

RAWLS, PUBLIC REASON AND BREXIT

IAN BROWNE

Abstract. Rawls sees public reason as serving as a constraint on the justification of political rules and procedures. Arguments adduced in favour of political rules and procedures must be reasonable. This means that comprehensive views, such as religious views on the nature of man and his place in the universe, or secular views such as utilitarianism, cannot be used to justify a particular set of political structures. A considerable literature exists on the issues and difficulties associated with this constraint. The normative constraint requires that in justifying and accepting political rules people be fair and sincere. Fairness is at the heart of Rawls conception of justice and political justification. I propose to look at the aftermath of the Brexit vote using the Rawlsian framework of public reason. There was a considerable political movement, involving both politicians and the general public, to simply reject the outcome of the vote. This was, in effect, a refusal to be bound by principles that meet the test of public reason. Rawls differentiates reasonableness from rationality. For Rawls, the political conception of a rational person is one who is a self-interested utility maximiser, whose actions are unconstrained by any idea of fairness – the homo economicus of Hayekian theory. The Brexit vote indicated that rational individuals cannot conform to the reasonable demands placed on them by public reason and as such the kind of rational individualism that underpins the strand of liberalism that is epitomized by writers like Hayek cannot be integrated into a liberal society based on a conception of justice as fairness and as such may represent a far more serious threat to a liberal democratic regime that is normally supposed.

Keywords: Rawls, public reason, rationality, justice as fairness, principle of reciprocity, Brexit, liberal democracy.

WHAT IS PUBLIC REASON?

Rawls aim is to provide a basis for a liberal society that all reasonable people can accept. He accepts that within any society there will be people who differ in their fundamental beliefs, what he calls the fact of a plurality of conflicting comprehensive doctrines. Rawls is only interested in conflicting *reasonable* comprehensive doctrines. Unreasonable doctrines are not his concern. The main aim of *Political Liberalism* is to find a basis for a fair society given this fact.

Besides differences between comprehensive doctrines, in *Political Liberalism* he also addresses what he calls a second kind of conflict, those reasonable

differences with regard to opinions and beliefs arising from differences in status, class position, or occupation, or from differences in ethnicity, gender, or race, what he describes as social groups whose members “total experiences are disparate enough for their judgments to diverge, at least to some degree, on many if not most cases of any significant complexity.”¹ It is this kind of difference that I will be looking at in the context of Brexit, not differences in comprehensive doctrines.

Rawls is interested in finding a basis for a fair society that everyone can accept despite their differences. And the role of public reason is to provide that basis.

Public reason is that form of reasoning used when citizens are prepared to offer one another fair terms of social cooperation. By this Rawls means reasonable people offering terms of political cooperation that reasonable others can accept. In order to clarify what he means by reasonably expecting reasonable others to accept he gives the example of Calvin and Servetus. Servetus could reasonably understand the reasons why Calvin wanted to burn him at the stake, but Servetus couldn't reasonably be expected to accept those reasons. On Rawls terms, Calvin was unreasonable. Reasonable people not only believe that they have good reasons for their beliefs, they have to believe that other people can reasonably accept those reasons. “For these terms to be fair terms, citizens offering them must reasonably think that those citizens to whom such terms are offered might also reasonably accept them. Note that ‘reasonably’ occurs at both ends in this formulation: in offering fair terms we must reasonably think that citizens offered them might also reasonably accept them.”² Rawls calls this the criterion of reciprocity. All reasonable citizens offer each other terms which they believe to be reasonable and which they believe other reasonable citizens can reasonably accept, and this will form the basis of the political legitimacy of the rules that govern the actions of the state. Without public reason, according to Rawls, it isn't possible to have a genuinely fair and equal political society.

By fair terms of social cooperation, means guaranteeing basic liberties and freely cooperating as equals. This is the subject matter of *A Theory of Justice*, and I'm not going to look at this in any detail. It is in *Political Liberalism* that Rawls gives his most comprehensive account of public reason, and that is my focus.

Public reasoning should provide public justification. Public justification is not simply valid reasoning, but argument addressed to others: it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept. The public nature of public reasoning meets what Rawls calls the duty of civility, the duty to make our reasons clear and intelligible to others. For Rawls, the idea of public reason is very closely linked to the idea of justice as fairness. “In justice as fairness, then, the guidelines of public

¹ All quotations are from John Rawls, *Political Liberalism*, expanded paperback edition, Columbia University Press, 2003, unless otherwise stated. *Ibid.*, p. 57.

