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A Pluralist Theory of Constitutional Justice. Assessing Liberal Democracy in Times of Rising Populism and Illiberalism

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ABSTRACT

A Pluralist Theory of Constitutional Justice. Assessing Liberal Democracy in Times of Rising Populism and Illiberalism advances a theoretically rich and extremely engaging case for the suitability of liberal constitutionalism to achieve justice in contemporary globalized and pluralistic societies. While acknowledging that actual liberal constitutional models have oftentimes failed to effectively address some of the most significant challenges of our time, the book offers a valuable contribution to the debate by shedding light on the potential of liberal constitutionalism, when taken in its ‘ideal’ form, as well as its conceptual superiority over competitors such as illiberalism, populism, and authoritarianism. In doing so, the author Michel Rosenfeld relies on the notion of comprehensive pluralism as a conception of the good in its own right that ought to be incorporated within liberal constitutionalism in order to secure and improve the ability of the latter to meet the demands of justice. While the author’s case for comprehensive pluralism is extremely compelling, the connection that the book seeks to establish between the requirements of justice under comprehensive pluralism and the liberal constitutional model requires further discussion.

Keywords: liberal constitutionalism, comprehensive pluralism, constitutional theory, distributive justice

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1. Introduction

In the last few years, liberal constitutionalism has come under serious attack on several fronts. At the political level, the populist agenda has been advocating for the rejection of the liberal constitutional model, which is accused of exacerbating the distance between the people and their institutions (Blokker, 2019) and of ignoring the preferences of “actually existing democratic publics” (Scheppelle, 2019, p. 316). In the academic context, many scholars have also started to increasingly question the merits of liberal constitutionalism and to take its limits and potential for reform seriously. Adding to the voices of its traditional critics (Schmitt, 1932; MacIntyre, 1981; Eisenstein, 1981; MacKinnon, 1989; Sandel, 1998), academics from different fields and traditions, including political and legal theorists, comparative constitutional lawyers (Dowdle and Wilkinson, 2017), European Union scholars (de Búrca, 2018; Komárek, 2023), as well as proponents of Global Constitutionalism (Eisler and others, 2022) and academics from the Global South (Dania, 2023), have all begun to pay much closer attention to the shortcomings of liberal constitutionalism. Some have even advanced the hypothesis that what we are currently witnessing might be the start of liberal constitutionalism’s ‘demise’ (Ginsburg, Huq and Versteeg, 2018). Many of the concerns with the future of liberal constitutionalism that are currently being expressed in the literature have to do with the model’s quite disappointing performance in promoting and achieving justice. This emerges both from a legal perspective, with scholars observing – for instance – that liberal constitutionalism’s commitment to the protection of constitutional rights through the judicial activity of courts has so far proven rather ineffective (Chilton and Versteeg, 2018), and from a material standpoint, especially once we consider the proven inadequacy of most liberal constitutions in tackling the problem of economic inequality (Dixon and Suk, 2018).

It is against this backdrop that Michel Rosenfeld's latest book, *A Pluralist Theory of Constitutional Justice. Assessing Liberal Democracy in Times of Rising Populism and Illiberalism*, advances a theoretically rich and extremely engaging case for the liberal constitutional model's aptness to achieve justice in contemporary globalized and pluralistic societies. While acknowledging liberal constitutionalism's failure, in the last decades, to effectively address some of the most significant challenges of our time, the book offers a valuable contribution to the debate by shedding light on the *potential* of liberal constitutionalism, when taken in its 'ideal' form, as well as its conceptual superiority over competitors such as illiberalism, populism, and authoritarianism.

Rosenfeld's main thesis can be summarised as follows. He starts from the premise that only those constitutions that are capable of delivering and advancing a certain minimum of distributive justice, which he refers to as the 'justice essentials', are worthy of legitimation and justification. This, in turn, makes the task of determining what these justice essentials require a crucial step for the purpose of assessing a constitution's ability to implement them and its overall legitimacy. However, a similar endeavour is made particularly complicated by the existence of widespread disagreement in contemporary constitutional units concerning the delimitation of the minimum of justice that ought to be incorporated into the constitution. Rosenfeld's answer to this conundrum lies in the notion of comprehensive pluralism, which is deemed to provide adequate grounding for the justice essentials (p. 228) and to normatively legitimate an ideal version of liberal constitutionalism that, in his view, is the "the optimal potential guarantor of the justice essentials" (p. 292) and should hence be pursued by contemporary *actual* liberal constitutional democracies.

