
Burdens of Judgment and Ethical Pluralism of Values

What were the reasons behind the risk taking and institutional audacity involved in establishing PTA experiments, which foreshadowed the notion of RRI, essentially from the perspective of allowing the participation of interested parties¹? Some analysts cite epistemic disputes², considering that the skills of ordinary citizens could be used to complement those of highly trained scientists. Whilst questions raised by citizens or interested parties, or their on-the-ground knowledge, may be helpful to scientists, how is this “lay” knowledge to be considered when it enters into conflict with expert opinions? In our opinion, the normative justification is more relevant. Whilst a citizen³ is unlikely to challenge a biologist, for example, in their own area of specialism, there is greater equality between the two individuals in terms of moral and ethical knowledge. We do not mean to defend the refusal of expertise in ethics, a tendency often encountered in France⁴. This equality between

1 A distinction will not be made here between stakeholders and citizens. For further details on this question, see Pellé and Reber [PEL 16].

2 These positions are held by many sociologists working on the fields of science and technology, considered to belong to the constructivist school of thought.

3 Except in borderline cases, where researchers present during the experiment dispute the authority of invited experts. This occurred during local debates concerning the ITER (*International Thermonuclear Experimental Reactor*) project, already mentioned. Note that the expert in question was not given the time to fully explain his position. See Reber [REB 07].

4 The case of the first *Etats Généraux de Bioéthique* is telling in terms of the relative absence of experts in ethics. Medical doctors often fulfill this role, although some reject the possibility of expertise of this type, even whilst providing it *de facto*. The composition of the *Comité Consultatif National d’Ethique français pour les sciences de la vie et de la santé* (CCNE, French national advisory committee on ethics in health and life sciences) has also been unsatisfactory on many occasions, lacking philosophers and even legal specialists, not to mention specialists in ethics.

experts and citizens may only be affected by the presence of an ethics expert, or, more rarely, by that of a skeptical meta-ethicist, invalidating and refusing most of the arguments and justifications in question. The ethical aspect of evaluation is therefore the most important element in PTA. This also appears to be true for RRI, on condition that the moral responsibility at the heart of the discipline is taken seriously.

Socrates is wrong-footed in this case; if we adopt his position that ethical issues may destroy the bonds of friendship, it may be considered riskier still to bring together individuals who are not friends, and may even be enemies, for the purposes of collective evaluation. PTA and RRI, as new forms of dialog, have much ground left to cover in order to invalidate these Socratic assumptions on ethics.

Moreover, the comparison with *Euthyphro* reaches its limits here, as Euthyphro considers himself an expert in matters of religion, and Socrates is falsely ingenuous, pretending to know nothing and using seemingly innocent questions to disarm those who believe themselves to be knowledgeable. The citizens invited to these debates are not supposed to be specialists on the matter in question; the questions are therefore not posed by experts⁵ but by naïve Euthyphros.

We shall present an opposition to Socrates' stance by attempting to show that ethical questions are not intended to generate anger or disputes, or to create enemies, in cases of unresolved disagreement. It is possible to guide this type of question, and to reach a variety of types of agreement. In a society which is marked by diversity and which recognizes the legitimacy of pluralism, the ability to live with disagreements between friends, or between friends and enemies, is much to be desired.

We shall begin this chapter by considering the difficulties inherent in judgment, before focusing on differences of an ethical variety, shot through with the normative reality of the ethical pluralism of values, from relativisms to monisms, and some of their characteristics (conditionality, incompatibility, incommensurability). Finally, we shall consider the type of commitments made in relation to these values and different types of conflict.

⁵ This reversal of positions is notable, but offers no guarantee that the discussion will go further, simply ensuring that citizens will not be "subject to the question". This often means that the process of enquiry will be shorter.

Empirically, we have noticed that experts often ask the citizens questions, even going so far as to inform these individuals of the questions they should be asking.

1.1. The “burdens of judgment” at the root of the “fact of reasonable pluralism”

Reaching an ethical judgment on a question, or simply reaching judgment on a question, is a difficult task for any individual. Socrates did not take this first difficulty encountered in internal ethical conflicts or dilemmas into account⁶. The issue takes a different direction if the same individual must justify his or her judgment in front of others, in the context of plurality (of disciplines or positions) or the “fact of pluralism”. This final expression is borrowed from John Rawls. It may appear intriguing, or even unsuitable, with regard to our proposed distinction between plurality and pluralism, as set out into the introduction, where the former is factual and the latter is normative. The combination of the normative notion of pluralism with the term “fact” is therefore surprising. In any case, a seminal text by Rawls, one of the most influential political philosophers of our time, attempts to explain the “sources of disagreement between reasonable people”, in order to defend the recognition of what he called the “fact of pluralism”, which is, additionally, “reasonable”. After eliminating overly simplistic explanations for disagreement, including the diversity of narrow interests, the lack of brightness and logical errors, Rawls briefly enumerates the reasons for disagreement, which he refers to as “burdens of judgment”. In a note in *Political Liberalism*, Rawls draws a clear distinction between the burden of proof in legal cases, falling on the plaintiff or defendant, and the burden of judgment⁷. Whilst Rawls did not make this connection, we shall use his distinction in discussion of the precautionary principle (Chapter 4), notably with regard to the reversal of the burden of proof, which falls to the producer of a new technology rather than on a plaintiff obliged to prove damages, as seen in most other situations.

Rawls limited the problem to the “obstacles” of correct usage of the powers of reason and judgment in “ordinary political life”. This context is much more limited than that of PTA and RRI. However, the question of justice and the associated notions, as discussed by Rawls, is also one of the issues addressed in Socrates’ somewhat monological dialog with Euthyphro⁸, in which the possibility of reaching agreement is debated. Rawls agrees with Socrates in terms of the possibility of

6 Certain philosophers maintain that these conflicts are impossible to resolve, and the threat of sanctions is necessary to elicit a response. See the famous example of Paul Gauguin, who left his wife in order to travel to the Marquesas Islands, wishing to benefit from their inspiration in order to become a great painter; this issue is impossible to resolve by moral philosophy, using Bernard Williams’ version. Then, he refers to what he calls “moral luck”, a curious form of Hegelian destined expectancy.

7 [RAW 95a, note 9, p. 55].

8 A distinction should be made between justice as a state of fairness in a political context, as defended by Rawls, and justice as a result of a particular comprehensive doctrine (moral, ethical, religious or ethnic).

resolving scientific disputes, at least in the case of the natural sciences in a long-term perspective⁹. Rawls focuses on explaining what underlies the most notable and permanent fact of democratic societies and culture, the limited framework of his analysis: justice as fairness. He recognizes that his work is limited around two key values, liberty and equality¹⁰, and barely mentions redistributive justice and the protection of the environment or the preservation of wildlife, to use Rawls' own terms¹¹. Significant and lengthy adjustments are therefore needed in order to discuss innovation and technological risks. The most notable fact is reasonable pluralism, described as "the diversity of religious, philosophical, and moral doctrines found in modern democratic societies"¹². Rawls lists five types of burdens of judgment¹³:

a) "The *evidence*¹⁴ – empirical and scientific – bearing on a case may be¹⁵ conflicting and complex, and thus *hard to assess and evaluate*¹⁶."

b) Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their *weight*, and so arrive at different judgments.

c) To some degree, all our concepts, and not only our moral and political concepts, are *vague* and subject to hard cases. This *indeterminacy* means that we must rely on judgment and interpretation (and on judgments about interpretations) within some range (not sharply specifiable), where reasonable persons may differ.

d) The way we assess evidence and weigh moral and political values is shaped (how we cannot tell) by our total experience, our whole course of life up to now; and

9 [RAW 03].

10 [RAW 95a].

11 [RAW 95a, p. XXVIII].

12 [RAW 03, pp. 33–34].

13 There is a notable difference between the two versions of this list. The version in [RAW 95a] contains six points. Even in this version, Rawls notes that his list is not exhaustive, and only covers the most obvious sources. See [RAW 95a, p. 54]. The list in [RAW 03] reproduces the sixth point, (f), in [RAW 95a] with four modifications in note 26, p. 36. [RAW 03, pp. 35–36]. The most recent list [RAW 03] is given here, but the list in [RAW 95a] will be used in our discussion of ethical theories (Chapter 2). In this first version, the questions considered above are related to three types of judgment: rational judgment and two forms of reasonable judgment [RAW 95a, pp. 55–56].

