Unit D 21: The Concept of the State by John Rawls

**1.	Summary**

John Rawls is considered one of the leading exponents of political liberalism in our time. The purpose of this text is to introduce Rawls' political approach.

**2.	The Concept of Rationality**

Central to John Rawls was and is the concept of rationality.

Matthias Herdegen (2010:15) has suggested that rationality should not only be understood as an action oriented towards a purpose or the effect of a measure. From a legal point of view, rationality is rather an "interpretation-guiding standard", which is based on functional "correctness" (Herdegen 2010:20). Rationality is therefore always to be measured against an intention: For example, a prohibition of discrimination is rational if it is about a "change of an existing reality in favor of a hitherto factually disadvantaged group" (Herdegen 2010:21).

**2.1	John Rawls' Concept of Rational Consensus**

John Rawls (1998:22) has formulated the problem of how to achieve a durable and rational consensus in a liberal state as follows: "How can a stable and just society of free and equal citizens, incisively separated from one another by reasonable and yet conflicting religious, philosophical, and moral doctrines, endure?" Or more poignantly, "How can even those who affirm a religious doctrine based on a religious authority, such as the church or the Bible, have a reasonable political conception that supports a just democratic order?" (Rawls 1998:35). This is especially true for members of non-Christian religions, such as Muslim communities.

In Rawls' (1998:23) view, this is especially also a question of political justice, especially in a world deeply divided by religion(s) and worldviews. A central sub-question in this context - according to Rawls 1998:23 - is: "What are the fair conditions of social cooperation among

citizens characterized as free and equal and who are nonetheless divided by deep doctrinal conflicts?" (Rawls 1998:23). In his lectures on "Political Liberalism" John Rawls (1998) tried to explain how in his opinion a "society of justice as fairness" (Rawls 1998:33) or even "A Theory of Justice" as an expression of a "reasonable pluralism" (Rawls 1998:33) can function - especially also in a society where different "reasonable political conceptions of justice" (Rawls 1998:34) exist. That this question is crucial for the relationship between religion(s) and the state probably needs no further justification.

Social cooperation, according to Rawls (1998:82/83), is characterized by a kind of reciprocity "between the notion of impartiality, which is altruistic (the general good is the motivating force), and that of mutual advantage (understood in terms of an advantage to each, measured by his present or expected future situation)" (Rawls 1998:82/83).

Rawls (1998:83) understands reciprocity as a "relationship between citizens expressed in principles of justice that order a social world in which ... everyone benefits." However, in Rawlsian terms, reciprocity and mutual benefit are not identical (Rawls 1998:83). Rather, a "symmetrical position of the parties with respect to each other ... is necessary if they are to be regarded as representatives of free and equal citizens reaching agreement under fair conditions" (Rawls 1998:91).

In the sense of Rawls, it would have to be asked whether this symmetry also applies to religious communities. After all, they and the state are also in a reciprocal relationship and act in the mutual interest - at least as far as their basic ideological stance and their basic intention of peaceful coexistence are concerned.

Rawls (1998:61) sees **three main types of conflict** in the public sphere: "those that derive **from** the **conflicting comprehensive doctrines of citizens**; those that derive **from the differential status of citizens** (their class, occupation, ethnicity, race, or gender); and finally, those that derive **from the burdens of judgment**" (Rawls 1998:61).

Political liberalism defuses conflicts of the first kind, but does not prevent them from arising. According to its author, the Rawlsian theory of justice can promote reconciliation in "a

reasonably just institutional order" (Rawls 1998:61) in the second type of conflicts. This is because if one accepts the theory of justice, "there need be no more conflicts of the second kind [to] occur, at least not serious conflicts" (Rawls 1998:61). Insofar as one reads the second Rawlsian rule of precedence (a): "an inequality of opportunity must improve the opportunities of disadvantage" as seeking to reduce inequality of opportunity, this is undoubtedly correct in the long run. But does this rule of precedence not contradict the first rule of precedence (a), which demands the greatest possible freedom for all?