² *Ibid.*, p. xlii.

reason and the principles of justice have essentially the same grounds. They are companion parts of one agreement. There is no reason why any citizen, or association of citizens, should have the right to use state power to decide constitutional essentials as that person's, or that association's comprehensive doctrine directs."³

BREXIT

I am only interested in one aspect of Brexit, which is the response of those Members of Parliament and those members of the public who refused to accept the result of the vote. These people failed to employ a Rawlsian conception of public reason and so failed in their duty to civility towards the citizens of the UK. They demanded that the UK ignore the result of the vote and remain in the EU. Their response to the Brexit vote was to endorse and try to bring about a policy that they could not reasonably believe that the leave voting majority might also reasonably accept. Their response was both 'unreasonable' and 'unfair', in the sense in which Rawls uses these terms in *A Theory of Justice* and *Political Liberalism*. Those people who demanded that the UK remain in the EU after the referendum result indicated a clear majority for leaving the EU failed to accept the requirements of public reason and as such betrayed the ideas of fairness and equality upon which a genuinely liberal society is built.

I am going to simply assume that the Brexit vote was fair and honest. Not everyone would agree, but I think that the vote was as fair and honest as any election in the UK ever is, which is perhaps not perfect but in an imperfect world it was fair and honest enough.⁴

The Prime Minister David Cameron gave an assurance that it would be the electorate who would decide whether to leave the EU or remain in the EU and that

³ *Ibid.*, pp. 225–6.

⁴ My view is that attempts to question the legitimacy of the result on the grounds of procedural irregularities, such as the claim that the leave campaign broke the spending rules governing the campaign, are simply attempts to find a procedural basis for rejecting the result, rather than the expression of a genuine concern for adherence to the rules. Rawls believes that a liberal society requires people, when they act politically, to act in good faith. As Rawls said, "the ordering of values is made in the light of their structure and features within the political conception itself, and not primarily from how they occur within citizens' comprehensive doctrines. Political values are not to be ordered by viewing them separately and detached from one another or from any definite context. They are not puppets manipulated from behind the scenes by comprehensive doctrines... What we cannot do in public reason is to proceed directly from our comprehensive doctrine, or a part thereof, to one or several political principles and values, and the particular institutions they support." p.454–5. According to the figures produced by the Electoral Commission, in total the Remain campaign spent £19,309,588 and the Leave campaign spent £13,332,569. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/campaign-spending-eu-referendum>

the electorate's decision was final.⁵ Parliament debated the proposal to hold a referendum and voted to hold one.

After the result was announced, around 60 MPs who had voted to hold the referendum voted against accepting the result, and a very large proportion of the population refused to accept the result and demanded that parliament ignore the result. There people I will call the Remainers, by which I mean not those who voted to remain in the EU, but those who demanded that the result of the referendum be ignored. It is this refusal to accept the result which raises issues in the area of public reason.

Although Brexit has changed the nature of the UK's relationship with the EU, and this has changed some far-reaching aspects of British political life, in that, for example, the decisions of the European Court of Justice made after 31 December 2020 will no longer be binding on UK courts. This does not however, constitute a change to constitutional essentials in Rawls sense of the term 'constitutional essentials'. The Brexit vote was not about constitutional essentials. But the response of those people who refused to recognise the result of the vote and who demanded that parliament ignore the result did raise a matter which involved constitutional essentials in Rawls sense of those words, since it raised the question of the relationship between the people and the expression of their will through majority voting, and the nature of the decisions enacted in Parliament. Remainers demanded that parliament, despite the assurances given in Parliament, should ignore the will of the majority.