Similarly, in [RAW 95a], this list of *cette liste des "obstacles"* est précédée des questions du rationnel et du raisonnable et suivie de la question des doctrines compréhensives raisonnables, alors que la liste à peine modifiée dans [RAW 03] est précédée par la question de l'idée de consensus par recoupements et suivie d'une défense contre le scepticisme, ainsi que d'une mise au point sur l'idée de consensus par recoupements.

14 The italics are ours.

15 This nuance is omitted in the [RAW 95a] list.

16 Note that he mentions the two terms, assess and evaluate.

our total experiences surely differ¹⁷. Therefore, in a modern society with its numerous offices and positions, its many divisions of labor, and its many social groups and often their ethnic variety, citizens' total experiences¹⁸ differ enough for their judgments to diverge to some degree on many if not most cases of any significant complexity.

e) Often there are different kinds of normative considerations of different forces on both sides of a question and it is difficult to make an overall assessment¹⁹.

The list of sources of disagreement in [RAW 95a] includes an additional point f) which is formulated as follows:

“Finally, as we note in referring to Berlin’s view (V:6.2), any system of social institutions is limited in the values it can admit, so that some selection must be made from the full range of moral and political values that might be realized. This is because any system of institutions has, as it were, a limited social space. In being forced to select amongst cherished values, or when we hold to several and must restrict each in view of the requirements of others²⁰, we face great difficulties in setting priorities and making adjustments. Many hard decisions may seem to have no clear answer²¹.”

No attempt will be made to extend this list of difficulties; Rawls himself recognized that it was not exhaustive. Nor shall we endeavor to reduce supererogatory points.

Despite its limited framework, focusing on questions of justice and equality, this work has been chosen for a number of reasons, apart from its reputation and use as a benchmark in political, and sometimes moral, philosophy. It highlights certain serious difficulties relating to judgments, which need to be reached collectively in new types of discussion spaces, whether for PTA or RRI. It might even be seen to render the solution to these issues almost impossible, implausible and of debatable quality, as it suggests that these problems are insurmountable. With the addition of the questions discussed in PTA or RRI, considerably more numerous than those encountered in the field of justice alone, and at an international level, rather than the national level considered by Rawls, the burden of proof regarding the relevance and

17 In [RAW 95a], Rawls is stronger. He writes “must always differ”.

18 In the same way, he adds that these experiences are disparate.

19 In [RAW 95a], point e) is concerned with issues rather than questions and, furthermore, is accompanied by a long note on the fragmentation of value according to Nagel. Rawls refers to Nagel [NAG 79, pp. 128–141]. This thesis may be used as a basis for describing this source of difficulty from a comprehensive moral doctrine.

20 This element of the phrase is omitted in [RAW 03, note 26].

21 [RAW 95, p. 57].

feasibility of this type of experiment is even heavier²², at least in theoretical terms. The conclusions reached in this area also relate to difficulties encountered in analysis and evaluation.

However, Rawls' work, a cornerstone of political liberalism²³ and his vision of society as a system of fair cooperation between free and equal citizens, remains useful in the contexts of PTA²⁴ and RRI. The political perspective is dominant in these practices, and this approach is often implicit. For example, the various actors, whether experts or citizens, are treated symmetrically²⁵. In a way, they possess two primal "moral powers", as set out by Rawls: liberty and equality. These elements are combined with the motivation to participate in fair and equitable cooperation²⁶. This symmetry, which is often assumed without discussion, should not be taken for granted, as we shall see in Chapter 6. If this can be envisaged from a political standpoint, Rawls felt that the political standpoint should take precedence over ethical considerations. We will question this claim.

Note that Rawls starts from the idea of reasonable disagreement, a perspective which is not often upheld in the context of PTA or RRI, which are often more consensualist²⁷, despite acting as a guarantee of respect. In the case of RRI, as formulated by the European Commission, scientific education might be considered to be sufficient to avoid situations of reasonable disagreement in the sense put forward by Rawls.

Rawls' discussion centers on two notable concepts, used as a starting point: reasonable pluralism, and the variety of reasonable comprehensive doctrines²⁸. These master pieces recognize the burdens of judgment set out above, along with certain political values, including freedom of conscience.

22 We should not be discouraged by this situation; the case of the parliaments analyzed from a practical perspective in the early years of deliberative democracy was of a similar difficulty, and similarly questionable.

23 For example, see [RAW 03, p. 40].

24 Notably in terms of the psychological traits he assumes. See [RAW 03, pp. 196–197].

25 The term "symmetry" is also used by Rawls in [RAW 95a, p. 52].

26 For example, see [RAW 95a, pp. 48ff].

27 To cite just one example, consider the reports or charters expected of citizens at the end of the process. The aim of the procedure is to produce the most consensual report possible, through reformulations, often proposed by experienced facilitators, concessions or apparent (or implicit) consensus.

28 [RAW 95a, pp. 191, 197].

1.2. Burdens of judgment: a critique

To begin with, we shall not consider Rawls' attempt to leave aside moral philosophy (as a doctrine or applied)²⁹ in order to focus on his explanation of the fact of reasonable pluralism, owing to its existence to the five points set out above. Our discussion will be split into two main parts: does each burden of judgment constitute an insurmountable obstacle (section 1.2.1), and what type of pluralism do we mean (section 1.2.2)?

We shall consider how each of the five points contributes to a reasonable pluralism, presented by Rawls as a fact.

The term "burdens of judgment" will not be used each time; instead, we will focus on the five points, addressing them systematically using their respective letters.

Note that we shall not adopt a monist position, which considers that all problems can be solved in one way or subjected to a rapid consensual resolution. However, we feel that what Rawls presents as common sense is like a scorched earth³⁰ policy for philosophy, or a highly pessimistic anticipation of possible modes of resolution.

1.2.1. Burdens of judgment: a starting point, not an obstacle

a) Without referring to them directly, Rawls shares the views of Socrates in *Euthyphro* concerning the resolution of scientific disputes. He begins by asserting that this is the case³¹. However, point a), explicitly, and points b), c) and d), less directly, question the ease or the possibility of resolving scientific disputes³²; with one hand, Rawls takes away what he conceded with the other.

We feel that the term of proof in point a) is too vague. The problem is not so much a question of proof as the numerous phases involved in validating this proof, with the accompanying uncertainties, and with the space given over to hypotheses and their revisions. We shall return to this idea with the precautionary principle which specifies some of these phases (Chapter 4), scientific practice and the choice of scientific theories (Chapter 5). There is nothing to say that inquiries of this kind are not possible, although they may be partial and hard to carry to term. In any case, the term "difficult" does not mean "impossible". Moreover, if the question concerns

29 [RAW 95a, p. 14].

30 Especially, point c), referring to the vague nature of concepts.

31 [RAW 03, p. 35].

32 The version given in [RAW 95a] is explicit in terms of theoretical reason. See p. 56.

evaluation, this evaluation may be more or less precise, as we saw in the general introduction. Following Rawls, we might all too easily give in to a sort of epistemic abstinence³³ with regard to ethics, and even within the domain of science.

b) We accept the fact that different judgments may be made concerning the weighting of considerations recognized to be relevant. This will be seen in Chapter 2 in the context of ethical theories. We shall go further still, presenting a varied selection of entities for examination in the context of moral life. However, the weighting obstacle is not insurmountable; on the contrary, it may be discussed and, potentially, negotiated. The weight may be considered to be easier to measure; even Socrates encouraged the use of weighing in order to resolve scientific disputes in the extract given above.

However, in the context of ethical theories, we shall explore the domain of pluralism in terms of its normative content, and not that of pluralism given as a fact, as discussed by Rawls alongside three other facts: a continuing shared adherence to one comprehensive doctrine can only be maintained by the oppressive use of state power; free and willing support of a democratic regime by at least a substantial majority of its politically active citizens; and a political culture within a democratic society, which includes, at least implicitly, certain durable fundamental ideas suitable for use in developing a notion of justice for a constitutional regime³⁴.

Rawls wished to base his discussion on “plain facts, open to all”³⁵. He considered that these facts stemmed from psychological observation and from political sociology³⁶. This is emphasized in a note in which the author distances himself from Nagel’s fragmentation of values. Rawls speaks of two main elements. The first of these is the permanent diversity of conflicting comprehensive doctrines, which are mutually incompatible whilst remaining reasonable. These comprehensive doctrines form stable schemes, creating their own judgments, which are themselves stable. The second element constitutes an explanation of this first point: this diversity is due to the practical use of a free reason. Practical judgments are considered either in terms of what they produce, consolidating comprehensive doctrines, or from the perspective of difficulties (the five or six burdens of judgment). In our view, there is no significant distinction between the products of practical judgments and those of doctrines; Rawls might simply have spoken of plurality.

