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John Rawls

Chad Van Schoelandt

The political culture of a democratic society is characterized (I assume) by three general facts understood as follows.

The first is that the diversity of reasonable comprehensive religious, philosophical, and moral doctrines found in modern democratic societies is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy. 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....

A second and related general fact is that a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power. If we think of political society as a community united in affirming one and the same comprehensive doctrine, then the oppressive use of state power is necessary for political community. In the society of the Middle Ages, more or less united in affirming the Catholic faith, the Inquisition was not an accident; its suppression of heresy was needed to preserve that shared religious belief. The same holds, I believe, for any reasonable comprehensive philosophical and moral doctrine, whether religious or nonreligious. A society united on a reasonable form of utilitarianism, or on the reasonable liberalism of Kant or Mill, would likewise require the sanctions of state power to remain so. Call this 'the fact of oppression.'

Finally, a third general fact is that an enduring and secure democratic regime, one not divided into contending doctrinal confessions and hostile social classes, must be willingly and freely supported by at least a substantial majority of its politically active citizens.¹

Throughout his career, John Rawls (1921–2002) sought a public basis for members of society to resolve fundamental disputes. Importantly, Rawls was not concerned merely to know what the right resolution or answer to the dispute would be. He was interested in the principles and procedures that the members of society could plausibly use themselves to come to form agreements. It was not enough for the society to *be* fair, good or righteous if the members of society could not themselves mutually recognize that fact. This chapter first explains why Rawls thinks it is difficult to get such agreement, particularly within a society respecting basic liberal rights like freedom of thought. Next, the chapter presents Rawls's proposal for how a liberal conception of justice may meet the challenge and provide a public basis of agreement.

Members of any society will face interpersonal disagreements of some sort. Al and Betty, for instance, may disagree about whether or not the tree should be removed from between their houses. These disagreements may remain fairly contained, for those in dispute may be bound by long personal histories, shared religion and common understandings of the relevant moral considerations. The disputants may be able to simply discuss the matter and come to agree on the most important considerations, such as whether it is more important to have shade in the summer or for the garden to have more sun, and thus resolve the dispute. Importantly, many personal disputes can be resolved by appeal to mutually accepted forms of conflict resolution and systems of social rules, such as property rights. Al and Betty may not agree on the relative harms and benefits of the tree, but they may agree about whose property it is on and thus who gets to decide whether the tree stays or goes. There are, of course, many other possibilities for how they may settle the dispute, but the central point remains that Al and Betty may be able to resolve their dispute through shared beliefs, values, practices and the like.

Members of a small-scale, isolated and homogenous society may readily resolve their disputes through appeal to a shared, robust view of the world, or at least through shared institutions for adjudicating their disputes. Modern industrial democracies, however, tend to be characterized by extensive disagreements, with members coming from vastly different cultural and religious backgrounds and holding conflicting moral frameworks. For instance, Al and Betty may disagree about whether trees have intrinsic or only instrumental value, the relative merits of shade and gardens or of the corresponding relaxation and work, the plausibility of various environmental concerns and the responsibilities of individuals for mitigating collective environmental problems, the relevance of subjective factors like pleasure or offence and so on. In such a case, Al and

Betty would not only disagree about the tree but also have starkly different views about what sorts of considerations are even relevant to figuring out what to do with the tree.

Of particular importance is the fact that members of diverse communities will often disagree about the society's fundamental institutions. For instance, the members may disagree about the legitimacy of the society's system of property rights and economic system, the extent to which decisions should be made by majority rule, the way political power is distributed or the liberties extended or denied to various individuals. We should expect members reasoning from diverse moral, religious and philosophical views to come to different evaluations of their social institutions, perhaps leading some to reject those social institutions as illegitimate, lacking authority or unjust. Modern societies are thus faced with a problem of finding a way for members to be reconciled to, rather than alienated from, their most basic social institutions.

One might think that the best way to solve that disagreement is to simply get people to share a religious, moral and philosophic view, particularly the true view. From that shared view, they could agree on the best social institutions, bring them about and form a common allegiance to those institutions. Many philosophers defend particular moral ideals, and derive from these ideas views about the best institutions. If only everyone would be convinced by one of these philosophic views of human flourishing, natural rights, aggregate social utility or the like, then the members of society could unite in support of the relevant social institutions. Such views may support deeply illiberal institutions, such as a theocracy, but they may also support liberal institutions with democratic procedures bounded by protections for rights of conscience, speech, association and other individual liberties. Rawls considers these various cases for liberalism based on deep moral ideal forms of 'comprehensive liberalism'.

As the first paragraph of the opening quote indicates, in Rawls's view, we cannot expect members of society to share a single comprehensive liberal view, or any other comprehensive view for that matter. Deep disagreement and competition between diverse comprehensive religious and moral views are not momentary phenomena we should expect to overcome. Instead, Rawls argues that intelligent, informed and well-meaning individuals, reasoning conscientiously in conditions of freedom of thought and discussion, will tend to disagree about fundamental religious, moral and philosophic issues.