2. Methodology and Structure of the Book

In presenting his pluralist theory of constitutional justice, Rosenfeld expressly commits to methodological neutrality (p. 3) and decides to adopt, for the majority of his analysis, a largely descriptive approach. This allows him to engage in an intriguing investigation of the historical and theoretical context of liberal constitutionalism while also addressing the criticism that has been advanced against such model. In fact, Rosenfeld's goal for the book is to verify whether the liberal model may be at least partially responsible for facilitating the worsening of distributive injustices in the world, and if liberal constitutionalism can or ought to be recalibrated to promote justice, intended not only as material welfare but also in identitarian and representational terms. Quite interestingly, he expressly states his intention to do so without suggesting any *a priori* determination of what the 'right' answer to these questions might be (p. 3).

To conduct his analysis, Rosenfeld relies on a series of conceptual tools that function as heuristic models. These are drawn from a counterfactual 'ideal' form of liberal constitutionalism, in which the constitution is capable of dispensing a certain minimum of distributive justice while also maintaining harmonization between a functional constitutional unit, or '*demos*', and its recognition-based identitarian imprint, or '*ethnos*', and a workable equilibrium between universal, singular, and plural identities (as already presented in Rosenfeld, 2009). In Rosenfeld's terminology, the universal relates to those attributes that refer to *all* the actors within a relevant polity, such as democratic self-government, the rule of law, and the protection of fundamental rights (p. 10). The individual, instead, focuses on the singular person intended both as an abstract citizen and as their own person, with a "unique history, heritage, experience, and set of challenges and aspirations" (p. 10). In this framework, the '*demos*' must partake in both of these dimensions, while the '*ethnos*' "must figure as an amalgam between the singular and the plural" (p. 10). The latter assumes special relevance in

contemporary polities – which are multicultural and plural in nature – and it refers to the accommodation and recognition of different communities both *among* and *within* groups of people (p. 11).

The role that these concepts seem to play in Rosenfeld's theory is threefold, and they reflect the structure of the book.

First, they provide standards against which to isolate the main challenges faced by contemporary liberal constitutionalism. In the first two chapters of the book, Rosenfeld observes that liberal constitutionalism's capacity to satisfy the requirements of distributive justice appears to be increasingly impaired by globalisation, a sense of inequity and alienation from the law, as well as the rise of intransigent politics and the various crises and emergencies that have fostered conditions of stress in several constitutional units during the course of the last few decades. All of these transformations symbolise current departures from the 'ideal' liberal constitution, as under these conditions citizens struggle to perceive law as self-given and laws rarely manage to account for the universal, the singular, and the plural (p. 40), hence projecting a sense of illegitimacy. In particular, the tribalisation of politics encouraged by populist discourses is found to be incompatible with the goal of promoting justice insofar as it casts some of the people as the 'whole' and the rest as 'enemies', hence regarding the partial as the universal, largely ignoring singularity and eliminating pluralism (p. 62).

Secondly, these conceptual elements are used to *assess* the way in which the interplay between liberal constitutionalism and justice has been traditionally grounded in legal philosophy. In the second part of the book, which spans over four chapters, Rosenfeld proceeds to evaluate several influential philosophical accounts against their ability to succeed along the two axes that, in his view, may lead to the justice essentials: the harmonisation of '*ethnos*' and '*demos*' and the balance between the universal, the singular, and the plural. All of the theories considered in these chapters are found to fall short in at least one of these dimensions, hence leading Rosenfeld to conclude that none of these traditional accounts on the link between justice

and liberal constitutionalism provide a fully satisfactory justification for the justice essentials (p. 227).

