HUMANE EXISTENZ

Reflexionen zur Ethik in einer pluralistischen Gesellschaft

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Rawls' Restatement of Justice as Fairness: An Introductory Overview

*Justice as Fairness: A Restatement* (2001) (or, as I shall call it, "The Re-statement"), is a very difficult, many-leveled philosophical work, moving on many different fronts. This is because it is itself a commentary on *A Theory of Justice* (1971, 1999), a work of nearly five hundred pages, and no easy read. Rawls himself calls it a "reformulation" of that larger work intended to incorporate his more than twenty years of reflection on *A Theory of Justice* (2001, xv). What I want to do in what follows is to unfold some of the density of the Restatement for those who are being introduced to Rawls for the first time by going over some of its most basic concepts and distinctions.

The Restatement reads repetitively, circling back on its own ideas over and over again, and thus seems as if it could never be applied to political life in practice. It is obvious that the author is constantly struggling to ward off possible misunderstandings, objections, unclarities. But I believe this is political philosophy at its most concrete, and precisely because of the kind of systematic, articulated structure Rawls has constructed. It is also philosophy at its most exquisitely precise: never overly or falsely rigorous, with distinctions drawn just sharply enough for their purpose, and never any more sharply than that. It remains open-ended with respect to specifying and reasoning about particular solutions to particular problems, but that, for me, makes it a philosophical work likely to animate thought over a longer stretch of time than works that may appear more concrete and applicable in the here and now.

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1 This is a transcript of a lecture given first at Boston University in Professor Glenn Loury’s undergraduate core curriculum course on concepts of social identity; it was given again at the University of Vienna. The undergraduates had been asked to read Rawls’ *Justice as Fairness: A Restatement*, selections from Robert Nozick, *Anarchy, State and Utopia* and Glenn C. Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University Press, 2002). I should like to thank the audiences on both occasions for their input, and Professor Joshua Cohen for sharing his lecture notes from MIT with me on Rawls and Nozick. The presentation of Rawls and Nozick below is heavily indebted in structure, formulation, and conception to Cohen's lectures. Thanks are also due to Mard Rawls and Daniel Brudney for their reactions to the piece. To Jack Rawls and Burton Dreben I owe thanks for many hours of conversation about political philosophy.
Throughout the book Rawls calls his own conception "justice as fairness", treating it as one among a family of other possible forms of political liberalism. He is trying to address, not only the most common misunderstandings of his view and the most important objections to its initial presentations, but also, more deeply, to clarify the status of his conception within the broader idea of what he came to call political liberalism. His task is enormously complicated and ambitious, because he came to recognize, after about 1985, the need to carve out a special category within moral philosophy, the category of the political.

This is a category that is new to the history of philosophy, and represents a normative idea of the "political" that corrects the often cynical or derogatory ways in which people use the term today. One sometimes says that a judge's decision is "merely political" meaning that the judge has allowed his or her personal views or interests to color the reasoning behind a verdict. One sometimes says that "political" decisions are a matter of deviousness, rationalization, or brute power, reflecting special interests of wealthy groups or individuals. What one suggests here is that these are decisions that are less than the best they could be, because they are compromises worked out among warring ideological groups. Rawls worried a lot about this kind of usage, and he is trying, with his notion of political liberalism, to rescue a positive use for the notion for our time that will allow us to see modern constitutional democracy as, if not a perfect form of government, one that we can at least see ourselves reflected in, and that we can see as a good worth fighting to improve and sustain. The category of the political, by the way, falls within the wider category of the moral: what Rawls is saying is that morality itself demands such a category, so he is working within moral philosophy at the same time as he is insisting on the distinctiveness of the category of the political within it.

Rawls' notion of the political aims to specify and lay out distinct normative ideals of justification and deliberation appropriate to a modern industrialized democratic society. This effort to demarcate and clarify these ideals required of him a reworking of his own terminology from A Theory of Justice in light of it, and the Restatement reflects this reworking. As he says over and over again, he is "working out" or "working through" a series of concepts — of basic political liberties, of the person qua citizen of a modern democratic society, of what are the most fundamental and important questions of political philosophy itself.

