

Phil 115, June 20, 2007
Justice as fairness as a political conception:
the fact of reasonable pluralism and recasting the ideas of *Theory*

The problem with the argument for stability:

In his discussion of stability, Rawls seemed to suggest that in a “well-ordered society,” people endorse a conception of justice on the basis of (what Rawls later explicitly labeled) a “comprehensive doctrine.”

A *comprehensive doctrine* is a system of moral beliefs not only about the specific subject of political institutions, but also about a wider range of subjects, such as how best to lead one’s life, what sort of virtues to aspire to, what sort of relationships to have, and so on.

- Comprehensive doctrines frequently also involve views about the metaphysics and epistemology of the moral beliefs in question.
- Examples of comprehensive doctrines are: religions, utilitarianism, Kantianism.

Is Rawls’s argument for stability *merely* consistent with the view that conceptions of justice are endorsed as comprehensive doctrines? Or does his argument for stability actually *depend* on that view?

The question of stability is really two questions.

- First is the question of whether people raised in a society that is regulated by the two principles will come to acquire the corresponding sense of justice.
- Rawls’s answer to this question, which appeals to the psychological laws, does not seem to require that people endorse the two principles as part of a wider comprehensive doctrine.
- The second question is more elusive. Roughly, it is whether, supposing that people have acquired a sense of justice, they will have sufficient reason to follow its demands, even when it conflicts with their other ends. This is the question, as Rawls puts it, whether the right is “congruent” with the good.
- Rawls’s congruence argument may rely on the idea that people endorse justice as fairness as part of a wider comprehensive doctrine. The Kantian interpretation of justice as fairness, in §40, invokes a substantial conception of moral personhood. By acting from our sense of justice, Rawls suggests, we realize or express our highest or essential nature as free and equal rational beings. Why is this so? Because in acting from our sense of justice, we are choosing as we would if we were represented solely in abstraction from any contingent characteristics, such as talents, class, aims, affiliations, loyalties, etc.

The fact of reasonable pluralism:

What’s the problem with supposing that if people endorse a shared conception of justice, they do so on the basis of a shared comprehensive doctrine?

The problem comes when we combine this supposition with the fact of reasonable pluralism: “Under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable—and what’s more, reasonable—

comprehensive doctrines will come about and persist if such diversity does not already obtain” (36).

Along with the fact of reasonable pluralism goes the fact of oppression: “a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power” (37).

Why is reasonable pluralism inevitable?

Why should reasonable people draw different conclusions? Suppose that we have a group of people with similar powers of thought and judgment. They are all equally good at drawing inferences, weighing evidence, and balancing competing considerations. Why do they wind up believing different comprehensive doctrines?

Because of the “*burdens of judgment*”:

- a. The evidence—empirical and scientific—bearing on the case may be conflicting and complex, and thus hard to assess and evaluate.
- b. Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments.
- c. Many concepts are vague and indeterminate.
- d. How we assess evidence and weigh moral and political values is shaped by our total experience, our whole course of life up to now. In a diverse culture, people have had different experiences.
- e. Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment.
- f. Not all moral and political values can be realized in social institutions. It is difficult to set priorities and make adjustments.

The crisis: no liberal society can be stable

- (1) A liberal society can be stable only if a substantial majority of its members endorse a shared conception of justice.
- (2) A substantial majority of the members of a society endorse a shared conception of justice only if they share the same comprehensive doctrine.
- (3) The fact of oppression: A substantial majority of the members of a society share the same comprehensive doctrine only if they are denied freedom of conscience, expression, and association: i.e., only if their society is not liberal.
- (4) Therefore, a liberal society cannot be stable.

The crisis: no liberal society can be liberal!

In fact, things are worse than this. Liberal societies not only can't be stable, but also can't be truly liberal.

The liberal principle of legitimacy: “Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.”

The liberal principle applies to exercises of *political* power: the power that we citizens, as a collective body, exercise over one another. What makes political power special?

- (1) We do *not voluntarily* enter and *cannot voluntarily* leave the basic structure, which a conception of justice is supposed to regulate.
- (2) Political power is *coercive*.

The liberal principle of legitimacy does not say that we cannot exercise political power over someone unless he *actually* accepts our conception of justice. The liberal principle of legitimacy requires only that it would be *reasonable* for him to accept that conception.