Finally, the dialectic between ‘*demos*’ and ‘*ethnos*’ and the tension between the universal, the singular, and the plural at the constitutional level provide normative guidance in pointing to what Rosenfeld considers to be the most promising approach in the quest for the justice essentials: comprehensive pluralism, intended as a commitment to pluralism “all the way up and all the way down” (p. 26). This element is not an original contribution of *A Pluralist Theory of Constitutional Justice*. In fact, Rosenfeld has written extensively on the notion of comprehensive pluralism as a conception of the good in its own right, which prescribes a set of fixed and non-negotiable norms but nonetheless seeks to accommodate as many other conceptions of the good as possible, as long as they are compatible – although not necessarily consistent – with comprehensive pluralism itself (Rosenfeld, 2012; Rosenfeld, 1999; Rosenfeld, 1997a; Rosenfeld, 1997b). In this book, comprehensive pluralism is deemed to be better suited to achieve an equilibrium between the various dimensions of constitutional identity than any of the previously considered philosophical accounts (p. 248). It is exactly because of this feature that comprehensive pluralism is more adequately equipped to pave the way towards the requirements of the justice essentials (p. 276-277 and p. 288). Once we assume the perspective of comprehensive pluralism, Rosenfeld concludes, it becomes clear that the liberal constitutional model remains the one that is most likely to achieve the justice essentials (p. 285). As such, comprehensive pluralism can and *ought* to be incorporated within liberal constitutionalism in order to secure and improve the ability of the latter to meet the demands of justice (p. 228 and p. 292).

3. Constructing a Pluralist Theory of Constitutional Justice

To fully grasp the way in which all these theoretical and conceptual elements fit together under a highly sophisticated unitary and coherent constitutional

project, it is useful to refer to the content of each chapter in more details. This also helps understand the complexity of Rosenfeld's argument, which is presented in a consequential fashion, with each chapter focusing on the goal of exploring a segment of the broader theoretical framework.

One of the main substantive claims of the first part of the book, which deals with the current challenges faced by liberal constitutions in the pursuit of justice, is the need to *constitutionally* guarantee the goal of economic redistribution. This constitutes a crucial requirement to ensure that the justice essentials are met in contemporary constitutional democracies (p. 67). In fact, in Rosenfeld's view, failure to minimise material inequalities is ultimately doomed to result in failure to approximate distributive justice in *all* its dimensions – including recognition and representation – and at all levels of the universal, the singular and the plural (p. 74).

To justify and reinforce this intuition according to which material conditions play a particularly important role in the quest for the justice essentials at a constitutional level, Rosenfeld proceeds, in the second part of the book, to investigate those theories that may broaden our understanding of how law interacts with morality, ethics, politics, and economics, hence going beyond what Rosenfeld refers to as mere 'justice according to law' (p. 125).

For this purpose, in chapter three, Hans Kelsen's pure theory of law and Sigmund Freud's account of group identity are presented in dialogue. The latter is invoked to rescue the former's inability to establish a sense of authorship and identity in relation to the law, while nevertheless succeeding in imposing at least a minimum of formal distributive justice in ruling *through* law – especially at the universal and individual levels (p. 110). However, Freud's theory is also considered inadequate to bridge the gap between the universal, the singular, and the plural due to its prioritisation of the individual in the process of internalisation of law through group psychology (p. 121).

Overall, the broader point that this chapter allows Rosenfeld to make is that law and justice seem to have no *intrinsic* relation, as justice under the law or the constitution is only capable of providing a bare *minimum* of justice (p.

125). On the contrary, the justice essentials largely depend on what happens ‘*beyond*’ law, relying for example on requisites of identification and common loyalty (p. 128).