Throughout history - right up to the most recent present - there have been many examples of liberalism confining itself to purely formal justice without addressing or tackling social and structural injustices and inequalities at all. Exemplary of this kind of thinking is the following example. In a polemic against the Swiss Conference for Social Assistance (Skos), the director of the Liberal Institute, Pierre Bessard, argued in the Neue Zürcher Zeitung of Dec. 28, 2013, as follows: Because the - by no means high - minimum rates and guidelines for social assistance would perpetuate poverty and the - well understood: justified - entitlement to social assistance is defined too generously, an "entitlement mentality" is created that must be fought because it is antisocial. Social assistance is - if at all - only acceptable as temporary "bridging assistance", everything else is to be rejected. Bessard justifies his anti-social and ultimately inhumane argumentation with a - purely formally understood - freedom of the individual. Bessard does not see that social assistance also has, or should have, a poverty-reducing effect in the longer term.

Whether or not social (or economic!) conflicts are recognized as such, there is no question that they exist. Therefore, it is undoubtedly too simplistic-and in keeping with a certain formal liberal tradition-when Rawls (1998:61) writes: "Political liberalism does not concern itself with these conflicts, leaving their settlement ... to the conception of justice as fairness or any other reasonable political conception of justice" (Rawls 1998:61). In this context, it is not enough to leave the settlement of such conflicts to "a reasonably just constitutional order whose political principles of justice satisfy the reciprocity criterion" and to assume, as Rawls (1998:61) does, that "these causes of conflict can by and large be eliminated".

It is well known from meanwhile 50 years of discussion on equality of opportunity, but also from poverty research, that freedom for all does not automatically lead to more social justice - rather the opposite. It is always about the distribution of social and economic resources. And because conflicts over the recognition of "foreign" religious communities under public law are to a not insignificant extent also a struggle over the distribution of resources, they cannot be resolved by this kind of political liberalism - not least because not all religious communities share the same understanding of justice.

Surprisingly, Rawls (1998:61) sees the only kind of conflicts that political liberalism cannot resolve-or as Rawls (1998:61) says, "persist"-as conflicts "arising from the burdens of judgment," that is, the third kind of conflicts mentioned above-for example, factual conflicts. But aren't factual conflicts usually de-ideologized conflicts, that is, conflicts that could be resolved more or less detached from worldviews, norms, and ideologies? That is, conflicts that can be addressed argumentatively and factually, without an ideological or ideological stalemate, as in the case of strongly ideologically anchored conflicts or issues, such as for or against nuclear energy, for or against abortion, or for or against euthanasia.

As we have seen, a central criterion for a political theory of justice and fairness, according to Rawls (1998:43), is the reciprocity criterion: "Our exercise of political power is reasonable only if we are seriously convinced that the reasons we give for our political actions can reasonably be accepted by others as justifications for those actions" (Rawls 1998:43). The basis for this "liberal principle of legitimacy" (Rawls 1998:44) is two things: "the idea of an overarching consensus" and "the idea of the public use of reason" (Rawls 1998:44). Accordingly, Anne Isabel Kraus (2011:41) has not entirely wrongly described Rawlsian theory of justice and fairness as "abstracting procedural ethics," with the probably accurate criticism that it "leaves out individual identification with particular points of view" (Kraus 2011:41).

Thus, Rawls recurs to a kind of "public reason," even as he links it to the concept of an "overarching consensus" and to the principle of reciprocity.

From the point of view of religion(s), the question arises whether religion-specific law - such as Catholic canon law or Muslim Sharia law - can and will indeed resort to a kind of religion-overarching "public reason" and thus to a "reciprocal consensus" of all participants. If religious law as "ius divinis" [= "divine law"] is order revealed by God - regardless of whether it is based on natural law and thus on reason or not (according to Haaland Matlary 2011:85, the current paradigm of reason is based on "the fact that reason is independent of both the Creator and man") - then the reason criterion does not lead anywhere in this case. For the "ius divinis" is, so to speak, "super-reason" revealed by God and is in any case above any human reason. So every religious community must deal with the question of the status of "public reason" within the framework of its legal system.

According to ethicist Johannes Frühbauer (2007:123), the "idea of public reason" represents one of the three basic ideas of Rawls' political liberalism. Reason is public "as the reason of equal citizens," which "reason of the public [is]: its object is the public good and questions of fundamental justice; finally, it is public in its nature and content insofar as its ideals and principles are expressed by the political conception of justice of the society in question, and on this basis are openly claimed by all recognizably" (Rawls 1998: 312/313).

According to Rawls, the public use of reason results in "citizens being able to justify what they vote for in fundamental matters by judiciously weighing public political values, all parties assuming, of course, that these values find a deeper and often transcendent basis in a plurality of reasonable doctrines as held by citizens. Which doctrine is affirmed is left to each individual citizen and his or her conscience" (Rawls 1998:348).

