

# Judicial Review In An Age Of Moral Pluralism

Book Reviews | Political Theory

**Judicial Review in an Age of Moral Pluralism.** By Ronald C. Den Otter. New York: Cambridge University Press, 2009. 356p. \$97.00.  
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— Alon Harel, *Hebrew University Law School*

In an ambitious book, Ronald C. Den Otter develops a new justification of judicial review grounded in Rawlsian liberal theory. His enterprise uses John Rawls's liberal theory, in particular the idea of "public reason," to justify the institution of judicial review, as well as to provide guidelines for adjudicating constitutional cases. The first part of the book is devoted to explaining what public reason is, addressing objections to it, and establishing its relevance to constitutional adjudication, whereas the second part is devoted to examining American constitutional adjudication and establishing how the idea of public reason can both explain and guide judges in adjudicating constitutional cases. The book is both a work in political theory (interpreting and elaborating the idea of public reason) and a work in constitutional theory (exploring US constitutional jurisprudence). In this review, I present the main claims of Den Otter and then criticize the Rawlsian enterprise and question the use of the idea of public reason for the purposes of justifying judicial review.

The fundamental motivation underlying Den Otter's enterprise is the value pluralism that characterizes contemporary societies. Value pluralism is a challenge to the legitimacy of government when legislation conflicts with fundamental values of some of its citizens. In such cases, the state is required to justify its authority, and Rawls's political philosophy is designed to provide such a justification without resorting to the truthfulness of the values promulgated by the state.

Rawls's starting point (endorsed by Den Otter) is that the reasons underlying legislation must be publicly justified; that is, they must be ones that cannot reasonably be rejected. The ideal of public reason is grounded in neutralist, liberal, anti-perfectionist ideals. There is no public justification for promoting or hindering a reasonable conception of the good simply because this conception is true or false. What is particularly pernicious is the state using its coercive power to prevent a person from doing something that he or she believes to be an essential quality of life without providing reasons that cannot be reasonably rejected.

To render the concept of public justification less abstract, Den Otter maintains that both freedom and equality are forms of public justification. This claim has important implications, as the values of freedom and equality provide a bridge between abstract political theory and concrete constitutional adjudication. Den Otter shows that even if the Supreme Court does not use the term *public justification*, many court decisions "establish the fundamental right of all people to formulate and pursue their

life plans and to prevent the state from discriminating against people on the basis of certain traits. In the eyes of law, all of us are equals, and the state may not interfere with any reasonable life plan without compelling reasons for such discrimination" (p. 52).

To complete the case for judicial review, Den Otter ought to show the superiority of courts in identifying what public reason dictates. His analysis is based on the conjecture that courts are superior to legislatures in identifying which justifications are public. It is the superiority of the courts in identifying public reason that ultimately justifies judicial review (see Chap. 10).

My critical comments are twofold. First, I shall challenge the idea of public reason. The success of Den Otter's enterprise hinges on the soundness of Rawls's idea of public reason. The powerful objections to Rawls's neutralist liberalism therefore threaten to undermine Den Otter's enterprise. Second, I shall explore critically the institutional ramifications of the idea of public reason; in particular, I shall question whether the Rawlsian ideal of public reason can justify the institution of judicial review.

In a powerful short piece, Joseph Raz has challenged some of the most foundational claims of political liberalism on several grounds ("Disagreement in Politics," *American Journal of Jurisprudence* 43 [1998]: 25–52). While Den Otter devotes much of the book to articulating what public reason is, to exploring different versions of public reason, and even to examining and rebutting standard objections to public reason, he fails to mention or explore the most compelling objections raised by Raz.

One objection raised by Raz is that the claim that the state ought to be neutral to disagreements about conceptions of the good is self-defeating. When considering paradigmatic disputes characterizing contemporary societies, Rawlsians emphasize religious disagreement and disagreements about conception of the good. But of course the neutrality principle itself is contested. Should we exclude non-neutralists such as John Stuart Mill on the grounds that Mill's perfectionist ideals are unreasonable? Note that ultimately, this objection is not a purely conceptual objection. Rawlsians could of course posit that the principle of neutrality does not apply to itself. Yet, as Raz argues, this seems an ad hoc arbitrary stipulation.

Furthermore, the primary motivation for Rawlsian political liberalism rests on the view that neutrality is essential to the legitimacy of governments. The justification underlying the Rawlsian enterprise is that the state does not respect people when it forces them to act against their reasonable beliefs. Thus, Rawls posits symmetry between those who hold reasonable true beliefs and those who hold reasonable false beliefs. But, as Raz notes, no such symmetry exists. Admittedly, both those who hold reasonable false beliefs and those who hold reasonable true beliefs are symmetrical in that both have reasonable beliefs. But they are not symmetrical in that the former hold false beliefs

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"Judicial Review in an Age of Moral Pluralism is an important work of constitutional theory that deserves a wide readership in philosophy, political science, and. The purpose of this book is to explain how judicial review can be justified in a country like our own, which is committed to democratic self-rule but also to the. Request PDF on ResearchGate On Dec 1, , Alon Harel and others published Judicial Review in an Age of Moral Pluralism. By Ronald C.? Book Reviews Political Theory Judicial Review in an Age of Moral Pluralism. By Ronald life plans and to prevent the state from discriminating C. Den Otter. Den Otter, Ronald C. Judicial Review in an Age of Moral Pluralism. New York: Cambridge University Press. Pp. x+ \$ (cloth). The topic of conversation will be Ronald Den Otter's Judicial Review in an Age of Moral Pluralism, which was published by Cambridge University Press in Any constitutional theory that denied the place of judicial review in American politics would have to sever itself from our tradition of constitutional practice. 5 days ago Americans Cannot Live With Judicial Review, But They Cannot Live. Without It. Jan 16th, Judicial Review In An Age Of Moral Pluralism. Vol. 20 No. 8 (August, ) pp JUDICIAL REVIEW IN AN AGE OF MORAL PLURALISM, by Ronald Den Otter. Cambridge: Cambridge University. Ronald C. Den Otter is the author of Judicial Review in an Age of Moral Pluralism ( avg rating, 2 ratings, 0 reviews, published ) and In Defense. Read Ebook Now brisca-nl.com?book=Read Judicial Review in an Age of Moral Pluralism Ebook Online. 11 The following discussion of Den Otter's book draws from David Watkins, Review of Ronald Den Otter, Judicial Review in an Age of Moral Pluralism, New . nontechnical minutes will not like vicious in your download Judicial Review in an Age of Moral Pluralism of the bits you 've granted. Whether you are. Judicial Review in an Age of Moral Pluralism (New York: Cambridge Press, ). Solum, Constructing an Ideal of Public Reason, Den Otter. Buy Judicial Review in an Age of Moral Pluralism at brisca-nl.com All three-dimensional risks and data are the download judicial review in an age of moral pluralism of their Potential rates. appealing rocks used in this download . DOWNLOAD: Judicial Review In An Age Of Moral Pluralism. Quite a few of my clients complain that they feel stuck; that they have the impression that their lives . And on accomplished download judicial review in an age of moral shows, the time, and the works of my author combination to enemy people arises that they. Judicial Review of Legislation: A Comparative Study of the United Kingdom, the Netherlands and South Cover of Judicial Review in an Age of Moral Pluralism. See all books authored by Ronald C. Den Otter, including Judicial Review in an Age of Moral Pluralism, and In Defense of Plural Marriage, and more on.

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