This finding serves as the starting point for chapter four, where Rosenfeld proceeds to explore theoretical contributions that bridge the gap between law and justice through politics and economics. In fact, if proven to be able to advance justice ‘*beyond the law*’, these could then be used to inform the *content* of law and constitutions and move towards the justice essentials (p. 130). Nevertheless, the analysis of several theories leads to the conclusion that, more often than not, the influence that politics and economics exercise on law seems to hinder law’s ability to produce justice, rather than to enhance it (p. 131). This is confirmed by some of the theories themselves, as Rosenfeld observes how both Carl Marx’s dialectical materialism and the work of critical legal scholars conceive of law as an instrument of oppression that leads to divisive politics and is intrinsically disconnected from the notion of justice (p. 131). At the same time, this conclusion is also reinforced by Rosenfeld’s critical analysis of other authors, who do try to link economics or politics to law in the quest for justice but, in Rosenfeld’s view, ultimately fail to do so. This emerges in particular with reference to law and economics theorists, who are deemed to succeed in subsuming law under *a* conception of distributive justice but are accused of settling on an idea of justice aimed at wealth maximisation that is unpersuasive and does not necessarily coincide with the justice essentials (p. 150). For Rosenfeld, in fact, the justice essentials are *not* exhausted by economic factors, and they encompass broader legal and constitutional matters, such as dignitarian ones (p. 150). In a similar vein, Carl Schmitt’s theory of the political is presented as detrimental for the justice essentials as it opens the way to systematic identitarian recognition-based distributive injustices (p. 139).

Overall, this chapter concludes that, together with the bare minimum of procedural justice provided by law, in contemporary pluralist and ideologically divided societies we need *at least* some iterations of justice

‘beyond’ law that transcend political and/or economic justice alone (p. 159). This is because economics and politics are inherently contestable, meaning that they fail to obtain consensus within a constitutional unit, and hence tend to frustrate rather than to advance justice (p. 146 and 158).

The problem of contestability that emerges with reference to these approaches is exactly what motivates Rosenfeld’s change of perspective in chapter five, where he considers theories that begin their enquiries with a self-standing conception of justice. Because they aim to *authoritatively* settle the contents of the justice essentials for all those who are part of the relevant constitutional unit (p. 161), these theories are putatively considered to be better suited to achieve the justice essentials. Nevertheless, these philosophical accounts, which are described as going from the ‘universal’ to the ‘singular’ (p. 195), seem to be affected by other kinds of limitations. For instance, Rosenfeld acknowledges that a Kantian perspective has the merit of successfully severing the notion of justice from a conception of the good and equating the legitimacy of laws and constitutions to their ability to obtain *formal* equality, hence reducing the problem of obtaining consensus on a specific substantive theory of justice (p. 163). However, a similar approach only manages to ground the necessary unity of the universal, while it fails to account for the singular and the plural (p. 165-166). In fact, Kantian morals require an abstract understanding of individuals, leaving aside any identitarian elements (p. 165).

Similar problems emerge with reference to procedural theories of justice, such as the ones advanced by John Rawls and Jürgen Habermas, especially to the extent that they require the exclusion of any metaphysical perspectives – to which the identity of individuals may nonetheless be deeply intertwined – to obtain a unifying concept of justice (p. 168). Rosenfeld also observes that these theories are not as purely proceduralist as they claim to be. At a closer look, they seem to assume substantive positions that may be incompatible with some elements of the justice essentials. For instance, according to Rosenfeld, Habermas’ refusal to include identitarian claims within the

constitution leads to a fatal neglect of two essential dimensions of the justice essentials: representation and recognition (p. 182).

Overall, Rosenfeld concedes that these conceptions of justice rightly point to the need to identify some normative grounding that is above the different contested understandings of the good for the purpose of binding together the community of communities within the relevant constitutional unit. However, they either fail to advance a version of the universal that may be compelling for all, hence leaving the problem of contestability open and failing to account for the plural by excluding segments of the relevant population, or they leave the singular aside due to the extreme levels of abstraction that they require (p. 196).

Such concern for the individuation of an ideal level or type of individualism that is compatible with the minimum of constitutional justice triggers the enquiry at the centre of the sixth chapter, which is also the last strictly doctrinal one. Here, Rosenfeld turns to those academic contributions that may, at least *prima facie*, provide a theoretical account able to avoid desingularisation by centring the understanding of the link between law and justice on the singular, rather than on the universal (p. 197). The authors explored in this chapter, though, fall short in their discussion of the plural and the universal. First, Jacques Derrida's theory is considered unable to account for those cases in which accommodating the singularity of one may detract from the singularity of others (p. 211). Then, Giorgio Agamben's focus on the polity's '*ethnos*' and symbolism in constitutional legitimation is shown to ultimately fail to bring different collective units under a singular community of communities (p. 220). The general conclusion that can be drawn from this analysis seems to be that in order to be compatible with the justice essentials, individualism must be *egalitarian* and capable of leaving room for the plural (p. 222).

