

John Rawls on Overlapping Consensus

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Although conceived as a rational deduction, the choice of the principles of justice requires a consensus about the same basic conception of justice since we must consider that there are different comprehensive conceptions of it. That means that is not possible to accomplish such a task within a political strict consensus. We must reach an overlapping consensus grounded in conditions of reciprocity. We then must inquire in what conditions this overlapping consensus may be reached, because we may find a difference between political or constitutional consensus and moral consensus. If the former does not raise many difficulties to be understood, since it deals only with political basic structure of one society, the latter seems to be more problematic. We aim to show that Rawls interpretation of the theory of moral sentiments may be more appropriate for the understanding and justification of the need for an overlapping consensus in the establishment of a just society. For if that could be the case, each citizen will engage the same liberal conception of justice for their one moral reasons.

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Introduction

In *A Theory of Justice* (1971), Rawls aims to rationally deduct the principles of justice that free and moral people, in an “Original Position” under a “Veil of Ignorance”, i.e., under conditions of equality and impartiality, would adopt to form a just society that they would like to live in. The rational strategy of maximizing the minimum of the best possible outcome would lead them to choose the same principles in a practical reasoning, exercise similar to a Kantian formalisation. Although conceived as a rational deduction, the choice of the principles of justice requires a consensus about the same basic conception of justice, since we must consider that there are different comprehensive conceptions of it. As Rawls states, “Political argument appeals to this moral consensus”. That means that is not possible to accomplish such a task within a political strict consensus. We must reach an overlapping consensus grounded in conditions of reciprocity. We then must inquire in what conditions this overlapping consensus may be reached. In *A Theory of Justice*, Rawls does not deal with the question; in fact, in his early work the term overlapping consensus only occurs one time, in § 59: The Role of Civil Disobedience, and although in the article “The Idea of an Overlapping Consensus” (1987) he clarifies and addresses some objections, it is only in *Political Liberalism* (1993) that comes to knowledge to a wider public an entire lecture dedicated to the theme in which we may find a difference between political or constitutional consensus and moral consensus. If the former does not raise many difficulties to be understood, since it deals only with political basic structure of society, the latter seems to be more problematic. Different religious, moral,

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and philosophical conceptions may underpin different comprehensive conceptions about justice and, as so, also different conceptions of what ought to be a just society. In this case, how can such a needed consensus be reached? Rawls overcomes the difficulty by separating political philosophy from other parts of philosophy, in particular moral, religious philosophies, considering that in a society with a democratic tradition, *public reason* and *reasonable pluralism* will promote that overlapping consensus which, once achieved, and established in a fair constitutional regime, becomes the very nature and definition of political liberalism itself.

Bearing in mind that it is difficult to identify the process of formation and even the sustainability of such a *public reason*, we depart from the premiss that citizens do not justify their decisions on fundamental political questions having as reference only public values and public standards and, if so, we take as our second premiss as the indetermination of the existence of a pluralistic reasonability, and that takes us to the conclusion that an overlapping consensus could not be more than a postulate in Kantian terms.

Strict and Overlap Consensus

In *A Theory of Justice*, John Rawls writes: “Everyone has a similar sense of justice and in this respect a well-ordered society is homogeneous. Political argument appeals to this moral consensus” (Rawls, 1999, p. 232).

For Rawls, considerable differences can exist in citizens’ conceptions of justice once those conceptions may lead to common political judgments. Like a formal structural of an argument, the example given it is that different premisses may lead to same conclusions and that is the case to affirm the possibility of the existence of an overlap consensus among basic principles of justice from those who may have different comprehensive conceptions. To straightforward his position, Rawls sustains that, in particular cases, different conceptions of justice may support or agree in a same judgment even when that may require to admit some kind of change or modification in a particular aspect of conflictual conceptions of justice. That is the difference between a strict consensus and an overlapping consensus grounded on reciprocity.

What seems to be most significant is that, for Rawls, an overlapping consensus opens the possibility to allow everyone to express their nature, because, without a common or overlap sense of justice, civic friendship cannot exist. By this assertion, Rawls concludes that it is perfectly adequate the argument that the principles of justice emerge from a special kind of consensus. And, in what regards to justice as fairness, when we compare it with those traditional comprehensive conceptions, we may identify the same kind of consensus in its historical practices and reasonable moral roots. As Rawls underlies, one of the main objectives of any moral philosophy is, precisely, to put forward the possible bases of agreement where they do not seem to exist.

