Refusing to hear the 'Refuseniks':
A cautionary tale for our times, from Israel/Palestine

Rupert Read

Rawlsian liberalism, the dominant contemporary form of liberalism (which is in turn the dominant political philosophy of our time, the reigning—presumed—paradigm in the discipline), being centrally constituted by 'neutrality' between conceptions of the good, is (allegedly) tolerant of religions, and of other 'comprehensive doctrines', provided that such doctrines do not seek to achieve political power or to enact political ends in their own names. One of the key ways, however, in which Rawls's liberalism thereby '*privatises*' religion and morality makes its—not infrequently *desirable*—impact on the political sphere severely punishable, is through Rawls's influential sharp division between 'conscientious objection' (private, not supposed to influence state policy) and 'civil disobedience' (public, political). This distinction, especially in roughly its Rawlsian form, has been enormously influential, including in courts of law.

The claims and suggestions in the previous paragraph would take an entire paper to expand upon—and to support.[20] My aim in the present paper is far more circumscribed. It is to endeavour to apply the suggestions just made so as to able to examine one powerful real-life *case-study* of the impact Rawls's philosophy has had upon the law and upon politics, so far as these matters are concerned (and thereby to test the suggestions in a concrete case). The case-study is the surprisingly little-known (outside Israel) significant impact of Rawls's doctrine on the conscientious objection vs. civil disobedience issue in relation to the 'Courage to Refuse' movement in Israel/Palestine. That is, the movement of Israeli soldiers objecting specifically to orders to take part in the Israeli military occupation of Palestine.

The case-study is pretty accessible: virtually every quotation I shall give is from one recent special issue of the *Israel Law Review,* 'Refusals to serve'.[21] This special issue conveniently collects together the key Israeli Supreme Court judgement against the Refuseniks with a series of learned commentaries upon this judgement, including commentaries by some of the parties to the case. Crucially, two academics (Avi Sagi and Ron Shapira)—who submitted to the Court a brief arguing against the Refuseniks, and who are cited in the Supreme Court judgement itself by the President in his ruling (p.6)—play a key role in the arguments of this issue of the journal. Crucially so, because their arguments are

[20] See my "On Rawls's failure to preserve genuine (freedom of) religion: confessions of an unreasonable religionist" (forthcoming), for such support and expansion. See also chapter 3 of my *Philosophy for Life*. For the basic Rawls's discussion/distinction, see the writings of mine just referred to, or p.363ff. of *A Theory of Justice* (Oxford: OUP, 1971).

[21] Unless specified, all page references alone, and citations of authors alone, in the remainder of this paper, are to this special 2002 issue of the *Israel Law Review*, 36(3).

based wholly upon Rawls's conscientious objection vs. civil disobedience distinction.[22]

In this paper I will concisely present the key philosophical issues involved in the debate, and argue that Rawlsian liberalism does indeed undermine the tenability of the conscientious 'Refuseniks', and that this is a telling and deeply regrettable finding. I believe that this 'case-study' is a case-study of philosophy in practice, and that its ramifications are profound and widespread.

The way in which the Introduction to 'Refusals to serve' frames the issue under discussion in this paper is quite striking, in this connection. The editors say:

> The complexity of this issue results from the distinctive nature of [refusals to serve in the Israeli army in the Occupied Territories]. On the one hand, these are acts that are motivated by a deep conviction that certain military activities are wrong ("conscientious objection"). On the other hand, they are also aimed at bringing about a change in the policies of the government (so-called "civil disobedience"). (Medina & Weisburd, 2002, p.vii)

What is precisely not allowed in the Rawlsian schema is for something to be intended to be both of these things at once (at least by more than mere 'coincidence'.) And it is this element of the Rawlsian schema that is exploited by Sagi & Shapira, in order to make their argument, an argument that appeared to impress the Supreme Court. Quoting now from the Supreme Court judgement itself (p.6): "Respondent supplemented his response with the opinions of Professors Avi Sagi and Ron Shapira which, he claims, support his position—that the freedom of conscience and the right to object, as far as they stand, apply neither to the petitioners nor to the arguments upon which they base their request." In upholding the Respondent's claim, the Supreme Court ruled (pp.14-15) that "it becomes difficult to distinguish between one who claims conscientious objection in good faith and one who, in actuality, objects to the policy of the government or the Knesset." My assertion is that it is not difficult to see here Rawls's doctrine, as presented to the Court by Sagi and Shapira.

