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Abstract

This article explores the relationship between justice and legitimacy in modern liberal democratic societies. Much debate within contemporary political theory has been dominated by the project of justice which makes discovering the normatively preferable conception of justice one of the political theorists’ key tasks and, in doing so, attributes priority to justice as the central concept in liberal theory. The main argument of this article is that the precedence that political theorists have attributed to justice is no longer compelling once we fully recognize the implications of the backdrop of pervasive disagreement against which liberal political theorizing takes place. Instead, and employing the underappreciated changes in John Rawls’ later work as confirmatory evidence, this article argues that legitimacy must now be given conceptual priority in conditions in which citizens can disagree, and reasonably so, as to which conception of justice is the most preferable. Such a change in the structure of liberal theorizing does, however, necessitate much deeper reflection upon the conditions of legitimacy appropriate to modern liberal societies characterized by endemic pluralism both about the good and the right than it has so far received.
John Rawls famously opened *A Theory of Justice* by declaring that ‘Justice is the first virtue of social institutions as truth is to systems of thought.’ Much of the debate within political theory which has taken place over the past forty years has endorsed the pre-eminence of justice by either focusing specifically on explicating the normatively favoured principles of distributive justice, at both the domestic and global level, or framing other discussions such as multiculturalism or the demands of citizenship within an analysis of justice. The aim of this paper is to argue that the central role that contemporary political theorists have attributed to justice is no longer compelling once we fully recognise the implications of the backdrop of pervasive pluralism against which liberal political theorising takes place. Rather, the paper argues that in conditions of pluralism the concept of legitimacy should be given priority over justice as the central theoretical question becomes how any conception of justice can legitimately regulate the basic structure of society if citizens disagree, and reasonably so, about which conception is most appropriate for a liberal democratic society. If this is right then it will also necessitate further reflection upon what the conditions of legitimacy should be in modern liberal societies characterised by endemic pluralism both about the good and the right.

The paper is divided into four sections: The first examines the conditions for justice and legitimacy in contemporary liberal thought. It argues that the justificatory conditions for the two evaluations are the same insofar as they both require that the set of principles under examination can be the subject of the universal consent of all those who would be regulated by them. The second section then explores how pluralism, specifically reasonable pluralism, affects the conditions for justice and legitimacy. The central argument of this section is that reasonable pluralism introduces the possibility that a conception can meet the criterion of universal consent, and thus be considered just, but still not legitimately regulate (in Rawlsian terms) the basic structure of society. This is because in conditions of reasonable pluralism individuals can reasonably disagree about which conception best meets the relevant criteria for justice, though they might all agree that many different ones do (if only minimally so). But this means that a separate and distinct account is then required to justify the basis on which any one conception can legitimately regulate the basic structure. If there is a plurality of liberal conceptions of justice, all of which are candidates for legitimately regulating the basic structure, a story is needed to explain what legitimates any particular one of them actually doing so. This is, in effect, to make legitimacy conceptually prior to justice and to subvert the pre-eminence that much liberal theory has given to the latter concept. The next section of the paper tries to provide confirmatory evidence for the claim of the previous one by showing how Rawls was moved to change his mind about the relationship between justice and legitimacy over time as his views about the scope of reasonable pluralism developed. This change in Rawls’ work on political liberalism is often overlooked but indicates the important consequences that altering our understanding of the relationship between justice and legitimacy has for the structure of liberal thought. Finally, the last section looks at some wider implications that thinking about justice and legitimacy in the way I defend will have for liberal theory.
The Conditions of Justice and Legitimacy

The aim of this section is to show that contemporary liberal theory has tended to assume that the conditions for justice are the same as, or synonymous with, the conditions of legitimacy. What this means is that the same arguments used to explain why a particular set of principles are to be thought of as just (rather than unjust or prudent) are the same as the arguments employed to demonstrate that they are legitimate. In meeting the conditions for one, a conception therefore automatically meets the conditions for the other. Demonstrating this will be easiest if we begin with legitimacy.

A conception of justice’s legitimacy relates to its exclusive right to regulate the basic structure of society according to its principles and in doing so impose legal duties on those subject to it, to have those principles obeyed, and to coerce non-compliers via the use of state power. The right of legitimacy gives rise to correlative obligations and in doing so constitutes a special relationship between a particular conception of justice and those individuals subject to it. Legitimacy is one of the most basic concepts of politics and amongst a handful, along with power and sovereignty for instance, which do not also feature in moral philosophy. It is a distinctively political concept. You are as likely to see discussions of freedom, equality, autonomy, and rights in a paper on moral philosophy as you are in a paper on liberal theory. But the same cannot necessarily be said of legitimacy largely because it is a concept which is only required when a power relationship is present and an explanation is required as to why power is being, in any particular instance, rightfully employed. By putting conditions on the use of power, we are able to distinguish between legitimate occasions of power and arbitrary acts of violence.

Jeremy Waldron wrote in his seminal article ‘Theoretical Foundations of Liberalism’ that the fundamentally liberal thesis, the idea that distinguishes it from all other political creeds, is a particular view about the relationship between the justification of social and political arrangements and their legitimacy: ‘a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it; the consent or agreement of these people is a condition of its being morally permissible to enforce that order against them’. The view that the legitimacy of the political order depends on the consent of those subject to it is a common liberal one which we can fairly straightforwardly recognize in the work of many liberal theorists. To identify but a handful, in his Equality and Impartiality Thomas Nagel writes that “the task of discovering the conditions of legitimacy is traditionally conceived as that of finding a way to justify a political system to everyone who is required to live under it ... the search for legitimacy is a search for unanimity”. Likewise, Rawls stated that “the basic structure and its public policies are to be justifiable to all citizens, as the principle of political legitimacy requires”. In his ‘Remarks on Political Philosophy’ he also wrote that ‘A legitimate regime is such that its political and social institutions are justifiable to all citizens — to each and every one — by addressing their reason, theoretical and practical. Again: a justification of the institutions of the social world must be, in principle, available to everyone, and so justifiable to all who live under them. The legitimacy of a liberal regime depends on such a justification’. And Jean Hampton wrote that liberals are committed to the tenet that ‘Any political society must be justified to the individuals who live within it, if that society is to be legitimate’. In the work of these theorists, and many others, we find time and time again the thought that the question of legitimacy is addressed by determining whether that which we are seeking to legitimate is justified to the constituency of
persons subject to it. While we might disagree with Waldron that this particular view of legitimacy is what distinguishes liberalism from all other ‘isms’, it is hard to deny Rawls’ contention that it is a central thesis of liberal theory.\textsuperscript{viii}

We can state this understanding of the liberal condition of legitimacy thus:

\textbf{LCL:} A conception of justice is legitimate if it can be shown to be the subject of agreement of all those who would be (or are) regulated by it.