The Idea of an Overlapping Consensus

In “The Idea of an Overlapping Consensus”, Rawls writes that an overlapping consensus is affirmed by different religious, philosophical, and moral doctrines that overcame in different generations throughout history under a more or less institutionalized form of constitutional democratic regime in which the criterion of justice is in itself a conception of justice (Rawls, 1987, p. 1).

The strongest endorsement in this text is that an overlapping consensus permits a more stable social unity through a shared “reasonable conception of justice”.

Rawls reinforces that we are products of a three-century tradition of democratic reflection and of the consequent development of constitutional practices, and we may assume that we have not only some degree of

common public understanding, but also some kind of agreement and alliance to some core political democratic values established in political institutions. That is one of the most important features to form the idea of an overlapping consensus derived from a political conception of justice, but that consensus is a special kind of consensus.

According to Rawls, the idea of an overlapping consensus allows us to understand how pluralistic society may be confined in the same constitutional regime, despite profound differences and divisions in comprehensive doctrines that we may identify among citizens.

Rawls writes:

In such society, a reasonable comprehensive doctrine cannot secure the basis of social unity, nor can it provide the content of public reason on fundamental political questions. Thus, to see how a well-ordered society can be unified and stable, we introduce another basic idea of political liberalism to go with the idea of a political conception of justice, namely, the idea of an overlapping consensus of reasonable comprehensive doctrines. (1993, p. 134)

As so, to understand the idea of an overlapping consensus on a conception of political justice, Rawls states that there are three features required: The first is that it is expressly elaborated to be applied to the basic structure of society; the second is that it does not require to be driven from any general comprehensive doctrine; the third is that it is not formulated in terms of a general religious, philosophical, or moral comprehensive doctrine, but in terms of certain “fundamental intuitive ideas” considered as being latent in public and political culture of a democratic society.

“Justice as fairness” is a conception of this kind. It departs from the constataction of the existence of a “fundamental intuitive idea” that a political society has a just system of social cooperation among citizens viewed as equal and free persons, born in a society that is assumed to be organized in order to provide the conditions to achieve a plenty and full live.

Public Reason and Reasonable Pluralism

What is important for Rawls, while it may be contested, is that those fundamental intuitive ideas are not derived from religious, philosophical, or metaphysical ideas. What he pretends is that this citizen’s sense of belonging becomes acceptable for a wide sort of comprehensive doctrines and, as so, supported by an overlapping consensus. Although those different comprehensive doctrines may oppose one another or even contradict among themselves, an overlapping consensus means exactly that, i.e., a consensus on ideas, principles, and standards in which those comprehensive doctrines may converge.

As he asserts,

... political liberalism supposes that there are many conflicting reasonable comprehensive doctrines with their conceptions of the good, each compatible with the full rationality of human persons, so far as that can be ascertained with the resources of a political conception of justice (...) this reasonable plurality of conflicting and incommensurable doctrines is seen as the characteristic work of practical reason over time under enduring free institutions. So the question the dominant tradition has tried to answer has no answer: no comprehensive doctrine is appropriate as a political conception for a constitutional regime. (1993, p. 135)

Rawls believes that there is not any superior practical alternative to ensure the stability of the political unity, apart from an overlapping consensus on a reasonable conception of justice. But that may be questioned.

What he designates as free “public reason” endows the needed work of reconciliation and avoids the expression of more general comprehensive doctrines in public sphere that can conflict with each other. He does it

through the identification of fundamental political values that are expression of a just social cooperation consistent with mutual respect among equal and free citizens. Quoting:

The idea of public reason, as I understand it, belongs to a conception of a well-ordered constitutional democratic society. (...)Citizens realize that they cannot reach agreement or even approach mutual understanding on the basis of their irreconcilable comprehensive doctrines. In view of this, they need to consider what kinds of reasons they may reasonably give one another when fundamental political questions are at stake. I propose that in public reason comprehensive doctrines of truth or right be replaced by an idea of the politically reasonable addressed to citizens as citizens. (*The Idea of Public Reason Revisited*, 1997, pp. 441-442)

But it is important to clarify the meaning of public reason. As Rawls states, there are assumptions that we may find in what may be called reasonable moral psychology, i.e., the psychology of the human being is able to be reasonable and engage in a just social cooperation. Here we may find the accordance with the liberal mechanisms, since it carries a reasonable sense of security, due to the past experience, that others may sense as well. The gradually and continues experience of such success in political cooperation provides citizens with the feeling of increased confidence in each other's—that is, assuming a reasonable moral psychology that makes possible an overlapping consensus.