Undoubtedly, Alois Müller (2005:60) is to be agreed with when he thinks that Rawls and the liberal current following him assume that "the essential constitutional contents can be supported by quite different 'reasonable' religions and worldviews."

At this point, it is worth recalling the Geertz-Gellner controversy in Amsterdam in 1994, which was about the question of whether or not there is some kind of **cross-cultural reason**. While on the one hand the nationalism and racism researcher Ernest **Gellner** (cf. e.g. 1993 or 1999) saw **reason** as a kind of **anthropological constant** that stands above cultures, so to

speak, the cultural anthropologist Clifford Geertz held that **every culture is an expression of socially conditioned production of meaning**. Geertz (1994:261ff.) impressively played out this argumentation using the example of common sense [= everyday reason]. Subsequently, Tibi (2002:156) opined, "Following Gellner, I deny that my reason as a West Asian and a man is anything other than the reason of a European or a woman. Culture is human and not, as multiculturalists and feminists claim, specific to a cultural collective or gender" (Tibi 2002:156). As an anthropologist, I tend to agree more with Geertz that there is no abstract reason floating in the air, so to speak, but that reason is always already socio-culturally concretized, expressed, and reproduced. Against the radical cultural relativists, however, I am of the opinion that a cross-cultural reason is possible insofar as inter- or transcultural rules of communication can be developed, which have to be negotiated, questioned again and again and adapted anew - this also excludes approaches such as Hans Küng's global ethic concept as the "lowest common denominator" of ethnic groups, cultures or religions. Seen in this way, reason can be understood as a rational negotiation mechanism. All other universalistic concepts of culture - such as the "Leitkultur" proposed by Tibi (2002:156) - on the other hand threaten to end up paternalistic and appropriating.

In addition to public reason, Rawls also introduces the concept of "overlapping consensus. According to Frühbauer (2007:117), the Rawlsian idea of "overlapping consensus" represents a **central guiding concept of his political liberalism** and also an answer to the stability problem he formulates. Does Rawls, then, have in mind a kind of institutionalized discourse-ethical negotiation process in his "overlapping consensus"? Johannes Frühbauer (2007:120) clearly denies this: "The 'overlapping consensus' differs from dialogic-communicative types of rational understanding (processes) of discourse-ethical character and remains essentially related to the liberal political conception of justice, which it is supposed to support in its plausibility, acceptance and effect [...]" (Frühbauer 2007:120).

Rawls is more concerned - in a first step, so to speak - with elaborating an "independent, political and moral conception of justice for the basic structure of society" (Frühbauer 2007:120), in order to then - in a second step - verify whether this conception of justice is sufficiently stable. Therefore, the "overarching consensus" "although free-standing, forms, as it were, a kind of lowest common denominator of different and otherwise

incommensurable reasonable and comprehensive doctrines" (Frühbauer 2007:121). Therefore, Rawls evaluates the "comprehensive doctrines" of socio-cultural associations - which, of course, also include religious communities - as "reasonable" as long as they do not publicly contradict the principles and claims of the constitutional state and democratic values (cf. Müller, A. 2005:79). But the problem of circular reasoning arises here: religions are reasonable when they affirm a reasonable state - that is, an overlapping reasonable consensus and the values that flow from it - and this "overlapping consensus" is reasonable insofar as it is supported by the various "reasonable" religious communities and worldviews.

Given this situation, Heiner Bielefeldt (2003:136 and 2010:115) has suggested that human rights should be seen as "the core of an intercultural 'overlapping consensus.'" Is Rawls' "overlapping consensus" thus based on a kind of "global ethic" of all religions and the secular idea of the state? If so, then it would have to be objected against this concept, just as against Hans Küng's global ethic approach, that religious systems of norms or symbols cannot - one to one, so to speak - be lined up and their contents compared. This is because the central values are coded in completely different ways and at completely different levels, depending on the religion and socio-cultural code (cf. Jäggi 2009). Therefore, an "overlapping consensus" can only emerge through a discursive debate, i.e., through a communicative process on the central contents and intentions of the systems concerned - i.e., in a kind of "meta-discourse," a "discourse about discourse." However, this brings us back to discourse-ethical approaches.