Universal consent is, as liberal philosophers are aware, a highly unlikely phenomenon in most areas of human life; possibly politics more than most others. As such, the strategy of seeking to show that there is a conception of justice which actually enjoys universal affirmation is rarely pursued. Instead liberal theorists have devised numerous ingenious ways to show how a conception of justice could be the subject of universal hypothetical consent by arguing that it would be accepted by all if we imagine ourselves in some idealised situation such as a state of nature or original position. The fact that a conception of justice enjoys a universal justification is enough to show that it is a conception which all should accept even if they currently do not, or as Kant put it, ‘even if the people is at present in such a position or attitude of mind that it would probably refuse its consent if it were consulted’\textsuperscript{x}. The differences between, and indeed plausibility of, actual or hypothetical consent theories of legitimation need not detain us here, nor do I want to get involved in the question of whether hypothetical justifications are sufficient to ground the sort of claims to legitimacy (and its corollary obedience) that they seek to.\textsuperscript{x}

I mention this distinction only because liberal theorists have largely accepted it as enabling them to bypass the obvious empirical point that no political regime or conception of justice enjoys the unanimous consent of those subject to it which would otherwise be immensely damaging to their account of legitimacy. Though there is good reason to doubt they are right on this point, for the purposes of this paper I shall assume that an adequate response to this problem can be offered so as to engage with liberal theory on its own terms.

The demand for universal consent is generated by a particular moral understanding of the person viewed as free and equal. Liberals take the freedom of the individual to be violated at a fairly basic level if they are compelled or coerced to live according to principles or laws which could not garner their free consent. This is to treat individuals as means rather than ends and thus contravenes a fundamental liberal moral principle. As Charles Larmore states, ‘To respect another person as an end is to insist that coercive or political principles by as justifiable to … [other] person[s] as they are to us. Equal respect involves treating in this way all persons to which such principles apply’.\textsuperscript{xii} And this concern about violating the freedom of others is amplified when we consider the vast inequality between the irresistible power of those directing the activities of the state, with its technological, administrative, and numerical superiority when it comes to such things as its surveillance and military capacity, compared to that of the individual. Ensuring that the political power can only be used according to principles which individuals would agree to is therefore to protect the individual and ensure that if political power is ever used to coerce compliance or enforce duties, it is used in a way that respects rather than violates
the individual’s freedom. The fact that all persons are assumed to be morally equal means that this concern about the violation of their freedom stretches to all individuals, regardless of characteristics or qualities such as their race, religious beliefs, sexuality, or ethnicity. This explains why the justificatory net is cast as wide as possible and legitimacy becomes dependent upon the consent of all those subject to the political power in question rather than any particular constituency (e.g. men, whites, Christians, etc.) within the totality. Liberals recognise that living in a political community is a necessary feature of human existence and that the use of power to enforce compliance with laws, duties and principles of justice is indispensable in ensuring its stability and maintenance, but they believe that this power must be subject to the moral constraints of legitimacy in order to ensure that when political power is used it is done in ways which respect the freedom and equality of all individuals.

There are two grounds on which we might seek to demonstrate the justness of any particular set of principles. The first is on prudential grounds whereby we demonstrate that this particular set of principles are rationally preferable to all alternatives on the basis that they provide more of the sort of goods that individual’s desire or need than any others. The other basis for justification is to show that the conception is morally defensible. Liberal theorists have most often attempted to provide a justification for their favoured conception of justice which combines these two criteria. The rationale for this is that it provides a justification which speaks to an intuitive idea that justice is not simply based on what would bring us as individuals the most of the goods we want or need but that justice must balance the interests of individuals within a wider moral context. Rawls, for example, assumes that persons are both rational and reasonable, which is to say interested in the pursuit of their own conception of the good but also desire to treat others as free and equal citizens. Brian Barry likewise sought a justification for his preferred conception on the basis that it too struck a balance between altruism and mutual-advantage and ‘capture a certain kind of equality: all those affected have to feel that they have done as well as they could reasonably hope to’. And Nagel seeks a set of institutions ‘within which persons can live a collective life that meets the impartial requirements of the impersonal standpoint while at the same time having to conduct themselves only in ways which it is reasonable to require of individuals with strong personal motives’.

In justifying a set of principles as just, the liberal theorist seeks to demonstrate how their favoured conception can be the subject of free rational endorsement within the constraints of what is morally permissible. And many different conceptions have been recommended on this basis, including Rawls’ justice as fairness, Barry’s justice as impartiality, and Dworkin’s egalitarianism, to name just some of the most prominent. Though the details of each argument are obviously different, common to all is the idea that whichever conception is being advocated must meet the liberal condition of justice:

**LCJ:** A set of principles are just if they can be shown to be the subject of agreement of all those who would be (or are) regulated by them.
Liberal theorists have employed various different arguments to show how their favoured conception meets this condition. Some, most notably Rawls, have argued that the appropriate test is whether a conception of justice is one that we can reasonably expect others to accept. The condition, on this account, is one of reasonable acceptability. Others have preferred to demonstrate how their conception of justice could be the focus of universal consent by showing that it is not a conception that can be reasonably rejected, and, drawing upon the work of Thomas Scanlon, Brian Barry’s work best exemplifies this approach. Nevertheless, whether we employ a test of reasonable acceptability or reasonable rejectability in either case the same moral criterion of seeking to ensure that the principles which regulate the basis structure can be affirmed by all those who are to be regulated by them is present.

The LCJ is a moral criterion insofar as what generates the thought that any conception of justice must be acceptable to all citizens of the political community is the demand that we respect the freedom and equality of others. To expect persons to live according to distributive principles which they could not affirm, especially when those principles regulate the basic structure of society and hence play a fundamental role in determining the life chances of all individuals, would not be to treat them as free and equal. This is important because it excludes other, potentially attractive, ways of thinking about the conditions of justice. In particular it means that we cannot think of the conditions of justice as purely external criteria which determine the justness of principles totally independently of the questions of whether persons could rationally accept them or not, especially in extreme cases where the interests of some are sacrificed for those of others or where Platonic noble lies are required to ensure obedience. Liberals demand that their justifications for a conception of justice be transparent and open to all because of a particular view they have of the equal moral worth of all persons.