I emphasize that the kind of context in which Rawls works these ideas through is all-important; it requires a distinctively philosophical sensitivity to the basis of reasoning and attention to the usage of his own words, a tremendous self-consciousness about the formulation of the standpoint from which he is speaking. In philosophy, as in the study of reasoning generally, we begin from the assumption that you and I might agree on what we think the right policy is, but offer radically different, even conflicting kinds of justification for that policy. Similarly, we might differ with one another on which policy is best, but for reasons, or at least kinds of reasons, that are close or similar in kind. Moreover, we are capable of engaging in what Rawls elsewhere calls "conjectural" reasoning: we are capable of taking up the point of view of those with whom we disagree — granting their view for the sake of argument — and then investigating whether their position inevitably leads to the policy positions they suppose that it does. This indicates something of fundamental importance to philosophy: What we mean when we say that we accept and endorse the values of justice, freedom, equality, and life in a democracy is not clear in advance, or so obviously transparent to us.

A key example in terms of the history of the United States concerns the effort to reconcile the values of liberty and equality enshrined in the Declaration of Independence and in the U.S. Constitution. Invoking language from the Declaration of Independence, Abraham Lincoln said, in his Gettysburg Address, that the United States of America was conceived in liberty and dedicated to the proposition that all are equal. Given the history of slavery in the United States, and the explicit mention of slavery in the Constitution, one might well be tempted by cynicism about this remark. But the prior philosophical question is "What does it, what could it, mean?" We face the problem of specifying what

2 The most accessible presentation of this view, applied to specific examples, may be found in the essay "The Idea of Public Reason Revisited"; in John Rawls: Political Liberalism (1996). (It is reprinted in Samuel Freeman (ed.): John Rawls, Collected Papers (1999).)

3 Readers should see "Justice as Fairness: Political Not Metaphysical", reprinted in Freeman (1999). A helpful overview of Rawls' philosophy that attends to this development in his thought is Samuel Freeman: Rawls (2007).

4 This idea is not an exclusively Western idea, as some have thought. On this see Amartya Sen, The Argumentative Indian: Writings on Indian History, Culture and Identity (2006).

these words come to, especially when certain philosophers argue that we cannot balance the competing claims of liberty and equality.

Rawls' enterprise is one, in part, of conceptual clarification, a little like solving a certain kind of riddle or difficult mathematics problem: If you ask, as Rawls is asking, "What is justice? Are human beings capable of it? To what extent? And Why?", then you need to do more than just answer Yes or No or state examples. You need to get to the bottom of your convictions about these notions themselves, and that means you have to explore the differing ways in which they have been and might be understood and contextualized. You need to interrogate, model, and normatively idealize the terms in which the questions are themselves posed, to interrogate your own understanding of them. This happens, at least ideally, when an informed judge or committee aims to describe cases so that principles of law will apply to them in a coherent way, to work out the best rendering and defense of a verdict which could always have been described or defended and/or applied in a different way.

This may sound too ideal and abstract. But one key philosophical quality Rawls' work has is to show how each and every one of us might begin to take up questions of justice from the inside of our present life in society as it is, and make progress with them. Before A Theory of Justice, legislators, policy makers and political theorists were much more likely to view society collectively, and to seek comprehensive, general methods - utilitarianism and/or majoritarianism - to achieve their aims. This created a counter tendency among some to focus on individualistic theories such as libertarianism, in which ultimate standards of justice are wholly lodged in the idea of a fundamental right of an individual to self-ownership; Robert Nozick's Anarchy, State and Utopia (1974) presented such a view. What Rawls did was to sophisticate thinking about these issues by reaching out to his readers as concerned citizens. He offers substantive comments and his own principles of justice, but as important are his manner and tone, his sobriety and care, his way of thinking about justice. It matters what we think about our notion of the political from the inside of our society, as individuals, it matters how we think about the notion of justice, and it matters to us both as individual persons and as citizens.

Now A Theory of Justice became a classic text immediately in 1971, a part of what every informed person in American culture would be expected to have read. It certainly was regarded by philosophers as revitalizing moral philosophy as a discipline. Some still regard it as the greatest statement of liberalism since John Stuart Mill. This was philosophy that went way beyond, and offered by example, powerful criticisms and/or adaptations of the major rival traditions in liberal moral and political philosophy, perhaps most importantly utilitarianism, which had been for a long time the dominant tradition in political philosophy in the Anglo-American world, the one held generally to be most suitable for a modern democratic society, especially in light of the development of rational choice theory, a branch of modern mathematical logic especially useful for economists attempting to model certain aspects of market behavior.

The utilitarian view democratic society as a collection of individuals, each with his or her own individual preferences and desires, and each driven toward pleasure or happiness as he or she conceives them. Social and moral policy, on the utilitarian view, should aim at promoting the greatest sum of happiness for the great number of individuals according to one or another measure of maximized general welfare or utility (for example, the principle of Average Utility, that maximizes the average of each of the individuals' utilities).