33 See [DUM 06, pp. 159–171].

34 [RAW 03, pp. 34–35].

35 [RAW 95a, p. 57]. Note that this fact is barely more accessible in its five (or six) characterizations than with Nagel’s explanations.

36 [RAW 03, p. 33].

Concerning the judgment process and the associated burdens, the various available means of guiding judgment might have been used, taking a less skeptical approach. Ethical pluralism highlights this “topography” and acts as a guide in the creation of this judgment, whether individual or collective, as we shall see in Chapter 2. Considering another passage in [RAW 95a] on the difference between pluralism and the fact of reasonable pluralism, Rawls’ position is even more perplexing³⁷. A brief remark³⁸ on his debt to Joshua Cohen³⁹, concerning the distinction between reasonable pluralism, and pluralism emphasizes the reasonable character of comprehensive doctrines. Free institutions do not only generate a variety of reasonable comprehensive doctrines, but also do this, in part, due to the practical use of a free reason. Rawls’ opposition to the “fact of reasonable pluralism” and pluralism in the sense used in moral philosophy conceals, as we shall see, a possible position with regard to the way in which judgment is approached. Perhaps, to follow Rawls’ reasoning, we should consider the fact of judging differently as a fact in its own right. However, there is no reason to reject the question of analysis at the heart of this judgment; instead, ethical evaluation may be carried out in a number of ways, not only to support, but also to justify or even revise this analysis. An additional advantage of this approach is that it highlights the fact that comprehensive doctrines are not fully unified or fixed. This brings us closer to the real situation, both historically and at the present time. Although Rawls presents a utopian theory⁴⁰, this should not prevent us from taking plausibility into account.

c) This point, which falls within the area of interpretation, is more troublesome than the first. However, if the concepts are vague, we might argue that the philosopher’s task is to provide definitions that are more precise. Moreover, we do not feel that differing individual interpretations of these concepts must necessarily result in disagreement. We may create more precise definitions and attempt to compare and contrast different interpretations. There is therefore a margin for maneuver which may be exploited, even in opposing directions.

First, from a passive standpoint, we might argue that, in politics, vagueness, ambiguity and a low level of precision may constitute a desirable quality and be useful in reaching agreements. It may be better to avoid excessive explanation, which might highlight areas of disagreement. A vague, general formulation has more chance of winning the support of the most different individuals or groups.

37 The Rawlsian acceptance of the difference between comprehensive beliefs and true comprehensive beliefs, as set out by Nagel and Cohen, is similarly perplexing. See [RAW 95a, p. 61].

38 [RAW 95a, pp. 36–37].

39 See Cohen [COH 93, pp. 270–291].

40 [RAW 03, p. 13]. Whilst Rawls revendicates this utopianism, he considers practical realities, including, for example, his five facts of democratic societies.

Rawls appears to take a very similar approach, seeking the support of different specific doctrines via overlapping consensus. These consensuses should be recognized as being apparent, rather than explicit.

Second, in contrast, the affirmation of indetermination of moral and ethical concepts, whilst initially interesting, appears to be problematic if we consider that it necessarily leads to disagreement. We may, instead, wish to maintain this indetermination as it offers room for negotiation, and may even promote the creation of interpretations, which may, explicitly, lead to agreements.

This indetermination, as it is formulated, is too vague and is itself insufficiently determined⁴¹. The most sensitive point is not indetermination itself, but rather the different focalizations, which may guide ethical evaluations in the cases under scrutiny, as we shall see (Chapter 2 in the case of ethics and Chapter 6 for science and ethics). However, once again, pluralism does not necessarily lead to permanent disagreements.

d) This point relates directly to the plurality of experience, and forms an essential part of any modern theory or democratic system. It is even more crucial in PTA, where this plurality is taken as a quality criterion; this will also apply to RRI when it enters the sphere of ethical discussions, something which appears inevitable⁴². Discussions within the framework of these experiences frequently produce different evaluations of moral and political values. Proofs, notably scientific proofs, will not be considered here, as they are subject to a lesser variability due to the existence of more stable modes of agreement⁴³; Rawls recognized this initially, but seems to forget this point later in his work. Once again, it is important not to get too far ahead of ourselves by considering that this will necessarily lead to disagreement.

Additionally, Rawls considers that, in order for evaluation to be possible, experiments or experiences must cover the whole of life, something which is not plausible. This idea is either a platitude – we make use of our own experiences in reaching a judgment – or impossible. How can we consider the full extent of our experience when making a judgment? The real problems to solve revolve around experiences which are used by different individuals to reach a certain kind of judgment, and the means of moving beyond the specific and individual nature of our particular experiences in order to understand those of others and beyond, to take up

41 For Rawls' relativism in ethics and politics and on the problem of indetermination, see Reber [REB 16a]. Dworkin discusses interpretative concepts which themselves require interpretation, or which use emulation between interpretations in order to identify the best option.

42 See Pellé and Reber [PEL 16].

43 See Introduction to Part 1.

positions on a shared, common playing field, attempting to reach a more universal conception.

If we accept Rawls' idea that the most common and most hotly debated disagreements are those occurring within ourselves⁴⁴, how is it that we can solve these issues, but not solve disagreements with others? This point also raises questions in relation to the partial separation of the ethical and political domains⁴⁵.

e) Like point a), this point identifies only a difficulty and not an impossibility. PTA and even RRI, designed to be spaces for evaluation, inquiry and accompaniment (Chapter 6), allow us, precisely, to obtain a global evaluation. The writer Paul Claudel stated that the whole is that what counts in a work of art; there was also a time when philosophers took the risk of a systematic approach in order to consider the connections between domains, instead of more specialized local approaches.

Whilst all of the points highlighted by Rawls are real problems, and need to be taken into account by the protagonists in PTA-type debates or for RRI systems, they do not always constitute causes for disagreement⁴⁶. On the contrary, they may be a motivation for commitment and be used to justify respect for the reasonable character of the assertions and pretensions of other participants.

Faced with Rawls' five (or six) points, we wonder why the same amount of time (if not more) is not devoted to finding solutions in ethics as in the sciences. We accept Rawls' list as a starting point, but we do not agree completely with their conclusions.

Our position is made firmer still by considering the second general fact given by Rawls, which is a result of the first (the fact of reasonable pluralism). Rawls claims that continuous shared subscription to "a particular comprehensive doctrine" can only be maintained by the oppressive power of the State⁴⁷. Our approaches differ fundamentally on this point. Rawls wishes to avoid the imposition of a particular comprehensive doctrine in the construction of a State, to the expense of all others, with the subsequent persecution of other citizens, free and equal, but supportive of the doctrine. Our approach is more pluralist, as we feel that there is no need to go from a single comprehensive doctrine to an overarching political structure. Moreover, we are not convinced that oppression would be necessary.

44 [RAW 03, p. 30].

45 [RAW 03, pp. 5, 14].

46 See Merrill [MER 08].

47 For example, see [RAW 03, p. 34]. The author adds a list of resulting crimes and instances of cruelty.

More strategically, including the third general fact of democratic societies, in deriving a particular doctrine, this State would deprive itself of the possible support of the greatest possible number of citizens in its conception of justice as fairness. Tension, or even opposition, would therefore emerge between the second and third general facts.

Rawls' solution⁴⁸ for avoiding the general fact of State oppression has collateral effects on moral philosophy and on ethics. How are we to "deliberate together" with a battlefield as broad as that created by Rawls' five (or six) points, without seeking refuge in basic institutions? This seems to be the pathway advocated by Rawls⁴⁹.

We feel, especially in the cases of PTA and RRI in the forms they are taking in reality⁵⁰ based on exchanges between individuals, there is a reduced risk of one particular comprehensive doctrine achieving dominance over the others. First, these doctrines are often incomplete and hybrid, even for single actors, or actors supposed to belong to the same ethnic group, to use Rawls' categorization. Second, they may be used to both guide and modify the evaluation. This constitutes the only chance to come to grips with the ethical dimensions of a problem, and then attempt to justify it. After all of the work required, if an explicit line of disagreement is identified, it will take time to assess whether the process should stop at this point or continue. In the first case, we have a situation of reasonable disagreement, but one which presents the advantage of being deliberative.

1.2.2. *The variable geometry of pluralisms*

Rawls uses the term "pluralism" to refer to a number of different things. In this section, we shall attempt to establish a clearer distinction.

