

Phil 115, June 21, 2007
**Justice as fairness as a political conception:
overlapping consensus and public reason**

Question: How can a liberal democracy be stable given the fact of reasonable pluralism?

Rawls's answer: By an “overlapping consensus” of reasonable comprehensive doctrines on a shared political conception of justice.

- But what is an overlapping consensus?
- And how might it arise and endure?

What is an overlapping consensus?

One response to disagreement is to try to find a compromise. Each side gets a little, but also has to give something up. At first glance, one might think that an overlapping consensus is a compromise of this kind.

But this is not what Rawls has in mind. Recall our discussion of a political conception of justice. Such a conception is not a kind of average of all of the comprehensive doctrines. It is developed from fundamental ideas that belong not to any particular comprehensive doctrine, but instead to the public political culture. Once this conception of justice has been developed from these fundamental ideas in the public political culture, it is then endorsed by different comprehensive doctrines for different reasons, internal to those doctrines.

Contrast with a modus vivendi

Rawls insists that an overlapping consensus is not a mere *modus vivendi*. A *modus vivendi* is a kind of strategic agreement or treaty, which it is public knowledge that no party has sufficient reason, in the present circumstances, to violate. The terms of the treaty are based on pragmatic, not moral grounds, and the treaty is adhered to for pragmatic, not moral grounds. Consequently, both the terms of the treaty and the degree of adherence to it depend on contingent factors, such as the balance of power.

An overlapping consensus differs in each respect. First, the object of the consensus, the political conception of justice, is based on moral grounds—it is developed from fundamental ideas in the public political culture. Second, the political conception is endorsed on moral grounds—grounds internal to each comprehensive doctrine. Finally, support for the political conception is not contingent on the balance of power. Those whose comprehensive doctrine becomes dominant will not withdraw their support for it.

How might an overlapping consensus emerge?

Rawls suggests that an overlapping consensus might evolve over time from a *modus vivendi*. At first, liberal institutions are accepted as the only way to avoid civil war. There is agreement on democratic procedures and associated liberties (e.g., participation and political speech). But there is not yet any acceptance of principles of justice that might support these institutions.

Over time, the agreement on the procedures develops into a “constitutional consensus” on the principles themselves. Here a certain looseness of comprehensive doctrines is important. People don't have clear views about the relation of these political principles to their comprehensive

doctrines. So they may come to accept the political principles in their own right, and even to hold to them when conflicts with their comprehensive doctrines come to light.

Once there is a constitutional consensus on the principles, there is pressure to “deepen” this consensus, to base it on fundamental ideas. This is necessary, in part, for justifying policies to proponents of other comprehensive doctrines, as well as for interpreting the constitution. There is also pressure to “broaden” the consensus to include more than simply the democratic process (e.g., freedom of conscience, basic needs).

In fact, Rawls suggests that modern liberalism may have emerged in this way as a response to the Reformation and the Wars of Religion that followed. Ironically, tolerance grew from intolerance. Religious liberty arose out of a plurality of faiths, each of which was itself hostile to religious liberty. This came about, in part, because the possibility of a tolerant but stable society had been demonstrated by a lasting *modus vivendi*. It also came about “because it is difficult, if not impossible, to believe in the damnation of those with whom we have, with trust and confidence, long and fruitfully cooperated in maintaining a just society” (xxvii).

Who might take part in an overlapping consensus?

- (i) A religious doctrine that accepts the political conception on the grounds of “free faith,” i.e., that religious conviction must be voluntarily embraced and cannot be coerced (e.g., Locke and some of you);
- (ii) a comprehensive liberalism, which simply deduces a liberal conception of justice from philosophical premises (e.g., Kant and maybe a few of you);
- (iii) an unsystematic pluralist view that accepts political values, but also a number of nonpolitical values (e.g., me and probably most of you); and
- (iv) a form of average utilitarianism that accepts the political conception as an approximation to what average utilitarianism would require.

Questions:

- Must the conception of justice be endorsed *as political*? If a comprehensive liberal deduces a liberal conception of justice from philosophical premises, does she accept it as a “freestanding” political conception, worked up from ideas implicit in the public political culture? Doesn’t she accept it as following from Kant’s moral theory? Similarly, if a utilitarian accepts a liberal conception of justice as an approximation of utilitarianism, is this compatible with his accepting it as a political conception?
- Can utilitarianism really be part of an overlapping consensus? Can a utilitarian accept the fundamental conceptions of society and persons from which the political conception is derived? (He couldn’t in *Theory*.) Insofar as the approximation depends on contingent circumstances, is the utilitarian’s acceptance of the political conception only contingent (as in a *modus vivendi*)?

The duty of civility

Because of the liberal principle of legitimacy, we have a “duty of civility” to justify certain kinds of political decisions by appeal to “public reasons” that every citizen can be expected to accept. This means, negatively, that one cannot justify political decisions by appealing to one’s own comprehensive doctrine. One cannot say, “Let us adopt this policy because it is God’s will.”

Nor can one appeal to contentious natural or social scientific theories. It means, positively, that one must justify political decisions by appealing to a freestanding political conception of justice, which is developed from fundamental ideas implicit in the public political culture.

To what does the duty of civility apply?

What sorts of exercises of political power must be justified in terms of public reason? Only “constitutional essentials and questions of basic justice.” This includes the structure of government and the political process, as well as the equal rights and liberties of citizenship.

Why is there this restriction? (i) Constitutional essentials concern how political power is acquired and the limits of its exercise. Recall that it is the exercise of political power over others that makes the liberal principle of legitimacy so important. (ii) It is also easier to tell whether the constitutional essentials have been established.

Who is bound by the duty of civility and when?

Only citizens when they are engaged in political advocacy in the public forum. This includes: (i) legislators in arguments in the legislature, (ii) the executive in public acts and decrees, (iii) the judiciary in judicial decisions, (iv) campaigners in running their campaigns, and even (v) voters in casting their votes (when constitutional essentials and matters of basic justice are at stake, we are not to vote our preference, interests, or even what our comprehensive views say is right).

However, we are not bound by the duty of civility when we are thinking these questions over in our own minds or discussing them in the various associations (e.g., churches, Rotary clubs, etc.) to which we may belong.

Can comprehensive doctrines ever be invoked?

Rawls observes that many important cases of political advocacy in the public forum, regarding constitutional essentials and matters of basic justice, have transgressed the duty of civility, as we have understood it so far. Arguments for the abolition of slavery and for civil rights, for example, appealed to religious grounds.

Should we conclude that these arguments, which invoked comprehensive doctrines, violated an important moral duty? Rawls thinks we should be more accommodating.

In “The Idea of Public Reason,” Rawls suggests that the duty of civility may permit us to introduce comprehensive doctrines, so long as this strengthens the ideal of public reason itself. (i) Showing how our comprehensive doctrines lead us to affirm the political conception may enliven mutual understanding and strengthen trust. (ii) More relevant to abolition and the civil rights movement: When a society is not well-ordered and just, appeal to comprehensive doctrines may be necessary to establish “a well-ordered and just society in which the ideal of public reason could eventually be honored” (250).

In the “Introduction to the Paperback Edition,” Rawls proposes a more permissive criterion. We may introduce our own comprehensive doctrines, provided that in “due course” we supply public reasons to justify whatever we introduced the comprehensive doctrines to support.