In other words, then, what there is no room for under the very-influential Rawlsian schema is conscientious objection that *is* civil disobedience; or, perhaps more accurately still, where there is *no clear conceptual space, so far as the practitioners of the thought or action in question are concerned, for even making the*

[22] And, lest it be thought that the morals of this story 'only' apply to the case of Israel, think again. Much the same kinds of concerns are present in the contemporary USA and UK. For instance, *Hansard* (http://www.theyworkforyou.com/debates/?id=2006-05-22b.1204.9) records that the British House of Commons debated the laws concerning desertion from the armed forces on 22 May 2006. It overwhelmingly rejected arguments put by a few Labour left-wingers and Scots Nationalists that the maximum penalty for desertion should be reduced from life-imprisonment to some lesser amount. Among the arguments explicitly used by those Conservative and Labour MPs arguing against the proposed reduction was that no quarter should be given to those who 'selectively conscientiously object', deserting from the armed forces in the face of the specifics of the war on (occupation of) Iraq. The case of Flight-Lieutenant Kendall-Smith—recently court-martialled for his refusal to serve in Iraq—was explicitly mentioned several times. In effect he now faces the possibility (through indefinite prolongation of his detention, if he continues to refuse to serve) of life imprisonment, similar to the Refuseniks in Israel who in face the very same possibility. (For further detail of his case, see the aptly titled article, "Refusing to serve", in *Red Pepper* magazine, August 2006).

distinction. Such a view, such a stance, such a motivated refusal to distinguish, is, I will submit, precisely the sort of view (stance, refusal) that would be, or is, taken by those who have a serious level of commitment to a 'comprehensive doctrine' (e.g. a religion which is not purely a private affair; nor a politically or ethically 'engaged' spirituality or morality) which is actually worth holding to. A way of seeing the world or a way of living which, not merely wanting egocentrically to keep its hands clean, cares about others, has compassion, in such a way that it might find (say) the Occupation wrong, but not all army service; or, to give a hypothetical example for comparison, which might find war an evil, but force in defence of 'Mother Earth' (or 'Gaia') sometimes a good.

For the Rawlsian liberal, one's 'comprehensive doctrine' is not permitted to enter into one's political doctrines and actions, in its own terms. The liberal thus allows conscientious objection only to the extent that the objector is aiming to salve his own conscience; not to the extent that he is aiming to express any collective 'political' conviction or indeed have any political effect whatsoever.[23] The Refuseniks in Israel are mostly Zionists, Judaists; *many of them believe that their religion allows for—indeed, mandates—defence of Israel;* but *not* of 'Eretz Yisrael', i.e. not of Palestinian lands. Ironically, the more reasonable their views, *the less tenable/acceptable those views appear, from the standpoint of the Rawlsian criterion of acceptable conscientious objection.* To be an acceptable conscientious objector, for Rawls, one has to have a blanket—extreme, un-nuanced, un-selective—pacificistic or anti-militaristic view; and furthermore, one has to have no real chance of leading enough others to have a similar view so as to damage the operational efficiency of the army.[24]

The bizarre and deeply-ironic consequence of this is writ large at one point in Barak Medina's paper, as at several other points, I would suggest, in 'Refusals to serve'; the problem with the Refuseniks' case for being conscientious objectors is said to be that they are too mainstream, that they *fail* to "*defy the constitutive principles* of the current Israeli society" (p.92), and thus cannot be entitled to the privileges accorded to 'permanent minorities'. In other words: to qualify as conscientious objectors, the *Refuseniks ought to give up their 'moderate' Zionism, and become (e.g.) Judaist extremists/fundamentalists!* An odd prescription, for a society wishing to save, help or better itself... Medina admits the point, through the way he frames the conclusion he himself draws from this (p.93): "*Somewhat paradoxically,* it is the political illegitimacy of the underlying reasons of these acts of refusals [viz. theologically-motivated refusals to enter the Israeli army on the part of Ultra-Orthodox Jews] that make them protected acts of conscientious objection" (emphasis added). Medina adds here, crucially and tellingly, that "the *form* of these refusals fits the celebrated definition of "conscientious objection" offered by Rawls."[25]

---

[23] Rawls, 1971, p.369: "[C]onscientious refusal is not an act in the public forum".

