A Rawlsian Prospect of Political Liberalism in the Post-Colonial Setting

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Introduction

In his book, Political Liberalism Rawls sets out to illustrate that the two principles of justice he has promulgated in the Theory of Justice are sustainable even under conditions of reasonable pluralism. To illustrate this point he introduces the concept of overlapping consensus. According to Maffettone the overlapping consensus is a social device that is realised when citizens, endorsing different reasonable comprehensive doctrines, accept the same liberal-democratic vision.[1] The Rawlsian train of thought is that within a well-ordered society, citizens with comprehensive and reasonable world-visions can peacefully co-exist with other citizens analogously oriented. This equilibrium is achieved or made permissible by a successful constitutional history, like the one that has characterized United States public life since the founding fathers.[2] Only such background permits the coexistence of doctrines and persons that make reference to world views that are deeply diversified from both the ethical and metaphysical point of view. The history of an empirical success, like that that preceded the promulgation of the American Constitution, is in line with the ethical-political normative premises of Rawlsian discourse. In this paper, I seek to investigate the opportunities for and challenges of Rawlsian discourse on Political liberalism in the postcolonial setting with specific reference to the African setting in which the constitutional histories of the existent political societies are for the most part dreary. In a social setting where the constitutional history is absent al bleak, can the doctrines referred to by Rawls be feasible? Does Political Liberalism have certain prerequisites devoid of which it cannot be said to prevail? Or can a political society deliberately and consciously work towards achieving or building Political Liberalism irrespective of a bleak constitutional history?

1.   Fundamental tenets of Rawlsian Political Liberalism

According to Rawls there is a distinction between the public and private realm is political society. In the public realm, an absolute moral standard, that of liberal justice is applicable and is universally accepted. In his first piece A Theory of Justice Rawls illustrates in detail the how the this standard is agreed upon. The agreement culminates in what he refers to as the

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[1]   Sebastiano Maffettone *Rawls: An Introduction* 21 (2009).
[2]   Id.

"original position"[3] promulgated in the theory of justice. In the private realm the liberal idea of freedom of conscience, namely respect for value pluralism is preserved. It is in this realm that Rawls introduces the "Overlapping consensus" concept referring to the social device achieved when citizens, endorsing different reasonable comprehensive doctrines, accept the same liberal-democratic vision.[4] Through this concept, sometimes referred to as the agreement on justice as fairness between citizens who hold different religious and philosophical views, a pluralistic society can achieve a common conceptions of the good irrespective of their cultural diversity. It is this concept I find particularly relevant as the object of study for deeply divided societies seeking workable constitutional models and state structures.

Rawls work is an attempt to secure the possibility of a liberal consensus regardless of the deep religious or metaphysical values that the parties in a given setting may embrace, so long as they remain open to compromise or remain reasonable. The term "overlapping consensus" derives from a scenario where, different and often conflicting accounts of morality, nature, etc. embraced by parties in the socio-political setting "overlap" with each other on the question of governance following a compromise reached because of their reasonability.

2.   The Postcolony

The Postcolony has often been referred to as a disordered state[5] most often with a bleak constitutional history. In my view, the Postcolony is the entity that is in the modern day, in need of principles such as the one advanced by Rawls as it is in a constant search for a consensus that would provide stability. Some of the typical characteristics of the Postcolony in Africa include and have included for long time, violence, civil strife, institutional weakness or complete breakdown and general social instability. Going by the conditions emphasised by Maffettone in his work on Rawls above, At first sight one would consider Rawlsian Political Liberalism

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[3]   See Sebastiano Maffettone as note 2 above at 31, "In the theory of justice as fairness, the original position of equality corresponds to the state of nature in the traditional theory of the social contract... Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance." (TJ 12)".

[4]   Sebastiano Maffettone as note 1 above at 272.

[5]   On the nature of the disordered Postcolony, see *Postcolonial Disorders* by Good, Mary-Jo DelVecchio; Good, Byron J.; Hyde, Sandra Teresa; Pinto, Sarah University of California Press, February 2008 at page 8. The disordered state is autocratic, weak failed and dependent on privatised militias and ethnically and religiously violent.

unimaginable in such a setting especially because Rawls talks of stability and a sound constitutional history as a key concepts of Political Liberalism. Indeed, it can be argued that a true overlapping consensus cannot be achieved or prevail in the face of inequality, irrationality, oppression, political instability and ethnic tension. In the following sections I will explore the feasibility of Rawlsian Political Liberalism in the Postcolony.