It fits in that, according to Bielefeldt (2003:137), the Rawlsian concept of overlapping consensus is or must be "more than a mere compromise between all value orientations present in society." This also means that the concept of overlapping consenus is not descriptive [= descriptive] but normative [= a postulate]. But the question remains whether there can be a normative, i.e. action-oriented, consensus between normativities as different as Muslim Shar'ia, Catholic canon law, and secular fundamental legal thought.

In addition, the question arises as to the compatibility of the claims to validity, intentions and self-understandings of religious legal systems or worldview communities among themselves and vis-à-vis secular-liberal legal thinking. Can it be assumed without further ado

that Catholic church law or Muslim religious law are at all interested in an overarching consensus, or that such an overarching consensus is in principle possible at all? Already for the Christian churches, Grotefeld (2000:121) has rightly stated that it is not necessarily self-evident - as many interpreters of the Böckenförde dictum think (cf. ► Unit D 18: "State and Religion Today") - "that the churches affirm the secularized, i.e., no longer determined by the Christian religion, liberal state" (Grotefeld 2000:121). This is even more true for Muslim communities and for other religions, such as the Baha'i.

2.2 John Rawls' Political Ethics

John Rawls (1975:146) formulated two principles (items A1 and A2) on a list of approaches to justice in his theory of justice:

"A.   The two principles (in lexical order).

     1.   The principle of the greatest possible freedom

     2.   (a) The principle of (fair) equality of opportunity

           (b) The principle of difference

B.   Mixed forms with one of the following principles instead of A2

     1.   the principle of average utility

     2.   the principle of average utility, with one of the following qualifications:

           (a) that the distribution does not fall below a certain subsistence level

           (b) that the distribution does not spread too widely

     3.   the principle of average utility, with one of the limitations of B2 and fair equality of opportunity.

C.   Classical teleological views

     1.   the classical principle of utility

     2.   the principle of average utility

     3.   the principle of perfection

D.   Intuitionistic views

     1.   balancing of total utility against the principle of equal distribution

     2.   weighing of the average utility against the principle of compensation

     3.   balancing a list of principles that seem obvious at first sight

           (as appropriate)

E.   Egoistic views ...

1.   one-man dictatorship: everyone has to serve my interests

2.   special status: everyone has to act justly, but I can exclude myself

3.   general: everyone can pursue his interests as he happens" (Rawls
        1975:146/147).

The idea of a - more or less fictitious (cf. Rawls 1975:142) - original state is supposed to lead to "a fair procedure, according to which an agreement on principles can only lead to just principles" (Rawls 1975:159). According to Rawls (1975:201), the two principles of justice (A1 and A2) represent a "useful minimal conception of justice in a situation of great uncertainty" (Rawls 1975:201).

This theoretical approach pursued two goals: A renewal of contract theory and the development of an "alternative to utilitarian normative theories of ethics" (Nida-Rümelin 2005:24). Rawls (1975:214) criticized the classical utilitarian approach primarily for not taking "seriously, in a certain sense, the diversity of human beings." He assumes reasonable decisions for individuals at the same time as a "social decision principle" (Rawls 1975:214). According to Rawls (1975:217), utilitarianism abstracts from the possibly different individual interests of individuals: the problem is that love for several people becomes problematic when their interests are opposed. How should action then be taken? Therefore, Rawls (1975:219) suggests to "distinguish between love of humanity and justice." While both are about striving for justice, love of humanity is broader than the sense of justice. Human love leads to selfless actions - in contrast to the sense of justice, which is focused on individual, personal interests (cf. Rawls 1975:219).

Explicitly against Rawls, Michael Walzer (cf. e.g. 1998) has - cf. Frühbauer (2007:101) - presented his own justice-theoretical draft. His basic idea: "A plural society differentiated into spheres of life cannot be regulated by a singular principle of justice or set of principles. Each sphere generates its own principles of distribution according to the social meaning of the goods to be distributed in it" (Frühbauer 2007:101). In other words, subjects of action with a claim to freedom and justice are communities for Walzer, individuals for Rawls. Thus, for Walzer, the concept of justice becomes group- and context-dependent. As a result,

individuals who find themselves between or within multiple communities - e.g., interethnic, interdenominational, or interreligious marriages and children born of them - fall under no or multiple jurisdictions, thus being, so to speak, homeless. Here, the following dispute is at the center between John Rawls' conception of justice and Michael Walzer's: either the determination of justice is based on the rights of the individual (Rawls) or on group-specific conceptions of justice (Walzer) (cf. Frühbauer 2007:101).