But even this may be too demanding.

- (1) Liberal principle of legitimacy: We cannot justify our exercise of political power over someone on the basis of a conception of justice unless that person can reasonably accept that conception.
- (2) Someone can reasonably accept our conception of justice only if he can reasonably accept the reasonable comprehensive doctrine, D, on which that conception is based.
- (3) The fact of reasonable pluralism: In a liberal society, some people will hold reasonable comprehensive doctrines that are incompatible with D.
- (4) People who hold reasonable comprehensive doctrines incompatible with D cannot reasonably accept D.
- (5) Therefore, we cannot satisfy the liberal principle of legitimacy.

In other words, a liberal conception of justice cannot be applied in a way that is acceptable to the conception itself. Liberalism must condemn itself.

Justice as fairness as a political conception:

- Rawls rejects premise (2) in both arguments.
- He conjectures that it might be possible for people to share a conception of justice without sharing a comprehensive doctrine.
- There might be an “overlapping consensus” of different comprehensive doctrines on a single conception of justice.
- But how is such an overlapping consensus possible?
- Rawls suggests that we look for a “political conception” of justice: which is “as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm. In formulating such a conception, political liberalism applies the principle of toleration to philosophy itself” (10).

The paradox of tolerance:

Toleration can seem paradoxical.

- On the one hand, toleration involves an attitude of rejection. We don’t tolerate things that we wholeheartedly embrace.
- On the other hand, toleration involves an attitude of acceptance. In tolerating something, we restrain our rejection of it.

What makes toleration possible, Rawls seems to suggest, is the space between “truth” and “reasonableness.”

- On the one hand, we reject these comprehensive doctrines. We *fully accept* our own comprehensive doctrine, and these other comprehensive doctrines say *something different*.
- On the other hand, we accept them, in another sense, insofar as we believe that they are *reasonable*.

What makes a comprehensive doctrine “reasonable”?

What does Rawls mean by a “reasonable” comprehensive doctrine? A reasonable comprehensive doctrine is arrived at by conscientious, competent reflection on the relevant subject matter. It is:

- (i) an exercise of theoretical reason,
- (ii) an exercise of practical reason, and
- (iii) part of a tradition of thought that evolves gradually, as a response to what it perceives as good and sufficient reasons.

How can more than one comprehensive doctrine be reasonable, when only one such doctrine can be true? Because of the burdens of judgment.

At moments, Rawls seems to suggest that reasonable comprehensive doctrines have a further feature, over and above (i)–(iii):

- (iv) Reasonable comprehensive doctrines support liberal institutions.

Question: Is (iv) meant as part of the definition of “reasonable comprehensive doctrine”? If so, does this simply define the problem away? After all, we know in advance that reasonable comprehensive doctrines will all support liberal institutions, since if they don’t, then Rawls won’t count them as “reasonable.”

A possible reply: Even if reasonable comprehensive doctrines are defined as supporting a liberal conception of justice, it is still a fact that different reasonable doctrines will do so for different reasons. So the question remains: How must the liberal conception of justice and its relations to these reasonable comprehensive doctrines be understood for this “overlapping consensus” on a liberal conception of justice to be possible? (For more, see Bonus Handout.)

What is a political conception of justice?

A political conception is restricted in three ways, which are meant to improve its chances of being the focus of an overlapping consensus of reasonable comprehensive doctrines.

- First, a political conception is meant to apply only to political institutions, not (say) to families, clubs, churches. The “domain of the political” is defined by its nonvoluntariness and its coerciveness. The domain of the political is the basic structure.
- Second, a political conception is presented as “freestanding”: that is, as not depending on any particular comprehensive doctrine.
- Third, a political conception is developed only out of fundamental ideas that are implicit in the public political culture of a democratic society. This is how it can have content without depending on any particular comprehensive doctrine. It draws its conceptual resources not from any particular moral, philosophical, or religious view, but instead from the shared culture.