[24] Compare p.190 of Sagi & Shapira's paper (2002a), where they make clear that conscientious objectors are absolutely not allowed to want to *win*. This is a *rigorous*—some would say an *extreme*—*privatisation* of conscience: of morality, religion, etc., inasmuch as these are allowed to have *no bearing* on matters political.

[25] Underlining added.

Thus the Israeli Supreme Court followed a precisely Rawlsian line, in confirming the illegality, in its view, of what it precisely called "selective conscientious objection", a category it deemed illegitimate for the very same reason that Rawls in effect proposed.

I shall now establish this case more firmly, by quoting and discussing the arguments made in 'Refusals to serve', by Sagi & Shapira (2002a; 2002b), in their brief to the Court and afterward, and by others.

The case is fairly easily made.[26] Take the following remark, at the very opening of the substance of Sagi and Shapira's main paper (2002a), called simply *Civil Disobedience and Conscientious Objection:* "Following Rawls's footsteps, the philosophical literature commonly distinguishes between civil disobedience and conscientious objection" (p.182). They go on to (try to) make out their claim that Rawls is indeed the person to follow on the issue:

> Conscientious objection is an act which aims to safeguard the conscience of a person. Michael Walzer and John Rawls are divided on the nature of conscientious considerations. Walzer is of the opinion that "the very word 'conscience' implies a shared moral knowledge, and it is probably fair to argue not only that the individual's understanding of god or the higher law is always acquired within a group but also that his obligation to either is at the same time an obligation to the group and to its members... thus conscience can also be described as a form of moral knowledge that we share not with god, but with other men—our fellow citizens ... (ibid.).

Rawls—and probably most writers on this subject—reject this approach. They believe that an act of conscientious objection is one motivated by personal factors, which generally cannot be justified on universal grounds. In this paper, following Sagi & Shapira (ibid., pp.183–5), this thesis will be termed "private conscientious objection".

I would venture to suggest that the "probably most writers on the subject" refers to liberals, and principally to broadly Rawlsian liberals. Walzer's 'communitarian' alternative reading of conscientious objection provides some possibility of a constitutively shared sense of conscience; his line of thinking would naturally lead to the possibility of groups working together to see their deeply-held beliefs put into practice. Rawls's line of thinking, by contrast, rigorously privatises conscience. (Thus, Sagi & Shapira's telling phrase: "private conscientious objection".)

---

[26] And that is, even leaving on one side the many other places that others besides Sagi and Shapira rely on Rawls's thinking to frame the discussion for them. This is so over and over in Medina's (2002) writing in 'Refusals to serve' , for instance; the Introduction to the special issue sums up Medina's paper in the journal as follows: "[he] argues that the [Israeli Defence Force's] current policy is actually based on a distinction between "non-political" objections, which are claimed by members of a permanent minority based on views that are practically excluded from the political discourse, and "political" objections, which are based on "political principles" (in the Rawlsian sense), and that the policy of legitimising only the former type of refusals is justified." (p.vii) In the paper itself, Medina's making of the distinction is, naturally, indexed fully and explicitly to Rawls's work (p.79, n.26, n.27, n.35, p.93, n.54, n.55, n.56, n.74, n.80, n.86, n.89, & n.92).

On this view, conscientious objection *should* be 'merely' moral; it *should* have no public effects. This is an *individualised*—liberal—vision of 'morality'. The conscientious objector is allowed to be responsible for his *own* actions. Only. The idea that we have wider responsibilities—to peace, to survival, to love, etc.—is anathema. (For the 'private conscientious objector', solely concerned with her own conscience ("Here I stand; I can do no other—for myself") is an acceptable figure for the liberal. What is unacceptable—what does not fit the categories that the liberal forces upon the situation—is someone whose *conscience requires* that they take an action that is constitutively collective, or constitutively aimed at other consciences, too.

