

MODUS VIVENDI, OVERLAPPING CONSENSUS AND STABILITY

MODUS VIVENDI, CONSENSO COINCIDENTE Y ESTABILIDAD

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RESUMEN ABSTRACT

En este artículo muestro como la teoría política de Hobbes, un gigante no-liberal del canon de la filosofía occidental, se puede interpretar como comprometida con alguna forma de neutralidad. Al reconocer el rol que juega la neutralidad en el pensamiento de Hobbes logramos ver que un requisito de neutralidad no es exclusivo del liberalismo. Más allá de esto, sin embargo, intento mostrar que considerar a Hobbes en este contexto revela ciertos puntos útiles de comparación con el trabajo tardío de Rawls que plantea preocupaciones sobre la viabilidad de su liberalismo político. Voy a argumentar que el liberalismo político de Rawls, mientras no ofrece una solución de *modus vivendi* a la justificación política, no está bien dotado para asegurar la estabilidad.

In this paper, I show how the political theory of a non-liberal giant of the western philosophy canon, Hobbes, can be interpreted as having a commitment to some form of neutrality. In recognizing the role neutrality plays in Hobbes's thought we come to see that a neutrality requirement is not exclusive to liberalism. Beyond this, however, I intend to show that consideration of Hobbes in this context reveals certain helpful points of comparison with Rawls's later work that raise concerns about the viability of his political liberalism. I argue that Rawls's political liberalism, while not a *modus vivendi* solution to political justification, is ill suited for the securing stability.

PALABRAS CLAVE KEY WORDS

acciones humanas, imperativo, Lógica, principios morales, reglas, pragmática, verificacionista

human actions, imperatives, Logic, moral principles, rules, pragmatics, verificationist

1. INTRODUCTION AND BRIEF BACKGROUND

“Neutrality,” many argue, is the quintessential and distinguishing trait of liberalism¹. The claim is that it is a distinctively liberal idea that moral neutrality is crucial for the legitimacy of a political order. The inference to neutrality from legitimacy comes out of a combination of what we might call *the voluntarist thesis* and *the fact of pluralism*. The voluntarist thesis holds that a political order is legitimate only if there is an acceptance of its fundamental normative principles amongst the citizens who are to live within that order. The fact of pluralism is simply the fact that the citizens in any modern state will be inescapably diverse in terms of the comprehensive normative doctrines that are endorsed. If the fundamental normative principles that serve to ground a political order are in conflict with (or, to put it differently, *fail to be neutral between*) the comprehensive normative doctrines of citizens, these citizens will not accept them and hence the order will be illegitimate. John Rawls’s later work is clearly influenced by this account of political legitimacy and the corresponding need to establish stability by securing the genuine and robust endorsement from many quite diverse persons. Rawls doubted the possibility of any such genuine and robust endorsement of a political order where the grounding normative principles are philosophically ‘thick’ and so he defended what he called “political” as opposed to “metaphysical” (“comprehensive,” “philosophical” or “substantive”) liberalism.

On Rawls’s account, political-normative principles are neutral in the appropriate and attainable senses of this concept in a way that philosophical-normative principles could never be. This is, in fact, the exact difference between these two types of principles. Political-normative principles could be located in an “overlapping consensus,” which means they are principles that would be equally acceptable to each of a group of persons who are quite diverse in terms of the

¹ Three examples of theorists who have understood neutrality and liberalism in this way are: ACKERMAN, Bruce. *Social Justice in the Liberal State*. New Haven, CO/US: Yale University Press, 1980. p. 10, DWORKIN, Ronald. *A Matter of Principle*. Cambridge: Harvard University Press, 1985. Ch. 8, and LARMORE, Charles. *Patterns of Moral Complexity*. Cambridge: Cambridge University Press, 1987. p. x. One of the most important discussions of neutrality in political philosophy is in RAWLS, John. *Political Liberalism*. Columbia: Columbia University Press, 1996. Lecture V, sections 5 & 6. The best collection of work on neutrality in political philosophy and theory is KLOSKO, George & WALL, Steven (Eds.) *Perfectionism and Neutrality: Essays in Liberal Theory*. Lanham, MA/US: Rowman and Littlefield, 2003. Recently, (May of 2008) The University of Montreal’s Centre de recherche en éthique hosted a conference entitled: “Liberal Neutrality: A Re-evaluation” featuring papers presented by Anthony Appiah, Steven Macedo, Steven Wall and Peter Demarneffe.

more comprehensive conceptions of the good and of what counts as a life worth living. In contrast, philosophical-normative principles are thought to be essentially parochial and so cannot be expected to garner widespread agreement. Rawls had hoped to support a liberal political theory without recourse to any of the typically liberal *philosophical* presuppositions² that had been called into question over and over by various critics of liberalism including Marxists, communitarians, feminists, and post-structuralists.