REMAINERS AND PUBLIC REASON

There is an important point to make about the UK. Rawls talks about public reason covering what he calls constitutional essentials, and in the examples he gives, he assumes that there are a set of fixed procedures enshrined in a constitution, because "It is through these fixed procedures that the people can express... their reasoned democratic will, and indeed without those procedures they can have no such will."⁶ Famously, the UK does not have a written constitution, and the

⁵ David Cameron, the Prime Minister, 10 November 2015, "It will be your decision whether to remain in the EU on the basis of the reforms we secure, or whether we leave. Your decision. Nobody else's. Not politicians'. Not Parliament's. Not lobby groups'. Not mine. Just you. You, the British people, will decide. When the British people speak, their voice will be respected – not ignored.... If we vote to leave, then we will leave." <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe> In the leaflet, *Why the Government believes that voting to remain in the European Union is the best decision for the UK*, sent to every household by the Government before the referendum, it states on page 3 that "This is your chance to decide your own future and the future of the United Kingdom. It is important that you vote". And the following sentence can be found on page 13 "This is your decision. The Government will implement what you decide".

⁶ *Ibid.*, p.232.

procedures are, to some extent, flexible. There are a set of rules and procedures to which parliament adheres, but these rules can be changed at any time and the one fundamental rule is that Parliament is sovereign. This means that Parliament can do whatever it likes and that the rules it makes can be changed at any time and that any promises made by parliament are not binding on parliament.⁷ Unlike countries with a written constitution and a Constitutional Court whose job is to see that parliament conforms to the rules enshrined in the constitution, in the UK there are no constitutional constraints on the power of Parliament. The Remainers demand that parliament refuse to implement the result of the referendum was in conformity with the UK's 'unwritten' constitution. It did not require a change in the constitution. So, in the particular way in which the UK constitution works, based on the idea of the absolute sovereignty of parliament, refusing to implement the result of the referendum would not have necessitated a change in the UK's constitutional essentials. However, it is worth noting that the Remainers case violates Rawls publicity condition, which requires at the very least that political processes do not rest "on the deceptive appearances of institutions that mislead us as to how they work".⁸ The idea that the assurance given by the Prime Minister that "When the British people speak, their voice will be respected – not ignored.... If we vote to leave, then we will leave" did not actually mean what all reasonable people would take it to mean is a clear violation of Rawls' publicity condition.

However, what was at stake when the Remainers demanded that parliament refuse to accept the result of the referendum was what Rawls and every reasonable liberal would call both a constitutional essential and a matter of basic justice. What was at stake was the relationship between parliament and the people in a democracy, and the issue of whether all citizens have an equal role in shaping public policy. These are clearly fundamental constitutional matters and bear directly on the issue of political equality, in that in refusing to accept the result of the referendum Remainers effectively denied the equal worth of each citizen's vote. They wanted the votes of those who voted to leave the EU, which was the majority of those who voted, to be worthless. For the Remainers, only the votes of those who voted remain counted⁹.

Rawls maintained that the demands of public reason fall most heavily on parliamentary representatives, ministers, MPs, and on judges in the Constitutional

⁷ The standard reference for the doctrine of Parliamentary sovereignty is **A.V Dicey**, *Introduction to the Study of the Law of the Constitution*, 1885. Dicey argues that firstly, that Parliament is the supreme law making body and can enact laws on any subject matter. Secondly, that no Parliament can bind its successor. And thirdly, no court of law (or other body) can question the validity of Parliaments enactments. From: <https://www.lawteacher.net/lectures/public-law/parliamentary-sovereignty/>

⁸ *Ibid.*, p.68.

⁹ To some extent, the crudeness of the demand that the Remainers made, that the votes of those who voted to leave the EU be simply ignored, was obscured by their resort to procedural objections and their use of delaying tactics. In this respect it was not dissimilar to the tactics used by Keiko Fujimori in the Peruvian election of 2021 in her attempts to use procedural devices to prevent the elected President taking power.

Court in those countries which have one – on those figures who should exemplify the use of public reason due to their position in society. So, the fact that around 60 MPs (approximately 10% of the House of Commons) who had voted in favour of holding a referendum subsequently voted against implementing the result is very disturbing¹⁰.

Rawls thinks that there is a very strict demand that those people, such as MPs, who by virtue of their position in the political life of a country occupy a special position, who operate in what Rawls calls the public political forum, should use only public reason in reaching their decisions when matters of basic justice and constitutional essentials are being decided.¹¹ Because these are people who, in virtue of their public position and public power, can be “expected to have a deeper understanding of society’s conception of political justice than others, and a greater facility in applying its principles and in reaching reasonable decisions.”¹² Rawls is quite explicit, “As to whom public reason applies... it always applies to public and government officers in official forums, in their debates and votes on the floor of the legislature.”¹³ So, the fact that around 60 MPs chose to ignore the requirement of public reason is a reminder of how shallow the roots of liberalism may be in Parliament.