At the end of part two of the book, Rosenfeld observes that, since they all fail to establish the necessary harmonisation of '*ethnos*' and '*demos*' and equilibrium between the universal, the singular, and the plural, none of the

approaches examined in part two of the book seem to be able to provide any workable criteria to determine what the justice essentials require in the context of liberal democratic constitutions. As such, they cannot offer any guidance or standards to assess contemporary liberal constitutions' ability to promote justice. On the contrary, these theories seem bound to either renounce *tout court* the possibility of full justice at the constitutional level or to foster disagreement over what constitutes justice by failing to accommodate relevant competing conceptions of the good within more broadly encompassing normative frameworks (p. 223). It is against this backdrop that part three of the book is dedicated to the goal of advancing an alternative and arguably more fruitful approach that starts from the perspective of the *plural*. This, it is submitted, should create sufficient common ground to agree on a mutually acceptable constitution within each particular constitutional unit that is compliant with the justice essentials (p. 228).

In chapter seven, Rosenfeld advances his most normative claims in constructing his case for turning to comprehensive pluralism, which entails some forms of intransigent anti-pluralist fixed minimum that is however designed to lead to a pluralist maximum that may advance the justice essentials through a combination of process-based and substantively driven considerations (p. 228). Contrarily to all the other approaches considered, in fact, comprehensive pluralism is deemed to strike the required balance between '*ethnos*' and '*demos*', while also establishing the necessary equilibrium between the universal, the singular, and the plural. On the one hand, it allows to distinguish between constitutional and national identity, and it ensures that all relevant groups within the constitutional unit are represented proportionally (p. 234). It also considers the contextual differences in material conditions, identities, and antagonisms within each constitutional setting (p. 246). On the other hand, comprehensive pluralism is concerned with the goal of providing the best possible mutual accommodation among proponents of different perspectives of the good, and it seeks to establish whether certain

attributes of singularity are favoured to the detriment of others or if certain groups are being unacknowledged or underrepresented within the constitutional unit (p. 234). This is due to the fact that, even though comprehensive pluralism may lead to prefer some theories of material distributive justice over others, it also prescribes that all of them deserve *consideration* in the constitutional unit. That, Rosenfeld concedes, does not necessarily mean that comprehensive pluralism can never give rise to institutional arrangements that may practically result in new inequities (p. 247). However, in relying on the “dignity of diversity” (p. 248) as a hierarchically superior unifying normative imperative that recognises everyone’s right to express one’s singularity and secure collective paths towards self-realisation, comprehensive pluralism does provide procedural steps aimed at resolving disagreements and obtaining more equitable resolutions of conflicts (p. 247).

Finally, in chapter eight, Rosenfeld uses the theoretical lenses of comprehensive pluralism to try and answer the overarching questions of the book concerning the determination of what the justice essentials require in any particular constitutional setting and the suitability of liberal constitutionalism to promote such minimum of justice. In this last chapter, Rosenfeld’s theory finally comes together under comprehensive pluralism, which seems to offer the necessary normative guidance that other theories explored in the previous chapters could not deliver. In fact, comprehensive pluralism points to some *categorical* preconditions for the achievement of the justice essentials that need to be added to the contextual elements and rely on a set of fixed norms concerned with the interplay between singularity, identity, solidarity, autonomy, choice among plural alternatives, as well as social and political cooperation with outsiders regardless of their own conception of the good (p. 270). Furthermore, the core of comprehensive pluralism incorporates norms that constitutionally guarantee the minimum of material welfare necessary for each person to have access to classical liberal rights, core group rights and democratic procedures and representation (p.

