
A defense of political constructivism

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Abstract In *Political Liberalism*, John Rawls describes a metaethical procedure – political constructivism – whereby political theorists formulate political principles by assembling and reworking ideas from the public political culture. To many of his moral realist and moral constructivist critics, Rawls’s procedure is simply a recent version of the ‘popular moral philosophy’ that Kant excoriates in the *Groundwork for the Metaphysics of Morals*. In this article, I defend the idea of political constructivism on philosophical and political grounds. Initially, I argue that political constructivism is the best available methodology for self-legislating, socially embedded and fallible human beings; then I show that political constructivism may produce principles that could garner the principled assent of Euro-American Muslims such as Taha Jabir Al-Alwani. The article concludes by considering how political constructivism might be employed to formulate new political principles for Euro-American societies experiencing and confronting the Islamic revival.

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Where do political principles – the basic rules or laws that govern a political body – originate? In *Political Liberalism*, John Rawls canvasses three possibilities. For moral realists, political principles emanate from a transcendent moral order accessible to theoretical reason. For moral constructivists, political principles emerge from the activity of pure practical reason. For political constructivists, political principles originate from reassembling ideas in the public political culture. The primary advantage of this last metaethical approach is that it makes possible principled political agreement in the face of deep metaphysical disagreement. Political constructivism holds that ‘for a reasonable and workable political conception [of justice], no more is needed than a public basis in the principles of practical reason in union with conceptions of person and society’ (Rawls, 2005, p. 127).¹ Political constructivism does not directly wage war on moral realists or constructivists who claim that their accounts of political morality are true: rather, political

constructivism insists that political theorists have the right to *make* political principles that different citizens can endorse in their own way. Given the facts of reasonable pluralism and oppression in contemporary democratic societies – that is, that it is neither feasible nor desirable to insist on one comprehensive moral doctrine attaining political hegemony – political constructivism may be the best available metaethical approach for left-liberal political theorists.

The idea of political constructivism has attracted an immense amount of criticism for failing to ground political principles in the nature of either extra-human or intra-human reality (McKinnon, 2002; O'Neill, 2003; Budde, 2007; Roberts, 2007; Cohen, 2008; Korsgaard, 2008; Larmore, 2008; Wood, 2008; Koppelman, 2009). In this article, I focus on a recent book that encompasses and sharpens many of these critiques to challenge the project of political constructivism. In *Reconstructing Rawls: The Kantian Foundations of Justice as Fairness*, Robert S. Taylor aspires 'to reclaim Rawls for the Enlightenment – more specifically, the Prussian Enlightenment' (Taylor, 2011, p. ix). Taylor thinks that Rawls's 'Kantian period' – from the time of *A Theory of Justice* to the early 1980s – laid out a map for Kantian constructivists to establish the foundations for a just political order. Rawls's early political theory contains the germs of a 'cosmopolitan Enlightenment liberalism' that may inspire people around the world (Taylor, 2011, p. xxiii). Rawls, however, made a 'fateful decision' in the mid-1980s to ground his political theory on culture rather than reason, opinions circulating in a historical milieu rather than ideas embedded in the distinct faculty that separates us from other animals (Taylor, 2011, p. 54). Below, we consider how Taylor proposes to restart the project of Rawlsian Enlightenment liberalism. Here, though, we may note Taylor's two main objections to political constructivism.

First, political constructivism is a version of the 'popular moral philosophy' (*populären sittlichen Weltweisheit*) that Kant excoriates in the *Groundwork for the Metaphysics of Morals*. According to Kant, popular moral philosophy assembles its doctrines from empirically discerned thoughts, feelings, traditions, public opinions, catchphrases, and so forth. Regardless of whether philosophy so conceived succeeds in this sociological task, it most certainly fails in its vocation of determining the supreme principles of virtue and justice, morality and politics. Popular moral philosophy 'produces only a disgusting mish-mash of patched-together observations and half-reasoned principles, in which superficial minds revel, because there is always something serviceable for everyday chitchat, but which insightful people disregard' (Kant, 2002, p. 26). Kant's critique of the popular moral philosophers of his day – such as David Hume and Adam Smith – finds an echo in Taylor's critique of Rawls who draws upon both the Prussian and Scottish Enlightenments (Frazer, 2007). Rawls's idea of political constructivism – and its goal of achieving reflective equilibrium between our ideas and sentiments, considered convictions on the



intellectual and visceral levels – is a slippery slope that leads political philosophers straight into relativism and nihilism.

I exaggerate only slightly by saying that such a role change for philosophy would mean the death of political philosophy as we have known it. No longer would it be about the discovery and realization of universal moral ideals through politics; rather, it would be about discerning the meaning and limits of existing political practices and delivering up more internally consistent versions of them. This role change would constitute a collapse of moral horizons and a deeply parochial and balkanized political-philosophical practice. (Taylor, 2011, p. 298)

For Taylor, Rawls's late appeals to practical reason blur the lines between Kant's conception of *pure* practical reason, guided by categorical imperatives, and Hume's conception of practical reason, which aims to satisfy desires that may or may not be moral. The only way that left-liberals can formulate satisfactory principles immune to social contingencies is to revive Kant's procedure in the *Groundwork* and Rawls's appeal to a 'self-evident first principle', namely a Kantian conception of the person, in *A Theory of Justice* (Taylor, 2011, pp. 231–248).