1.2.2.1. *Theoretical, epistemic, hermeneutic and ethical pluralisms*

According to Rawls, the first four points of the burdens of judgment are based on a theoretical reason. The pluralism considered in point a) is thus theoretical and epistemic, whilst that of point b) is evaluative. Point c) is a hybrid version, with hermeneutic aspects (vague and indeterminate concepts) and evaluative aspects (classifications are subject to interpretation). Although Rawls denies the possibility, point d)⁵¹ raises suspicions of ethical relativism in the perspective of ethical

48 Reconstructing this solution with all its artifacts lies outside the scope of this work. However, we shall consider the idea of reflected equilibrium and its various incarnations in the conclusion to this book.

49 For example, see [RAW 03, pp. 37, 40].

50 And not in an ideal theory, the perspective adopted by Rawls. See [RAW 03, p. 35].

51 This also applies to point f) of the version in [RAW 95a].

pluralism of values, for example, as we shall see later in this chapter. Rawls' relativism takes two forms: individualist perspectivist, and conventionalist with regard to the division of labor.

By our assessment, point e) is most directly relevant to ethical pluralism. However, the [RAW 95a] version, with point f) and the note on Nagel, undermines our qualification of ethical pluralism, as Rawls refuses to enter into normative consideration. To discuss the burden of evaluation, for example, in this way is to go beyond the facts. We are therefore in a context of normative pluralism, or obliged to recognize a normative mode of management as a fact, in the same way that much reasoning and many legal decisions are considered as facts, without shocking anyone⁵².

1.2.2.2. *Four general facts of democratic societies*

Returning to Rawls' five (or six) points, we shall now explain what the author refers to as the four "general facts"⁵³ of political sociology and human psychology⁵⁴: the fact of reasonable pluralism, State oppression to maintain a particular comprehensive doctrine, the need to obtain the broadest possible support base for a secure democratic regime and the use of certain fundamental ideas to support a notion of constitutional justice.

First, we note that the five (six) points in the lists concerning the burden of judgment focus mainly on the first two facts.

Second, we do not consider the second fact to be a necessary consequence of the first⁵⁵.

Finally, the points given to explain oppression are not specific. Oppression is seen as a form of decisionism, considering that the burdens of judgment are too great and that the probability of divergence is very high.

52 This implies the existence of normative or axiological elements, which become facts, in a satisfying reversal of natural sophism. Jurisprudence would be an example of this.

53 The use of the term "fact" to refer to generalities may be problematic. In history, for example, facts are clearly delimited. A distinction must therefore be made between permanent facts and specific, instantaneous facts. Here, we refer to permanent facts.

54 [RAW 03, pp. 33s].

55 The examples given in [RAW 95a] – the Inquisition medieval society united around the Catholic faith – are somewhat distant. The reference to Pope Boniface VIII's affirmation that "outside the church there is no salvation", given as an example of unreasonable doctrine, is also over 700 years old, and forms part of an ecclesiology which is no longer in common use. See [RAW 95a, p. 37; RAW 03, p. 183].

However, this position is open to question. Rawls rejects oppression; however, his approach, considering that these questions cannot be treated by the use of comprehensive doctrines, investment in weighting, the interpretation of concepts or other elements, may not represent the best means of avoiding it.

1.2.2.3. *The fact of reasonable pluralism*

Let us return to our explanation of the fact of reasonable pluralism. We have identified at least three types of pluralism subjacent to Rawls' notion of reasonable pluralism. These distinctions may be used to break down reasonable pluralism and to see how they tie into each other (Chapter 6). The following remarks are intended to highlight the weak points of the explanation of the fact of reasonable pluralism.

First, we should remember that some of these points do not express pluralism, unless pluralism is considered to be equivalent to relativism (notably in the case of point d). These points are therefore no more specific of pluralism than they are of relativism.

Second, these points offer no guarantee of reasonable disagreement, for two reasons. The first reason, already discussed above, is that the five (six) points do not necessarily lead to disagreement. There is a high probability that disagreements will arise in the context of point e), but as we have seen, this should not impede discussion. A disagreement in evaluation is not an insurmountable obstacle, and is often subject to discussion.

The issue of ethical and epistemic pluralism is more serious. In these cases, a reasonable disagreement may be given as a possible outcome, or even presented as a possibility at the beginning of a debate. However, it is not necessarily fatal.

The second reason is more subtle, as it invites us to create an "equation" between the points of the burden of judgment used to explain the fact of reasonable pluralism, on one side, and the cooperation of free and equal citizens on the other side. Looking closely at the two parts of the equation, the content of the "reasonable" is not the same. In the first case, we must consider a heterogeneous scheme including the following elements:

- point a) concerns conflicts and the complexity of scientific proof;
- point b) concerns the weights of different elements taken into account;
- point c) concerns the indetermination of concepts, requiring the use of interpretation in classification;
- point d) concerns the creation of different experiences;
- point e) concerns the different strengths of normative considerations.

On the other side of the equation, we find a cooperation in which other citizens are considered to be free and equal. In the name of reciprocity, it would be unreasonable to reject this cooperation. However, the two sides of the equation are not equivalent. From this image, we simply deduce that the reasonable disagreements likely to arise, given the burdens of judgment, mean that we should recognize the reasonable character of other participants, even if they do not share our point of view⁵⁶. In this way, Rawls admirably avoids hasty judgments of irrationality. The ideas of cognitive bias or irrationality are often used in social psychology or in the cognitive sciences. Without excluding the possibility of this type of error, Rawls operates at a different level of reasoning, with a partial demonstration of charity in the sense set out by Donald Davidson, taking the effort of understanding others' reasoning as far as possible. However, Rawls' refusal to go further in considering disagreements is regrettable. Going beyond simple legitimation by equality and liberty, he wished to include a reasonable character as a primordial element in this cooperation. Rawls' proposal effectively constitutes a half-measure, as it only recognizes the initial difficulties involved in judgment, without going down the twisting path of evaluation.

The probability of finding different pathways for evaluation is even higher if we add the other points of the burdens of judgment (in addition to e), creating more complex and rich possibilities. This is the case in PTA and RRI, where the disorganized aspect of linguistic exchanges is more problematic than the clash of dense and constructed ethical and epistemic disagreements⁵⁷. Fortunately, doctrines are in place to collect and organize these exchanges for the purposes of comparison.

From here on, two options are open to us: either continue using point e), the only directly ethical point, exclusively, or accept the cohabitation of scientific and normative evaluation. The second option will be taken here. This perspective will be considered in greater detail in Part 2.

The first solution will be discussed in the context of ethical theories (Chapter 2). Rawls begins from a starting point of political liberalism, which he delimits and separates from comprehensive doctrine. He then uses this notion as an artifact in his proposal for overlapping consensus. We shall take the opposite direction, starting from morality and ethics, and not excluding the resources of "comprehensive doctrines". Priority will be given to ethical theories and the pluralism of values. In our opinion, Rawls includes too much in these doctrines: religions, the "reasonable

56 See Rawls [RAW 95a p. 61]: "reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others, and so they endorse some form of liberty of conscience and freedom of thought".

57 See Reber [REB 11b, Part 1].

liberalisms of Kant or Mill”, or moral doctrines such as utilitarianism⁵⁸. Second, we shall consider the combination of these different types of comprehensive doctrines⁵⁹.

We shall begin with the ethical pluralism of values. This term features only once in the five points given in [RAW 03]. In a way, Rawls’ view of the elements making up ethical theories, relationships and distinctions between values is too narrow. Furthermore, his burdens of judgment are insufficiently specific in ethical terms. Rawls is also overly hasty in declaring treatments and judgments to be impossible.

1.3. Ethical pluralism of values, from relativism to monism

Those moral or political philosophers who have given more specific consideration to ethical pluralism⁶⁰ have favored a pluralism of values⁶¹. This is relevant for both PTA and RRI, alongside many other areas of life. It applies to a number of questions, such as the incommensurability of values, the predominance of certain values over others, the forms of commitment; it is also relevant to some considerations relating to types of implicit social ontology, notably the hypotheses made concerning the dependence of individuals upon groups or upon other individuals.