2.1   Political Liberalism in the Postcolony

My thesis in this paper is that Rawlsian Political Liberalism is an ideal that can be strived for in the Postcolony irrespective of a bleak constitutional history. The development of an overlapping consensus in the Postcolony can reduce conflicts between divergent value systems and render the political system stable. Stability is a key element of justice. Rawls postulates that "given certain assumptions specifying a reasonable human psychology and the normal conditions of human life, those who grow up under just, basic institutions acquire a sense of justice and a reasonable allegiance to those institutions sufficient to render them stable."[6] As citizens grow accustomed to living in a just basic system, they develop a sense of justice which inevitably serves to combat any injustice in the system. This development can only occur over time as citizens develop a motivation strong enough to act in a just manner towards each other.[7] In this sense the legitimacy of political authority accrues over time and in so doing the holders of political power convince the citizens and themselves that they are acting properly. However, the path towards Political Liberalism is not as straightforward. There is some level of social awareness that is required of the citizenry to realise the consensus. This conception of political legitimacy aims for a public basis of justification and appeals to public reason and in so doing to free and equal citizens viewed as reasonable and rational.[8]

The ideas in Political Liberalism in particularly are attractive as they seek to find a way in which a people no matter how diverse can find an overlapping consensus or a liberal consensus irrespective of their divergence of cultures and still achieve a liberal democratic model. As a keen reader of postcolonial theory, I set out in this paper to investigate the possibilities and challenges for success of the Rawlsian model of political liberalism in the Postcolony. How can

[6]   John Rawls, *Political Liberalism* 142 (1993).
[7]   This has been the undoing of the Postcolony because their present day reality is the result of a process of imposition. In such environment the Postcolony was instantaneously expected to embrace a sense of justice that was and is not of its own making.
[8]   Id at 144.

the process of constitutionalism in the post independence period confer legitimacy and create a path towards overlapping consensus? The fact that the inception of the African state may have been flawed from the onset does not renders Rawlsian concept of Political Liberalism unfeasible in Africa. The continuous search for the overlapping consensus has been gaining momentum since independence with numerous African states getting closer and closer to dispensations that they consider their own and that they can genuinely embrace.

In Political Liberalism, Rawls postulates two types of conceptions of justice. One which allows for a plurality of reasonable but opposing doctrines and the other which holds that there is only one conception that is to be accepted by all.[9] Political Liberalism supposes that there are many differing doctrines that can be rationally defended. This acknowledgement is in tandem with the is what is the driving premise of postcolonial theory which calls for the accommodating of divergent doctrines as opposed to the imposition of a single doctrine over the latter. Hence the reason why I believe that Rawlsian philosophy is compatible with postcolonial political philosophy. Political Liberalism sees a plurality of differing religions, philosophical and moral doctrines as a permanent feature of democratic societies.[10] Rather than be erased or sidelined Rawls makes a case for compromise, and this is at the heart of postcolonial theory.

In a constitutional regime, political power is more often than not always a coercive power of the government; a public power constituted by free, equal, reasonable and rational citizens acting as a collective body. The question that then arises is: when can this public power be exercised appropriately? Can any given exercise of such power by the citizens as free and equal citizens be justified when used against other citizens who are also free, reasonable and rational?[11] This seems particularly important in the context of the Postcolony. Political liberalism answers by the rule that any "exercise of political power is proper only when it is exercised in accordance with a constitution, the essentials of which all citizens as free and equal persons may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason."[12] This is the liberal principle of legitimacy. Under this view all other legislative questions and laws must be similarly supported. Thus all constitutional questions and questions of justice are to be settled by appeal to political values alone. These political values override all

9   Id at 134-136.
10   Id.
11   Id at 137.
12   Rawls supra note 3 at 137-138

other values that conflict with them.[13] The basic political values that make up the constitutional essentials represent the "political view"; citizens also have "comprehensive views" grounded in various religions and philosophies through which a whole series of wider values are pursued that are consistent with or supportive of the political view. There is then a plurality of not unreasonable comprehensive doctrines in tandem with the political conception of justice, making an overlapping consensus possible and reducing conflict between political and other values.[14] However, it seems that the key assumption made by Rawls in this regard is that the constitution represents the views of the citizenry. In the Postcolony, many post independence constitutions were an embodiment of the preferences of the political elite, or subject to their whims, the aforesaid principle may not be as tenable, as the constitution in such instance is not be a representation of a peoples political values. That is why the emphasis is on constitutional reform in the Postcolony so as to encapsulate the political values that the citizenry stand for.