The second problem with political constructivism is political: it cannot secure an overlapping consensus of reasonable or decent comprehensive moral doctrines on either the domestic or international level. Consider Rawls's hope that political constructivism can fashion principles to garner the allegiance of Muslim citizens of faith. Muslims view *shariah* as 'a binding "divine law" '; therefore, Muslims will be reduced 'to a strategic or feigned affirmation of the constructivist method ... rather than the genuine moral affirmation that Rawls requires' of any comprehensive moral doctrine to qualify as reasonable (Taylor, 2011, pp. 263, 257–258). On the global scale, political constructivism is even more futile, given its reliance on the premises supplied by decent, not even necessarily reasonable, political cultures (see also O'Neill, 1996; Tasioulas, 2002). There is no reason why, taken on its own philosophical presuppositions, political constructivism could fashion principles to isolate 'a nonaggressive but malevolent absolutism' such as Afghanistan under the Taliban before 9/11 (Taylor, 2011, p. 292). In the face of fundamentalist political Islam, political constructivists wage a war of ideas with a hand tied behind their backs. To combat militant religious fundamentalists at home and abroad, we need to regain confidence in the capacity of finite rational beings 'to offer universalistic, cosmopolitan theories, intended to apply (eventually, at least) to all societies on earth' (Taylor, 2011, p. 317).

In this article, I defend the project of political constructivism on philosophical and political grounds by taking up and reworking ideas from Rawls's corpus. Initially, I explain how Rawls formulates the project of political constructivism by pulling together insights from Kant, Hegel and Isaiah Berlin. For Rawls, political constructivism is the best available methodology for self-legislating, socially embedded and fallible human agents. Practical reason may not attain the purity that Kant demanded, but that does not mean that the only alternative is standard-less nihilism. Furthermore, Rawls envisioned the possibility that political constructivism had the flexibility to adjust if the public political culture changed – say, by an influx of ‘decent’ immigrants who do not (yet) share liberal democratic cultural norms (Rawls, 1999a).² To flesh out this idea, I consider how political constructivism could create new standards that may appeal to Muslims such as Taha Jabir Al-Alwani, the founder of the Fiqh Council of North America and ‘arguably the most influential mainstream Muslim preacher in the United States’ (Brown, 2005, p. 13). Given Rawls's long-standing interest in laying the theoretical ground for a just, stable and tolerant society, we might explore how liberal democrats may find some sort of principled accommodation with Muslim citizens (see March, 2009).

Two caveats before I begin the argument proper. First, the audience for this piece is primarily political theorists torn between Enlightenment and Reformation liberalisms, that is, rights-based theories that emphasize the moral ideal of autonomy versus the political good of toleration (Galston, 1995).³ An important lesson of the nascent field of comparative political theory is that political theorists should hesitate to claim to speak for and to all human beings. Many of the controversies between Prussian and Scottish Enlightenment liberals, for instance, will strike many Muslims, Hindus, Confucians, and so forth as minor and uninteresting.⁴ Similarly, this article cannot assemble arguments sufficient to convince an advocate of classical political philosophy such as Leo Strauss (1953) or a Thomist such as Alasdair MacIntyre (1984) to care about an intra-Enlightenment debate. The language of *making* principles, common to moral and political constructivists, occurs to many philosophers and religious believers around the world as ‘blasphemous hubris’ (Taylor, 2011, p. 259). It is hard to envision, we shall see, Taha Jabir Al-Alwani accepting an argument for political constructivism. But we could consider his reaction when we decide among ourselves what contribution to make to public political discourse (see Rawls, 1999a, pp. 9–10). In sum, this article speaks primarily to left-liberals who respect Kant, Hegel, Berlin and Rawls and care about the future of Muslim–non-Muslim relations in political cultures affected by the Euro-American Enlightenment.

Second, this article defends a certain approach to metaethics rather than lays the foundation for a specific political theory. Political constructivism is a



module, a detachable component, of political liberalism or justice as fairness. Rawls's insights about formulating political principles may be taken up and reworked by other political theorists, including those often associated with Continental or postmodern political theory (Patton, 2010, pp. 185–210). Furthermore, the idea of political constructivism builds upon the conceptions of person and society pervasive in any public political culture, and the Islamic revival in Europe, North America, and the rest of the world means that *our* culture is changing too. At some point, perhaps soon, we may need a new political vision on the scale of *A Theory of Justice*. This article makes a modest contribution to that large and timely project.