The LCL and the LCJ therefore share a common moral foundation in the familiar liberal concern for respecting the freedom and equality of all persons. As political conditions they are nonetheless continuous with a central feature of liberal morality. But they represent responses to two different political issues that this foundational belief generates. The LCL addresses the liberal apprehension regarding power, that though individuals must live together in political societies in which the use of political power is an essential and necessary feature, the modern state is vastly unequal to the individual in terms of the power it can wield and thus a constant potential threat to their freedom. By ensuring that power is used legitimately, that is to say according to principles which all persons could accept, is therefore to protect the individual against the state and ensure that his freedom is not violated. The LCJ attends to a different concern, one which Rawls captured in *A Theory of Justice* when he discussed the ‘profound effects’ that the basic structure has on individual’s lives insofar as we are all born into social positions which largely determine our ‘initial chances in life’. Some position will afford greater chances to those who occupy them than others yet the question of who starts off in which position is not determined by merit or desert but by luck, who happens to be born to whom, where and when. But to leave the matter of individuals’ life chances to luck is an affront to their moral equality insofar as it allows people to benefit or suffer, throughout their lifetimes, because of contingencies over which they had no control. We therefore make justice subject to the criterion of universal consent to ensure that life chances are fairly distributed and in doing so acknowledge the moral equality of all individuals.
In order to merit being either legitimate or just, a conception needs to meet the criterion of universal consent; it needs to be shown that those principles can be affirmed by all those who are, or will be, subject to them. Hence the requirements of showing how any particular set of principles are just will also demonstrate that they are legitimate, and vice versa. While it might be going too far to suggest that this conflates the question of a conception’s justness and its legitimacy totally, it nevertheless certainly makes it difficult to see any significant difference between the justifications required for either. In effect, no extra argumentative work is needed to move from one evaluation of a conception to the other. Both evaluations of a conception, its justness and legitimacy, can be determined by showing whether it is acceptable to the entire relevant constituency of persons or not.

A consequence of this has been that discussions regarding legitimacy as a concept have been relatively absent in contemporary liberal theory, certainly in comparison to discussions around justice or compared to the attention that our liberal predecessors such as Locke and Rousseau gave to it. It is incredibly telling that legitimacy does not have an entry in the indexes of many of the central texts of contemporary political theory, including Rawls’ *A Theory of Justice*, Raz’s, *The Morality of Freedom*, Young’s *Justice and the Politics of Difference*, Nozick’s *Anarchy, State, and Utopia*, Sandel’s *Liberalism and the Limits of Justice*, Dworkin’s *Sovereign Virtue*, Kymlicka’s *Multicultural Citizenship*, or Walzer’s *Sphere’s of Justice*. And though it does have an entry in other texts such as Barry’s *Justice as Impartiality*, it has far fewer references than other concepts or terms, including justice. It might be tempting to simply put this down to a change in focus away from legitimacy and towards justice, which could be justified by a variety of theoretical and practical reasons. And though there is undoubtedly something in this, discussions of legitimacy, rather than being totally absent in contemporary political theory, have actually been subsumed into discussions of justice which is made possible by the theoretical assumption that the two forms of normative evaluation share a common condition. So while it should strike us as an idiosyncratic and unique feature of liberal political theory that so little attention has been dedicated to legitimacy and so much to justice, it is possible to explain this once we properly understand the nature of the justification required for both.

**Pluralism and the Criterion of Universal Consent**

There are two ways in which we might understand the criterion of universal consent common to the LCJ and the LCL. The first is as a comparative standard. On such a reading it would hopefully be possible to employ the criterion of universal consent to justify one of two unique claims to justness: either that there is one (and only one) conception which is consistent with the criterion, and therefore the only truly just conception, or that there is one conception which better meets the criterion than all others, and is hence the most just conception. In either case the criterion of universal consent allows us to say that there is one conception which has a comparative and superior claim to justice and therefore the obviously preferable set of principles. This is a fairly common way of thinking about the sort of justification required for a conception of justice and it has been prevalent throughout contemporary liberal theory. Rawls (at least in his earlier work) and Dworkin, for example, did not think that their favoured conceptions were equally just compared to its rivals but that it had some unique claim to being the most just...
conception available to us. And once the unique claim to justness has been demonstrated, an equally compelling case for the conception’s legitimacy automatically follows. If we think of the criterion of universal consent as a comparative standard then the synonymity of LCJ and the LCL is maintained insofar as it is a necessary and sufficient condition of both that a set of principles be acceptable to all those subject to them. Any just conception will be legitimate and any legitimate conception necessarily just.

A different way of thinking about the criterion of universal consent is as a minimum rather than a comparative standard. On this view, the criterion has a more limited role insofar as it provides a necessary and sufficient condition for determining the justness of a conception but is not, or cannot, be employed to distinguish any one conception as preferable or more just than any other. Rather then being used as a way of identifying a superior conception of justice, the criterion is used as a threshold test which allows us to exclude particular conceptions as incompatible with the moral demands of liberal theory, and hence unjust, but it is not employed as a means of making evaluations between different conceptions of justice as it is if we take it to be a comparative standard. This then presents us with a different picture of justice in modern liberal society: instead of having identified the superior conception of justice which therefore has the most legitimate claim to regulating the basic structure, if we take the criterion to be a minimal standard then what we have is a series of suitable conceptions of justice all of which compete, and with valid claims given their consistency with the criterion of universal consent, for the right to regulate the basic structure.

However, legitimacy is a more exclusive evaluation than justice. Only one conception can be legitimate at any one time in the sense that only one conception can determine the rights and duties of citizens and state power can only be used to enforce compliance with the principles of that conception rather than any other when obedience is not forthcoming. We might think that several conceptions could legitimately regulate the basic structure, all those that meet the LCJ, but only one can actually be legitimate. A consequence of thinking about the criterion of universal consent as a minimal standard is therefore that the conditions for justice and the conditions for legitimacy can no longer be the same as they are if we think that the criterion of universal consent is a comparative standard. If several conceptions can simultaneously be just but only one can be legitimate then clearly the conditions which determine if a conception is just cannot be the same as those which determine if they are legitimate. In answering whether a conception is just we do not automatically determine its legitimacy also. So the conditions of legitimacy are going to be more extensive than the condition of justice. Undoubtedly any liberal conception of legitimacy has to include the criterion of universal consent, liberals will not accept that an unjust conception can be legitimate, but it is not a sufficient condition. Further work will be required to establish which out of all the conceptions of justice compatible with the criterion of universal consent can legitimately regulate the basic structure.