In this paper, I show how the political theory of a *non-liberal* giant of the western philosophy canon, Hobbes, can be interpreted as having a commitment to a form of neutrality. In recognizing the role neutrality plays in Hobbes's thought we come to see that a neutrality requirement is not exclusive to liberalism. One of the conclusions I reach, thus, is that 'neutrality' is ill suited for the purpose of identifying liberal thought and that the over reliance on this concept for this purpose has caused needless theoretical confusion. Beyond this, however, I intend to show that consideration of Hobbes in this context reveals certain helpful points of comparison with Rawls's later work that raise concerns about the viability of his political liberalism. I argue that Rawls's own version of liberalism both relies on more controversial philosophical assumptions than he acknowledged and is subject to criticisms similar to those that are raised against Hobbes.

2. HOBBS AND NEUTRALITY

In *Leviathan*, Hobbes draws upon an understanding of human nature derived primarily from observation of others and perhaps a bit of self-reflection. For Hobbes, the fact that in a state of nature we would regularly encounter non-trivial, practically problematic, and even potentially tragic conflicts, is explained by our being shortsighted egoists who lack genuine other-regarding dispositions³.

² Examples of such philosophical presuppositions include a stance on the metaphysics of the self, the nature of the good, or human nature.

³ Hobbes, in listing the passions, includes 'desire of good to another, BENEVOLENCE, GOOD WILL, CHARITY. If to man generally, 'GOOD NATURE' See: HOBBS. *Leviathan*, 6.22. This suggests that he will allow for some measure of an other-regarding disposition. Still, if there is any possibility for this sort of disposition it seems that for Hobbes it is slight. More often than not, it seems, benevolence, good will, and charity will come in the form of acts that are selfishly motivated. This is evidenced by the following of Hobbes's comments: "To give great gifts to a man, is to Honour him; because 'tis buying of Protection, and acknowledging of Power (...) To be sedulous in promoting another's good; also to flatter, is to Honour; as a signe we seek his protection or ayde" (*Ibid.*, 10.21-22).

In Chapter VI of *Leviathan*, Hobbes asserts that most of a person's appetites are "for particular things, (which) proceed from Experience, and triall of their effects upon themselves or other men"⁴. Our aversions, in contrast, are for things that we have learned by experience are hurtful and for things about which we haven't the prior experience to know if they are hurtful or not. Since experience is cumulative and changing and since no two people will have identical life experience, no person will maintain all of the same desires and aversions over her lifetime and few of us will desire all of the same things. Nevertheless, if a particular thing is desired, it is to be called "good" by the one who desires it. If a particular thing is hated, it is to be called "evil," again, by the person who hates it. These words, "good" and "evil," Hobbes tells us: "(...) are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common Rule of Good and Evill, to be taken from the nature of the objects themselves (...)"⁵.

Hobbes, thus, is a relativist with respect to the good and accepts a version of *the fact of pluralism*⁶. The diversity of experience and the relativistic indexing of "the good" to individuals results in there being many different (equally permissible) perspectives on what is good including what sort of life is best.

A further relevant point to note at this stage is that Hobbes is a *moral* positivist: "The Desires, and other Passions of man, are in themselves no Sin. No more are the Actions, that proceed from those Passions, till they know a Law that forbids them (...)"⁷.

Morally wrong behavior requires the institution of a sovereign legislator, which in turn, for Hobbes, requires a deliberate act of agreement on the part of those who will fall under that legislator. So, Hobbes also accepts *the voluntarist thesis*.

Due to egoism, shortsightedness and the lack of any compelling natural moral law individuals are inevitably in competition both for the instruments of power like wealth, reputation and honor but also for

⁴ *Ibid.*, 6.4.

⁵ *Ibid.*, 6.7.

⁶ I say 'a version of the fact of pluralism', because for Hobbes this pluralism is implied by the prior rejection of any naturalistic account of moral value and acceptance of moral relativism. Rawls and other political liberals would not want such thick philosophical commitments lurking in the background of their theory.

⁷ *Ibid.*, 13.10.

those particular things that are desired intrinsically. We will, Hobbes warns, “endeavor to destroy, or subdue one another”⁸. This leads us to be constantly on guard against others, afraid of their efforts to destroy us and makes it in our respective best interests to engage in preemptive strikes against one another: “(...) from this diffidence of one another, there is no way for any man to secure himself, so reasonable, as Anticipation; that is, by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to endanger him (...)”⁹.