Political Constructivism and Autonomy

'The further advance of moral philosophy' – Rawls states in his Presidential Address to the American Philosophical Association, 'The Independence of Moral Theory' – 'depends upon a deeper understanding of the structure of moral conceptions and their connections with human sensibility' (Rawls, 1999c, p. 287). Moral philosophers require a pedagogy in moral theory, the systematic study of conceptions of human nature and moral principles among leading representatives of prominent schools of thought within the philosophical tradition. Only upon the completion of that apprenticeship may moral philosophers thence create their own concepts and theories. In this and the following two sections, I extract claims about human nature from Rawls's writings – directed to fellow moral and political philosophers rather than fellow citizens as such – that present a philosophical argument for political constructivism. Rawls's commitment to wide reflective equilibrium also ensures that, in principle, future philosophers retain the right to refine or replace any of these claims (Rawls, 1999c, p. 289).⁵

In his essay, 'Themes in Kant's Moral Philosophy', Rawls describes Kant's Copernican revolution in moral philosophy in the following way:

Rather than starting from a conception of the good given independently of the right, we start from a conception of the right – of the moral law – given by pure (as opposed to empirical) practical reason. We then specify in the light of this conception what ends are permissible and what social arrangements are right and just. We might say: a moral conception is not to revolve around the good as an independent object, but around a conception of the right as constructed by our pure practical reason into which any permissible good must fit. (Rawls, 1999b, p. 509)

Late Rawls is emphatic that citizens do *not* have to embrace Kant's Copernican revolution in moral philosophy to be considered reasonable citizens. Rawls

makes his late political turn, in part, to enable ‘citizens of faith’ to be whole-hearted members of democratic society (Rawls, 2005, p. xxxviii). And yet Rawls also states that citizens *qua* citizens are fully autonomous, politically speaking (Rawls, 2005, p. 77). To understand the Kantian themes that inform even Rawls’s late work, we may review Kant’s argument in Chapter II of the *Analytic of the Critique of Practical Reason* (‘On the concept of an object of pure practical reason’).

Kant proceeds in this passage by identifying two flaws in heteronomous moralities and then arguing that a morality of autonomy remedies them. The first claim is that heteronomous moralities are incapable of providing determinate or consistent moral guidance. Kant takes for granted that moral obligation is categorical, that is, that moral laws apply always and everywhere. Where, though, do moral laws originate? Prior to Kant, philosophers concurred that moral laws emerge from *out there* while disagreeing on how to characterize the latter term. Empiricists often ground the moral law on a human feeling for the good – the contingency of this procedure clearly (for Kant) disqualifies empiricism from identifying the moral law. Rationalists and theologians, however, do not do much better when they ground morality on the idea of perfection. For the idea of perfection can only be given content by empirical data. For Kant, the attempt to distinguish the higher from the lower faculty of desire merely postpones the inevitable conclusion that heteronomous moralities always differ depending on the intellectual and affective capacities of particular human beings. The first problem with heteronomous moralities is cognitive: we cannot know the moral law if we search for guidance among different objects with our disparate subjective faculties of perception and feeling.

Yet moralists have often asserted, Kant recognizes, that they know what morality requires and demands of human beings. The second problem with heteronomous moralities, then, is that they compound theoretical indeterminacy with an imperialism that destroys the moral worth of human compliance. Human beings have a will, that is, a power to choose principles of volition independently of alien causes. Only in this way may we speak meaningfully of human responsibility. Yet if moralists force human beings to comply with moral laws, then moralists destroy the features that distinguish an act as moral (Silber, 1959, p. 91). The second problem with heteronomous moralities is motivational: human beings have to comply with the moral law on their own volition if the action is to qualify as moral.

Kant solves the problems of moral cognition and moral motivation by identifying the sole moral law that may address them: the principle of autonomy. ‘If a rational being is to think of his maxims as practical universal laws, he can think of them only as principles that contain the determining ground of the will not by their matter but only by their form’ (Kant, 1996, p. 160).



Conceptions of the good are heteronomous and thus give conflicting commands: they clearly cannot be the source of the moral law. The only alternative is a formal moral law that states that we may not act on maxims that we could not will at the same time to be a universal law. Furthermore, the moral law teaches us the ultimate object of moral striving – the realm of ends – as well as the freedom that makes possible moral obligation and moral agency. We also recognize that we obey the moral law, not because an extrinsic force compels us, but because we have legislated it for ourselves. Kant holds that we can know the moral law because we have composed it with our own rational faculties, and we obey it because we are simply following laws that we identify with as their author. Thus Kant ‘is the historical source of the idea that reason, both theoretical and practical, is self-originating and self-authenticating’ (Rawls, 2005, p. 100).

Rawls translates Kant’s Copernican revolution into the domain of the political. Political constructivism addresses the cognition problem. Heteronomous moralities cannot serve as the fundamental charter of liberal democracies because citizens disagree on the nature of the good. What some citizens hold as the fundamental truth is simply incomprehensible to citizens who hold other faiths. The ideal of public reason is to make the terms of social cooperation transparent to all citizens (Rawls, 2005, pp. 440–490). Furthermore, political constructivism postulates why citizens comply with constitutional principles: they recognize themselves as the (potential) authors of the conception of justice that regulates a well-ordered society.

In short, Rawls’s call for citizens to practice ‘higher lawmaking’ appropriates Kant’s thesis that human beings are capable of formulating and re-formulating practical laws that inform and motivate them (Rawls, 2005, pp. 231–240).