There are two obvious yet fundamental kinds of problems with this kind of approach viewed as a comprehensive moral and political doctrine - problems acknowledged by Mill, and familiar in public discourse in the United States today, investigated explicitly in recent works such as Glenn C. Loury's Anatomy of Racial Inequality.

The first concerns a worry about the concept of individual liberty and liberalism's traditional emphasis upon it. The traditional advocate of utilitarianism justifies sacrificing the liberty, happiness or good of a few for the sake of maximizing the summed utility of the many: this is what impartiality in morality comes to from his or her point of view. But suppose it turns out that you could increase the efficiency of the market system, and raise the standard of living, or average utility, by imprisoning or even perhaps killing off a few individuals. Then the principle of utility says that it is not only acceptable to do so, you ought to do so, because this is what moral impartiality requires. Of course I simplify: Mill in particular attempted reformulations of utilitarianism to rule out this kind of case and was highly sensitive to, and articulate about, ways in which we must try to work in a democratic society to resist the tyranny of the majority, and strive to incorporate protections for individual liberty and individuality. But even the most sophisticated forms of utilitarianism still face the problem of how to incorporate the fairly clear basic
moral fact that there are some actions that, in general, you cannot pay most people enough to do, some tradeoffs that are off the utility charts, and that seem intuitively to us to violate the self-respect, integrity, and/or liberty of an individual, all part of what Loury calls in The Anatomy of Racial Inequality "our common humanity". Moreover, utilitarianism tends to give life and purchase to counter-philosophies that place fundamental weight on the individual's basic liberties and rights as such, for example, the libertarianism of the kind defended by Nozick.

This first objection is related to another one, voiced by Loury in connection with his analysis of race and social cognition: "we cannot hope to explain all of human behavior with a cost-benefit calculus" (2002, 43); "everything of importance in social life has an informal dimension" (2002, 104); "societies are not amalgams of unrelated individuals creating themselves anew out of whole cloth" (2002, 101). Differently put, there are qualitative and historically conditioned aspects of our lives - our moral and political discourse about justice in particular - that do not lend themselves to quantification by means of rational choice theory. There are, in other words, limits to the application in practice of any formalized mathematical model of human behavior you may develop. This is not to deny that the study of rationality, cognition, and the individual pursuit of means-end reasoning cannot shed great light on certain aspects of market behavior, much less to deny that idealization cannot go on. But it is to insist that on its own, rational choice theory does not give us the wherewithal for understanding all morally and politically relevant distinctions. These limitations on the ability of the formal models suggest that our distinction-drawing must not be simplistic and across-the-board all at once, tailored for every logically possible world and without attention to our historical context. It is not a good idea only to seek political theories that will grind out particular results by a formalized algorithm according to fixed first principles or rules.

We already have in the here and now what Rawls calls "considered judgments" as to what is right and just. Let's assume they are good enough for a starting point. (What else can we do?) In political society what seems most reasonable (I shall come back to that term "reasonable" in a moment, because it's a technical term for Rawls (cf. 2004, 6-7)) is to try to formulate a system of general principles that will make sense of, and give rationales for, as many of our considered judgments - the data points - as possible, but then revise our understanding of these principles (their scope of application, their basic notions, and so on) if certain of these data points fall off the line. You do not want to insist ahead of time that this investigation cannot overturn any considered judgments; perhaps it will and should. But you do not want to be a slave to the principles you come up with either, just because it looks as if they could be tailored to apply very generally. You have then to work toward a mutual adjustment of principles and considered judgments, idealizing where and when you need to, in order to work out conflicts between them, both for yourself and in the political domain, with others. Idealizing this kind of activity - which is quite concrete and everyday - we can describe a person as having reached what Rawls calls (in the Restatement, §103) "a wide reflective equilibrium" when we find for that person, having sorted through the available conceptions - including alternative rival ones - a conception of political justice that makes the fewest revisions in that person's initial judgments.

This again may seem abstractly methodological, and perhaps too timid or conservative as a picture of philosophy. But it is invested with very large and powerful philosophical significance in Rawls' hands. We need some specifics and distinctions in place before we can understand this.

Rawls does not state the Principles of Justice belonging to his own conception of justice as fairness until the Restatement, §13: the reader faces therefore a long stretch to get there. Why? This may seem especially puzzling since the principles may seem obvious, jejune, or trivial in their content.