Rawls provides an apologia for those legal codes that are institutionally biased toward liberalism—and thus, 'ironically', toward state power, and against anything but a fully-privatised freedom of conscience. Unsurprisingly, the Rawlsian contribution to the debate, then, is intellectually to back up an exceedingly sharp conceptual distinction between conscientious objection and civil disobedience, a distinction that enforces a privatised individualised morality, religion and self-conception.

The upshot of our brief examination of this jurisprudential debate—this fascinating and disturbing for-instance of philosophy in action—is as follows: the cultural caché of liberalism's sharp public vs. private distinction, intellectually founded nowadays upon the notion of state neutrality between conceptions of the good, and refracted in particular through the lens of Rawls's civil disobedience vs. conscientious objection distinction, has in effect made the position of the (of course mostly Zionist, Judaist) 'Courage to Refuse' *refuseniks* in Israel impossible. Rawls's stance has been enormously influential in Israel as a tool with which the political Right (which now occupies the entire 'mainstream' of politics in Israel,[27] including the former governing Party, Kadima, and most of the Labour Party) has argued successfully against any judicial viability in the stance of the *refuseniks*. This is the political reality of how Rawls's prohibition on religion or any 'comprehensive doctrine' having a public face works: the Israeli Supreme Court has ruled against 'selective' conscientious objection (objection to serving in Israel's Occupation of Palestine), or conscientious objection that is also civil disobedience ... leaning heavily, in effect, on Rawls's distinction, in the process.

In a world in which we do not think of ourselves as isolated individuals, conscientious objection and civil disobedience are naturally one, rather than two.[28] In such a world, 'civil disobedience' comes from deep moral and spiritual conviction; and 'conscientious objection' can be wide-ranging, other-involving (recall the Walzer quote, earlier in this paper), politically literate, etc.. But the world that liberalism has made in its own image is not such a world. It is, rather, a world modelled for instance around the figures of ideal contractors, autonomous and only self-regarding. It is a world that splits public from private, political from religious, and so on. It is a world not unlike the world that neo-liberal economies and polities are ever increasingly generating for us – and that, appears to be crashing down in crisis. (It would perhaps be as well to ponder on the

[27] That backed the re-occupation of Gaza, and the massive assault on Lebanon, in summer 2006.

[28] Contrast p.88 of Medina's (again problematically titled) "Political disobedience in the IDF".

contribution made to this vast financial crisis by the extreme individualism which fatally underlies it.)

And so, the empirical conclusion one must draw from my case study is highly disturbing. It is that Rawls's arguments have had an actual, tangible and not-unpredictable influence on preventing the 'Courage to Refuse' movement from getting a fair hearing in Israel. For those of us who believe (as virtually every country in the U.N. believes, for instance) that Israel's occupation of Palestine is an indefensible violation of international law, and who believe the 'Refuseniks' to be heroes, this result is deeply distressing—and deeply revealing. Rawls's doctrine of a sharp conceptual divide between conscientious objection and civil disobedience, a doctrine thoroughly grounded in the liberal private vs. public distinction—and preserving the 'sanctity' of the political sphere so as not to have it invaded by avowedly religious, spiritual, etc. 'comprehensive' doctrines—has biased the pitch against the very idea of a conscientious objection that *is* through-and-through civil disobedience, or where the two are so 'internally related' that there are not two things here at all, but only one. Rawls's system of thought—contemporary political liberalism's system of thought—leaves no conceptual space for same; with the consequence that more and more space has to be found in Israeli prisons for some of Israel's most conscientious and indeed arguably (at a deep level) *most law-abiding* citizens.

Let it not be thought that I am asserting that those who break the law of a nation for reasons often intertwined with their religion, morals, politics and obligations under international law, should automatically be exempt from legal sanctions. Conscientious civil disobedients objecting to an immoral or internationally-illegal instruction have often accepted the right of the state to punish them. But I do object to the treatment of such people simply as criminals posing a danger to the body politic, criminals whose ('mere') civil disobedience allegedly threatens their whole society such that it is deemed legitimate to lock them up *indefinitely*. This is the threat now facing the Refuseniks: that as soon as they reach the end of one jail term, they will be instantly called up again and instantly sent to prison again, should they refuse to serve.[29] This, it seems to me, is quite heinously wrong. And it is the logical outcome of 'liberal' political philosophy. That ought to tell us something about the latter.