These religious, moral and philosophic disagreements do not necessarily emerge from malice, stupidity or insufficient reflection. They can emerge from various 'burdens of judgement' that good-willed, intelligent people reasoning

as best they can will face. For instance, many of the key concepts used in moral reasoning are vague. Happiness, equality, freedom, rule of law, democracy, opportunity and many other moral concepts have unclear boundaries, even if they have some paradigmatic cases of application, so members reasoning from these concepts may come to different moral views. In addition, considerations relevant for selecting a view will often differently weigh conflicting considerations, such as simplicity and explanatory power, or conflicting intuitions. Such conflicts will include conflicting normative values for which there is no obvious balance that all well-meaning and conscientious people must strike. When it comes to the basic institutions of a society, such conflicts will arise because no society can fully realize all values. For any institutions selected, limited resources will allow the realization of some values only by allowing other values to go unsatisfied, but members of the institution may disagree about which values should be promoted at the expense of which other values.

Differences of interpretation of vague concepts along with assigning different weights to the relevant considerations are already sufficient for producing a tremendous diversity of views. We can add to these burdens of judgement the facts that the relevant evidence will often be complex, conflicting and difficult to assess. Experts carefully examining the evidence may come to hold different views even in fairly narrow question, and certainly when it comes to the formation of moral, religious and philosophic views. Furthermore, when it comes to interpreting concepts, weighing considerations and assessing evidence, our personal experience will affect our judgement. Since people will always have different experiences, we should expect them to make these judgements in different ways. These burdens of judgement, perhaps along with others not discussed by Rawls, generate tendencies towards disagreement and, ultimately, a wide diversity of moral, religious and philosophic doctrines. The members of any large-scale society reasoning as well as can be expected, then, will tend to disagree about the nature and requirements of morality, the good life and other issues that people may appeal to in assessing a society's basic institutions.

As our quoted passage makes clear, Rawls believes that the use of oppressive state power could maintain consensus on a comprehensive moral, religious or philosophic doctrine, at least in the context of a large modern society. Since the free reasoning of citizens produces a diversity of views, uniformity of view requires the prevention of such free reasoning. At a minimum, we might expect censorship to prevent members from encountering alternative interpretations of the relevant concepts, conflicting evidence or other considerations that may lead members away from orthodoxy. Even censorship, however, has not been

sufficient to prevent scepticism, heresy, protest and resistance to dominant views historically. Societies wishing to maintain uniformity of view have tried many harsh means, including mass propaganda and indoctrination, the torture and execution of heretics, forced confessions and public humiliation of class enemies, inquisitions and purges.

Such oppressive policies can sometimes work to control the views that members of society profess, consider and hold, though dissent often emerges even under such pressure. Oppressive state policies, then, might not be sufficient, but seem to be absolutely necessary for any society to maintain a uniformity of moral, religious and philosophic doctrines. Unfortunately, this applies to liberal philosophic doctrines as much as to illiberal religions and ideologies. So, an attempt to support liberal institutions through a shared embrace of the moral doctrines of, say, John Stuart Mill or Immanuel Kant, would be unstable unless enforced with deeply illiberal, oppressive policies. Liberal institutions depending upon a shared comprehensive moral, religious or philosophical doctrine thus are unstable, either because within the liberal freedoms members of the society will come to hold competing views or because illiberal policies will be adopted to prevent such dissent. If liberal, democratic institutions are to be stable through the free support of their members, it must be through something other than a shared comprehensive view.

Having ruled out comprehensive forms of liberalism, Rawls proposes that a conception of justice for a diverse society should be merely 'political'. There are a number of related features that make a conception merely political, the most obvious of which is that it has a limited scope of application. A merely political conception provides answers only to questions about the basic political institutions of a society and does not apply to other institutions or domains of life. Such a conception may, for instance, require that political institutions be democratic without saying that democracy is good generally, required for churches or the like. In limiting its scope, the political conception maintains agnosticism about the other domains. In contrast, a comprehensive doctrine like utilitarianism answers questions for all domains in the same way, holding that political institutions, religious institutions, families and individual actions should all be chosen so as to maximize the happiness of people collectively.

Part of what enables the conception to have this limited scope is that it is composed of specifically political ideas and values. The central example of this, for Rawls, is the idea of free and equal citizens. Free and equal citizenship regards how members of society stand in relation to political institutions and to each other regarding political issues. For political purposes, citizens are free

in that they are seen to have the ability to form, revise and pursue their own conceptions of the good, along with a presumptive claim for doing so. This idea does not require that they have any sort of metaphysical freedom from causation, satisfy or pursue any moral ideals of autonomy, be self-creating and self-sustaining atomistic individuals or other contentious philosophic notions of freedom. A member may see herself as politically free to join or leave her church while also believing that, in other important senses, she is not free because, say, she was called and predestined to be a member, or that she is not morally or spiritually free to leave because apostasy is a moral (though not legal) offence. Equal citizenship and other political values are limited in similar ways.