273). Coherent with this normative core, Rosenfeld suggests that any constitutional model that may reveal apt to incorporate such elements within its own theoretical framework would then be consistent with the goal of pursuing at least a minimum of material justice (p. 277). Once these aspects are constitutionally enshrined, then the pursue of justice above such minimum needs to be left to the extra and infra-constitutional means: in fact, Rosenfeld observes, constitutions alone cannot achieve total justice due to their role of preserving the constitutional order (p. 270).

It is at this point of the analysis that, considering the requirements of the justice essentials under comprehensive pluralism, Rosenfeld draws the conclusion that the model that is more likely to obtain them seems to be liberal constitutional democracy. This, in fact, is conceptually fit to achieve the justice essentials due to its unique ability to consider the singularity of the individual citizen while also keeping in mind the plurality of collective allegiances and pursuits of different groups (p. 286). It must be observed that, in a previous chapter, Rosenfeld concedes that illiberal *constitutional* populism may also be, at least in principle, able to achieve the justice essentials, as long as it is democratic, the right to vote is equally accorded to citizens and members of the 'elite', and the focus is on redressing distributive inequalities (p. 136). However, the objection here is mostly empirical, in the sense that, in practice, the possibility of this happening seems very modest (p. 138). In a similar vein, if we move away from the abstract theoretical level, it must be also recognised that many current liberal democracies fail to deliver on the justice essentials as well. Nevertheless, Rosenfeld concludes, this finding should not be taken as an *intrinsic* weakness of liberal constitutionalism, but rather as a contingent deficiency that could be overcome through adaptations and reforms inspired by comprehensive pluralism itself (p. 285 and 292).

4. Is There a Normative Case for Liberal Constitutionalism in the Pursuit of Justice?

A Pluralist Theory of Constitutional Justice successfully manages to offer an original contribution that does not merely identify the challenges faced by liberal constitutionalism, but also seeks to provide a practically implementable theoretical account that is ultimately aimed at reforming, rather than abandoning, the liberal constitutional model in the pursuit of justice. However, due to the ambition of the project, which rests on an impressive analysis of many philosophical positions, some of Rosenfeld's substantive claims for a theory of constitutional justice seem to come across as slightly underdeveloped in comparison to the rest of the analysis. In particular, while the case for comprehensive pluralism is definitely convincing, the conceptual connection that Rosenfeld seeks to establish, at the very end of the book, between comprehensive pluralism and liberal constitutionalism could have benefitted from further elaboration.

On the one hand, in fact, Rosenfeld successfully reinforces some of the claims that he already advanced in his earlier work in suggesting comprehensive pluralism as an alternative to philosophical and political liberalism. This is because philosophical liberalism is, in Rosenfeld's view, inextricably linked to *limited* pluralism (Rosenfeld, 1997b, p. 216) and monistic in nature, meaning that it affords hierarchical normative priority to certain values only, such as individual liberty. Exactly because it considers its own values as overriding, philosophical liberalism fails to provide any normative guidance to resolve disagreement among competing, and oftentimes conflicting, conceptions of the good. For Rosenfeld, this is particularly problematic not because the values that the liberal tradition perceives as overriding are not worth pursuing, but due to the fact that this rigidity has the effect of preventing liberalism from advancing those very same objectives that it seeks to achieve (Rosenfeld, 1997b, p. 215). In contemporary polities, in fact, plural identities may conflict but nonetheless

have to coexist with one another, which is why it is essential to be able to accommodate a more productive dialogue between proponents of different conceptions of the good. Against this backdrop, comprehensive pluralism emerges as a superior alternative to philosophical and political liberalism because it has “the ability to appeal to different values to varying extents” (Rosenfeld, 1997b, p. 217), and its only overriding value consists in the “greatest possible inclusion of competing ideologies without risking mere mutual disengagement or a thoroughly relativistic war of all against all” (p. 26). In doing so, because it is a guarantee “against intentional interference by the self against the other” (Rosenfeld, 1997b, p. 217), comprehensive pluralism turns out to be much more effective in advancing the liberal values than liberalism itself.

On the other hand, in *A Pluralist Theory of Constitutional Justice*, Rosenfeld takes this argument a step forward by claiming that the superiority of comprehensive pluralism over philosophical and political liberalism extends to the legitimation of liberal constitutionalism as well. There are two main ways in which this thesis is supported throughout the book.