Political Constructivism and Community Life

In the *Lectures on the History of Moral Philosophy*, Rawls elucidates how his political theory addresses Hegel’s charge that Kant insufficiently accounts for the social rootedness of human beings (Rawls, 2000, p. 366). Kant, Rawls explains, holds that transcendental freedom always makes it possible for human beings to rise above natural inclinations and needs, social context and history, to choose to act from the moral law. Kant’s theory of human nature places full responsibility of achieving a good will on individual moral agents. From Hegel’s perspective, Kant misses how moral decisions always take place within the context of community life (*Sittlichkeit*), the entire ensemble of political and social institutions – such as the state, civil society, and family – that shape human thinking and action. For Hegel, thinking can never be pure or *a priori* in a Kantian sense: our thoughts are always mediated by the

social milieu into which we are born and lead our lives. From a Hegelian perspective, talk of constructivism ‘all the way down’ mistakenly assumes that we can escape our social milieu mentally to think about the moral or political principles that are supposed to govern it. This approach is narrow – ignoring our membership in communities that profoundly shape our thinking about such matters as private property or the conduct of warfare – and alienating – pressing us to ignore the myriad desires and aspirations that form part of moral thinking and judgment (Rawls, 2000, p. 335). Moral realists and moral constructivists risk replicating the ethics of *Sollen* that Hegel rightly problematized.

Rawls learns several lessons from Hegel. First, political constructivism starts ‘from the historically given system of institutions themselves, from ethical life in its substantiality as we see it before our eyes’ (Rawls, 2000, p. 339). Political constructivism forthrightly assembles material from the public political culture to construct political theories. The reason is that there is no other choice – Kant’s moral theory, Hegel correctly observed, is empty unless it is filled in with presuppositions from one’s *Sittlichkeit*, and political constructivism has to begin with some empirical material upon which to build meaningful political ideas and principles (Rawls, 2000, pp. 334–335). Next, political constructivism focuses on the political question of building and sustaining a stable ethical life rather than the subsidiary question of how individuals should live their own lives within the *Sittlichkeit*. Hegel’s idea that ‘the free will is the will that wills itself as the free will’ implies that ‘rational social institutions are the necessary background for freedom and for individuals’ real autonomy’ (Rawls, 2000, p. 334). According to Rawls and Hegel, practical philosophy must begin by formulating a theory of justice for the social world that frames individual morality – not, according to Kant’s apparent procedure in the *Groundwork*, by starting with individual moral reflection and then proceeding to political questions. Thus *A Theory of Justice* and *Political Liberalism* take as their primary subject matter the basic structure of society (Rawls, 2005, pp. 285–288). Finally, political constructivism accepts Hegel’s thesis that political philosophy must ‘try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood, from a properly philosophical point of view, are rational’ (Rawls, 2007, p. 10). For Rawls, political constructivism works within the range of the possible and thus should strive to reconcile us to the social order at the same time as it accepts the modified-Kantian position that this order is subject to revision by human action. Political constructivism is part of the milieu that it wishes to change.

Rawlsian political constructivism, however, lacks an essential part of Hegel’s political philosophy: the doctrine of absolute idealism that holds that reality is fully intelligible to the wise man at the end history (Rawls, 2000,



pp. 330, 369–371). Rawls ‘retains the *import* of many of the most significant strands of Hegel’s metaphysics’ while detaching these strands from Hegel’s monism, talk of world spirit (*Geist*), concept of alienation, and so on (Schwarzenbach, 1991, p. 541). One reason that Rawls abstains from Hegel’s metaphysics is that the latter may justify ignoring the cries of the victims of history. ‘Hegel speaks of the fate and suffering of individuals in a way that cannot but strike us as callous and indifferent’ (Rawls, 2000, p. 369). Hegel also occludes the way that that history is open-ended for free agents – and here, Rawls refuses to relinquish entirely Kant’s theory of freedom while still acknowledging that human beings are profoundly influenced by their social milieu. Thus Rawls’s political theory is not ‘thoroughly historicist’ (Rorty, 1991, p. 180). The very metaphor of construction implies that human beings have a choice – albeit one constrained by historical circumstances – about what type of social order they wish to build (Hill, 2008). For Rawls, political philosophy must be realistic, but it must also be utopian – that is, capable of envisioning and working towards an ideal order constructed by human practical reason. Political constructivism does not simply strive to make existing practices more coherent: it can also fashion theories to help transform such practices in more sober or extravagant ways (Patton, 2010, pp. 185–210).

Political Constructivism and Human Fallibility

Human beings, in their role as citizens, must forebear from demanding that others recognize the entirety of one’s own truths. The reason, Rawls explains in *Political Liberalism*, is that human beings have constrained vision. It is worth reviewing how Rawls’s idea of the burdens of judgment shapes the aspirations of political constructivism.

Human beings, Rawls maintains, can be fully reasonable *and* in profound disagreement with each other about the meaning and contours of a satisfactory life (Rawls, 2005, pp. 55–56). On theoretical questions, people disagree on what evidence to include or how to weigh it when making judgments; language’s intrinsic indeterminacy leads to confusion and disagreement; and human beings decide cases, in part, based upon their own life experiences. Furthermore, citizens in a liberal society differ on the normative frameworks through which they view the world, and certain challenging cases may ultimately have no clear resolution (Rawls, 2005, pp. 56–57). According to Rawls, embodied human beings as we know them will always view the world from different and often conflicting perspectives.