In coming to decide whether it is more appropriate to understand the criterion of universal consent as a minimal or comparative standard in modern liberal democratic societies we need to keep in mind that a central characteristic of such societies is deep and seemingly intractable disagreement and pluralism. The prospects for citizens all affirming the same conception of justice on the basis that it is the most consistent with the criterion of universal consent, as the comparative reading requires, looks demanding, if not utopian, in societies such
as our own in which agreement amongst citizens is an incredibly rare occurrence. Of course, people have and always will disagree about anything and everything. Even the truths of common sense are denied by some people (usually philosophers). So, as a means of salvaging the criterion of universal consent in the face of such prevalent discord (and in way not unrelated to the shift to hypothetical consent touched upon in the previous section), we might try and distinguish between disagreements which are, in some sense, reasonable and those that are not. If we can meaningfully make such a distinction then it might allow us to dismiss certain conflicts as the result of disreputable factors such as bias, prejudice or self-interest while maintaining that some disputes are in some sense genuine arguments generated by something like the limits of human reason or inevitable features of the human experience. If this distinction can be maintained then it has the potential to save the plausibility of the comparative reading of the criterion of universal consent in the face of endemic disagreement. But, even if we assume such a distinction is possible, there is still a question whether disputes regarding which conception of justice best meets the criterion of universal consent are reasonable or not. If they are not, then the theoretical prospect remains, which will always fixate political theorists, that we can identify the comparatively favourable conception of justice, again even if citizens do not recognise it as such. However, if we determine that disagreements about justice are indeed reasonable then this seriously undermines the prospect of identifying that conception which best meets the criterion of universal consent understood as a comparative condition.

So the situation is this: If we think the scope of pluralism extends to justice, and in particular to which conception of justice best meets the criterion of universal consent, then the criterion of universal consent necessarily underdetermines legitimacy. That is to say, though it might tell us which conceptions are just, it cannot tell us which is legitimate. The argumentative grounds for justifying a conception’s justness and legitimate must be different. Whereas, if we do not think pluralism extends to which conception of justice best meets the criterion of universal consent then it can determine which is legitimate. The conditions for legitimacy and justice remain synonymous insofar as a justification for one evaluation will automatically demonstrate the other. What must establish which of these understandings of the relationship between justice and legitimacy we should affirm is therefore going to be the question of whether persons can genuinely, or reasonably, disagree which conception of justice best meets the criterion of universal consent or not. That becomes the decisive issue on which the question of which conceptualisation of justice and legitimacy is suitable for modern liberal democratic societies hangs.

In order to provide confirmatory evidence of this claim, and in order to get a clearer understanding of the implications of this question for liberal theory, I want to examine the work of John Rawls in this area. Rawls saw more deeply than most, especially in his later work, the connections between pluralism, legitimacy and justice and importantly how disagreement constrains the ambitions of liberal theory. But while it is now commonplace to acknowledge that Rawls’ views about the relationship between these three concepts changed between his earlier work (A Theory of Justice) and his later work (Political Liberalism) what is much less appreciated is that within Rawls’ work on political liberalism we can identify a distinct movement in his thinking about how different understandings regarding the scope of reasonable disagreement affects how we can conceptualise the conditions of justice and legitimacy, and the relationship
between them. What I want to claim is that a fundamental alteration took place in Rawls’ later work which is both underappreciated in the wider literature, and therefore worthwhile explicating for its own sake, but sheds some important light on the thesis of this paper. This is because not only do the two models of political liberalism, as I shall call them, conceptualise the conditions of justice and legitimacy in ways which map onto the alternatives discussed in this section but because it is possible and plausible to account for this shift in Rawls’ thinking as a direct consequence of his changing his mind as to whether citizens can reasonably disagree about justice or not. Studying Rawls’ work will therefore confirm the thesis of this paper that there is an essential connection between the scope of disagreement and the conditions of justice and legitimacy which it is crucial to attend to if we are to get a suitable account of the relationship between the two evaluations in modern liberal democratic societies.

Rawls, Justice, and Legitimacy

According to Rawls, the requirement that the conception of justice which regulates the basic structure must be justifiable to all citizens is necessitated by the liberal principle of legitimacy:

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. This is the liberal principle of legitimacy. To this it adds that all questions arising in the legislature that concern or border on constitutional essentials, or basic questions of justice, should also be settled, so far as possible, by principles and ideals that can be similarly endorsed.\(^\text{xx}\)

State power must be used in accordance with principles of justice, or constitutional essentials, which all citizens could reasonably be expected to endorse if it is to be legitimate. It is important to note that the task is not to identify those constitutional essentials which all citizens do accept or to seek a justification for a conception of justice which actually does command the universal affirmation of all citizens. This would, as Rawls put it, make political liberalism ‘political in the wrong way’ insofar as the satisfaction of the liberal principle would become beholden to citizens who might hold unjust, unreasonable, or irrational views.\(^\text{xxi}\) Rather, Rawls restricts those to whom the conception must be reasonably acceptable (the justificatory constituency) to only reasonable individuals. There are two aspects to the reasonable in relation to persons: a commitment to reciprocity and the acceptance of the burdens of judgement.

It is a feature of modern liberal democratic societies that citizens do not share a common religious, philosophical, or moral comprehensive doctrine. Rather citizens disagree and conflict, seemingly intractably, about fundamental matters of the good. This disagreement, Rawls believes, is the inevitable outcome of the use of reason under conditions of freedom, such as pertain in
liberal democratic societies where the associative and expressive liberties are protected. Why the free use of reason should lead to disagreement when applied to matters of the good is explained by Rawls with reference to the burdens of judgement. There is no need to go into detail about what these burdens are though they are essentially obstacles to the employment of rationality which lead reason to underdetermine human assessment of matters of the good. What is important for our purposes is that the burdens inevitably lead individuals to disagree about the good and therefore their disagreements are to be construed as reasonable. They are not the result of bias, self-, class- or group-interest, ignorance, stubbornness or prejudice but the unavoidable outcome of the use of reason in conditions of freedom which, as such, should not be a source of regret.

Reasonable individuals are committed to the burdens of judgement and so take the free use of reason to be the cause of their deep and persistent, though nevertheless, reasonable disagreements. This is one aspect of the reasonable. The other aspect is a readiness “to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they [reasonable individuals] view as reasonable for everybody to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose”. This commitment to reciprocity means that individuals desire to live with others on terms that they can reasonably be expected to accept (assuming others are likewise motivated) and this is clearly a version of the criterion of universal consent. So, it would be unreasonable, for example, to engage in, or intend to engage in, cooperative schemes with others without being willing to honour or propose fair principles of cooperation which meet the criterion of reciprocity. In short, reasonable individuals believe that the principles of justice, or constitutional essentials, must be justified to all individuals subject to them.