Conclusion Appreciations

Departing from the reading of the *Lectures on the History of Moral Philosophy* (1999), in particular the lectures on David Hume, we think that Rawls' interpretation of the "principles of morals" may be more appropriate for the understanding and justification of the need for an overlapping consensus in the establishment of a just society. That is because Rawls reveals a special concern in distinguishing moral reasoning from moral sentiments, and we might conclude that, for him, moral reasoning is at the basis of Hume's moral philosophy. In fact, he often stresses the insufficiency of moral sentiments to form a public reason as a necessary condition to achieve an overlapping consensus.

In Rawls' point of view, David Hume aims to show that our morality and agency are expressions of our nature, considering where we stand in the world and our dependency on our society. Since morality is part of human nature—is a fact of human nature—moral virtues are considered psychological attributes, dispositions of character that influence our behaviour, what and why we do what we do. But, for Hume, it is important to distinguish natural virtues from what he calls artificial virtues: The latter involve design and intention, judgment and understanding and, in general, they are products of reason that are expressed in our projects and conventions, in laws and institutions. So, for Rawls, it seems that we must deal with artificial rather than natural virtues, as a set of rules of morality and rules of justice that allow the formation of "conventions of justice".

We think that it is possible and more adequate another interpretation of Hume's moral virtues, and that interpretation may better justify the moral content of the needed overlapping consensus.

In Section I of *Enquiry Concerning the Principles of Morals—Of General Principles of Morals*, Hume states that "... the true origin of morals, it will then easily appear how far either sentiment or reason enters into all determinations of this nature" (1961, p. 173). If Rawls stresses the role of reason, let us stress the role of moral sentiments. For that, let us make three citations from Hume's work:

1. Section III—Of justice—146

163 The necessity of justice to the support of society is the sole foundation of that virtue; and since moral excellence is more highly esteemed, we may conclude that this circumstance of usefulness has, in general, the strongest energy, and

most entire command over our sentiments. It must, therefore, be the source of a considerable part of the merit ascribed to humanity, benevolence, friendship, public spirit, and other social virtues, of that stamp as it is the sole source of the moral approbation paid to fidelity, justice, veracity, integrity, and those other estimable and useful qualities and principles.

2. Section V—Why utility pleases

Part II—189 It appears that a tendency to public good, and to the promoting of peace, harmony, and other in society, does always, by affecting the benevolent principles of our frame, engage us on the side of the social virtues. And it appears, as an additional confirmation, that this principles of humanity and sympathy enter so deeply into all our sentiments, and have so powerful an influence, as may enable them to excite the strongest censure and applause.

3. Appendix III—Some farther considerations with regard to justice

258 Men's inclination, their necessities, lead them to combine; their understanding and experience tell them that this combination is impossible where each governs himself by no rule, and pays no regard to the possessions of others: and from those passions and reflections conjoined, as soon as we observe like passions and reflections in others, the sentiment of justice, throughout all ages, has infallibly and certainly had place to same degree or other in every individual of the human species.

What Hume intends to show us is that the moral sentiments are inherent to human nature; they are originated from the social dimension of human nature considering what it is useful and good. It is in moral sentiments, and not just in reason, that social virtues are based, as well as a conception of justice that may allow any form of an overlapping consensus between people with different comprehensive doctrines.

If we consider moral sentiments from Hume's perspective, we find the needed support for our thesis, that is, it is not possible to instrumentally separate moral values from political values, since political values have to be grounded in moral values. That is, the desire to act justly is not derived from a blind obedience to arbitrary reasonable principles; it is grounded on human nature and in its natural sense of justice.

In a pluralistic and liberal society, the different comprehensive doctrines that, in philosophical or religious terms, can even be considered incommensurable, may find in moral sentiments, in particular in the sentiment of justice, the basis for the institution of a well-ordered and just society without the need to address some kind of postulate in a form of a public reason.

References

- Hume, D. (1961). *Enquiries concerning human understanding and concerning the principles of morals* (2nd ed.). L. A. Selby-Bigge, (Ed.). Oxford: Clarendon Press.
- Rawls, J. (1971). *A theory of justice* (rev. ed.). Cambridge, Massachusetts: Harvard University Press.
- Rawls, J. (1987). The idea of an overlapping consensus. *Oxford Journal of Legal Studies*, 7(1), 1-25.
- Rawls, J. (1993). *Political liberalism*. New York: Columbia University Press.
- Rawls, J. (1999). *Lectures on the history of moral philosophy*. B. Herman, (Ed.). Cambridge, MA: Harvard University Press.
- Rawls, J. (2001). *Justice as fairness: A restatement*. E. Kelly, (Ed.). Cambridge, MA: Harvard University Press.