Political constructivism folds in Berlin’s appreciation for the provisional and modest nature of humanly constructed political theories (Rawls, 2005, p. 58). According to Rawls, metaphysical realists and Kantian constructivists

need to recognize that other citizens may reasonably endorse other ways of viewing the world. At the same time, political constructivism seeks to avoid a slide into relativism or nihilism: ‘it is only by affirming a constructivist conception – one which is political and not metaphysical – that citizens generally can expect to find principles that all can accept’ (Rawls, 2005, p. 97). Rawls is a pluralist, not a relativist: he sees the need to cooperate with fellow citizens who live their lives by different lights, while still seeing the need to draw lines between acceptable and unacceptable political behavior (cf. Berlin, 1990, p. 10). In his metaethical reflections, then, Rawls views many of the key components of his political theory as ‘essentially contestable’, though his political sensibility, one may surmise, is more prone to solidify the considered convictions of liberal democrats than to spur transgressive thinking in the manner of ‘postmodern’ theorists such as Gilles Deleuze or Michel Foucault (cf. Connolly, 1987; pp. 116–126).

Whither Practical Reason?

A Kantian leitmotif throughout Rawls’s work is that human beings have ‘a moral nature ... that can understand, act on, and be sufficiently moved by a reasonable political conception of right and justice’ (Rawls, 2005, p. lx). Kant seems to aspire, in the *Groundwork*, to formulate a practical philosophy that has the same degree of precision and certainty as the principle of non-contradiction in mathematics. There is, for Kant, a close parallel between mathematical and moral constructivism (Rawls, 2005, p. 102). And yet Rawls eschews an apodictic conception of reason for political philosophy. In *Political Liberalism*, Rawls elicits his conception of the reasonable from ‘everyday speech’ (Rawls, 2005, p. 48). Everyday speech, however, changes – consider, for example, the introduction of the honorific ‘Ms.’ in English in the twentieth century. Reasonableness so conceived has *some* consistency insofar as there is often wide societal consensus when behavior is unreasonable, but there is also an unavoidable ambiguity to a term open, in principle, to shifting tastes. Rawls’s theory of practical reason, then, is ‘chastened’, ‘incapable of peering through and fully resolving differences between alternative foundational claims’ (White, 2009, p. 15). Rawls is aware that this conception of the reasonable will bother philosophers trained in the tradition(s) that aspire to true moral principles that may govern the political sphere. As Samuel Freeman laments in a discussion of Rawls’s conception of practical reason in *Political Liberalism* and *The Law of Peoples*, ‘Rawls in the end completely deflates Kant’s idealism within political constructivism’ (Freeman, 2007, p. 363). And yet Rawls agrees with John Dewey that political philosophy after Hegel and Darwin ‘forswears inquiry after absolute origins and absolute finalities in



order to explore specific values and the specific conditions that generate them' (Dewey, 2009, p. 59). Contemporary pluralistic democracies require political categories and principles that make possible stable, just and tolerant societies. For now, Kant's concept of the reasonable suffices; in the near future, we may need a new philosophical terminology that political constructivism can help us generate (Rawls, 2005, pp. 438–439).

Political Constructivism and Islam

Rawls invents the idea of political constructivism to confront a concrete real-world problem: liberal democracies are pried by difference that makes any attempt to enforce one comprehensive moral doctrine using state-sponsored coercion imprudent and dangerous. In other words, Rawls departs from universalistic Enlightenment liberalism because he thinks the chance of it succeeding without illiberal pressure and violence is miniscule. The task of political constructivism is to create a political conception of justice that may contribute to 'a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines' (Rawls, 2005, p. 4). The initial and most important step in political constructivism is to extract a conception of the person from the public political culture. 'The conception of the person motivates and is mirrored by a procedure of construction, which captures its features and translates them into the language of political principles' (Taylor, 2011, p. 11). In other words, political constructivism makes a mirror so that we may better see ourselves and act on principles that accord with our higher nature. What happens, though, when the face in the mirror changes?⁶ So far, we have considered Rawls's reasons for abandoning the Platonic or Kantian projects of legislating, once and for all, categorical principles to govern the moral and political spheres. Now, we may take into account the pragmatic benefits (and risks) of political constructivism for forging terms of political alliance among diverse constituencies.

In this section, I consider how political constructivism can make concepts and principles that may appeal to Euro-American Muslims who would not be 'wholehearted' members of a secular political culture but who could be allies in certain ethico-political coalitions. To ground this analysis in a concrete person and movement, I focus on Taha Jabir Al-Alwani, born in Iraq in 1935, trained at the Al-Azhar University in Egypt, living in the United States since the early 1980s, founder of the Fiqh Council of North America, and a leading theoretician for The International Institute of Islamic Thought, a Muslim educational institution based in Virginia (see Euben, 2002, pp. 40–44). I do not assert that Al-Alwani represents a large swath of the Euro-American Muslim

community (though he may⁷), nor do I wish to advance a comprehensive argument for what kind of theory Euro-American left-liberals should construct to address the ‘Muslim question’. Rather, I consider how political constructivism may provide resources to address a problem Rawls glimpsed in *The Law of Peoples*: what happens if citizens of decent societies emigrate to liberal societies and do not immediately adopt its mores (Rawls, 1999a)? How, in other words, can Euro-American left-liberals reach out to Muslims such as Al-Alwani who consider themselves part of the worldwide Muslim community (*Ummah*) but reside, with mixed thoughts and emotions, in the west?⁸