One aspect of the reasonable is an epistemological thesis about the origin and nature of pluralism (the burdens of judgement) while the other is a particular moral commitment (reciprocity). Combined they explain why the universal public justification of the constitutional essentials is a necessary condition of their legitimacy and how it is that only neutral reasons are appropriate to this justificatory task. It follows from the commitment to reciprocity that the use of state power can only be legitimate if used in accordance with constitutional essentials which we can reasonably expect others to accept. The form that the liberal principle of legitimacy takes is therefore explained by the demand that constitutional essentials require public justification.

However, on its own, the commitment to public justification required by the criterion of reciprocity is only a procedural requirement and tells us nothing about what reasons are appropriate. As the liberal principle is stated above, there is nothing wrong with offering a justification for constitutional essentials which refer to a particular comprehensive doctrine, Protestantism or Kantianism for example, if I can reasonably expect others to accept those reasons. Of course, not all individuals will accept those reasons but then actual acceptance is not required by the commitment to reciprocity nor is the absence of reasonable rejectibility the criterion reasons have to meet. It just has to be the case that I can reasonably expect others to accept these reasons and I might think that the truth of Protestantism or Kantianism provides sufficient reason to think that others can reasonably be expected to accept them, even if they currently do not. That reasons which are neutral between comprehensive doctrines are
appropriate is only given to us by the second aspect of the reasonable: the burdens of judgement. Because reasonable individuals are committed to the burdens of judgement they accept that they will inevitably and reasonably disagree about moral, religious and philosophical issues. As such, we could not reasonably expect all citizens to accept justifications for constitutional essentials which drew upon any particular comprehensive doctrine or relied upon controversial claims about the good. The only reasons which would satisfy the criterion of reciprocity are therefore those which remain neutral between comprehensive doctrines and do not take a position on the controversial issues over which citizens will reasonably disagree. It is only when we take both aspects of the reasonable together that we get both the form of the liberal principle of legitimacy and the condition that only neutral justifications will be consistent with it.

An important step in ensuring that the regulative conception of justice is one that all persons can reasonably be expected to accept is to construct it using the fundamental ideas implicit in the public culture of our liberal democratic society, ideas which Rawls assumes citizens will necessarily share. Rawls says, ‘Since justification is addressed to others, it proceeds from what is, or can be held in common; and so we begin from shared fundamental ideas implicit in the public political culture in the hope of developing from them a political conception that can gain free and reasoned agreement in judgement’. xxvii These fundamental ideas and ‘settled convictions’ xxviii out of which we try to construct a coherent political conception of justice include the belief in religious toleration, the rejection of slavery, the idea of society as a fair system of cooperation over time from one generation to the next, the idea of citizens (those engaged in cooperation) as free and equal persons, the idea of a well-ordered society as a society regulated by a political conception of justice xxix, and that occupying a particular social position or holding a particular conception of the good is not an appropriate reason for us to propose, or expect others to accept, a conception of justice that favours that position or conception. xxx Out of these principles, commitments, and values we are to create a coherent political conception of justice which, because it is constructed out of fundamental ideas all will share, will be acceptable to all citizens regardless of their conception of the good.

Even if we use only those principles and values implicit in our liberal democratic societies, however, there will be many different ways in which we can fit these together and thus different political conceptions of justice that we can construct out of them, all of which will have different reasons counting for or against them. What characterises the first model of political liberalism, the consensus model, is the presumption that citizens, despite their different comprehensive doctrines and the plurality of political conceptions of justice, can reach a consensus on which conception of justice should regulate the basic structure of our society by identifying the most reasonable conception available to us, that is to say the conception most compatible with the liberal principle of legitimacy. It therefore seeks to identify a conception of justice that ‘all affirm’. xxxi Consequently, the use of state power is legitimate when employed in accordance with this conception because, being the most reasonable, all citizens can reasonably be expected to endorse it. So the consensus model of political liberalism does “not impose the unrealistic – indeed, the utopian – requirement that all citizens affirm the same comprehensive doctrine, but only … the same public conception of justice” xxxii

The consensus model seeks to identify the most reasonable conception of justice by employing the representational device of the original position. The original position “is
introduced in order to work out which traditional conception of justice, or which variant of one of those conceptions, specifies the most appropriate principles for realising liberty and equality once society is viewed as a fair system of cooperation between free and equal citizens.

It “model[s] both freedom and equality and restrictions on reasons in such a way that it becomes perfectly evident which agreement would be made by the parties as citizens’ representatives” or, put slightly differently, it identifies “the conception of justice that we regard – here and now – as fair and supported by best reasons”.

Rawls is explicit that the original position should be understood as a device of representation which embodies our considered convictions without presupposing any metaphysical claims about the person it had been charged with by critics such as Michael Sandel (Sandel 2008). But, though it is bereft of any metaphysical justification, Rawls nevertheless defends the appropriateness of employing the original position on the basis that “there is no better way to elaborate a political conception of justice for the basic structure from the fundamental idea of society as an ongoing and fair system of cooperation between citizens regarded as free and equal”. So, according to the consensus model, it is possible via the original position for citizens to identify and all affirm the same conception of justice on the grounds that it best embodies our considered convictions while remaining divided by their comprehensive doctrines. It is therefore the most reasonable conception of justice available to us and the conception which citizens can and should endorse. When citizens have reached a consensus upon the most reasonable conception of justice that conception is said to be the focus of an overlapping consensus of reasonable comprehensive doctrines. This shared political conception of justice can then “serve as the basis of public reason in debates about political questions when constitutional essentials and matters of basic justice are at stake”.

That the consensus model assumes that citizens can identify the most reasonable conception of justice means that all can reasonably be expected to accept it, even if they do not currently do so. Its superior reasonableness is the reason for affirming the conception of justice that all citizens can reasonably be expected to accept. Those who do not can be understood as unreasonable and their presence does not disrupt the legitimacy of using state power in accordance with the principles of the most reasonable conception of justice. In effect, to demonstrate that a political conception of justice is the most reasonable is also to demonstrate its legitimacy, and the arguments in favour of the superior reasonableness of a political conception of justice are the same arguments that are required for demonstrating the legitimacy of using state power in accordance with that conception. It is crucial, therefore, to the success of the consensus model that the most reasonable conception of justice can be identified amongst the family of conceptions which can be constructed out of the values and beliefs inherent in modern liberal democratic societies.