Although Rawls (e.g., 1975:217ff.) criticizes utilitarianism, there are also points of contact between Rawls and utilitarianism (on utilitarianism, see also ► Unit E 3: "Foundations of Ethics"). Ethicist Johannes Frühbauer (2007:38) sees primarily formal similarities between Rawls and utilitarianism in the striving for universality, equality, impartiality, and sovereignty. Frühbauer also sees a thematic similarity in the intergenerational perspective: "While Rawls ... postulates a principle of saving for the socio-economic safeguarding of the possibilities of action of a welfare society - and this with the inclusion of preceding as well as succeeding generations -, utilitarian thinking focuses more strongly on the responsibility for the future in the question of the preservation of the natural foundations of life" (Frühbauer 2007:39).

Important in the thinking of John Rawls is the notion of the "original state" (cf. e.g. Rawls 1975:159). Frühbauer (2007:45) has pointed out that this primordial state, however, does not represent a state of nature. Thus, according to Frühbauer (2007:46), the "classical-contractualist state of nature is essentially" characterized by the following features:

"- its fictional character for the purpose of methodological construction;

- that it precedes a legitimized social order;

- the absence of a moral as well as legal-state order;

- the situation of extreme insecurity and individual danger;

- its overcoming by all-round agreement in the renunciation of freedom" (Frühbauer 2007:46).

John Rawls' **original position** contrasts with this: "Here it is precisely **not** about the **exeundum e statu naturali** motif, i.e. about getting out of a pre-social state of individuals living side by side and against each other in order to arrive at a state-organized constitution.

Rawls shows no interest in a pre-social or pre-state condition. For him, it is simply a matter of rationally justified and intersubjectively communicable decision-making in favor of a particular conception of justice. The justification-theoretical character of decision-making is in the foreground" (Frühbauer 2007:46).

According to Frühbauer (2007:47-49) John Rawls **"original position"** [= original state] is characterized by the following features: Scarcity of goods as a framework condition with simultaneous harmony of interests and conflict of interests in the goal of a better life under competition in the distribution of goods; characteristics, abilities and motivations of the decision actors, which are manifested in a certain equality, the need for basic goods, a certain reasonableness of the contracting parties and disinterest in the interests of others, in a "purely formal sense of justice" (Frühbauer 2007:49), willingness to cooperate and in two moral qualities, namely the development of a reasonable life plan and aminimal sense of justice. Accordingly, John Rawls' "primordial state" - according to Frühbauer 2007:50 - has the character of a representational device or a fictional construct, makes no historical claim, is heuristic in nature, taps into a choice situation, and thus resembles - according to Frühbauer (2007:50) - a "moral point of view." From this, Frühbauer (2007:50) concludes that John Rawls' "primordial state" "explicitly [bears] moral features for Rawls, since this state is to be determined in such a way 'that the principles that would be chosen in it, whatever they might be, are morally right': the agreements are free" (Frühbauer 2007:50). In other words, the actors decide autonomously, self-determined, independent of social power relations, and the decisions have moral binding force for all members of society.

The problem that arises is the following: If the "original state" in Rawls' sense has only a fictitious and heuristic character - i.e. serves, so to speak, as the "negative" for his theory of justice - the problem of arbitrariness arises. Or, in other words, the original state appears to be the projection template for a theory of justice that is projected into the past counterfactually to the theory. If John Rawls had developed a different "theory of justice", the "original state" assumed by him would also have looked different. Thus, the theory of justice becomes circular - and the "original state" that precedes it is nothing more than an illustration of this. This does not necessarily speak against the theory itself, but against its plausibility. That this is apparently the case is also underlined by Frühbauer's (2007:51)

statement according to which the "primal state is Rawls's 'official justificatory apparatus'": "Its fundamental service for the theory of justice consists in the fact that all elements of the conception of justice can ideally always be justified in recourse to it [i.e., the primal state, note CJ]" (Frühbauer 2007:51). If John Rawls (cf. 1975:143) himself speaks of various possible concretizations of the original state - and the original state desgin is supposed to be "a fair procedure" for the "agreement on certain principles of justice" and thus to lead to "de facto just principles" (Frühbauer 2007:51), then the procedure proves to be at least problematic - and at worst arbitrary in the sense mentioned above.