This leads to the insecurity and suspicion that is inevitable in the state of nature described by Hobbes as a state of war of all against all.

Out of this picture Hobbes devises a strategy for securing peace. We can design society, Hobbes maintained, to take advantage of our nature, work with that nature, to produce stability. It is rather like an engineer who figures out how to constrain a raging river, channeling its force into a highly controlled, predictable, and useful production of energy. Given our egoism and the overriding interest in self-preservation, Hobbes argues for a sovereign endowed with enormous power and efficacy. This sovereign determines and harshly enforces the laws. This provides selfish individuals (who are otherwise prone to take advantage of one another, steal from one another, frequently injure and even kill one another) with a motive to cooperate that appeals to their respective immediate, selfish desires for survival. The violation of the sovereign’s laws carries a grave risk of immanent death.

Hobbes’s thesis can be interpreted as involving a neutralist mode of justification. His system is argued to be the best, not because it will promote the interest of some one individual or type of individual, but because it alone meets the *common* and fundamental need of living free of fear of death. Hobbes recognizes that individuals will judge differently what sorts of life are desirable and no one view or group of views about the good life is the true one. He does not prioritize any of a number of competing conceptions of what counts as good because, for Hobbes, there is no controversy about these things. We all agree that the maximal promotion of selfish desires (most importantly, the desire to avoid death) is what we are each individually after. Morality, thus, is the artificial system of ‘oughts’ recommended by prudence and

⁸ *Ibid.*, 13.3.

⁹ *Ibid.*, 13.4.

enforced by the sovereign. Obedience best realizes that which we are each individually after. Instead of relying on a view about independent moral requirements governing which desires or types of desires are sinful and which aren't, Hobbes maintains only that, whatever an individual person might count as valuable, he won't see its realization if he is dead and that the only way to sufficiently minimize the risk of premature death is to contract into a state that will be governed by an all-powerful and indivisible sovereign. The fundamental normative principles grounding Hobbes's preferred political order, therefore, are neutral between the indefinite number of actual and possible conceptions of what, more specifically and idiosyncratically, is and can be counted as desirable.

3. LEVIATHAN AS A *MODUS VIVENDI* SOLUTION AND THE ARGUMENT AGAINST *MODUS VIVENDI* SOLUTIONS

The sort of neutrality that I see in Hobbes's *Leviathan* is that of a mere *modus vivendi*. Rawls gives the following illustration of the idea of a mere *modus vivendi*:

A typical use of the phrase "modus vivendi" is to characterize a treaty between two states whose national aims and interests put them at odds. In negotiating a treaty each state would be wise and prudent to make sure that the agreement proposed represents an equilibrium point: that is, that the terms and conditions of the treaty are drawn up in such a way that it is public knowledge that it is not advantageous for either state to violate it. The treaty will then be adhered to because so doing is regarded by each as in its national interest including in its interest in its reputation as a state that honors treaties¹⁰.

The difficulty with a *modus vivendi* approach is its fragile stability. In such an approach, points out Rawls, "social unity is only apparent, as its stability is contingent upon circumstances remaining such as not to upset the fortunate convergence of interests"¹¹. It makes no sense, according to Hobbes, to speak of *moral oughts* in the state of nature. But, there are facts in the state of nature about what will increase and decrease the probability of desire satisfaction and so there are *prudential oughts*.

¹⁰ RAWLS, J. *Political Liberalism*. New York: Columbia University Press, 1996. p. 147.

¹¹ *Ibidem*.

urthermore, for Hobbes, “rationality” is just recognizing and pursuing whatever is in one’s interest where ‘interest’ is understood in terms of egoistic desire-satisfaction. Consequence of this is that, for Hobbes (unlike, for example, Plato) the question “why ought I do what I morally ought to do?” is not trivial. It is possible that prudential prescriptions and moral prescriptions could diverge. Their alignment is a matter of contingent circumstance and not conceptual necessity.

When circumstances change, there is nothing about a *modus vivendi* to recommend continued adherence. Hobbes, is aware of this but thinks that he is able to avoid the difficulty in part because of (a) the consistency of human nature and (b) the awesome power of his sovereign. That he is, as I am convinced, wrong in his view of human nature virtually guarantees that the Leviathan variety *modus vivendi* is unstable. Many will find life in such state worse than death and so will revolt. Beyond this, it is reasonable to suppose that no sovereign can be powerful and informed enough that a subject could *never* violate its laws so as to gain tremendously without risk of being caught. If a subject were ever in such circumstances there would be nothing about the *modus vivendi* that could obligate or motivate him to refrain from violating the law.