The first one is structural, and although it plays a smaller role in Rosenfeld’s overall argument, it is nonetheless worth considering to fully grasp the broader point that the author is trying to make. For Rosenfeld, differently from philosophical liberalism, liberal constitutionalism is not monistic. In fact, it is potentially consistent with a spectrum of post-metaphysical perspectives beyond liberalism itself, including pluralism, republicanism and, to a certain extent, communitarianism (p. 4). What this means for a theory of constitutional justice is that, even though liberal constitutionalism seems inherently committed to advance a certain minimum of distributive justice (p. 3), it is not intrinsically connected to any fixed definition of what this minimum of justice entails. Hence, liberal constitutionalism and comprehensive pluralism share the same essential feature of rejecting philosophical monism. As such, because of this structural affinity, comprehensive pluralism seems better suited than philosophical liberalism to

serve liberal constitutionalism in the quest for the justice essentials and to provide a basis of legitimation for contemporary liberal constitutionalism (p. 26).

While this reasoning appears to be sound from an argumentative perspective, what seems to be missing in this analysis is a more precise identification of the *kind* of liberal constitutionalism that Rosenfeld is concerned with. In fact, at a closer look, the version of this model that he seems to have in mind in the book is actually much more structurally similar to philosophical liberalism than it may appear at first sight. Just like philosophical liberalism monistically rejects any conception of justice that does not afford priority to the value of individual liberty, the ‘ideal’ of liberal constitutionalism that features in Rosenfeld’s theory assigns normative priority to the pursuit of a minimum of justice that must be consistent with two necessary requirements: a proper harmonisation of ‘*ethnos*’ and ‘*demos*’, and the right balance between the universal, the singular, and the plural. Achieving an equilibrium between these elements is, in a sense, the ‘monistic’ core of Rosenfeld’s version of liberal constitutionalism that should guide the pursuit of justice, as it points to those hierarchically entrenched values that cannot be pushed aside or recalibrated against competing conceptions of what justice ought to entail. In fact, it is exactly because of the failure to establish a workable balance between these dimensions that illiberal and populist iterations of constitutionalism are ultimately found to be incompatible with the ideal liberal model of constitutionalism under Rosenfeld’s account (p. 16). As such, liberal constitutionalism and philosophical liberalism seem to both rely on a monistic overriding commitment to a specific normative conception of justice that is not intrinsically and necessarily paired with a relativist moment, as it is in the case of comprehensive pluralism instead.

Nevertheless, it is important to recognise that the core argument advanced by Rosenfeld to make his case for comprehensive pluralism is actually a substantive one, which is somehow connected to this ‘monistic’ core of its ‘ideal’ of liberal constitutionalism. In fact, Rosenfeld observes,

comprehensive pluralism is capable of identifying a minimum of constitutional justice that guarantees the equilibrium between ‘*ethnos*’ and ‘*demos*’ and between the universal, the singular, and the plural. On the contrary, philosophical liberalism creates a certain unbalance towards singularity, while also conceiving the individual in excessively abstract and partial ways. That is why comprehensive pluralism is better equipped to deliver on those requirements for the justice essentials that liberal constitutionalism strives to achieve, and hence emerges as the superior alternative to approximate the ‘ideal’ version of liberal constitutionalism.

This constitutes a highly compelling argument that overall succeeds in grounding Rosenfeld’s claim that comprehensive pluralism should replace philosophical and political liberalism as the normative foundation and justification for liberal constitutionalism – or at least, for the kind of liberal constitutionalism that Rosenfeld has in mind. However, he then proceeds to further rely on these findings to advance an additional claim: not only comprehensive pluralism provides a better form of legitimation for liberal constitutionalism, but it also supports the conclusion that liberal constitutionalism should be preferred over its competitors, particularly illiberalism and populism, in the quest for justice. Liberal constitutionalism is, in Rosenfeld’s words, the conceptually apt alternative in approximating the requirements of the justice essentials under comprehensive pluralism. It is at this point of the book that the connection between all these elements would have probably required some further elucidation, as what Rosenfeld seems to argue here is that the ultimate ‘rescue’ of liberal constitutionalism should be predicated upon the fact that the latter is the most promising avenue for advancing the justice essentials as identified under comprehensive pluralism. This is, however, hardly surprising considering that comprehensive pluralism itself emerged as the superior alternative in pointing to the requirements of the justice essentials exactly because of its ability to better serve and strike the necessary balance between the values associated with the ideal version of liberal constitutionalism. In other words, it is evident that the

