

A Question of Stability

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When constitutional essentials and matters of basic justice are at stake, John Rawls argues that it is possible and desirable to ensure that the exercise of political power is justifiable by appeal to a liberal political conception of justice. In this paper I intend to outline Rawls' arguments for the liberal political conception of justice, specifically his conception of a person in society and his argument for the overlapping consensus and reasonable pluralism of political liberalism, both of which are required by him in order to maintain stability in such a liberal society. Next, I will introduce three main criticisms of Rawls from Michael Sandel's book *Liberalism and the Limits of Justice*. First, Sandel does not believe that it is always wise or reasonable to set aside moral or religious differences in order to maintain a political system. Second, Sandel believes that the 'fact of reasonable pluralism' about the good (saying that people can have many different moral or religious doctrines in one political system) should also apply to questions of politics, thus removing the asymmetry between the right and the good that Rawls sets in place. Third, Sandel believes that Rawls is wrong to require citizens to be abstracted from their moral or religious beliefs when debating political policy, since this sort of separation would remove many interesting questions and important opinions from public debate. I will conclude by attempting to show how Sandel is not quite charitable in his first argument, and by describing a situation which I feel poses a problem for that argument.

In his new conception of justice as fairness, termed political liberalism, Rawls has abandoned the Kantian notion of a person as a free agent, capable of choosing her own ends apart from a philosophical or religious doctrine, in order to

support the idea that the right takes precedence over the good. Rawls feels that a person does not have to be an agent in this sense in order for political liberalism to be attained. Instead of the Kantian notion, Rawls now favors a conception of the person that allows for something akin to the original position in regards to political policy rather than to all moral and political thought. This is an important stance, since the Kantian conception of a person was attacked for presupposing that an agent would be a specific type of person with certain motivations. In this new conception of a person, Rawls does not need to assume that the agent have any type of motivations. All he requires is that when determining public policy, the person must distance herself from any moral or religious doctrine that she might embrace in her private life, and step into her role as a political citizen. In order for the right to have priority over the good, Rawls requires that citizens not consider themselves to be under the dominion of duties to anyone or anything, including other people or a moral or religious code. Rawls claims that this will lead to a better structured society since many people disagree about what is good (good meaning something that is determined to be good in a moral or religious doctrine), but everyone will be able to agree on what is right without appealing to that good. Thus political liberalism will be able to circumvent the issue of people having differing moral or religious beliefs. Our political system will not change over time, as moral or religious beliefs do, since when citizens make political decisions they will have abstracted themselves from their moral or religious feelings.

This conception of a political citizen leads well into Rawls' idea of overlapping consensus. Since people will not be able to bring their moral feelings into the political arena, their moral or religious doctrines will have no bearing on political policy. Thus in order to maintain a balance in society it would be important for political liberalism to allow for all types of moral or religious codes to exist under

its principles. Instead of beginning with a philosophical foundation, Rawls claims that his political concept is one outside of moral doctrines that would be accepted by every doctrine in the parlance of their own community. That is to say, Hare Krishnas would examine political liberalism through the conception of morality that they have, and would come to agree with it based on their own moral code. Likewise for Catholics, Protestants, Atheists, and every imaginable moral or religious community. Of course, these groups would not have to accept political liberalism for all the same reasons (indeed it would be very surprising if they would). The policies of political liberalism would overlap with all sorts of different moral doctrines on different grounds. It is important that they can accept the different political principles on different grounds, since with the morally-abstracted political citizen making political decisions, no one group could force their concepts of morality on another group.

Rawls is not interested in citizens accepting a *modus vivendi*, as happened between the Catholics and Protestants in the sixteenth century, when the two religious groups "held that it was the duty of the ruler to uphold the true religion and to repress the spread of heresy and false doctrine"¹ and were thus living in a sort of compromise between the two religious doctrines. Such a system, Rawls says, is only stable so long as the groups vying for control are equally matched. As soon as one of the groups gains a significant amount of power in the government through converting individuals or through subterfuge, they would seize the government and impose their moral doctrine on the other group, ending the balance that was in place. Under political liberalism, citizens would initially accept the system because it was palatable to each of them on their own moral or religious grounds. Rawls believes that this does not reverse the priority of the right over the good, since he wishes citizens to accept this liberal system under their moral doctrines only initially in order to support a system that will uphold people's rights. After time Rawls hopes that

¹ Rawls, John. *Justice as Fairness, a Restatement*. Cambridge: Harvard University Press. 192

citizens would begin to support political liberalism because they would recognize it as having important political values. They will gain "virtues that strengthen their commitment to liberal principles"² through living under the policy. Rawls does not believe that political liberalism should have an effect on citizens' moral lives. He wishes for them to learn to separate their political identity from their private, moral life.