Two comments on this:

- First, Rawls is not scrapping the argument of *Theory*. Instead, he is suggesting that the building blocks of that argument—the fundamental ideas—can be derived from the public political culture. Once we show that the fundamental ideas can be so derived, the argument for the two principles proceeds in much the same way.
- Second, although a political conception of justice is developed only out of ideas are implicit in our public political culture, it is still a *moral* view. It says: “These institutions are just.” It is not a descriptive, sociological exercise. It does not say: “Most Americans believe that these institutions are just.” Nor is it a strategic compromise. It does not say: “Since most Americans believe that these institutions are just, we had better play along.” It makes normative, moral claims, albeit claims that are supported by normative, moral ideas that are part of our shared self-understanding as citizens in a constitutional democracy.

Recasting the fundamental ideas as “political”:

The question, then, is whether the conception of justice that Rawls argued for in *Theory* can be developed out of ideas implicit in our public political culture. Recall that Rawls’s conception of justice is ultimately based on the fundamental ideas of society as a fair system of cooperation and of persons as free and equal. Can these ideas be expressed in a way that depends only on our self-understanding as participants in a liberal democracy and not on any particular comprehensive doctrine?

Example: the idea of persons as free and equal. A certain conception of the person follows from the very idea of society as a system of fair cooperation, an idea that Rawls takes to be implicit in the self-understanding of constitutional democracies. A person is someone who can be a citizen, someone who can be fully cooperating member of society. To be a cooperating member of society, a citizen must have the two moral powers: a capacity for a sense of justice and a capacity for a conception of the good.

Citizens are “equal” simply in having the two moral powers to a sufficient degree to be fully cooperating members of society.

Citizens are “free” in at least three senses.

- First, citizens are not identified, for political purposes, with the specific conception of the good they hold at a given time. If one converts from one religion to another, for example, one’s standing as a citizen does not change.
- Second, citizens are “self-authenticating sources of valid claims.” They are entitled to make demands on institutions to advance their conceptions of the good. Contrast: Slaves, who can make no claims. Or having only claims arising from roles in a religious hierarchy (layperson, pope) or aristocracy (vassal, lord).
- Third, citizens “can take responsibility for their ends: that is, they can adjust their ends so that those ends can be pursued by the means they can reasonably expect to acquire in return for what they can reasonable expect to contribute” (34). This is implicit, Rawls thinks, in the idea that citizens are full participants in a fair system of cooperation.

This political conception of the person informs the idea of primary goods, which is in turn shown to be well suited to a political conception of justice. “[G]iven the conflicting comprehensive conceptions of the good, how is it possible to reach such a political understanding of what are to count as appropriate claims? The difficulty is that the government can no more act to maximize the fulfillment of citizens’ rational preferences, or wants (as in utilitarianism), or to advance human excellence, or the values of perfection (as in perfectionism), than it can act to advance Catholicism or Protestantism, or any other religion” (180–181). Citizens, recall, are not identified with any particular conception of the good, but instead with the capacity for some conception of the good. Primary goods are what they need for the exercise of this general capacity: all-purpose means for pursuing any conception of the good.

Sen’s criticism

People vary in (i) abilities, especially due to result of illness or accident, (ii) conceptions of the good, and (iii) tastes. As a result, some people will need more resources to do “equivalent” things. Insofar as primary goods are insensitive to these variations, principles stated in terms of primary goods are likely to be unfair.

Rawls’s response is guided by his political conception of the person. Citizens are assumed to be fully cooperating members of society. They are assumed, therefore, to have sufficient ability to contribute to society (i), as well as to be able to take responsibility for their ends (iii). For example, they should not be compensated for having expensive tastes.

Rawls concedes that primary goods will not be equally valuable in pursuing every conception of the good (iii). Income and wealth may be *less valuable* in the observance of an ascetic religion than in other pursuits. To rely on primary goods, it might be said, is to subsidize conceptions of the good that are benefited by income and wealth. Reliance on primary goods is unfair, therefore, to conceptions of the good.

But is there any alternative that would be *fairer* to conceptions of the good? One might propose to measure the degree to which people are successful in pursuing ascetic and nonascetic conceptions of the good and then distribute primary goods so as to ensure that equal levels of success were achieved. But how is this comparison to be made?

Moreover, reliance on primary goods is not unfair *to citizens*, not even to citizens who happen currently to be ascetics. Recall that citizens are not identified with the specific conception of the good that they presently hold. They are identified instead with the capacity for a conception of the good—one conception, from among a variety of possibilities. Primary goods are fair to citizens *viewed as possessors of that capacity*, since primary goods provide them with all-purpose means to pursue any of those possibilities.