in pursuing perfectionist values, such as funding sport arenas with public money [Freeman (2007), p. 396].

¹⁶ In his article *The Idea of Public Reason Revisited*, Rawls said that there are three main kinds of conflicts between citizens, each stemming from a different source: comprehensive doctrines, social and natural differences, and the burdens of judgement [Rawls (1997), p. 804]. Political liberalism aims fundamentally at solving conflicts of the first kind, i.e. those arising from irreconcilable comprehensive doctrines: “it holds that even though our comprehensive doctrines are irreconcilable and cannot be compromised, nevertheless citizens who affirm reasonable doctrines may share reasons of another kind, namely *public reasons* given in terms of political conceptions of justice” [Rawls (1997), p. 805, italics added]. Being able to solve this kind of conflict, political liberalism would also be able to solve the second kind, i.e. conflicts arising from social and natural differences [ibid.]. However, the third kind seems unfit to be solved by public reason, since “conflicts arising from the burdens of judgment always exist and limit

the extent of possible agreement" [ibid.]. I am grateful to the anonymous reviewer for his/her comments on this point.

¹⁷ As Sunstein has explained, "[p]articipants in legal controversies try to produce incompletely theorized agreements on particular outcomes. They agree on the result and on relatively narrow or low-level explanations for it. They need not agree on fundamental principle. They do not offer larger or more abstract explanations than are necessary to decide the case. When they disagree on an abstraction, they move to a level of greater particularity" [Sunstein (1995), p. 1736, italics from the original]. More recently, Martí (2017), p. 8, has pointed out, in similar spirit, that a conception of deliberation aiming at solving all disagreements would be self-defeating. What a plausible conception of public deliberation must aim at is only reaching "operative consensus, that is, consensus about the decision to be taken or the action to be undertaken" [Martí (2017), p. 12; italics added; see also Naurin and Reh (2018), p. 730].

¹⁸ Rawls explicitly recognises the possibility that reasonable citizens fail to agree on essential matters - such as abortion - even when appealing to public reasons. However, this does not mean that public reason is to blame [see *PL*, p. lvi].

¹⁹ Contrary to what agonistic critics like Mouffe (1993), chap. 3, argue, Rawls' political liberalism recognises the inner meaning of 'the political', i.e., the Schmittian distinction between friend and enemy. This seems clear when Rawls justifies violence and even the wage of war if it is a necessary condition "to establish political justice. (...) On this account the abolitionists and the leaders of the civil rights movement did not go against the ideal of public reason" [*PL*, pp. 250–51]. Larmore's reading goes in a similar line: "One of the benchmarks not just of Rawls's conception of public reason but of his political philosophy as a whole is that basic justice takes precedence over civil peace or, perhaps better put, that it is a precondition for any civil peace worthy of the name" [Larmore (2003), p. 385]. For an account of agonistic critiques of Rawls, see Ferrara (2014), pp. 92-100.

²⁰ Rawls [*PL*, pp. 240-241] considers inconclusiveness from the perspective of the narrow-scope view and opposes resorting to non-political values when it comes to fundamental issues. Here, I am considering both fundamental and non-fundamental issues.

²¹ This is precisely what Rawls does in relation to abortion [*PL*, p. 243, note 43]. His view is interpreted in more detail by Freeman (2007), pp. 407-8.

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