Rawls' arguments for stability in his system are based on two main points, first, his conception of a person who can separate himself from his moral or religious doctrine in order to discuss or accept political principles, including the principles of political liberalism, and second, the concept of an overlapping consensus, in which people of every moral and religious group would accept his political doctrine based on their own moral feelings and would then grow to accept it as a political system that protected everyone's basic rights. Michael Sandel formulated three related critiques of this argument for stability.

First, Sandel does not believe that it is always wise or reasonable to set aside moral or religious differences in order to maintain a political system. When a certain moral or religious stance is true, Sandel claims that it is not reasonable to "bracket moral and religious controversies for the sake of political agreement"³ or to maintain pluralism. Sandel gives two example scenarios to support his argument. Let us suppose that in the case of abortion, the Catholic Church is correct and life truly does begin at conception. If this is indeed true, then millions of citizens have been murdered, and those citizens' rights have been lost. If the Catholic Church's opinion is allowed into the political debate, however, this would break the policy of maintaining separateness between the moral or religious and the political. Sandel asserts that if citizens' rights are being lost, moral and religious doctrines should be able to weigh in

² Sandel, Michael. *Liberalism and the Limits of Justice*. Second Edition. Cambridge: Cambridge University Press. 195

³ *Ibid.*, 196

on the issue at hand in order to save the rights of those citizens.

The second situation that Sandel describes in backing up his first argument is that of slavery. When Lincoln and Douglas were debating prior to the presidential election, the issue of whether or not slavery should be permitted in the new territories was an important one. Douglas claimed that since slavery was a moral question and people were bound to disagree over moral questions, the government shouldn't have anything to say about whether or not slavery should be permitted. People should be allowed to reason based on their own moral doctrine whether or not slavery should be permitted, and then act according to their own moral thoughts. Sandel says that according to Rawls' system of reasonable pluralism, Douglas would have been correct in separating the public political debate from the private moral lives of the citizens. Lincoln agreed with Douglas that the question of slavery was a moral one, but he viewed this as being an important fact to be considered in the political sphere. Lincoln felt that political policy should "express rather than avoid a substantive moral judgment about slavery"⁴ and in other matters where a grave moral question is at stake. Sandel agrees with Lincoln on this point. When a substantive moral question is under question in the deciding of policy, bracketing that policy depends on a certain answer to the moral question. In order to bracket the question in the case of slavery one must accept that slavery is right, since some people will be making that decision and owning slaves. If slavery is wrong, then bracketing the question will allow for wrongs to be committed and rights infringed upon. For these reasons Sandel claims that when moral or religious doctrines are correct about a substantive moral issue, those moral or religious doctrines must be allowed to come into the political arena.

Sandel's second argument is that the fact of reasonable pluralism should not only apply to principles of moral and religious doctrines, but also to political

⁴ Ibid., 199

principles. Rawls assumes that although we will have differences of opinion on moral and religious matters, we will not have the same differences of opinion when it comes to political matters. He believes that political debate will occur on the matter of application of principles rather than on the principles themselves. Since we have certain concepts in our minds that we conceive of as right, our disagreements must be about how to apply those things that are right, not about whether or not they actually are right. Sandel responds to this line of thought by asking, "Do all of our disagreements about justice concern the application of principles we share or would share on due reflection, rather than the principles themselves?"⁵ Sandel asks specifically about the debates over redistributive policies, saying that if the government can create a policy of redistribution in the face of dissent from libertarians, the government can also create policies that affirm one moral standpoint while denying another. He allows, however, that in the case of political liberalism and the redistributive policy, Rawls has provided many convincing arguments that counter the libertarian viewpoint. It is possible, then, to create a political view that must be accepted due to its overwhelmingly logical and reasonable construction. Sandel argues that this could also be possible in the case of moral views. In that case, there would be discussion on the basis of moral thought as well as on the basis of political thought, and the asymmetry between the right (the political) and the good (the moral) would not hold. The right could no longer take priority over the good, because there would be definite answers to both types of questions.