Let us begin by identifying three reasons why Al-Alwani’s conception of Islam does *not* fit neatly into Rawls’s category of a reasonable comprehensive moral doctrine. First, the wellspring of ideas for political liberalism is ‘the tradition of democratic thought, the content of which is at least familiar and intelligible to the educated common sense of citizens generally’ (Rawls, 2005, p. 14). Rawls takes it for granted that most citizens of the United States will orient themselves by the Declaration of Independence, the Constitution, the Gettysburg Address and other seminal documents of American liberal democratic political thought. According to Al-Alwani (as for most Muslim scholars), the founding documents of Islamic legal thought are the Qur’an, the Prophetic Tradition (the *Sunnah*), and the history of Islamic legal thought. Al-Alwani periodically highlights the strangeness of western political concepts: “‘Citizenship,’ as the concept is understood today, was unknown during the heyday of Islamic fiqh [jurisprudence]’ (Al-Alwani, 2003, p. 10). Al-Alwani’s thinking grows out of a political culture different from Rawls’s.

Second, Al-Alwani does not hold a conception of the person as a free and equal moral being. As Taylor emphasizes throughout *Reconstructing Rawls*, Rawls’s conception of the person – the germ of the idea of justice as fairness and political liberalism – is ‘radical and radically Kantian’ (Taylor, 2011, p. 55). In *Towards a Fiqh for Minorities*, Al-Alwani asks how Muslims can employ *ijtihad* – ‘creative but disciplined intellectual effort’ – to reconceptualize their status as ‘representative models or examples of Muslim society in the countries in which they live’ (Al-Alwani, 2003, pp. 44, 3–4). Al-Alwani’s model for this endeavor, unsurprisingly, is Muhammad: ‘A new methodology for replicating the Prophet’s example is needed in order to make his way clearer and more accessible to everyone at all times’ (Al-Alwani, 2003, p. 7). The Prophet was not apparently troubled by the burdens of judgment, nor does Al-Alwani express any doubt that the Qur’an is ‘the only book capable of dealing with contemporary global situations’ (Al-Alwani, 2003, p. 22). It is not so much that Al-Alwani is unreasonable by Rawlsian criteria: Al-Alwani cites Ali’s statement that ‘the Qur’an is a book that speaks only through the mouths of men’ to permit Muslim scholars to disagree with each other over how to



interpret shariah (Al-Alwani, 2003, p. 15). Rather, Al-Alwani expresses a conception of just political agency in a language very different than Rawls's.

Third, and related to the previous two points, Al-Alwani thinks that there is a trap in the language of reasonableness. Al-Alwani warns fellow Muslims from 'borrowing concepts from a civilization with pagan roots and a significantly different system of principles', including such terms as nationalism, democracy, citizen and secularism. Concepts such as reasonableness may implicitly promote 'expediency, pleasure, and worldly benefits' rather than 'religious and moral values' (Al-Alwani, 2005, pp. 188–189). The concept of 'the ultimate objectives (*maqasid*) of the Islamic *shariah*' may provide an Islamic route to many of the same goals as political liberalism – such as stability, justice and pluralism – but with an avowedly religious concern with the values of monotheism (*tawhid*), purification (*tazkiyah*) and civilization (*'umran*) (Al-Alwani, 2003, pp. 9, 16; see also Attia, 2007; Auda, 2008).

Rawls's conception of reasonable pluralism in *Political Liberalism* accommodates fairly easily Lockean Protestants (Schwartzman, 2005) but it strains when confronting Islamic political thought. I wish here to note three aspects of Al-Alwani's thought that might encourage liberals to revise their own political theories to reach out to Muslim constituencies potentially represented by Al-Alwani. First, Al-Alwani signals appreciation for the good aspects of western political culture.

The new [Muslim] immigrant communities have a very sincere wish to integrate into the host society, while preserving their religious and cultural identity. Like the rest of the population, they are quite happy and prepared to comply with and respect the law of the land, pay their taxes, assume responsibilities, and benefit from the freedom, advantages and rights provided by the law. (Al-Alwani, 2003, p. xv)

The minimum requirement that political liberalism makes of all citizens is a willingness to pay taxes and serve in the military (March, 2005), and Al-Alwani clears that threshold. But Al-Alwani also indicates a willingness to embrace aspects of western political culture even though he retains the right to disagree profoundly with western secular moral values.

Second, Al-Alwani thinks that Muslims have an obligation to replicate the Prophet's willingness to change his mind in light of spatial and temporal developments (Al-Alwani, 2003, p. 8). 'There is no doubt that the role of *ijtihad* is to regulate and guide man's actions to accomplish his role as the vicegerent of God on earth' (Al-Alwani, 2003, p. 13). *Ijtihad*, as a mental disposition rather than strictly a technical device used by jurists, empowers Muslims to perform an 'intellectual *jihad*, a *jihad* launched to generate ideas and build a new Muslim identity, mentality, and personality' (Al-Alwani, 2005, p. 60). In

this sentence, we hear resonances of the three major claims of political constructivism: Muslims have a right to generate political ideas, to recognize their situatedness as minorities in liberal democracies, and to keep an open mind about all matters except *‘ilm al-kalam* (scholastic theology) (Al-Alwani, 2005, p. 123). Al-Alwani thus encourages Muslim scholars to develop a *‘fiqh for minorities’* to permit Euro-American Muslims to survive and flourish in this condition, and this may mean proposing and honoring fair terms of cooperation.