These authors often operate within the framework of liberal political philosophy. Here, and in the conclusion to this chapter, we shall present and discuss (in the footnotes) an essay that attempts to call this framework into question. John Kekes’ *The Morality of Pluralism*⁶² is considered to be one of the most relevant⁶³ works on ethical pluralism. Our task is complicated by considering Kekes’ sources of inspiration, which lie partly outside of the liberal framework; the author is indebted to two very different sources, the liberal Isaiah Berlin and the conservative

58 For example, see [RAW 95a, pp. 37s, 58s; RAW 03, pp. 14, 32s, 191s].

59 Work begun in Reber [REB 08a].

60 Certain authors have discussed moral pluralism, identifying the same problems with regard to the ever-moving distinction between morality and ethics. John Kekes, a specialist in the ethical pluralism of values whose work will be discussed in this section, classifies pluralism using the terms *moral theory* and *ethical and metaethical theory* to mean exactly the same thing in two consecutive paragraphs. See Kekes [KEK 93, pp. 12–13].

61 For a review of pluralisms of values, see Rorty [ROR 90, pp. 3–20].

62 [KEK 76].

63 For example, see the eulogistic assessment of Rescher, a specialist in general pluralism: [RES 93, pp. 90, 131, 158]. This work takes issue with views expressed by Habermas on a number of occasions.

Michael Oakeshott⁶⁴. Note, in passing, that it is possible to reconcile differing thoughts, if not comprehensive doctrines.

Straightaway, Kekes' approach concerns conflicts at a mostly individual level; this is welcome in the context of a liberal perspective, making it harder for more liberal thinkers to attack as being overly conservative⁶⁵. This simplifies our problem, but presents a drawback for the more political elements relating to pluralism, discussed in greater detail in the conclusion to this chapter. Here, politics is taken to mean political problems concerning a large number of people, rather than cooperation, as discussed by Rawls. This is true of objects treated using PTA or RRI, such as global warming. Finally, note that, as with most work on the moral and political pluralism, the debates in Kekes' work focus on problems of identity and religion. Without minimizing these issues, PTA and RRI are more focused on other, shared problems⁶⁶ of a technical and/or environmental nature.

Kekes presents ethical pluralism as a position open to opposition on two fronts. On one side, this idea is in opposition to monism, according to which "there is one, and only one, possible [ordered and] reasonable system of values"⁶⁷. On the other side, we find relativism, which defends, on the contrary, and in a variety of forms, that all values are conventional. In this case, "what values people accept depends on the context in which they were born, on their genetic inheritance and subsequent experiences, on the political, cultural, economic and religious influences on them,"⁶⁸ in short, what they value depends on their subjective attitudes, and not on the objective features of values". Ethical pluralism of values is the belief according to which a good life depends on the realization of types of values⁶⁹, which are radically different; many of these are *conflicting* and cannot be realized simultaneously. Living a good life requires the achievement of "a coherent ordering of plural and conflicting values, but coherent orderings are themselves plural and conflicting"⁷⁰.

64 Other communitarian philosophers might have been selected here, or, for example, Chantale Mouffe, whose critique of liberalism is inspired by another conservative, Carl Schmitt. Kekes has the advantage of being a moral philosopher and of going into considerable depth in his analysis of moral values and their relationships.

65 Such as Crowder [CRO 02]. This initial perspective sets Kekes apart from communitarian philosophers.

66 See Chardel and Reber [CHA 14].

67 [KEK 93, p. 8].

68 These types of approaches were motivating factors in our reassessment of a form of relativism shown by Rawls, notably in relation to point d) in the list of burdens of judgment, alongside an overly broad acceptance of comprehensive doctrines.

69 Moral and non-moral for Kekes, who gives examples of both types. The first type includes good, duty, justice and loyalty. The second includes creativity, physical wellbeing and style.

70 [KEK 93, p. 11].

For Kekes, the plurality of conceptions of a good life takes two forms; first, it incarnates different values, and second, these values are taken into account according to different orders.

Initially, Kekes limits values to connections⁷¹ with goods (or benefits), or evils which may have an effect on human individuals. He establishes several distinctions between values.

First, Kekes distinguishes between those values in which positive or negative effects are caused by human agents (such as cruelty or kindness) and those involving non-human agents (such as health⁷² or illness). The notion of moral values is only applied in the first case.

Second, he proposes an important distinction which, in his opinion, opens a possible pathway for resolving value conflicts. Moral values are of two types.

Primary values are those for which benefits and damages are considered to be universal under normal circumstances. Food, love and respect are cited as examples of goods⁷³ of this type, with torture, humiliation and exploitation as examples of evils.

Secondary values vary between individuals, societies, traditions or even historical periods.

There are two main reasons for these variations:

1) The first reason is that *conceptions of good life* consider what is good or evil in different ways⁷⁴. Different orders of value may be used according to social roles, as a parent, spouse, colleague or lover, according to profession, the qualities we wish to cultivate (creativity, influence, ambition) and our preferences (aesthetic,

71 A distinction needs to be made between values, “goods” and positive effects, something Kekes leaves vague.

Consider, for example, the brief explanation in Ogien and Tappolet [OGI 08]: “We consider values not as things, but as qualities associated with things, rather like size or color. We may thus say that liberty or friendship *possess* a certain value”.

The comparison with color had already been made by Max Scheler, as had the comparison between values and goods, and not “things”, as seen here. See Scheler [SCH 73].

72 This example is debatable. Moreover, Kekes recognizes that moral values sometimes presuppose non-moral values in order to be applied [KEK 93, p. 45]. On further reflection, we see that all values *emerge* from non-moral elements.

73 Once again, there is an unfortunate blurring between values and goods. We share Scheler’s position in rejecting this assimilation.

74 Here, Kekes moves too quickly from good to evil, forgetting the competition between values relating exclusively to good, something he discusses later.

culinary, etc.). “What is rightly valued in one kind of life may equally rightly be regarded as a matter of indifference or even positively harmful in another”⁷⁵. Reasonable individuals share primary values as their “shared humanity” makes certain things beneficial, and others harmful. However, reasonable people also recognize that many individual differences exist when we move beyond the basis of shared values. These differences are reflected in secondary values⁷⁶. Kekes adds that primary values are often presumed, and conflicts generally emerge between secondary values⁷⁷.

2) The second reason for the variability of secondary values is dependent on the form and on the different ways in which certain benefits should be pursued, and harmful elements avoided. Take the example of nutrition, which is a primary value; however, the norms in this area, defining benefits and evils through secondary values, are variable.

To summarize, for Kekes, the distinction between moral and non-moral values cuts through the established distinction between primary and secondary values. The pluralism defended in this case is founded on the diversity of goods and evils associated with these different types of values, and on the multiplicity of traditions and conceptions of good life in different contexts. The way in which these values are realized in different concepts will be discovered below⁷⁸.

To ensure clear understanding of these initial points, let us consider approaches to good life. Each individual engages with his or her tradition⁷⁹ in a different manner. He or she adapts the resources of this tradition, ordering values according to their importance for his or her conception of good life. The reasons for ordering are not arbitrary, but vary based on personal judgments. The freedom to conduct our “good life” according to our own reasons forms part of individual integrity, although it is plausible, and indeed probable, that other individuals will share these same reasons.

The most problematic conceptions of good life are those which fail to *prioritize primary values over secondary values*, thus violating the deepest conventions of tradition, as we shall see below. However, it is also possible for an individual to make faulty assessments when selecting values from his or her own tradition in

75 [KEK 93, p. 18].

76 [KEK 93, p. 19].

77 [KEK 93, p. 61].

78 A distinction might be made here between the context of discovery and the context of justification.

79 The plural term “traditions” is more realistic, particularly in pluralist societies; it is rare for an individual to profess allegiance and loyalty to one single tradition.

connection with his or her circumstances or character, for example, due to a lack of knowledge.

Can we go further with the problem of conventions and moral traditions⁸⁰? Conventions also govern primary (or established) and secondary (or variable) values. We can therefore distinguish between *established conventions* and others, which are *variable*. Primary conventions protect the minimum requirements for any good life, whilst variable conventions define the possibilities and limits available above and beyond this minimum, which are thus *optional*. Established conventions are supposed to guide our conduct in relation to the pursuit of primary values, whilst secondary conventions (traditions) set out the acceptable means of implementation of the primary values. However, as primary values are often too general and indeterminate, they need to be realized and specified through the use of secondary values and established conventions. This is the case for the concept of protection, for example, which is a primary value; however, certain questions remain open, concerning, for instance, the extent of this protection: its limits, at the borders of our society or of a state; its application to foreign members, or even enemies; the type of protection in question; its scope, from exclusively covering violence to covering risky activities and self-destructive behaviors; the means by which this protection is to be provided, by laws, the police, customs, families, political authorities, religious authorities or by each individual; and the way in which disputes are to be judged. For Kekes, the solutions to all of these questions are to be found through the use of secondary values, conventions and moral traditions.