The practices of Israel in the Occupied Territories (and to some extent on its own territory), practices such as separate roads for Jews and Arabs, look more and more similar to those of apartheid South Africa, and are clearly worse than those practiced by the state(s) in the pre-Civil-Rights-movement American South. The non-violent resistance of a Gandhi, a King,[30] a Mandela—civil disobedience that

[29] And note n.3, above: the same situation threatens British soldiers who refuse to serve in Iraq etc., despite again this being widely adjudged to be an internationally-illegal war of aggression and unjust occupation.

[30] Compare and contrast Sagi and Shapira's truly desperate efforts (pp.212-3)—following Rawls's similarly desperate efforts in his *Political Liberalism*—to present Gandhi and King etc. as practitioners of civil disobedience, without conscience being meaningfully involved in their actions. Surely it is obvious that, as David Enoch remarks (in 'Some arguments against conscientious objection and civil disobedience refuted', p.230): "... almost none of the interesting cases fall neatly on one side of the distinction. Clearly, Gandhi was out to change public policy, but didn't he engage in conscientious objection?" Even Sagi and Shapira can't help noting themselves (in n.52, on p.212) that "The Indian term *satyagraha* means to adhere to truth"" (underlining added). Adhering to the truth, to what one's conscience enforces upon

was conscientious objection, utterly motivated by and manifested in moral, spiritual and religious teachings—is rendered impossibly difficult, by the excuses that Rawlsian liberalism provides the Israeli state with for the delegitimisation of the most important radical internal opposition that it has faced, in recent years. The courageous, conscientious 'refuseniks' are locked up, potentially indefinitely, courtesy of the Israeli Supreme Court, courtesy of John Rawls and his Israeli jurisprudential followers.

The dark role played by Rawls's arguments in the dismal saga of Israel's repression of its own citizenry's conscientiously-motivated effort both to refuse conscientiously to undertake immoral and internationally-illegal actions themselves and (thereby) to struggle against that immorality and illegality reveals an unpleasant truth about the political philosophy of liberalism. Namely, that it provides a systematic excuse for some of the very most oppressive and illiberal governance that the alleged 'liberal democracies' have ever practiced.[31]

And it is of course this that gives my topic its peculiar piquancy and relevancy in this journal, in the context of philosophy in practice. The Israeli state, as notably in its jurisprudents, claims to embody the philosophy of 'liberalism' and the political practice of democracy. I do not dispute that claim: rather, I draw out the discomforting nature of 'actually existing liberalism'. In other words: I claim that the practice of the Israeli state in refusing to hear the refuseniks throws a strong searchlight on the true nature of the political philosophy of liberalism of John Rawls *et al*.. Israel's behaviour toward the refuseniks is justified by Rawlsian philosophy: so much the worse for that philosophy. Rawls's 'liberal' philosophy leads, among other things, to a kind of tyranny.

---

one... Anyone looking with eyes not already closed can see that at the very least, the boundaries between civil disobedience and conscientious objection are systemically blurred, in most of what are historically the most powerful cases of either/both. But just this is what Rawlsians don't wish to allow, refuse to see.