The answer is that the status and content of these principles are not obvious off-hand, and are not taken by Rawls to be so, nor should they be without much philosophical qualification. Rawls has to try to lay out this content, to interpret and clarify it by laying out the modes of reasoning surrounding these principles, contrasting them with other possible ones. The two principles involve a liberty principle and an equality principle, and Rawls conceives of these two principles as lexically ordered, that is to say, when there are possible conflicts between them, the liberty principle is to take priority. Now part of the point of Justice as Fairness is to argue against the idea, argued by philosophers from various different perspectives, that the values of liberty and equality are fundamentally at odds with one another as political values. Rawls hopes to effect a reconciliation of them, but this requires that they be carefully and systematically interpreted.

According to Rawls' Restatement the two principles are to be conceived as constraints of a very general kind on reasoning about how to lay out the basic structure of society (we shall return to this concept of "the basic structure" later, it is described as the subject of the discussion in the Restatement §§95-16). The principles are conceived, in
other words, to operate as touchstones for modes of justification and argumentation that concern the basic institutional framework, and not every association or community in a society. They are officially stated as follows (2001, 42–43):

(1) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;
(2) Social and economic inequalities are to satisfy two conditions; they are to be
   i) attached to offices and positions open to all under conditions of fair equality of opportunity;
   ii) to the greatest benefit of the least-advantaged members of society (the difference principle).

Rawls’ question is not whether you think these principles are true or false propositions per se, or perfect ideals for all societies at all times and places. What’s important are the questions: What do they mean? How are we to understand them? If we do grasp them, then how may they be viewed as specifying a way of thinking and reasoning about possible just institutional structures that could realize something implicit in our current ideas about justice in a modern constitutional democracy?

According to Rawls, these principles specify an underlying idea of society as a mutually cooperative venture undertaken among free and equal persons. To emphasize: it is the informal, intuitive systematization of the principles’ status that Rawls is trying to make clear in the first thirteen sections of the Restatement, and by doing so he is specifying that underlying idea, and answering what he takes to be the “fundamental” question of political philosophy for a constitutional democratic regime (I shall return to that question soon).

As far as the “basic” liberties for the basic structure goes, it is important that Rawls specifies them with a list, rather than by means of a general philosophical characterization of liberty as such. He includes on the list
- Freedom of thought and liberty of conscience
- Political liberties (e.g., the right to vote) and freedom of association, the rights and liberties specified by the liberty and integrity (physical and psychological) of the person
- Rights and liberties covered by the rule of law.

Now what about the arguments Rawls has for his two principles? He has both informal and more formal arguments for these principles as specifications of his fundamental ideas. The more famous, analytical argument is that from the idea of the Original Position. The basic idea is to imagine an original constitutional convention to set up the basic institutional framework of our democratic society. The parties or representatives to the convention must choose principles of justice that maximize the interests of the society’s members. Rawls imagines a model or analytical thought-experiment: imagine that the parties must reason about how to set up the basic institutional structure of society not knowing whom they represent. They must go behind a “veil of ignorance”.

Rawls argues that it is plausible that they would settle on something like these two principles. The thought experiment is one which each one of us is invited to go through for ourselves. Of course, the Original Position is a fiction: we all reason as individuals with identities and ties in the real world. However, Rawls does not take himself to be assuming any substantial (Kantian) theory of the self, or any particular underlying psychology. He is instead taking it for granted that he will be able to model irrelevance of consideration by ignorance, i.e., that his readers will for the most part be able to work out how one would set up the basic institutional structure of society as a party to that original convention.

The two principles of justice have their historical antecedents, and they code up a great deal of political philosophy and history. The idea of obtaining a perspective that removes the “distortions” of the existing basic structure of society forms part of an answer to Marx, and is indebted to him. The first principle of liberty stems from the tradition of Locke, the second principle of equality from the tradition of Rousseau. Like Kant, Rawls is attempting to combine Locke and Rousseau via a theory of the social contract.

But we have here a profound transformation of Kant, in which elements of Hegel’s thought are combined; Rawls offers a de-transcendentalizing or empiricizing of Kant, bringing Kant’s philosophy out of the mould of what Loury calls a “brittle” liberalism of the Enlightenment. We have here a unique version of the social contract theory bearing within it an extremely sophisticated critique and adaptation of contem-
porary social choice theory as formalized in economics to the context of the basic institutional structure of society. Rawls is providing a distinctive way of thinking about why and to what extent we ought to aim to address inequalities in our society.