This subtle framework allows us to go further than many debates between communitarians and liberals, the first centering on the importance and influence of communitarian entities, and the others on individual autonomy.

However, Kekes refines his presentation further still. Certain secondary values should be included in the content of established conventions. Notably, these values concern customs, rules institutions and the authorities who organize interactions between individuals who live together in the context of a particular society. Kekes thus introduces a new distinction which is important in debates relating to political liberalism. In the same way that certain *secondary values* are *substantive*, making primary values effective, other values are *procedural* as they give a concrete

80 Kekes makes a distinction between the terms “convention” and “tradition”. “(...) Once a tradition has arrived at some set of answers and the answers have become widely accepted, customary, and handed down from generation to generation, they become embodied in conventions” [KEK 93, p. 82]. It is thus possible to speak of conventions of traditions [KEK 93, p. 80]. Later, he indicates that “(...) the conventions from the pluralistic point of view is that they are one of the most effective means of resolving conflicts within a tradition. For conventions institutionalize prevailing conceptions of a good life and the permissible ways of trying to achieve them” [KEK 93, p. 85].

expression to acceptable modes of interaction between individuals. These procedural secondary values define both the varied possibilities, which allow and encourage individuals to interact in different contexts, and with this, equally, the limits beyond which it is not morally acceptable to interfere in the sphere of other individuals. Legal systems⁸¹ or political institutions, and the conventions, which indicate what is encouraged, permitted, tolerated, forbidden, distasteful, shameful or dishonorable, excusable or a reason for exclusion, fall into this category of procedural secondary values, and may vary according to the context. A different emphasis may be placed on honor, shame, disgust or tolerance, partly because of these evaluations concerning this type of convention.

Another pluralist philosopher, Bhiku Parekh, making claims to universality, gives other contemporary examples of these differences⁸². The importance given to different questions in different traditions plays a part in defining the identity of their members. Their shared identity allows these members to regulate their own conduct, to define reasonable expectations with regard to the conduct of other members, to trace distinctions between various groups, between “them” and “us”, and to feel safe⁸³ on a fundamental level of their moral attitude [KEK 93, p. 84].

To summarize, a tradition may be said to be healthy when the established conventions are strong, but the variable conventions are more flexible. A tradition may be damaging if the requirements for good living are insufficiently protected, or, on the contrary, if the variable conventions are strictly maintained to the point where the details of good living constitute elements of orthodoxy and become coercive. “When this happens, the tradition is impoverished by repressing possibilities of good lives other than the orthodox ones”⁸⁴. In this case, pluralism would be suffocated.

81 In this broad acceptance, there is a risk of confusing laws, morality and ethics.

82 See, notably, the passage on universalist pluralism: Parekh [PAR 00, particularly pp. 114–141]. Parekh considers that, given the significant differences in history, traditions and moral culture, it is inevitable and desirable for different societies to interpret, prioritize and implement moral values in different ways, integrating them using their own simple and complex moral structures, with all necessary revisions.

Parekh appears to take the same stance as Kekes, although he only cites this author on one occasion.

83 This is an inverted and more complex form of the Valladolid debate discussed in the introduction.

84 This is a more detailed form of a case presented by Daniel Weinstock, who states that the exit rights of homosexual Jews from their orthodox, non-liberal community solves nothing. It would, in fact, be better if these communities were more open to pluralism [WEI 05]. This type of discussion between orthodox and liberal sensibilities, each group considering itself more faithful than the other, is fraught with difficulties, and is widespread within religions.

1.4. Relativisms and commitments

If pluralism constitutes a third way between monism and relativism, what distinguishes ethical pluralism of values from relativism of values?

1.4.1. Three types of relativism

Unlike pluralism, relativism questions, in a variety of ways, the possibility of discussion, of justification and of a critique of values. There are at least three distinct types of relativism:

– *Radical relativism*: this position affirms that all ethical judgments relate to particular conceptions of morality, which has emerged in a specific historically, culturally, and socially conditioned setting.

– *Conventionalist relativism*: whilst this position accepts the distinction between objective and universal primary values and secondary values, it claims that only secondary values are relative to the conventions of particular contexts.

– *Perspectivist relativism*: accepts the same distinction between primary and secondary values, but considers what other values are regarded as secondary is relative to the conception of a good life of an agent.

One defender of the latter two types of relativism is Rorty, who claims that “absolute validity would be confined to everyday platitudes, elementary mathematical truths, and the like; the sort of beliefs no one wants to argue about (...)” [ROR 81, p. 47]⁸⁵. It might be countered that these platitudes and beliefs concern primary values, which are the minimum requirement for any good life.

Kekes also cites Walzer as a relativist; Walzer claims that “there is no single set of primary or basic goods conceivable across all moral and material worlds – or, any such set would have to be conceived in terms so abstract that they would have be little use (...)” [WAL, p. 8]⁸⁶. Walzer goes on to consider the case of bread, rich in symbolism, which takes on different meanings in different contexts: “(...) the body of Christ⁸⁷, the symbol of Sabbath, the means of hospitality, (...) If the religious uses

85 Discussions between mathematicians still occur, and what is elementary is not always easiest. In any case, these things must be discussed in PTA and RRI, notwithstanding this summary judgment.

86 This criticism is often directed at moral philosophers.

87 With regard to the Eucharist, Walzer leaves aside different conceptions, representations, and the relationship between the bread and Jesus Christ, which differ between denominations. Similarly, in Christianity, the other two perspectives may be integrated, inviting the faithful to provide hospitality in commemoration of the two other meanings. Going further into theological matters could therefore highlight certain oppositions, which are not necessarily relevant.

of bread were to conflict with its nutritional uses (...) it is by no means clear which should be primary". Kekes, who some, including Crowder, consider to be a conservative, objects: "Nutrition is a primary value, while religion is secondary (...) religion is not among the minimum requirements of all conceptions of a good life" [KEK 93, p. 50]⁸⁸. Nutrition is, however, a condition for any good life and is not dependent on context.

Pluralists disagree with the idea of a particular established convention of a tradition, put forward by conventionalists and radical relativists, using the example of a similar convention in another tradition in order to see how it might provide a better protection of the same primary value and a better protection of good life. This comparison may be made based on two or three traditions. "Traditions thus need not be doomed to the perpetuation of orthodoxy"⁸⁹. Unlike Rawls, Kekes makes use of the resources of comprehensive doctrines rather than confining and abandoning them.

1.4.2. *Commitments in response to values*

Let us now consider the types of commitments made in response to conventions and in relation to individual conceptions of good life. The problem with these types of commitment is interesting in the context of the sensitive issue of relationships and the influence of groups on individuals, individuals on individuals, and, consequently, of social ontologies. These may vary from one type of PTA procedure to another type⁹⁰. Commitments are not without consequences for the relationships between individuals and communities. Taking these elements into account, Kekes cannot be reduced to a conservative⁹¹, and his work is not based on traditions alone. Individuals engaged with a tradition may imitate other members, react spontaneously to new situations, and also take a more reflective, analytical and critical stance with regard to the rules of their tradition⁹². They are not able to observe all of the variable conventions applied to secondary values. Moreover, it is

88 Here, the episode in which the disciples of Jesus of Nazareth are criticized by their fellow Jews for eating ears of corn picked whilst walking through a field on the Sabbath could be used as an argument, or at least a point for reflection. The episode ends with the statement that "the Sabbath was made for man, and not man for the Sabbath" (Mk 2: 23-28; Mt 12: 1-8; Lu 6: 1-5).

89 [KEK 93, p. 83].

90 See Kahane [KAH 02, pp. 251–286] and Reber [REB 11b, Chapter 6].

91 For example, see the critique given by Crowder [CRO 02, p. 11].

92 This may be connected to first- and second-order reflexivity, as discussed in Pellé and Reber [PEL 16].

rare for an individual to have a fully formed conception of good life⁹³ descending as far as the sub-sets of variable conventions.

Kekes identifies three types of commitments, which determine both the values of individuals and the importance they assign to particular values: *basic commitments*, *conditional commitments* and *loose commitments*⁹⁴. The first types form the basis of our conception of a good life. We feel shame, guilt or remorse when we violate these convictions⁹⁵. Conditional commitments concern day-to-day obligations that attach to our jobs and to our roles as spouse, parent or friend⁹⁶. Loose commitments concern politeness, conviviality, personal style, etc., “form more than content”⁹⁷. These commitments are the most visible and the easiest to observe with regard to our conception of good life.