Finally, Al-Alwani posits a ‘a fundamental rule in Muslim relations with others’ that may provide the foundation to a principled endorsement of interfaith dialogue and cooperation. The Qur’an states: ‘God does not forbid you to be kind and equitable to those who have neither fought you on account of your religion nor driven you from your homes’ (60: 8). Thus, Muslims are required to exercise ‘kindness and justice towards all non-belligerent communities’ (Al-Alwani, 2003, p. 27). Al-Alwani does not recognize the burdens of judgment that Rawls requires of reasonable comprehensive doctrines: he expresses no doubt that the Muslim community is ‘the best nation ever raised for mankind’ (3: 110).⁹ There is also the open question of how he fills in the concepts of kindness and justice. At a minimum, though, Al-Alwani’s discussion of *fiqh* complicates Taylor’s assessment that Muslims view *shariah* as binding law: *fiqh*, Islamic jurisprudence, is the *shariah* interpreted by fallible human beings, and is thus open to renegotiation by Muslims wishing to reside in, thrive in, and contribute to western political culture.

How can political constructivism help liberals propose terms of political cooperation that Muslims such as Al-Alwani may endorse? Note that moral realism, with its emphasis on theoretical reason, and moral constructivism, with its emphasis on practical reason, alienate Al-Alwani: ‘we must view rational issues and philosophical terms as secondary, for the risk of overlooking or discarding some of these terms is far less serious than disregarding the higher governing values and purposes’ (Al-Alwani, 2003, p. 17). Yet there is no reason, in principle, that political constructivism cannot find or implant terms in the public political culture that will earn the principled endorsement of liberals and Muslims. The vice that Taylor and others find in political constructivism – that it identifies principles that may change in time and place – is a virtue in this instance (March, 2011, pp. 48–51). We believe that human beings are self-legislating, socially embedded and capable of making mistakes; therefore, there is nothing that prevents us from going back to the drawing board, as it were, to draft new political principles for new political cultures.

We cannot hope to politically construct principles in an article. We may note, though, one concept that may replace Rawls’s reliance on reasonableness: thoughtfulness. In *Issues in Contemporary Islamic Thought*, Al-Alwani calls upon Muslims to reexamine the Islamic intellectual heritage and engage the



Western intellectual heritage (Al-Alwani, 2005, pp. 41–42). Thinking – ‘the silent dialogue of me with myself’ (Arendt, 1978, p. 122) – requires one to consider issues from multiple perspectives. Rawls’s device of the original position is meant for each of us to lift us out of our particularity and consider the perspective of other citizens. Al-Alwani holds that Muslims must reject *taqlid* (blind imitation of legal predecessors) and think about how best to achieve Muslim objectives in non-Muslim majority societies. The challenge facing liberals and Muslims today is how to construct new political principles that may resonate with thoughtful constituencies of multiple faiths (or new routes to principles proposed by other constituencies).

Why Political Constructivism

Numerous political philosophers and theorists take up Kant’s critique of heteronomous moral doctrines in the *Groundwork* to accuse political constructivism of relativism and nihilism. Political constructivism, in fact, renounces Kant’s project of grounding political principles upon the single moral source of pure practical reason. And yet, is Kant’s original project viable today, philosophically or politically? Taylor struggles with that question in the conclusion to *Reconstructing Rawls*. Kant attempts to authenticate the moral law by drawing upon a highly controversial doctrine of transcendental idealism. To address that controversy, Taylor proposes a ‘practical postulate of freedom’ that reenacts Kant’s argument in Section III of the *Groundwork* – linking negative freedom from alien causes to positive freedom to self-legislate – in a supposedly non-, or at least less-, controversial manner. ‘The practical postulate of freedom therefore stands some hope of becoming a generally accepted first principle, and insofar as this postulate implies justice as fairness, Rawls’s principles of justice may similarly gain the assent of all reflective persons’ (Taylor, 2011, p. 312). In the likelihood that this approach does not convince all reflective persons, Kantian-Rawlsian liberals may lock arms with ‘universalistic comprehensive liberalism of all stripes ... to undermine ideological support for the illiberal political institutions and values that are still widespread in the world today’ (Taylor, 2011, p. 303). Taylor has not quite figured out how to make Kantian-Rawlsian liberalism work if it rests upon controversial premises and compromises with other universalisms (an odd proposition), but he is sure that political constructivism cannot provide a rudder to steer liberal democratic politics.