Rawls accepts that when matters of constitutional essentials and basic justice are not at stake, such as in the vote to remain in or to leave the EU, ordinary citizens and legislators may vote on the basis of their comprehensive doctrines: “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.”¹⁴ But the requirement to reason in terms of public reason does apply to ordinary citizens when constitutional essentials and matters of basic justice are at stake. “Citizens are to reason by public reason and to be guided by the criterion of reciprocity, whenever constitutional essentials and matters of basic justice are at stake.”¹⁵ “I stress that the limits of public reason are not, clearly, the limits of law or statute but the limits we honor when we honor an ideal: the ideal of democratic citizens trying to conduct their political affairs on terms supported by public values that we might reasonably expect others to endorse... Public reason further asks of us that the balance of those values we hold to be reasonable in a particular case is a balance we sincerely think can be seen to be reasonable by others.”¹⁶

¹⁰ I have left the Scottish National Party (SNP) out of my calculations as they voted against holding the referendum and against leaving the EU after the result of the referendum was declared. Scotland voted overwhelming to remain in the EU and the SNP could with some legitimacy claim to be expressing the will of the people of Scotland.

¹¹ *Ibid.*, p.80.

¹² *Ibid.*, pp. 442–3.

¹³ *Ibid.*, p. 252.

¹⁴ *Ibid.*, p. 235.

¹⁵ *Introduction* to the Paperback Edition, p.liii.

¹⁶ *Ibid.*, pp. 252–253.

My argument is that because the refusal to accept the result of the referendum raised a constitutionally fundamental issue, the structure and rules governing the acceptance and implementation of a democratic vote, it showed that within the UK (in point of fact, mainly in England) there was a significant number of parliamentarians and ordinary citizens who were unable to accept the demands of public reason. They were not prepared to lose the vote, which means that they were not prepared to honour fair terms of cooperation when the cost was their own interests¹⁷. In demanding that the result of the referendum be ignored they refused to offer their fellow citizens terms which they believe to be reasonable and which they believe other reasonable citizens can reasonably accept. They rejected the idea that society be based on reciprocity – on fair terms reasonable for all to accept. This refusal to offer fair terms to others effectively undermines the basis for a liberal society. They are, in Rawls terminology, “unreasonable”. “People are unreasonable... when they plan to engage in cooperative schemes but are unwilling to honour... except as a necessary public pretence, any general principles or standards for specifying fair terms of cooperation. They are ready to violate such terms as suits their interests when circumstances allow.”¹⁸ And as Rawls further says, “Unreasonable doctrines are a threat to democratic institutions, since it is impossible for them to abide by a constitutional regime except as a *modus vivendi*. Their existence sets a limit to the aim of fully realizing a reasonable democratic society with its ideal of public reason and the idea of legitimate law.”¹⁹

Part of the problem is that because the UK does not have a written constitution, the constitutional implications of a refusal to implement the result of the referendum were not immediately apparent to many people, and very little of the extensive public discussion which occurred after the result was declared centred on the implications for constitutional essentials and for a fair society based on the agreement of free and equal citizens. That is to say, there was almost no discussion of the implications for those aspects of society which Rawls sees as essential to a liberal society. Instead, the Remainers treated the possibility of rejecting the outcome of the referendum as though it had no constitutional implications and no implications for the idea of a society as a union of free and equal citizens. The Remainers treated the possibility of refusing to implement the result of the referendum as simply part of ordinary politics.

Rawls makes a distinction between ordinary law and higher law. Higher law “is the expression of the people’s constituent power and has the higher authority of

¹⁷ “Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them.”, *Ibid.*, p. 446.

¹⁸ *Ibid.*, p. 50.

¹⁹ *Ibid.*, p. 489.

the will of We the People.”²⁰ It covers constitutional essential and the conception of justice that free and equal people agree upon. The aim of public reason is to articulate this ideal of a constitution which embodies such a conception of higher law. Ordinary law covers the day to day political decisions which do not involve constitutional fundamentals and matters of basic justice. I have argued that the Brexit vote was a matter of ordinary law and that the demand that the result of the vote be ignored involved the question of higher law. Because the UK lacks a written constitution, Remainers presented their demand that the result of the referendum be ignored as a matter of ordinary law, rather than a constitutional essential which would fall within the scope of what Rawls calls higher law.