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3.   Prospects for Political Liberalism in Africa

In light of the string of constitutional failures, autocratic rule, one party states and an overall decline in democracy, how do African countries posit vis a vis a quest for Political Liberalism? Indeed, a quick glance at the historical foundations of the contemporary African state reveals a set of political entities that were brought together not by the local inhabitants but by foreign colonial powers. Going by Rawlsian train of thought, it seems that a natural process of development and not an artificial one as was the case with post-colonial Africa is what creates a conducive environment for the realisation of Political Liberalism. It also emphasises that the road or path towards Political Liberalism is a slow one, developing over time as citizens do their share and as they see others doing their share.[15]

With reference to the African Postcolony, at the dawn of independence, the exigencies of the time, the political atmosphere, and the urgency with which freedom was demanded gave birth to a completely new body politique but with the vestiges of colonialism. The elites in the new

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[13]   Id.
[14]   Id. at 140.
[15]   Id at 153.

entity were forced to quickly invent a consensus or legitimizing principle so as to keep the new entity intact. They could no longer rely on the pre-existing unity of purpose that existed prior to independence because the coloniser had gone. It was no surprise that they experienced a three-fold crisis of legitimacy; a crisis in the legitimacy of the post-colonial constitution, a crisis in its supremacy in a logical-legal sense, and a crisis in the legitimacy of the political power of ruling elites. This crisis of legitimacy had the effect of pushing the elites toward intolerance and to embrace the opposite of political liberalism. The one party state, military rule and dictatorships are obvious examples of this intolerance.

It is in this sense that the liberal principle of legitimacy of the African state as whole at inception can be said to be non existent. What political values did the populous have in common when they were brought together under one political entity? The truth is that none at the very least. What existed was more of a common sense of unity of purpose to overthrow and expel from their lands a common enemy, the coloniser. It is my thesis that because of this lack of legitimacy of the African state from the onset that the questions of instability began to rock the newly established entities after the end of colonisation and the grant of independence. In an unstable world, it is extremely difficult for the populous to grow and become accustomed to a sense of justice so as to combat injustice as Rawls says. As illustrated so far, the contemporary setting in the African state presents a challenging environment for Political Liberalism to thrive. In the following paragraphs I set out to illustrate how in my view, Political Liberalism ought to be realised in the Postcolony.

## 4.	Realising Political Liberalism in the Postcolony

In the previous section, I have outlined the main challenges to Political Liberalism in the Postcolony. I am of the opinion that all is not lost and that this noble principle can nevertheless be achieved. The first step is a positive acknowledgement of the legitimacy hurdles of the African State at its inception as has already been done above. Next is embarking on a programme aimed at legitimising the African state, in the essence a programme of legitimisation. The Postcolony must work towards a sound and robust constitutional programme of its own making that can provide a solid anchor for the nurturing of genuine political values, those that the people can identify with irrespective of their diversities. This can best be achieved through a robust programme of constitutional reform as is presently ongoing in some African states. Through this process of constitutional reform Constitutional Commissions solicit

the views of the people on an array of issues with the view of establishing what the people want as a constitutional order. This is a process but if carried out to fruition, a genuine political ethos and value system is planted in the otherwise illegitimate entity that will over time grow to maturity. Presently more than a half of African countries have undertaken some form of constitutional reform to aimed at bringing the constitutional order in tune to the values embraced by the people.

A key element of the Rawlsian conception of justice being stability, a true overlapping consensus cannot evolve in the face of inequality, irrationality, oppression, political instability and ethnic tension. Thus, whatever chance there was for the reconceptualisation of an autochthonous constitutional consensus in the emergent states was destroyed by the political conditions in which despotic regimes and ethnic conflict flourished. Many despotic regimes continue to exist, for example, in Kenya, Cameroon and Gabon not to mention Equatorial Guinea. Rawls predicates "normal conditions of human life" in which citizens "grow up under just basic institutions" for the establishment of stable institutions and the evolution of "a reasoned allegiance" towards these institutions on the part of the people.[16] Social conditions in the immediate post-colonial era were so abnormal and the institutions so unjust, that there could be no "reasoned allegiance" of the people to the political order and there could, therefore, be no stability. This was the case for the first twenty-five to thirty years following independence. In the early 21st Century things have entered a new phase. There is relative stability and emerging democratic regimes but with still miles to cover. The African State is struggling to consolidate its own Political Value system and find an overlapping consensus where possible. The advantage that the African Postcolony enjoys is the plethora of state models existing in the world today to learn from.

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[16]   Rawls, supra note 3, at 142.