The principles are not given a purely instrumental defense. Instead, Rawls is Kantian in laying out a distinctive conceptual or condition-giving argument, working backwards (regressively, Kant would have said) from the assumption that the idea of a just liberal constitutional democracy makes sense and has some purchase in our society, to the principles and conditions involved in its making sense providing us with a coherent and compelling ideal. In a sense his way of thinking is a priori, but not in the sense of Kant's quest for universally valid, absolutely necessary principles that will apply to all possible human contexts, times, and places, and not in the sense of Kant's view that we could abstract away from history and the given social world to reflect on the nature of justice. Rawls is explicit that his conception applies to democratic regimes "as we know them" (2001, p. 43).

In general we may contrast two ways of thinking about policies that address economic inequalities: instrumental and philosophical. Instrumental ways of thinking focus on outcomes and effects, and depend upon complex modes of empirical assessment. For example, one might reject certain policies on the grounds that they generate inefficiency, limit incentives to work and invest, distort workings of markets, or require regulatory governmental apparatus that threatens individual liberties. One might also try to defend certain other policies by arguing that they do not generate inefficiencies that are likely to be large, but achieve other aims. One might even try to mount a general instrumental defense of egalitarianism across the board by claiming that reducing inequality is good for the general welfare and/or that extreme inequality is bad for democracy because it will lead to unrest, unwillingness to sacrifice or participate in institutions, and so on.

With Rawls and Nozick (for example) we have by contrast more purely philosophical argumentation. Rawls is an egalitarian of a liberal kind. He holds that certain kinds of inequalities are unacceptable not simply because they have bad effects on the general welfare, but because, simply put, they are unjust. Nozick argues that certain forms of governmental intervention in the making of contracts between individuals are intrinsically unjust because they violate individuals' intrinsic rights.

The basis of Rawls' argument is to begin with the idea that members of society are to be conceived to be free and equal persons involved in a cooperative venture. Rawls is laying out a way for you to think about how that starting point can be seen to yield important implications for how we discuss and argue with one another about various inequalities in our society — racial, sexual, and gender inequalities among them.

Rawls' particular way of reconciling these traditions of discussing notions of liberty and equality rests upon what he calls "fundamental ideas" and distinctions, upon which he is commentating in the first part of the Restatement. I want to comment on these in the remaining time in order to orient you.

The most novel distinction, from the point of view of the history of philosophy, is that Rawls draws between a political conception and a comprehensive doctrine (which could be moral, or spiritual or philosophical). This is not a distinction you will find in Kant or Mill or Locke. You will not even find the distinction drawn in A Theory of Justice. In general it is a difficult distinction to grasp. But it is fundamental to Rawls' notion of political liberalism, i.e., to the idea that there is a category of the political as such.

Note two points right away. First, the fundamental question does not ask what is the True or Correct conception of justice intrinsically. That is not a question that Rawls deals with here — it lies (thank goodness) outside the bounds of his investigation, outside the bounds of his notion of the political. In philosophy, as in science and everyday life, sometimes less is more: only by narrowing down the focus of your inquiry are you likely to get anywhere. Second, we see embedded within the fundamental question the contrast between a "political conception" and a "comprehensive doctrine" (moral, philosophical, spiritual, or religious).

A comprehensive doctrine regulates reasoning with a general moral theory, and in principle governs every sphere of a human life. Examples would include Utilitarianism, Perfectionism and Intuitionism about moral judgment, as well as comprehensive religious views, scepticism, atheism, relativism, moral constructivism or Kantianism. A political conception is a possible object of an overlapping consensus among comprehensive doctrines (on "overlapping consensus" see §11).

8 Justice as Fairness: A Restatement, §11: "The idea of an overlapping consensus is introduced to make the idea of a well-ordered society more realistic and to adjust it to the historical and social conditions of democratic societies, which include the fact of reasonable pluralism. While in a well-ordered society all citizens affirm the same political conception of justice, we do not assume they do so for all the same reasons, all the way down [. . .]. Citizens have conflicting religious, philosophical, and moral views and so they affirm the political conception from within different and opposing comprehensive doctrines, and so, in part at least, for differing reasons.
Rawls' Restatement develops a notion of person as citizen, as opposed to person as soul or moral personality. This notion is "freestanding" in the modes of reasoning that attach to it, which is to say that it does not require any particular comprehensive doctrine to support claims made about the citizen.

First and foremost, this is not a contrast between that which is intrinsically superior or more legitimate or true in general. As to the question of whether there are transcendent values that go beyond those involved in political philosophy Rawls remains mute, and for good reason. Political liberalism, he says, takes no stand on this. That's what makes it political, rather than comprehensive, by its own lights. Unlike a comprehensive moral doctrine, a political conception reasons about politics in what Rawls calls a "freestanding" way: the justifications for principles and policies that it delivers can be endorsed by citizens who may hold radically different, otherwise quite conflicting, comprehensive moral doctrines.