The consensus model is characterised by the idea that the criterion of reciprocity provides a comparative standard for assessing the reasonableness of conceptions of justice which will allow citizens to identify and converge upon that conception which is the most reasonable available to us. Citizens can reasonably be expected to affirm this conception because it is the best elaboration and articulation of our considered convictions and is thus consistent with the liberal principle of legitimacy. The second model of political liberalism, the deliberative model, does not accept that the superior reasonableness of a particular conception of justice can
function as a shared reason for citizens’ affirmation of it. This is because it assumes citizens can and will reasonably disagree as to which conception of justice is the most reasonable. Thus Rawls accepts that justice as fairness is ‘but one’ reasonable political conception – though he thought it the most reasonable – and therefore basic to neither the ideas of political liberalism nor that of public reason.\textsuperscript{x}\textsuperscript{i}

Rawls explains why citizens will disagree about which political conception is the most reasonable in terms of the different ways in which the content of such conceptions could be interpreted and understood. All political conceptions will contain:

First, a list of basic rights, liberties, and opportunities (such as those familiar from constitutional regimes);

Second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to the claims of the general good and perfectionist values; and

Third, measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms.\textsuperscript{x}\textsuperscript{ii}

Political conceptions will contain these because they embody our considered convictions that citizens are free and equal persons and that society is a fair system of cooperation over time. However, citizens’ will interpret these basic rights, liberties and opportunities differently and balance and order them in various ways so as to produce different conceptions of justice.\textsuperscript{x}\textsuperscript{iii} Because of this, the deliberative model of political liberalism accepts that citizens will judge differently which political conception of justice is the most reasonable which consequently means that the superior reasonableness of a conception of justice cannot function as the shared reason for citizens’ affirmation of it. A different mechanism for explaining how citizens can reasonably be expected to affirm the constitutional essentials is thus required and the idea of public reason is central to how the deliberative model addresses this issue.

‘Public reasoning’, Rawls notes, ‘is crucial, for it characterises … citizens’ reasoning concerning constitutional essentials and matters of basic justice’.\textsuperscript{x}\textsuperscript{iv} ‘The content of public reason is determined by the principles and values of the family of reasonable political conceptions of justice rather than determined by the content of one particular political conception.’\textsuperscript{x}\textsuperscript{v} A citizen engages in public reason:

When he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values that others, as free and equal citizens might also reasonably be expected reasonably to endorse.\textsuperscript{x}\textsuperscript{vi}
In engaging in public reason, citizens appeal to the reasonable political conception which they take to be the most reasonable. However, ‘Citizens will of course differ as to which conceptions of political justice they think are the most reasonable, but they will agree that all are reasonable [i.e. meet the criterion of reciprocity], even if barely so’.\(^{xlvi}\) This is because all reasonable conceptions of justice will be constructed out of the same considered convictions, values and beliefs implicit in our liberal democratic society which citizens will therefore necessarily share. Though they will not agree which conception best articulates these in a coherent and systematic fashion, citizens can agree that conceptions are reasonable insofar as they are constructed out of beliefs, values and commitments all share. As such, they have reached an overlapping consensus in which all citizens affirm one of the conceptions of justice which comprise the family of (at least minimally) reasonable conceptions.

By appealing to these common considered convictions, citizens provide reasons for endorsing a particular conception of justice which satisfy the criterion of reciprocity, that is to say, reasons which it is reasonable to expect other citizens to accept. When engaging in public reasoning, I provide other citizens with reasons why I favour a particular political conception of justice with reference to rights, liberties and values to which all citizens are committed. The deliberative model does not assume that just because citizens commend their political conceptions in terms of public reason that others will come to recognise it as the most reasonable; it assumes only that they are reasons which we could reasonably expect them to find acceptable. They are not reasons which draw upon values and principles specific to a particular comprehensive doctrine which we could not reasonably expect citizens who do not hold that doctrine to accept.

Public reason plays a dual role in the deliberative model of political liberalism. On the one hand it plays a practical evaluative role in allowing us to determine which conceptions of justice are reasonable in the sense just expounded of being affirmaible by citizens according to reasons we can reasonably expect them to accept, and therefore consistent with the commitment to reciprocity. It can be used as a minimal standard of evaluation against which we judge whether the conception of justice which currently regulates the basic structure of our society is reasonable and, if it is, therefore legitimate also. On the other hand, public reason determines how citizens should reason and come to a decision when debates concerning constitutional essentials take place, again consistent with the commitment to reciprocity. However, because citizens will reasonably disagree as to what the outcome of these debates should be, a democratic secondary process is required. Rawls writes that citizens or their representatives must vote and

when, on a constitutional essential or matter of basic justice, all appropriate government officials act from and follow public reason, and when all reasonable citizens think of themselves ideally as if they were legislators following public reason, the legal enactment expressing the opinion of the majority is legitimate law. It may not be thought the most reasonable, or the most appropriate, but it is politically (morally) binding on him or her.
as a citizen and is to be accepted as such. Each thinks that all have spoken and voted at least reasonably, and therefore all have followed public reason and honoured their duty of civility.\textsuperscript{xlvii}

All vote according to how the constitutional essentials or matter of basic justice feature in the political conception they take to be the most reasonable and, though others will offer different answers, all should accept that the opinion of the majority expresses an answer which is reasonable, even if only minimally so, and therefore legitimate.

At the heart of both models of political liberalism is the commitment to ensuring that the regulative conception of justice is consistent with the criterion of universal consent, or reciprocity. On both accounts, the condition of justice is that the conception be one that we can reasonably expect all others to accept, i.e. that is reasonable. However, the two models have differing accounts as to how the liberal principle of legitimacy is satisfied in conditions of reasonable pluralism, which can be stated thus:

\begin{enumerate}
\item[LCLCM] The liberal principle of legitimacy is satisfied if the constitutional essentials are the most reasonable available to us.
\item[LCLDM] The liberal principle of legitimacy is satisfied if the constitutional essentials are minimally reasonable and have, if necessary, received the majority of votes in a deliberative democratic procedure regulated by the demands of public reason.
\end{enumerate}

Though the criterion of reciprocity is central to how both models conceptualise the conditions of legitimacy, they are differentiated by whether they think reciprocity is a comparative or a minimal standard, with the consensus model assuming that we can identify that conception of justice most compatible with reciprocity while the deliberative model taking reciprocity to be a threshold which all reasonable conceptions of justice must meet, thus leaving us with the need to have a secondary procedure for identifying which conception can legitimately regulate the basic structure. This procedure cannot rely upon reciprocity because, as we have seen, reciprocity underdetermines the legitimacy of reasonable conceptions of justice.