There are at least two ways liberals may defend political constructivism against the charges of relativism and nihilism. First, we may need to reconsider Kant’s aspirations to philosophical purity and apodicticity. ‘All the main conceptions in the tradition of moral philosophy must be continually renewed’

and this demands considering criticisms of one's favored conception and revising it accordingly (Rawls, 1999c, p. 302). Kant, for Rawls, correctly highlighted the human capacity to practical self-legislation, but he neglected the impact that language and historical developments have on a philosopher's thought, and he did not fold modesty into his account of the origin or precision of the categorical imperative. Political constructivists, then, take up and modify Kant's metaethics to help us address key political problems of our time. Will this approach speak to all reflective beings? Probably not. But it may speak to liberals who appreciate the moral impetus behind Kant's practical philosophy – particularly its respect for human dignity – but think that a chastened conception of practical reason is better for contemporary pluralistic societies. This is not succumbing to relativism or nihilism; it is maturity in the face of a political universe without easy, or universally recognized, answers.

Second, political constructivism helps us better respond to Muslim constituencies in Europe, North America, and arguably the rest of the world. Moral realisms that try to conquer the political sphere almost inevitably incite bloodshed (Rawls, 2005, p. xxiv); moral constructivists, insofar as they wish to convince or compel everyone to work towards Kantian ends, bracket the fact that their own account of the person relies upon 'the mystery of our free and unfree selves' (Taylor, 2011, p. 310). Rawls does not wish to disprove moral realisms or moral constructivisms; rather, he argues that we need flexible political principles to reach out to new constituencies that do not fit into established political categories. Al-Alwani, we saw above, does not think Muslims should use the language of reasonableness, but his preferred discourse of the 'objectives of *sharia*' seems to generate ends and strategies that may roughly accord with liberal democratic politics. The task of liberals today, I think, is not to use a 'method of convergence' that grounds political principles on majority coalitions (Klosko, 1997): 'no attractive conception can be built around such an accommodation to power' (Cohen, 1994, p. 1539). Rather, the task is to generate ethical political principles that may garner the principled support of multiple thoughtful constituencies. Political constructivism thus may be an invaluable metaethical procedure to help us confront arguably the most important political assignment of our time.

Notes

- 1 Taylor (2011, pp. 3–58) and Freeman (2007, pp. 324–364) describe the mechanics of Kant's constructivism, Kantian constructivism and political constructivism. Each variety of constructivism articulates a conception of the person, a procedure to mirror that conception of the person, and a constructed political theory including principles, institutions and a political psychology of justice. Constructivism, unlike realism, holds that we make rather than discover principles; political constructivism, unlike Kant's or Kantian constructivism, holds that the public political



culture, rather than pure practical reason, provides the material used to construct principles. On the impact of Kant's constructivist thesis on the history of western philosophy, see Rockmore (2006, 2007).

- 2 In the *Law of Peoples*, Rawls discusses decent peoples, including of the imagined Islamic republic of Kazanistan, who value broad conceptions of human rights and popular consultation but do not share the same cultural and institutional arrangements as liberal democracies. Rawls brackets the question of immigration in that book, but we may anticipate that political theorists, adopting the idea of wide reflective equilibrium, will eventually need to address the considered convictions of immigrant communities.
- 3 The language of binaries and spectrums may conceal the many types of political theories and theorists that this article wishes to engage. Monique Deveaux, for instance, argues that liberals might stop debating about autonomy to consider how the concept of agency illuminates 'ever subtler expressions of reflexivity and action, such as as subverting a cultural tradition from the inside' (Deveaux, 2006, p. 173). I emphasize, then, that political constructivists view virtually all political concepts, to borrow a felicitous phrase from Michael Oakeshott, as 'temporary platforms of conditional understanding', that is, useful launching pads for thinking that may ultimately need to be rebuilt (Oakeshott, 1975, p. 2).
- 4 See the precious few references to Euro-American political philosophers in Euben and Zaman (2009).
- 5 For Rawls, the idea of wide reflective equilibrium demands that philosophers have an obligation to unsettle themselves, that is, to force themselves to hear new voices (1999c, pp. 288–289). Rawls's tentative reflections about Islam – for instance, highlighting the problematic nature of the concept of 'decency' when describing certain non-liberal peoples (Rawls, 1999a, p. 67) – exemplifies this broadminded disposition.
- 6 An example of the new American multiple consciousness may be Obama's decision to go by Barack (meaning 'blessed' in Arabic) rather than Barry. See Obama (2004, p. 104).
- 7 On the political ideas and behavior of the Muslim American community, see Abdo (2006) and Cesari (2010).
- 8 Muslims following Al-Alwani's interpretation of Islamic politics may hesitate to join a Rawlsian overlapping consensus if that means adopting quasi-Kantian conceptions of the person and society. We may need to construct another alternative to *modus vivendi*, constitutional consensus, and overlapping consensus (Rawls, 2005, pp. 133–172).
- 9 Al-Alwani's writings often convey a militant tone that should alarm Euro-American liberals: 'Many Muslim governments cite indigenous non-Muslim majorities as an excuse to deprive their Muslim majorities, who often represent 98 per cent of the total population, of the right to be ruled by *the Shari'ah*' (Al-Alwani, 2005, p. 187). In this sentence, Al-Alwani is worlds away from J.S. Mills' defense of individual liberty in *On Liberty*. The challenge for liberals is to engage illiberal interlocutors with confidence that political dialogue and cooperation tends to soften hard-liners (see Roy, 2008, p. 59) and that better ideas and practices have a tendency (but no guarantee) to prevail (Rawls, 1999a, p. 62).

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