[31] Consider the conclusions of this paper, in light for instance of Israel's military actions in the recent war-year of 2006: e.g. its savage 'collective punishment' attack on the newly re-occupied territory of Gaza, which featured the kidnapping of large portions of the democratically-elected government of Palestine, the use of Palestinian civilians as human shields, and internationally-illegal attacks upon the power supply and other necessities for the civilian populace in Gaza; and its massively disproportionate 'collective punishment' attack on Lebanon, which has also featured the apparently-deliberate targeting of a U.N. observation post, likely use of internationally-banned weapons (such as white phosphorus and cluster bombs in civilian areas), again internationally-illegal attacks upon the power supply and other necessities for the civilian population, and major unilateral ceasefire violations. Israel's involvement in those actions, some of them clearly war-criminal, makes the topos of the present paper all the more pressing. (For justification of the adjective 'war-criminal', see for example Human Rights Watch's report, "Israel/Lebanon: End indiscriminate attacks on civilians: Some Israeli attacks amount to war crimes". See also on the same website HRW's 31 July 06 report, in which Israel's claims to be acting in accord with its obligations under international humanitarian law in its attacks in Lebanon are dismissed as "fantasy", and the 30 July report, in which the Qana bombing specifically is labelled as a "war crime". The topic of this paper is particularly pertinent in that one serving Israeli soldier and hundreds of reservists attempted to be relieved of the assigned task of serving in Lebanon in the summer of 2006 on conscientious grounds.) (See also Amnesty International's important 30 June 2006 report, on recent events in Israel and the Occupied Territories, in which again Israel's deliberate attacks are characterised as a war crime.) Soldiers know that, since 1945, "I was only obeying orders" is no defence, if the orders were to carry out war criminal acts. If Israel continues to deliberately fail to understand its soldiers who refuse to serve when serving would mean carrying out war criminal acts, then it comes astonishingly close to risking the harsh but just judgement famously imposed upon the entire leadership of a certain other nation at the Nuremberg Tribunals.

By contrast, the philosophical position of the conscientious civil disobedients, i.e. of the refuseniks themselves, tends toward a very different philosophy-in-practice. The refuseniks who interest me the most are those who appeal to international law, or to the moral law, to give the lie to the law that tells them that only a *blanket* religious prohibition on them engaging in soldiery will let them out of the army. These refuseniks appeal to religion *and to politics and to ethics* in order to say: any philosophy that refuses the category that I have called conscientious civil disobedience, i.e. that refuses to allow for the merging of religion, ethics and politics into a comprehensive whole, is a philosophy that must be interrogated and resisted.

The lived reality of the lives of human beings whose minds and selves have not been deformed by the dichotomies that liberal political philosophy imposes on our lives (e.g. between public and private, or between 'the right' and 'the good') itself provides a powerful argument against that philosophy. Thus my claim, in the end, is that what the refuseniks rightly refuse is *a philosophy* … Rawlsian 'liberal' philosophy. And, implicitly, they refuse it in the name of another incipient philosophy, that they themselves practice. They practice an *engaged* spirituality, or philosophy: engaged with the world, not remote from it and sequestered from it, as liberalism wants religion or spirituality or philosophy to be.

And this I believe offers hope for us in a century which will require many acts of conscientious civil disobedience if our species is not in war or in ecocide to destroy its own home and its own civilization by the century's end.[32]

References

Enoch, (2002). Some arguments against conscientious objection and civil disobedience refuted. *Israel Law Review*, 36(3): 227–254.

Human Rights Watch, "Israel/Lebanon: End indiscriminate attacks on civilians: Some Israeli attacks amount to war crimes". Available from: http://hrw.org/english/docs/2006/08/02/lebano13902.htm

Israel Law Review (2002), 36(3), *Refusals to Serve—Political Dissent in the Israel Defense Forces*.

Medina, B. (2002). Political Disobedience in the IDF: The scope of the legal right of soldiers to be excused from taking part in military activities in the Occupied Territories. *Israel Law Review*, 36(3): 73–110.

Medina, B. & Weisburd, D. (2002). Editorial. *Israel Law Review*, 36(3).

Rawls, J. (1971) *A Theory of Justice* Oxford: Oxford University Press.

Read, R. (2007). *Philosophy for Life*. London: Continuum.

Red Pepper magazine (2006). Refusing to Serve. *Red Pepper*, August 2006, 144: 10.

Sagi, A. & Shapira, R. (2002a). Civil disobedience and conscientious objection. *Israel Law Review*, 36(3): 181–218.

[32] Thanks to Gerald Rochelle, Anat Matar, Phil Hutchinson, Preston King, A.T. Baumeister, John Game, Tom Young, and the audience at a presentation of this paper at SOAS in London.

—— (2002b). Rejoinder: civil disobedience and conscientious objection. *Israel Law Review*, 36(3): 257–266.

About the Author

Rupert Read is Reader in Philosophy at the *University of East Anglia*, where he specialises in Wittgenstein, in literature and philosophy, and in environmental and political philosophy. He is also a trained and practicing Co-Counsellor, is one of the Green Party Councillor in Norwich City.

r.read@uea.ac.uk