The idea is familiar from debate in the public forum of the United States. A believing Catholic may on Christian religious grounds feel certain that abortion is always wrong. A believing Jew may on her religious grounds feel that it is morally wrong not to save the mother's life if both lives are in danger. An atheistic feminist libertarian might feel that it's wrong ever to prevent a mother from having a choice to exercise control over her own body. Here we have conflicting comprehensive doctrines involving conflicting modes of reasoning about ultimate moral values. However, each person, qua citizen (note the contrast here between "person" and "person qua citizen"), understands that in order to make an argument for or against a particular law, reasons must be given to others as citizens. Each of the respective arguers for her position must work, from within her own comprehensive moral vision, toward transforming the underlying comprehensive arguments into those she might reasonably expect others with her to be able to share.

This may mean various things in various contexts. Sometimes it will be not achieved, for a variety of reasons. But we can at least say this: What will obviously not serve this purpose of what Rawls calls "public reason", in an example such as this, are remarks like "because Jesus tells us" or "because I own control of my body; period". There is nothing wrong with witnessing or being open about one's faith in our society; it is generally good to know what kind of moral framework moves a citizen to speak in the public forum, and there should be no shame in speaking of one's own comprehensive doctrine. But if we are to work toward developing just political institutions, from the point of view of political liberalism we all must grant that it is also a good - a moral as well as a political good - to work toward reasonable argumentation that others might be able to share, even those whose comprehensive doctrines conflict with one another and with our own.

An example Rawls mentions in his essay "The Idea of Public Reason Revisited" is the parable of the Good Samaritan. Aside from being a powerful and inspiring story for all of us, this parable expresses an aspect of Christian faith. What the believing Christian can and ought to do from the point of view of public reason, is to try to transform this comprehensive doctrine, with its teachings, into the terms of a political conception endorsable by all. This activity is an equal onus on all of us, those of traditional faith as well as those who are atheists: all must adapt their own comprehensive doctrines to the public forum. This is familiar in numerous cases, for example Martin Luther King, Jr. and the Civil Rights movement. And it is a natural outgrowth of beginning where Rawls does, with his picture of a society of free and equal persons. He wants to see how, whether, and to what extent it might be possible for a religiously believing (or religiously disbelieving) person to come to see liberal constitutional democracy as something more than a mere modus vivendi - something that is, or at least could be, by the lights of various comprehensive doctrines, a positive good. Rawls understands that religion will not wither away in the face of the modern world, that it was an error in many of the major ideologies of the twentieth century to think that it would. The question is how religion and morality of various kinds can find, at least ideally, happy places in a liberal constitutional democracy - and vice versa, how such a form of government might find itself strengthened by human beings such as we are, with our differing comprehensive views.

Originally the meaning of toleration, in the time of Locke, functioned against the background of a modus vivendi: bluntly put, the Catholics in Europe could not kill all the Protestants, and the Protestants could not kill all the Catholics, so they worked out a way to live together. But a modus vivendi is only viewed, from within each comprehensive vision, as a temporary matter: something to be put up with until your side gets

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But this does not prevent the political conception from being a shared point of view from which they can resolve questions concerning the constitutional essentials.

9 Again, see Freeman (ed.), John Rawls, Collected Papers.
enough power to impose its will. This is toleration in a different sense from that worked out in political liberalism. What Rawls would like to lay out is a picture of liberal constitutional democracy as, at least in theory, something that could achieve an "overlapping consensus" among what he calls "reasonable comprehensive doctrines".

So this distinction between a political conception and a comprehensive doctrine is not one of content, so to speak, but one of form, mode of reasoning, and tone of expression. Importantly, it applies to Rawls' own work. Justice as Fairness is not a comprehensive moral doctrine, though one might have taken it to be after reading A Theory of Justice. The job of Rawls' later work on political liberalism is in part to disambiguate this point, to transform the terminology from A Theory of Justice into the context of a political conception, rather than a comprehensive moral doctrine. Words like "person" had to be worked through, transformed into the notion of a person as citizen, and so on. The Restatement is not a comprehensive doctrine (2001, p. 14):

[...]