best model to obtain the demands of comprehensive pluralism will be the liberal constitutional one, if the criteria that led to pick comprehensive pluralism over other philosophical accounts are drawn from an ‘ideal’ version of liberal constitutionalism itself. There is, in this sense, a certain circularity in the argument once we consider that an ‘ideal’ version of populism or illiberalism would hardly focus on the goal of harmonising the ‘*ethnos*’ and the ‘*demos*’ of a constitutional unit, nor they would prioritise the balance between the singular, the universal, and the plural. It is only natural, if the criteria are drawn from an ideal version of liberal constitutionalism, that the theoretical perspective that is most likely to closely approximate them, *i.e.*, comprehensive pluralism, will then point to liberal constitutionalism itself as the most promising candidate for advancing the cause of justice as identified according to those very same standards.

Broadly speaking, when evaluated against standards that are derived from the liberal constitutional tradition, it is very likely that non-liberal forms of constitutionalism will fall short in abiding by those requirements. When compared to the book’s purported objectives, a similar methodology seems difficult to reconcile with the commitment to neutrality expressed at the beginning of Rosenfeld’s work. Moreover, this circularity may feed into the increasingly discussed tendency, especially among comparativists, to refer to non-liberal models mainly through the gaze of liberal constitutionalism, which has historically led scholars to discuss the characteristics of non-liberal constitutionalism by simply “cataloguing the presence or absence of canonical structural-liberal features” (Dowdle and Wilkinson, 2017, p. 2). In the last few years, academics have started to point out how most non-liberal constitutional orders do not actually perceive themselves merely “in negative terms against liberal beliefs or institutions” (Walker, 2020, p. 305), but rather evaluate their constitutional practices through the lenses of their own particular culture, tradition, history, and identity. Rosenfeld himself is committed to tackling these risks in *A Pluralist Theory of Constitutional Justice*, as he expressly states his intention to resist any *a priori*

determinations concerning the model that is to be preferred in the pursuit of justice. He effectively accomplishes this for most of his analysis, and he largely succeeds in presenting the values and core normative beliefs of illiberal and populist practices from the perspective of their own constitutional project. That is exactly why, to avoid falling into this methodological trap at the very end of the book, it would be beneficial to further develop the reasons why liberal constitutionalism should be preferred over its alternatives, without necessarily recurring to requirements that are drawn from liberal constitutionalism itself. In summary, even though Rosenfeld ultimately manages to bring all the conceptual and analytical elements together under a unified theory of constitutional justice, the connection that he seeks to establish, in the last chapter, between comprehensive pluralism and liberal constitutionalism could be strengthened and made much more significant by further differentiating between the reasons that normatively justify the two. This would also probably lead to a more robust case for the liberal constitutional model than the book's current conclusion that liberal constitutionalism is merely *not less likely* than any of its alternatives to advance the cause of the justice essentials (p. 286).

5. Conclusions

Overall, *A Pluralist Theory of Constitutional Justice* is an intriguing and deeply relevant addition to the field of constitutional theory that combines a rigorous and sophisticated descriptive philosophical analysis with a compelling and workable substantive theory of constitutional justice. Comprehensive pluralism emerges as a valid and promising alternative to the traditional model of philosophical and political liberalism, as the author succeeds in demonstrating its aptness to tackle several of the challenges associated with our contemporary globalised societies. Although there are still some doubts as to whether, in practice, liberal constitutional democracies will succeed in assuring and promoting the justice essentials, the book

provides its readers with mostly hopeful expectations for the future of constitutional justice, while also leaving the door open for the possibility to further advance the quest for justice *beyond* the constitution.

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