This breakdown in the asymmetry between the right and the good leads to Sandel's third argument. Rawls believes that it would not be proper for citizens to bring moral and religious views into political debates, since if one of those views were made into policy it could threaten the reasonable pluralism of political liberalism by making a moral judgment when there could be a moral community that opposes that

⁵ Ibid., 205

judgment. If there were answers to moral questions, however, Sandel feels that keeping the concept of the good out of the political realm would "impoverish political discourse and rule out important dimensions of public deliberation."⁶ Sandel brings in the example of homosexual rights. If laws existed, based on moral grounds, that forbade the practice of homosexual intercourse, gay rights advocates would be unable to bring a moral standpoint to bear on this issue unless morality were allowed in the political arena. The only way they could argue against this legislation would be to argue that the legislation itself is based on morality, and thus should not be policy. In another example, Sandel recalls that the abolitionists made arguments against slavery that were explicitly founded in religious views. According to Sandel, Rawls addresses this fact by saying that in a society that is not well ordered "...it may be necessary to resort to comprehensive moralities in order to bring about a society in which public discussion is conducted solely in terms of 'political values!'"⁷ If this is the case, then the abolitionist arguments can be justified and allowed into the political discussion since they hastened the day when discussion would be conducted purely on a political level. But, Sandel says, it doesn't seem that the abolitionists had such a society in mind when they presented their religion-based arguments, and neither did the lawmakers who passed the abolition legislation. He feels that in order to assess Rawls' suggested rules of public reason, we must weigh the value of political liberalism against its moral and political costs. Moral costs will vary based on the case that they are brought to bear against. In the case of slavery, Sandel says that the moral cost would be high since slavery is a grave moral wrong. In the case of abortion, he says that if the Catholic Church is correct, then the moral cost is high. If the Church is wrong, however, the cost is much lower. This suggests that the moral status of the practice under question must be considered when deciding whether or not

⁶ Ibid., 196

⁷ Ibid., 213

moral arguments should be allowed in the political arena. The political costs that Sandel speaks of are the costs of having a population disenchanted with the political system. "Where political discourse lacks moral resonance, the yearning for a public life of larger meanings finds undesirable expressions"⁸ such as the actions of fundamentalists. Sandel also says that this sort of political policy devoid of the moral question leads the public to focus not on the policies that are being created, but rather on scandals or moral questions that lie in private life.

Based on these three arguments, Sandel draws the conclusion that rather than the mutual respect of moral feeling generated by political liberalism and reasonable pluralism, where respect is shown through not engaging others in meaningful debate on issues of moral or religious import, we should have what he calls a deliberative respect. This respect would involve engaging each other on important political or moral issues, arguing and contesting and learning.

Sandel's arguments are very convincing, and they shed a great amount of light on Rawls' line of reasoning. I do not feel, however, that Sandel was as charitable as he could have been in the reading of Rawls' arguments and in the formulation of his own. In his first argument, Sandel uses the examples of abortion and slavery in order to prove that in some cases, the truth of a moral issue should be brought to bear on a political issue. However, in these cases it is taken that citizens' rights are being infringed upon, and that is the ultimate reason for moral arguments to be permitted in the political discussion. It seems to me that it is uncharitable to take a case where citizens' rights are being infringed upon in a society that does not follow the system of political liberalism and then apply the system to see how problems may fall out of it. Would slavery exist in a system of political liberalism? I find this unlikely, since Rawls' conception of a citizen should be sufficient to show that all people, no matter their race or class, have certain rights that cannot be infringed upon in the manner that

⁸ Ibid., 217

slavery does. Again, in the case of abortion, the decision about who is and is not a citizen will settle the debate over whether or not abortion should be legal. This does not seem to be a moral question to me, but rather a political question that would be settled prior to the establishment of a system of political liberalism.

In order to be charitable to Sandel, I have considered a scenario that I feel is more appropriate to the question in the fact that it does not presuppose the citizenship status of anyone. Let us consider homosexuality. Suppose that legislation currently considers homosexuality to be a moral choice, and thus does not have policies enacted either to support or block it. Now suppose that the Catholic Church somehow proves that homosexuality is immoral and they are correct. What would that mean for political policies? Homosexuality does not infringe upon the rights of any citizens, since those engaging in homosexual practices are conceivably those who would not consider themselves infringed upon. If it is considered infringing for two people of the same gender to walk down the street holding hands or kissing in public, then many family groups and cultures would also be considered immoral, family groups and cultures that the Catholic Church would not want to target with their moral statements. It seems to me that the definition of morality that Rawls intended was focused mainly on the private life, the life that did not infringe upon other people's rights. Under this definition, it would not be proper to pass legislation that outlawed a way of life that did not infringe upon other peoples' rights. If the knowledge that homosexuality was taking place was considered the infringing factor, then it would seem that nearly every moral community that disagreed with another would have their members' rights infringed upon. It seems that passing this moral judgment into political policy would lead to some type of instability in the system, as I believe would be the case with any truly moral judgments.