What was at stake in the debate after the result had been announced was a conflict between the rational and the reasonable.²¹ Reasonable people are able to offer fair terms of cooperation and abide by them. They respect the principle of reciprocity. Rational agents pursue their own ends and interests, which may well be at the expense of others and at the expense of social cooperation. They are the kinds of rational agents that one finds in neo-liberal economic theory. They lack “the particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and to do so on terms that others as equals might reasonably be expected to endorse.”²² It was rational for the Remainers to pursue their interests at the expense of social cooperation, but it was not reasonable. But for Rawls, a liberal society which is based on justice as fairness depends on society having reasonable citizens, rather than their having rational citizens.

CONCLUSION

In Political Liberalism, Rawls is mainly concerned with the problem of how to get people who hold different and incompatible comprehensive doctrines to agree on a set of rules for fair cooperation. In contemporary political thinking in France, for example, the idea that Islam may be incompatible with laïcité, is often seen, wrongly, as the incompatibility of Islam with public reason.²³ And as

²⁰ *Ibid.*, pp. 234–235.

²¹ See *Ibid.*, pp. 48–54, ‘The Reasonable and the Rational’.

²² *Ibid.*, p. 51.

²³ It is as well to remember that for Rawls, the French conception of laïcité would not be a form of public reason. It would be a secular comprehensive doctrine. “We must distinguish public reason from what is sometimes referred to as secular reason and secular values. These are not the same as public reason. For I define secular reason as reasoning in terms of comprehensive nonreligious doctrines. Such doctrines and values are much too broad to serve the purposes of public reason. Political values are not moral doctrines.” Rawls, p. 452. In this context, see also Macron’s call for an “Islam des lumières”. ‘Emmanuel Macron veut libérer l’islam de France des influences étrangères’, *Euronews*, 02/10/2020. <https://fr.euronews.com/2020/10/02/emmanuel-macron-veut-liberer-l-islam-de-france-des-influences-etrangees>

such it is seen as a representing the sort of threat to liberal democracy that contemporary Europe needs to face. But the problem which was raised by the refusal of Remainers to accept the result of the Brexit vote was a different problem, and may in fact prove to be a far greater threat to democracy than any supposed incompatibility between Islam and the requirements of public reason. It had very nothing to do with a comprehensive doctrine which was incompatible with public reason. It was the problem of rational self-interested people who could not accept that in a fair and reasonable political system they might not get their own way. The incompatibility was between those who were rational, in Rawls sense of the political implications of self-interested rationality, and those who were reasonable, in the sense of those who recognise the burdens of judgement, the fact of reasonable pluralism and the requirement of reciprocity. This raises a very different kind of problem for a liberal society from the one that was at the forefront of Rawls thinking. The conflict between the reasonable and the rational suggests that the danger to liberalism arises not just from outside, from religious fundamentalists and other groups who hold comprehensive doctrines incompatible with liberalism. It suggests that a serious danger to the kind of liberalism which takes fairness seriously may arise from within the liberal tradition, in the form of those parts of the liberal tradition which prioritise the rational over the reasonable. This leads to the thought that Hayekian approaches to liberalism, which deny any role to justice as fairness within liberal society, and base their conception of liberal society on what they see as a rational individuals – the individual conceived as a kind of self-interested utility maximising self-interested *homo-economicus*, may perhaps present a greater threat to the European conception of what a liberal society should look like than religious fundamentalism does.²⁴ What Brexit showed is that, even within a well-developed liberal society like the UK, there is a significant section of the population and, much more worryingly, a significant number of representatives in parliament, who, when there is a conflict between their self-interest and living in a fair and just society, will reject the fair and just society and choose a self-interested one. This is a deeply worrying thought for those people who are committed to a liberal society of the Rawlsian kind.

²⁴ On the wide variety of theories which have been presented as liberal see Duncan Bell, 'What is Liberalism?' *Political Theory*, Vol. 42, No. 6, 2014. Available at: <https://www.repository.cam.ac.uk/bitstream/handle/1810/247570/Bell%202014%20Political%20Theory.pdf?sequence=1>