Rawls repeatedly emphasizes this contrast through the Restatement, because it was not emphasized or worked through in A Theory of Justice, and that led some to think that he was trying to argue that his own conception of justice was to be grounded in something like rational choice theory. But No: Rawls does not think you can properly understand or answer the fundamental concepts of political liberalism in that way. This is why, in §2.2, he emphasizes the point. "Common sense views the reasonable, but not, in general, the rational as a moral idea involving moral sensibility" (2001, 7). Those in a position to dictate terms of an agreement (those, e.g., in powerful bargaining positions because of wealth) may find it "rational" to propose terms that otherwise those with whom they cooperate would not accept. But that does not mean that their terms are "reasonable", i.e., endurable, ideally, by all parties. This does not mean that Rawls' system lacks the concept of an individual's rational advantage or good: he specifies as fundamental to his conception of a free and equal person what he calls "the two moral powers": the capacity to frame a conception of the good, and the sense of justice. The first-named power stands in for the rational, the self-interested, as it were, the means-end kind of reasoning characteristic of our moral life. The other power, however, stands in for the reasonable, which Rawls views as complementary to the rational. The reasonable constrains the rational for its own good, so to speak. And what is reasonable always has to do, in justice as fairness, with what can be thought of in terms of the idea of reciprocity, mutuality. Reasonable terms are those you offer to someone else in a cooperative situation with the expectation that he or she would, in considering his or her own self-interest and good, be inclined to accept as terms everyone in the society could see as fair and applying to all. Moreover, such principles are such that all reasonable members of society will be willing to honor them, even at the cost of their own interests, for their own sake. So the rational has to do with an individual's ability to calculate, infer, form a rational life plan, provide instruments for promoting one's own good, and manage coordination of various kinds with others. It is not in and of itself moral, though its exercise is assumed to be in play as part of moral life (compare 2001 §2.2).

If we consider rational choice theory, the rational seems to be a far easier concept to structure and model, for certain purposes, than the notion of the reasonable. The reasonable is never defined by Rawls. But it is used systematically. It represents, if you like, the limit of what rational choice theory can hope to accomplish in political philosophy. A policy proposal might well be rational - and attractive in that way - but not reasonable, not able to be seen as specifying fair terms of cooperation. Then, according
to Rawls, it cannot form part of what he means by a public conception of justice. Not everything that is rational, in other words, is reasonable.

Now one demand that Rawls takes to be unreasonable, as we have seen, is the demand that every citizen agree on a comprehensive moral doctrine. A comprehensive moral doctrine might be religious — a form of Catholicism or Quakerism, for example — or it might not be, i.e., it might be a form of generalized secularism or atheism. The important point is that a comprehensive moral doctrine applies to many, if not all, spheres of human life: it is a general point of view. Political liberalism — as opposed to the possessive individualism of Nozick, or Mill’s utilitarianism, or even Kant’s form of liberalism — regards it as impossible that all citizens accept the same comprehensive doctrine; as Rawls writes (2001, 3):

I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive doctrine. *The fact of reasonable pluralism* which characterizes a society with free institutions makes this impossible. This is the fact of profound and irreconcilable differences in citizens’ reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life. But this fact is not always easy to accept, and political philosophy may try to reconcile us to it by showing us the reason and indeed the political good and benefits of it.

This is a remarkable attack on the philosophical tradition of Reason at work in Enlightenment liberalism, which worked according to the dream that if all human beings could just sit down and think things through together in the light of reason, they would agree, they would find the truth. Even Kant thought this (though you can find remarks where he may be read as questioning this, especially in works like *The Critique of Judgment*). Against this, political liberalism rests on four unargued points, assumptions or, as Rawls calls (some of) them “facts”. These are working assumptions shaping what a philosopher of logic would call the conditions of material adequacy on any analysis of the concept of political justice (Rawls 2001, 33ff):

1. The fact of reasonable pluralism
2. The fact of oppression
3. The fact of the need for public reason
4. The fact of a basis for an idea of public reason implicit in the culture

There is, importantly, a high degree of self-reflexivity here: Rawls is noting that even his own conception of justice as fairness, as laid out in *A Theory of Justice*, would require state enforcement and oppression to be held constant over time, from generation to generation, as a correct point of view for liberalism, were it taken to be a necessary comprehensive doctrine for the preservation of democratic political community; the “fact of oppression” points to the idea that “shared adherence to one comprehensive doctrine can be maintained only by the oppressive use of state power, with all its official crimes and the inevitable brutality and cruelties, followed by the corruption of religion, philosophy and science” (Rawls 2001, 34). This points to the need for an understanding of our concept of stability for the right reasons in the political sphere. Rawls is not trying to justify modern liberal constitutional democracy against its rejectors — as Hobbes and Locke were trying to do. He is certainly not defending democracy for all times and places, and against all philosophical objections. He takes its value for granted, and seeks to systematize, organize, “work out” a conception of it as possibly realizable with a just set of basic institutions. If someone objects by saying “Well perhaps philosopher kings or a religiously homogeneous society would do a better job of it”, Rawls has no answer. He is not going to entertain scepticism or philosophy at that level, and in that way.