From these political ideas, Rawls attempts to construct suitable principles of justice. The details of these principles are unimportant here, but we can note that they include principles protecting individual liberties, promoting fair equality of opportunity, and requiring the economic system to be to the benefit of even the least well off in society. These principles, like the political ideas supporting them, have a limited political scope. The principle of liberty, for instance, ensures that members will not be legally punished for their religious expressions, and that their legal rights will not depend upon professed religious belief. Religious associations, however, may make professed belief a condition of membership, and may institute certain punishments for irreligious behaviour such as excommunication for blasphemy. The key here is that, just as the political ideas are narrow in scope and do not compete with other religious or moral understandings of ourselves, the principles are also narrow in their application in a way that minimizes conflict with the moral and religious views members may hold.

These political ideas and principles constitute Rawls's preferred conception of justice, 'justice as fairness'. By building a merely political conception without dependence upon deeper metaphysical or moral views, Rawls hoped to ensure that justice as fairness could be a sort of module within the views of diverse members of society. Were each member to have this module as a part of her complete view of the world, the views of the diverse members would overlap on justice as fairness, making it the focus of what Rawls calls an 'overlapping consensus'. Minimally, this means that each member endorses justice as fairness and it does not excessively conflict with her other commitments, perhaps in the way a member may find her support for her favourite sports team neither conflicts with nor depends upon her Catholicism. More positively, a member may find that justice as fairness coheres with her other commitments, so she has deeper religious, moral or philosophic reasons to endorse justice as fairness. Note, however, that members do not have to have the same deeper reasons for

endorsing justice as fairness. In an overlapping consensus, the members may be converging on the conception from very different, even opposing, starting points. Essentially, the wide range of moral arguments for liberalism, including arguments that conflict with each other, provide resources by which diverse members of society can come to endorse justice as fairness for different reasons.

Now we have the pieces for answering Rawls's initial problem regarding how a society can be stable through the free support of citizens despite their inevitable religious, philosophical and moral disagreements. Overlapping consensus on a merely political conception would constitute the free support of citizens without uniformity in their comprehensive doctrines. Justice as fairness could then provide a shared basis for citizens to judge and affirm their common institutions as providing fair terms of cooperation. Unfortunately, even a merely political conception of justice, including justice as fairness, will face yet another problem from disagreement.

At the end of his career, Rawls recognized an important difficulty for his account. As Rawls came to see, reasonable disagreement is not restricted only to matters of religion, morality and philosophy. Reasonable disagreement should be expected to emerge about political values and the conception of justice itself. Thus, while Rawls maintains that justice as fairness is one reasonable conception, he holds that it is unrealistic to believe that the members of a liberal society could be expected to all agree that it is best. We should instead expect members to favour diverse conceptions of justice.

What Rawls came to hope was that there could be overlapping consensus on a set of conceptions that were all recognizably liberal and shared certain key features. In particular, such conceptions would all give some special priority to a list of basic liberties, and assure for all members a claim to adequate resources for exercising those liberties. Many different conceptions may have these features, so perhaps the best we may hope for is that the members of society would hold views that converge on some key features, while continuing to diverge about exact weights and details. Despite holding that disagreement about justice is inevitable, Rawls and his followers do not think it would be particularly extreme. If members of society were split merely between variations of liberalism, sharing in a concern for individual liberties and adequate resources for all to exercise those liberties, then it may be that each member can see the society as sufficiently just to warrant her allegiance. Though a member may think that the society is giving somewhat too little or too much priority to the basic liberties, she could be glad that other members of society share with her an appreciation for the importance of these liberties and that the fundamental policies of the

society reflect that importance. Likewise, though she may think the economic structure is not optimal, she may recognize that it enables all members to have means to exercise their liberties and that, as other members would agree, this is a good thing. Each member, then, may recognize the society as adequate for constituting an ongoing system of fair cooperation and likely to be maintained as such by her fellow members. Such recognition, as some recent Rawlsians have emphasized, may ground civic friendship and political community.

In the final analysis, liberalism is presented as something we can all live with. Our disagreements are pervasive and run deep, and perhaps it is beyond hope that we will ever agree on any comprehensive moral basis for the basic structure of society. We may, however, hope that all members can recognize a society allowing each the space to pursue their own views and values as a society providing fair terms of cooperation. It may not be utopia, but it is a community of mutual accountability organized through free endorsement rather than coercive oppression, and that would be a valuable achievement.