Note that Kekes places respect on the level of primary values and considers it vital for life in a society in terms of procedural secondary values. He also acknowledges that civility or politeness is the most visible aspect emanating from the three forms of commitment.

Conflicts between incommensurable and incompatible values encountered by an individual thus essentially concern secondary values, as primary values should be guaranteed by traditions and their resources.

These three types of commitment help us to categorize values in terms of their importance for our conception of a good life. Faced with conflicts between values, we may, more precisely, imagine two types of solutions:

1) the first consists of prioritizing the value of which the realization also allows us to possess other equally or more important values;

93 Here, Kekes’ reasoning follows the same path as Rawls, to his great pleasure, but is less radical. See Rawls [RAW 03, p. 33].

94 Crowder’s critique does not refer to this important distinction.

95 Kekes acknowledges that not everybody has these basic commitments [KEK 93, p. 87].

96 See Bradley [BRA 27, Essay 5].

97 Drawing on Hume and Jane Austen, Kekes includes civility in this category. Jane Austen speaks of “civilities, the lesser duties of life” in [AUS 69, Chapter 46]. This subject merits discussion with regard to the conceptions of civility proposed by Pharo [PHA 92].

Everything depends on what is meant by “civility”: politeness, courtesy or something else, more essential, concerning the treatment of others and life in society?

On this subject Hume speaks of “d’une sorte de moindre moralité” in [HUM 61, p. 209].

2) the second consists of attempting to find an equilibrium between values. This is possible in cases where the values are not totally incompatible and where there is a possibility of compromise⁹⁸.

The ethical pluralism of values, as presented by John Kekes, is often regarded as a major contribution on the subject, even by his detractors, such as Crowder, who essentially disagrees with the political implications that Kekes draws from his ethical pluralism. This will be discussed in more detail in Chapter 3.

This essay succeeded in defending coherent pluralism. However, in addition to the remarks made throughout our presentation, we shall indicate a number of limits, which we hope to be able to overcome later.

First, Kekes' work does not specify a precise way of arbitrating between primary and secondary values. Attempts to order values depend on three types of somewhat cursory considerations: their importance for good living (for an individual in a community open to criticism), according to the three types of commitments, and acknowledging that certain procedural secondary values are vital, insofar as they concern the treatment of other people. Whilst the arguments are often sensible and take us away from rather caricatural debates between communitarians and liberals, there is a lack of even minimum rules for use in evaluation.

Second, we are not convinced that ethical pluralism should be limited to questions of values. Whilst certain philosophers and sociologists (Scheler⁹⁹, Nagel¹⁰⁰, Stocker¹⁰¹, Pharo¹⁰², Veca¹⁰³) give a significant amount of space to these considerations, others (Ogien¹⁰⁴) are more skeptical. Without seeking to settle the debate, we feel that the links to create between values and practices, at motivational, descriptive or justificational level, or their roles in ethical theories, are still subjects

98 However, in this, Kekes appears to move toward a monist solution.

99 [SCH 73].

100 [NAG 79].

101 [STO 90].

102 [PHA 04].

103 [VEC 99].

104 See Ogien, who presents a severe assessment in [OGI 04]: "This is not, of course, the first time that a current of antitheory has made its presence felt in moral philosophy (before receding, as in the case of existentialism, which has almost disappeared, or "philosophers of value" whom no one remembers)".

Moreover, Ruwen Ogien has no need of values, such as autonomy or impartiality, as the basis of his minimum ethics; three principles are sufficient, considered as "the central elements of a secular ethics", as they are neutral in terms of conceptions of good life [OGI 04, p. 45].

The term "secular ethics" is too vague and makes discussion difficult, if we consider the broad conceptions of Rawls' comprehensive doctrines.

of considerable debate. This will be considered further in the context of pluralism of ethical theories in the following chapter, where we shall attempt to propose a general framework including these two types of pluralism. This framework will also consider other entities for use in ethical evaluation. Each element has its own advantages and weaknesses, some of which are less significant than those inherent in the values¹⁰⁵.

1.5. Opposing monism: conditionality, incompatibility and incommensurability of values

On the other side of the argument, how should ethical pluralism of values be distinguished from ethical monism of values? Once again, the response lies in the relationships between values, and in their strength. The distinctions between moral and non-moral values and between primary and secondary values are not the exclusive preserve of pluralists, and are shared by certain monists. However, pluralists consider that the plurality of values implies their *conditionality*. Monists, on the other hand, maintain that it is possible to establish an authoritative system of values in which a supreme value takes justified precedence over all lower level values, categorized by order of their contribution to this value. Pluralists such as Kekes do not believe in the possibility of a single authoritative system of values, and for them, there cannot be an overriding or unconditional predominant value or group of values.

Sometimes, a limited group of values¹⁰⁶ is imposed instead of a single value; other options include a principle or a procedure for the classification of values, as we shall also see in Chapter 2.

From this perspective, a value can be overriding and predominant if, and only if:

- 1) it is the highest-placed value and takes precedence over other values in case of conflict;
- 2) it is universal, as any normal human being would consider it to override all other values in any conflict;
- 3) it is permanent (for any temporal situation);

105 For a summary of the debate on the objectivity of values, see Dworkin [DWO 13] and Reber [REB 16a].

106 This raises questions regarding methods of classification, and whether or not this classification is variable over time.

4) it is invariable in all contexts;

5) it is either absolute, that is, should never be violated under any circumstances, or *prima facie*¹⁰⁷, so that violations may be justified if, and only if, this violation is demanded by the value in general.

Kekes mentions several examples of overriding values: “the utilitarian ideal of the greatest happiness for the greatest number of people¹⁰⁸, the Kantian principle of the categorical imperative¹⁰⁹, (...) the contractualist list of fundamental human rights, a Platonic notion of whatever the Good may be, a Christian commitment to doing the will of God¹¹⁰, and so on”.

On the other hand, he talks of the *conditionality of values* and, like other pluralists, maintains that values may enter into conflict due to their *incompatibility* and *incommensurability*. In our day-to-day lives, we often encounter conflicts involving at least two different things that we consider to be good, but where we are obliged to make a choice. For example, we cannot choose to be ambitious and politically active and, at the same time, retiring and humble with an attitude of observation.

Two or more values may be considered incommensurable if, and only if¹¹¹:

1) There is no higher value or combination of values which may be used to evaluate other values in terms of their proximity to the higher value, such as pleasure or Plato’s *Summum bonum*.

2) There is no available means of expressing and ordering the different values, such as an order based on satisfaction of preferences alone, without leaving out any significant aspects.

3) There is no principle or group of principles suitable to create an order of precedence between values, which would be acceptable to any reasonable being, such as duty, for example.

Incommensurability thus excludes the possibility of ordering values according to two requirements, which should be taken together: first, ordering based on the intrinsic characteristics of values, and, second, acceptance by all reasonable persons.

107 This expression is taken from Ross, a defender of pluralism. Note that the pluralism of values in Kekes’ conception is not a “*prima facie* pluralism”.

108 This is only one of the possible forms of utilitarianism.

109 Note that this is formulated in five visibly different ways. See Paton [PAT 47].

110 [KEK 93, p. 47]. This choice is debatable if we must determine to which God we are referring, to what will, and whether or not God is voluntarist.

111 Kekes’ list, [KEK 93, pp. 56s] is relatively similar to the one given by [WIL 81].

What, then, should we do when faced with a conflict of values? The majority of pluralist philosophers are in agreement concerning the recognition of conflicts between *incompatible* and *incommensurable* values. This is the case for Berlin, Hampshire, Nagel, Rawls and Williams. However, opinions differ as to whether these conflicts may be resolved. Williams and Berlin tend toward the view that resolution is impossible. Less dramatically, Kekes and Crowder¹¹² maintain that we spend our whole lives solving some of these value conflicts, and that, consequently, these conflicts must be resolvable.

Kekes' desired outcome is based on our capacity to evaluate the respective importance of incommensurable and conflicting values according to individual conceptions of a good life, which each person pursues, informed by the conventions and "moral"¹¹³ traditions in which we live and with which we engage in different ways. He acknowledges that "this approach to conflict resolution is a program, not a solution"¹¹⁴. This constitutes a significant limitation for our study, and the question will be studied in much detail in the following chapter.