This is not a philosophy designed to get you to mount the barricades, to thrill you by overturning deeply cherished ideas by clever arguments, or to convince the unvarnished bigot. But that, in its subtlety and complexity, is its great depth, its great relevance, as philosophy. If you assume human nature is intrinsically conflicted or evil, or if you postulate fictional philosopher kings, you do not even get to pose the questions Rawls — and so many of us — are asking, the real questions we face today about liberal constitutional democracy.

Rawls’s procedure is a profound rejection of Plato’s idea that a just society requires just souls for its realization, that we should seek justice in the soul first, and then impose that upon our social institutions. On the contrary: just social institutions are there to set into place a political context in which pursuit of justice in the soul may take place for all rational and reasonable citizens. Moreover, perhaps even more profoundly, Rawls is rejecting the Platonic idea that there is a single, unambiguous conception of justice that will apply directly to multiple spheres of life, univocally — justice in a democratic society’s basic institutions is not the same as the concept of justice in the law of contracts which is not the same concept as that of justice in the family, or between friends, or lovers, or nations, or students in a university classroom. Of course, these
concepts do not, as Rawls makes clear, apply to different spaces that fail to interpenetrate one another. The family is part of the basic structure of society, for example, and the principles of justice will allow certain restrictions to, or forms of it, to be imposed by the form of the basic structure. But there is no reason to think that one concept will suit every context of discussion in the same way, as if all associations, communities, histories and selves wear the same shoe-size.

To close: what is perhaps most important to appreciate is where Rawls begins. He begins with certain “fundamental ideas” – idealized pictures of a democratic society – and spells out his own fundamental question in terms of these. He grants from the beginning that this picture may not end up fitting with all our present considered judgments. He grants from the beginning that our actual society here in the United States does not yet realize it. He does not assume that we are all capable of becoming saints, nor that we are each a bundle of individual units invested in our own selfish quest for pleasure. Instead, he prescribes from offering a comprehensive moral vision, or theory of moral personality across the board, and focuses on a narrower and more urgent question. By holding his idealized picture up to scrutiny, and thinking through the ideas of liberty and quality in its light, he hopes to be able to specify a way of thinking about these ideas – his two principles of justice – that will bring us to some understanding, some reconciliation with, and some practical political forms of social cooperation that we can regard as worthy in themselves. His aim is to sketch a model of liberal constitutional democracy that will portray it as something more than the most productive, economically efficient, or useful kind of society to live in for now. He hopes to be able to portray it as the most just and worthy of our respect.

§1 of A Theory of Justice began with the remarkable statement that “justice is the first virtue of social institutions, as truth is of systems of thought”. In so writing, Rawls asked us to interrogate this notion of justice, and he was also expressing his profound dissatisfaction with philosophical views that are prepared to believe that the most important, or anyway equally important virtues of social institutions are or may be (for example) their promotion of highly-achieving individuals (as in perfectionism), their promotion of economic well-being and efficiency (as in utilitarianism) or, perhaps worst of all, their promotion of insight into Truth-As-Such. Rawls was always arguing for the priority of what he would later call the political: justice as the first virtue of social institutions can never be traded off against the other aims and ends, important though they may be. It constrains our choices in setting up the fundamental institutions of our society, and partly because our lives and choices are so profoundly affected by that structure. This does not imply any particular metaphysical or detailed psychological theory of human nature (to repeat, Rawls is not arguing that we can derive the concept from knowledge of our actual world), it depends upon his assumptions. Nor does it imply, algorithmically, any particular concrete policy positions as policies for all possible contexts (though it does rule out slavery and other obviously unjust forms of basic structure).

Rawls’ work suggests that it is hard enough, and important enough, for us to investigate in the here and now, for a modern industrialized society like ours, with sufficient basic resources to support that society over and indefinite time, whether or not the idea of a just constitutional liberal democracy makes sense – whether, that is, it can be reconciled with our considered judgements, in the here and now, about justice. That gives us all something very important to do, as philosophers, as citizens, and as individuals with our own conceptions of what is right and what is wrong. The Restatement may then be very abstract and difficult on first or second or third reading, but it is a very concrete and compelling exercise in political philosophy for that very reason, and a profound exemplar of what philosophy at its best is and ought to be.

Literature