The point of this excursion into Rawls’ work was to show how initial differences as to the scope of reasonable disagreement, specifically whether persons can reasonably disagree about which conception of justice best meets the criterion of universal consent or not, has wider implications for the conditions of justice and legitimacy in modern liberal societies, and the relationship between them. It is important to emphasise how the changes Rawls made to his theory were motivated by the recognition that the means of satisfying the demands of reciprocity are inextricably related to the possibility of citizens being able to reach a consensus on which conception of justice is the most reasonable in conditions of reasonable pluralism. According to
the consensus model, reciprocity is achieved when citizens all affirm the same conception of justice on the shared basis that it is the most reasonable conception available to us. The satisfaction of reciprocity therefore requires that citizens cannot reasonably disagree as to which conception is the most reasonable in the way that they reasonably disagree about matters of the good. Justice has to be immune to the effects of the burdens of judgement in order for the commitment to reciprocity to be met in this way. However, as has been noted by others, there is no convincing reason for assuming that human thinking about justice will not be subject to the burdens of judgement. As a normative issue it would seem only inevitable that the same obstacles that human reason faces with regard to the good, such as the difficulty of assessing complex information, the different ways in which we can weigh up various considerations, and the indeterminacy of political concepts such as freedom and equality, would feature when we reason about justice also. And, as such, citizens can (and indeed do) agree which reasons should be used to justify political conceptions (i.e. the principles, values, basic rights, liberties and opportunities drawn from the liberal democratic tradition) but reasonably disagree about which political conception those reasons speak most strongly in favour of; though we might differ over which conception best realises those principles and values, we nevertheless accept that all do realise them one way or another. Once this is granted, then it undermines the possibility of satisfying the liberal principle of legitimacy by identifying the most reasonable conception when the conditions of freedom in which reasoning about justice takes place will inevitably lead them to reasonably disagree as to which conception is the best and most appropriate interpretation and explication of our considered convictions. A different way of demonstrating a conception’s legitimacy is therefore necessitated.

The deliberative model responds to this problem in a way consistent with the burdens of judgement by making the liberal principle of legitimacy a minimal rather than comparative standard, which it operationalises by relocating the relevant unanimous agreement from the superior reasonableness of a conception of justice to the public reasons which can be offered in support of any particular reasonable conception. Or, put differently, the reciprocity which is a necessary condition of legitimacy is guaranteed not by citizens agreeing upon particular principles of justice for the same reason but by agreeing that a particular mode of justification provides reasons which we can reasonably expect others to accept. In debating questions of constitutional essentials or matters of basic justice using public reasons citizens ensure that the reasons they are offering for their preferred resolution to the issue at hand are ones which we can reasonably expect others to accept, even if they do not actually do so. There is a compelling argument, therefore, which can account for the move from the consensus to the deliberative model on the basis that the former fails to fully appreciate how the burdens of judgement affect the possibility of satisfying the moral commitment to reciprocity. So though the difference between the two models begins as a difference regarding the scope of reasonable disagreement, this has important consequences for the criterion of universal consent or reciprocity and hence the conditions for justice and legitimacy in modern liberal democratic societies.
Significances

The purpose of exploring Rawls’ later work was to investigate the connection between disagreement and the conditions for justice and legitimacy, focusing specifically on how altering the scope of reasonable pluralism has consequences for whether the criterion of universal consent, or reciprocity, can provide a necessary and sufficient condition for justice and legitimacy or not. Crudely put, if we think that citizens cannot reasonably disagree about which conception of justice is the most reasonable then reciprocity can function as a condition for determining both a conception’s justness and legitimacy. Whereas if we think that citizens can reasonable disagree about the reasonableness of a conception (though they can agree that some are reasonable, if only minimally so) then reciprocity can determine a conception’s justness but not its legitimacy. I believe that the presence of two models of political liberalism, differentiated in this manner, has largely gone unrecognised and unexplored in the literature on Rawls and it certainly has implications for Rawlsian scholarship. Rather than explore those, however, in this final section I want to focus more on the ramifications for liberal political theory more widely, in particular how this should affect our understanding of the relationship between justice and legitimacy in modern liberal societies.

Firstly, our everyday use of justice and legitimacy suggest that they are two separate evaluations of a conception and an elision of the two, as takes place in the consensus model when reciprocity acts as a necessary and sufficient condition for both, would therefore involve some loss to our moral and political vocabulary. Indeed, it is not hard to think of practical instances which confirm this intuition regarding their distinctness. Rather than thinking that there is one conception which has a unique claim to justice and legitimacy, a more intuitive account of what is going on is that several rival conceptions of justice simultaneously exist within a liberal society all of which are valid candidates for legitimately regulating the basic structure though only one can actually (legitimately) do so. And we recognise the justness of the many different conceptions which regulate the basic structure of states other than our own. But because those conceptions are just does not automatically mean that it would be legitimate for our state to use its power in accordance with their principles (unless they are the same as our own). The conditions for legitimacy and justice are therefore different. The deliberative model of political liberalism captures this thought by making it possible to recognise a conception as just, i.e. justifiable to all citizens regardless of their conceptions of the good, while requiring a further step to explain why it is legitimate. This is a particularly desirable structural feature of the deliberative model given that we can expect citizens to hold a plurality of different yet nonetheless reasonable political conceptions of justice.

An example might help here: Let us imagine that there is currently a debate taking place within our society regarding the limits of free speech. For the sake of simplicity let us assume that the citizens of our society affirm two (reasonable) conceptions of justice: Within conception x freedom of speech is ascribed a very high value such that its adherents believe that it should not be restricted unless it can conclusively be shown that expression of one’s beliefs or opinions will lead to the physical harm of others. Conception of justice y, however, does not ascribe quite so high a value to freedom of speech and its adherents believe that expression can justly be restricted in such instances as when it will likely cause offence to members of particular religious minorities. A debate is had and adherents of both conceptions put forward their cases in terms
of public reasons. Eventually a ballot is held in which the representatives of the citizens vote on the issue and the majority of votes are cast in favour of the position of conception of justice \( y \).

According to the deliberative model of political liberalism, because the majority of representatives affirmed conception \( y \) as the most reasonable and voted accordingly after an appropriate deliberative process, those who affirm \( x \) must recognise legal enactment of restrictions on freedom of speech as legitimate.\(^{49a}\) Even though some citizens will think that \( x \) is the most reasonable conception and may indeed think that \( y \) is the least reasonable (though still at least minimally reasonable), its legal enactment is still legitimate law and the state can therefore legitimately expect their obedience and use its power in order to ensure their compliance. With the consensus model, however, there is no conceptual space for such a situation to arise, and this is for two reasons: Firstly, according to the consensus model, if a citizen does not recognise a political conception as the most reasonable, then he or she is guilty of some sort of intellectual error which, it is hoped, she can rectify by repeating the use of the original position. Secondly, because only the most reasonable political conception can be legitimate given that it is the only conception which we can reasonably expect all individuals to affirm, and because there can be only one most reasonable conception, no conflict can arise between rival political conceptions of justice that citizens consider legitimate — unless, and again, some citizens are guilty of making a mistake. The deliberative model therefore opens up the conceptual space in which a citizen can accept the legitimacy of a particular political conception of justice even if he does not recognise it as the most reasonable.