1.6. Conclusion: decompartmentalizing conflicts of values

This first chapter has, in a way, begun to chip away at the irrefutable disagreements on political and ethical questions, capable of sparking violent disputes and hatred. The character of Socrates in *Euthyphro* goes too far, too fast, or, at best, takes a pessimistic stance regarding the possibility of reaching an agreement. We agree with Rawls in acknowledging the existence of reasonable disagreements resulting from the burdens of judgment. These may cohabit with certain types of pluralism. However, we have also argued for a continuation of the discussion beyond the issue of fair cooperation between individuals. That which is "reasonable" may be based on both the consideration of individuals as free and equal and the burdens of judgment, managed in different ways by different people, shaped by *hazards*, to use Rawls' term¹¹⁵. We have discussed each of the five (or six, in the version given in [RAW 95a]) points of disagreement, highlighting their excesses or relativist aspects. We have shown that these points do not necessarily lead to disagreements. This position should not be taken as a starting point; instead, evaluations – according to Rawls, difficult, indeterminate, weighted differently and opposed by certain normative elements – should be considered in detail. We shall carry the burdens of proof with us throughout this volume. PTA was created in

112 Despite his liberalism, ordering a list of values

113 See Kekes [KEK 89, Chapters 1–5].

114 [KEK 89, p. 80].

115 [RAW 95a, p. 56]. These hazards, in the sense of risks, will be characterized in much detail in Chapter 4.

response to the difficulty of evaluation, and is succeeded by RRI in this respect. In this context, evaluation can realize its full potential, although this is not the only justification for PTA or RRI. Fair cooperation is merely a prerequisite to all of the roles that PTA or RRI may play¹¹⁶. The addition of burdens of judgment, the results of which are considered to be reasonable, constitutes a further step, as actors may understand that each person may evaluate the aspects being judged in different ways.

For Rawls, the issue is “simply” justice. With the range of questions involved in PTA and RRI, the probability of reasonable pluralism in judgments is even higher. In passing, note that proponents and analysts of RRI are now starting to take into account the question of fairness¹¹⁷. However, we feel that we need to go further still. It would certainly be possible, in a “brief” form of PTA or RRI, to collect only a first series of judgments made by individuals selected according to criteria designed to ensure plurality in the group. A lot of the work carried out in the emerging field of RRI has yet to look beyond the participation of stakeholders or sub-determined citizens, simply assessing the diversity of these individuals.

In PTA, the chosen citizens have been known to show strong similarities with a citizen *lambda*, poorly informed and reacting spontaneously, all too similar to random citizens participating in rapid interviews¹¹⁸. If this is the case, then, why we involve experts? In our opinion, the most interesting evaluations go further and require deeper understanding, with mutual testing of justifications from all sides of the question.

Choosing to focus on the specifically ethical aspects of Rawls’ list of sources of disagreement, we desire to go further regarding the question of moral values, certain characteristics of their interrelations, notably conditionality, incommensurability and the capacity to create conflict, and the types of commitments which may be made in relation to these values. Note that the distinctions between ethical pluralism of values and ethical relativism of values, as seen by John Kekes, one of the most important contributors to this field of work, are based on relationships.

Focusing on this type of ethical pluralism, we have considered possible methods of evaluation and of resolving conflicts, which are all too often treated by external factors (relativism) or avoided entirely due to their polemical nature. These methods almost exclusively exploit the relations between values and other elements, and the way in which these values may be treated on their own, or using a form of monistic

116 For these roles, see Reber [REB 11b] and Pellé and Reber [PEL 16].

117 [PEL 16].

118 This affirmation may be nuanced for longer surveys or interviews based on the quality of questionnaires.

objectivity. Attention is rarely given to their status (subjective/objective), accessibility, or potential orderings (subjective/objective)¹¹⁹.

Whilst progress has been made in this area, the same cannot be said with regard to the types of conflictuality. Kekes limits his pluralism of values¹²⁰ to very specific types of conflict. He focuses on conflicts concerning a single person who wishes to realize two or more incompatible and incommensurable values simultaneously, with an appropriate attitude to these values. Kekes thus leaves aside other possible types of conflict, which are much more frequent within the framework of PTA or RRI¹²¹:

1) conflicts between multiple persons wanting something which has value and cannot be shared, for example, a donated organ with several potential recipients; cases of disagreement with regard to a question, such as the utility of GMO; or cases where two individuals order the same value differently, for example, with regard to short-term prosperity and durability;

2) conflicts between obligations and other, tempting, possibilities;

3) conflicts between various available means of realizing a value;

4) conflicts between certain individuals and their institutions¹²²;

5) conflicts between different sequences of steps which would cancel each other out. This is the case for conflicts where there is a strong presumption of damage, for example, with two different successions: A, sow GM maize in year t1; B, continue research for a further year before sowing GM maize in year t2.

Personal conflicts are important; Rawls, as we have seen, presented them as being the most heated. What, then, happens if multiple individuals are in conflict? From a pluralist perspective, which gives importance to values and their relationships, the scope is perhaps somewhat narrower and the choices are easier to obtain, as an area of convergence is required. The other advantage of collective evaluation, with an obligation of justification, is that internal and fuzzy conflicts are brought into clearer focus. This does not necessarily lead to increased conflictuality. Furthermore, using the reasonable character in both senses may help to limit conflict

119 Scheler and Dworkin, cited above, or Gurvitch [GUR 49, GUR 61], present counter-examples.

120 Despite certain exceptions when he speaks of values or groups of values which predominate, with the addition of principles.

121 Simply mentioned in passing; a detailed treatment of each is not possible here.

122 Kekes mentions these types of conflict in order to exclude them. We feel that this is debatable. The solutions put forward by Kekes, presented above, allow us to resolve some of these conflicts. Furthermore, why exclude type 3), since Kekes qualifies certain procedural values as “instrumental”, and in this case, the discussion centers on means? See [KEK 93, p. 204].

due to the desire to maintain comprehension. We feel that these two senses, with the requirement of explaining the disagreement through evaluation, may even shore up cooperation, something Rawls valued highly; unlike Rawls, however, we feel that burdens of judgment should be treated as and for themselves.

Furthermore, the spectrum of value conflicts considered by Kekes is limited; for example, cases relating to distributive justice are excluded. In modern, large-scale democracies, however, distributive dilemmas are a sensitive issue, which has been considered by many philosophers, including Rawls, and by economists, offering different solutions. The problems encountered in PTA and RRI are more complex still.

In another area, Kekes focuses mostly on certain types of value conflicts that we will all, almost inevitably, face over the course of our lives¹²³. From this starting point, Kekes moves up a level to traditions, and finally, brusquely, the State. This trajectory is eminently individualist, rather paradoxically for a philosopher considered as a moderate conservative. The individual is the first level considered by Kekes, who feels that each individual should be able to reach personal fulfillment. However, the transition from the conduct of individual lives to the expectations of the State is problematic, raising questions from both individual and State perspectives.

Taking the individual as a starting point, the limit between private morality and public ethics requires definition. Who defines this limit, which is often mobile and provisional? Would it be possible to imagine a sort of “division of labor” between our freedom of choice, as individuals, and that which concerns our collective freedom, as citizens? The solutions proposed in this area are dependent on a particular interpretation of the nature of politics. Williams’ notion¹²⁴, invoked by Kekes, proposes a reflexive equilibrium¹²⁵ between private and public morality. The question of individual identity and traditions, which Kekes considered to be different, is also applicable when considering the State.

Moreover, like Rawls, Kekes limits his demonstration to the context of liberal States, at one point specifying “English speaking” states!¹²⁶ Moving beyond this sizeable limit, we wonder why Kekes did not offer a criticism of states, as he had for

123 It seems implausible to limit oneself to a single role in life used to treat secondary values. First, there is a possibility of conflict between roles, and, second, certain roles may become obsolete.

124 [WIL 93, Chapter 5].

125 This solution will be discussed further in the general conclusion, where we shall propose our solution of reflected equilibrium, suitable for a new ethical theory, and also inspired by the difficulties of PTA and RRI in order to ensure coherency.

126 [KEK 93, p. 200].

traditions. This type of comparison is often instrumental within the framework of European construct, using a benchmark procedure to compare and evaluate the solutions suggested by each country for the same type of problem, in order to identify the best options.

According to Rawls' conception, "(...) the sources of reasonable disagreement – the burdens of judgment – among reasonable persons are the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life"¹²⁷. Rawls later reformulates this phrase, abandoning "hazards" in favor of obstacles, which are more static and less associated with probabilities. We shall now continue our examination of these obstacles, which may operate differently in different circumstances (as a result of different "hazards"), but which are limited in terms of evaluation within the context of justification. The time has come to tackle these *burdens of judgment* head-on.

127 [RAW 95a, pp. 55–56].