4. THE SUPPOSED STABILITY OF AN OVERLAPPING CONSENSUS

Rawls’s argument that *political liberalism*, does not amount to a *modus vivendi* is as follows. The state and its institutions are justified only with reference to certain basic ideas that are located in the consensus that is the overlap of multiple comprehensive conceptions of the good. There is no claim as to the *truth* of any of these basic ideas or to the truth of any substantive philosophical commitments that entail them. There is simply a fortunate, historically produced, convergence of comprehensive conceptions. Certainly, any one of these conceptions is loaded with philosophically substantive and so controversial commitments. For each person (each “endorser of a comprehensive conception”) you can say that *her* commitment to the ideas in the overlap derives from the comprehensive conception *she* endorses. So each of us has his or her own reasons (drawing upon his or her own comprehensive doctrine) for supporting the state that is justified with reference to and designed in a way governed by, the basic ideas in the overlap. But the justificatory force of these ideas rests upon their being shared, not

upon any presupposition about the truth or superiority of any one of the comprehensive doctrines. *I* will support the state that is justified in this way because *I* accept these justifying principles for *my own* reasons. *You* support the state because *you* accept these justifying principles for *your own* reasons. "An overlapping consensus, therefore, is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests. All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides"¹².

Since we each have our own reasons, stemming from our own comprehensive doctrine, we will remain committed to the political conception even if circumstances change such that our own comprehensive doctrine becomes dominant. Thus, Rawls believes, we have stability.

5. CONCLUSION: WHY THE OVERLAPPING CONSENSUS IS NOT STABLE

Here is the problem. Suppose we find our diverse comprehensive doctrines 'overlapping' in the way Rawls suggests. This fact is historically contingent. So long as the diverse citizens continue to endorse *these doctrines*, and avoid significant alterations to them by mixing in dogmatism or sectarianism (rendering them unreasonable) we could expect stability. But this stability is as tenuous as that provided by Hobbes' *modus vivendi*¹³. Somewhat ironically, political liberalism can hasten the spread of dogmatism and ultimately set the stage for a loss of stability. The method of avoidance of substantive philosophical matters that is at the core of *political liberalism* is also the internal seed of its own undoing.

A state that is given such an austere and minimalist justification as that which can be squeezed out of an overlapping consensus runs a serious risk of degenerating into an anemic and listless, non-progressive

¹² *Ibid.*, p. 148.

¹³ For a distinct criticism of Rawls as facing the dilemma of either having to settle for a *modus vivendi* himself or commit to some form of comprehensive liberalism, see TALISSE, Robert B. *Democracy After Liberalism: Pragmatism and Deliberative Politics*. London: Routledge, 2005. p. 55-63.

and stagnant collectivity. Because the political liberal's state eschews any substantive commitments to the *truth* of any claims about human nature and the good for humans and relies instead only on there being a few commonly held ideas (none of which needing to be either true or dependent upon more fundamental notions that need to be true) it's own justificatory structure can hardly avoid dogmatism.

Rawls attempts to identify a small number of basic ideas that are common to several diverse comprehensive conceptions. He then uses them to justify a particular sort of liberal state. However, the justificatory force of these ideas is independent of their truth, resting only on the fact that they are shared. There is no need to question these ideas or to consider why they are preferable to some other ideas located only in those excluded conceptions of the good that do not overlap. The particular "political values" that Rawls relies on to justify the liberal state will, after a time, slip into the status of what John Stuart Mill refers to as "dead dogma". For the purposes of the state—the shape of its institutions and character of its policies—no independent reasons or philosophical grounds are required in support of these political values. More than this, however, independent reasons and philosophical grounds are *positively excluded* from consideration since it is inevitable that there will be disagreements between individuals in terms of what their independent reasons are in support of these political values. These disagreements are inevitable because the support of the overlapping political values is provided for each person by his or her comprehensive conception.

The political liberal's likely response to this concern is to say that there is nothing in his theory that prevents *individuals* from this sort of substantive reflection regarding, and critical scrutiny of, their respective comprehensive conceptions and the ideas found in their overlap. The difficulty with this response, though, is that it indicates the extreme degree to which political liberalism privatizes the issues most important and fundamental to the determination of a just state. Consequently, the quality of scrutiny regarding such issues will be low. The mere fact that political liberalism does not explicitly *prevent* such reflection and scrutiny does not mean that there will likely be such reflection and scrutiny and there is a reasonable concern that there likely won't be. The quality of whatever scrutiny exists is bound to be low because it will be an activity relegated to the private sphere and so no criteria of public justification need be met. The expected result will be an ever-increasing frequency of individuals endorsing doctrines that are sectarian and that, thus, do

not overlap. Once the overlap disappears, or even becomes an overlap of conceptions endorsed by a small number, stability will be lost.

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