Though separating the conditions of justice and legitimacy is more consistent with our intuitions, I should be clear that I am not necessarily advocating the deliberative process as providing the separate mechanism required in order to demonstrate a conception of justice’s legitimacy. Rawls turned to deliberative democracy in order to fill the gap in his theory with regard to the conditions of legitimacy which opened up as soon as he accepted that citizens can reasonably disagree about justice. And while it is clear that the criterion of universal consent cannot provide a sufficient condition for legitimacy I see no reason for thinking that there might not be other resources either internal to liberalism or, as deliberative democracy is, external to it which could equally (or possibly better) provide the required theoretical account. Rawls supplemented reciprocity with an account of legitimacy borrowed from democratic theory but more work would need to be done in exploring other possibilities before we can comprehensively say either that the liberal tradition cannot supply us with further conditions for legitimacy which would be consistent with reasonable pluralism or that other non-liberal, but still consistent with liberalism, alternatives are inadequate. What I am essentially saying is that more work needs to be done on theorising liberal conditions of legitimacy in modern states characterised by reasonable disagreement about both the good and the right before we accept Rawls’ contention that we must leave the realm of liberal theory in order to resolve this problem.

But really the key implication of the argument of this article is that it tells us something important about how we should understand the relationship between justice and legitimacy in modern liberal democratic societies characterised by reasonable disagreement and how the latter concept must now take a more central role in liberal theory than has been thought appropriate in recent years. One of the central philosophical projects of the past four decades or so has been what we can call the project of justice. The central aim of this project was to, in Rawls’ words,
“present the structural features of … a theory [of justice] so as to make it the best approximation to our considered judgements of justice and hence to give the most appropriate moral basis for a democratic society”.¹ This aim was pursued by trying to show how reason, usually constrained by certain moral considerations, can identify one particular conception of justice as the most reasonable and therefore that which we should all, on pain of irrationality, affirm. As Raymond Geuss has reminded us justice has historically never assumed such a central role in liberal theory and intellectual predecessors such as Humboldt, Constant, Mill and de Tocqueville tended to either ignore it, consider it a side issue at best, or view it with some suspicion as a concept with potentially anti-liberal intimations.³ But nevertheless contemporary liberals largely embraced this change of focus and Rawls succeeded in rearranging the intellectual landscape of liberal political theory in such a way that justice became the central concept of concern, and other familiar concepts of political theory, such as legitimacy, obligation, and authority, became somewhat peripheral in this new philosophical order.

The project of justice assumed two things: Firstly, that reason, properly employed and constrained by the appropriate moral considerations, would identify the most reasonable conception of justice and, secondly, that the legitimacy of that conception to regulate the basic structure is derived from the fact that reason prescribes it (and it alone). Though, as we have seen, little was said about legitimacy, nevertheless the project of justice did assume a recognisable liberal account of legitimacy which presupposed that the legitimacy of a conception of justice to regulate the basic structure follows from the fact that all rational individuals can reasonably be expected to accept it. In other words, the project of justice assumed that the conditions of justice and legitimacy are synonymous as in the consensus model of political liberalism. So, if we can discover the right principles of justice a separate question about their legitimacy simply does not arise. This is why legitimacy was largely invisible when the project of justice dominated.

However, neither of these assumptions are sustainable if we accept the burdens of judgement. Reason, as we have seen, underdetermines the right as it does the good when used in conditions of freedom. This means individuals can reasonably disagree, even when reasoning properly and within the proper moral constraints, which conception of justice is the most reasonable. If we accept the burdens of judgement then we must recognise such disagreements about justice as reasonable. Reason, rather than leading us all to the same conception of justice, will lead individuals to a plurality of different and often conflicting conclusions. And rejecting the first assumption of the project of justice undercuts the second because, as we saw with the consensus model of political liberalism, once you reject the idea that citizens can reasonably be expected to affirm the same conception of justice then the legitimacy of a conception to regulate the basic structure cannot be derived from this unanimous consensus. Accepting that the burdens of judgement apply to questions of right as well as the good means that we must acknowledge how even if we consider a particular conception of justice to be the most reasonable, the fact of reasonable pluralism means that it is not the only reasonable conception which can legitimately regulate the basic structure. The question regarding which conception of justice is the most appropriate moral basis for a democratic society is thus distinct from the question how a conception of justice can legitimately regulate the basic structure when citizens reasonably disagree which is the most reasonable. Or, put differently, because citizens disagree which conception of justice is the most appropriate moral basis for a democratic society, the
question of how any conception – including the one currently regulating the basic structure – can be legitimate must be considered separately. Indeed the concept of legitimacy should be considered prior to that of justice insofar as the important question for modern societies characterised by reasonable pluralism is how, in the absence of the possibility of citizens reaching a unanimous agreement, any conception of justice can legitimately regulate the basic structure at all.

None of this should be taken as an attempt to devalue the normative project of seeking to offer the most persuasive arguments for the conception of justice we endorse. An important task for political theorists, indeed any citizen, is to offer the best arguments and reasons in favour of the conception of justice they affirm as the most reasonable. Nor should we push the separation between the two concepts too far as, after all, only a conception of justice which is consistent with the criterion of universal consent (understood as a minimal standard) can be a candidate for legitimacy. The legitimacy of a conception to regulate the basic structure should have something to do with the justness of its principles. But nevertheless, and in contrast to how they have largely been conceived in much contemporary political theory, justice and legitimacy should be kept distinct when engaging in political theorising for societies characterised by reasonable pluralism. And the work of providing a full conceptualisation of liberal legitimacy which is suitable for modern liberal societies characterised by reasonable disagreement is still to be done.


xii Rawls, *Political Liberalism*, lecture II.


Barry, *Justice as Impartiality*


Ibid., p. xlvi, 39-40.

Ibid., p. xviii, xlii, 4, 36, 129, 135, 144.

See ibid., p. 56-57.

Ibid., p. 37, 144.

Ibid., p. 49.

Ibid., p. 50.

Ibid., p. 100-101.

Ibid., p. 8.


Ibid., p. 38.

Ibid., p. 39.

Ibid., p. 22.

Ibid., p. 26, emphasis added.

Ibid., p. 26; see also p. 95.


Rawls, *Political Liberalism*, p. 26; see also p. 98.

Ibid., p. 44.

Ibid., p.48; see also, p. xxii-xxiii, 44, 115, 213, 223.

Ibid., p. 581-582.


Ibid., p. 581.

Ibid., p. 581.

Ibid., p. 578.

Ibid., p. 578; see also, p. 605.


Ibid., p. 606.