Johannes Frühbauer (2007:107-109) points out that John Rawls expanded his (earlier) theory of justice (Rawls 1975) in his work Political Liberalism (Rawls 1998), modified it in part, and responded to arguments of his critics. However, despite later modifications, Rawls has held to his theory of justice "unchanged in its basic features, however" (Huber 2006:223). Among other things, Frühbauer (2007:109) lists the following main differences between the "theory of justice" and later "political liberalism": stronger distinction between political philosophy and moral philosophy, emphasis on historical contextuality, stronger interpretative recourse to the tradition of a democratic society, stronger reference to legislation and jurisprudence, stronger independence from philosophical assumptions, revision of the position that in a stable society all members would have to hold the same comprehensive doctrine" (cf. Frühbauer 2007:109).

In addition to the idea of justice, the principle of tolerance is also crucial for Rawls. According to Frühbauer (2007:107), Rawls (1975) did not yet have "the plurality of political, moral, and religious worldviews" "in view" in his theory of justice (Frühbauer 2007:107). But at the latest with the second Rawlsian principle, the "difference principle," also the question of tolerance comes up. However, in my eyes the concept of tolerance is extremely problematic, because on the one hand it is too weak - tolerare means "to endure", "to bear", "to endure" - and perhaps precisely because of this it has been instrumentalized politically again and again. For "tolerance" can encompass a whole spectrum, namely everything between "not forbidden" and "encouraged". For this reason, the concept of tolerance is extremely blurred, especially in connection with religious communities that have a polarizing effect - e.g. Islamists or evangelical Christians - and state recognition of religious communities, and

should not be used in this context. At the same time, it should be borne in mind - with a view to Rawls - that the "right to inequality" is always in tension with equality of opportunity, quite simply because difference always manifests itself as inequality and because equality of opportunity tends to negate difference. Accordingly, Rawls, too, is ultimately concerned with a balancing process between the right to difference and the right to equal opportunity.

At the heart of Rawls's later reflections is, among other things, the question of "how ... a just and stable society of free and equal citizens [can] endure permanently when they are incisively divorced from one another by their reasonable religious, philosophical, and moral doctrines?" (Rawls 1998:67, see also Frühbauer 2007:110). In Rawls's eyes, the task of political liberalism "is to devise a political conception of justice for a constitutional democracy that can be voluntarily affirmed by a variety of reasonable religious and non-religious, liberal and non-liberal doctrines; a conception with which these doctrines can live unimpaired and whose virtues they can understand. It explicitly does not seek to replace comprehensive religious or non-religious doctrines, but aims to maintain an equal distance from both, and thus hopes to be equally acceptable to them" (Rawls 1998:36, see also Frühbauer 2007:111).

This development of Rawlsian thinking is significant because it has important consequences - both in theory and in practice. In theory, this raises the question of the extent to which political liberalism does not ultimately lead to a totalitarian understanding of the state, because vis-à-vis all those religious communities and religious-ideological claims that represent the unbroken unity of state and religion, which are inevitably also directed against liberal and secular understandings of the state. Thus, such ideas ultimately appear subversive because they do not accept the general premises of the liberal state and secular society.

In practice, the liberal conception of the state was and is often instrumentalized, for instance to enforce hegemonic interests, as can be seen, for example, in U.S. policy toward other countries, especially in the area of Muslim-majority states.

2.3   Some Critical Reflections on John Rawls

John Rawls (1998:47) thinks that the reciprocity criterion must necessarily lead to the principle of freedom of conscience and thought, and thus also to religious freedom for all - while at the same time recognizing "that there are various contrary liberal political conceptions" (Rawls 1998:47) as well as a general, public reason. Rawls (1998:52), however, understands public reason not statically but dynamically: "The content of public reason is no more fixed than it is defined by a single reasonable political conception" (Rawls 1998:52). This is because "social changes [give rise to] new groups with different political problems across generations. Obvious examples are views that raise new questions about ethnicity, gender, and race, and the political conceptions resulting from these views will confront existing conceptions" (Rawls 1998:52).

As we have seen, Rawls (1998:69/70) formulated two principles of justice: First, every person is entitled to equal basic rights and freedoms, and second, social and economic inequalities must meet two conditions: "First, they must be associated with offices and positions open to all under conditions of fair equality of opportunity, and second, they must work to the greatest possible advantage of the least advantaged members of society" (Rawls 1998:69/70). Depending on how one interprets these two conditions, a more or less far-reaching policy of social and economic redistribution can be read into it, or - since for consistent liberalism equality of opportunity can only exist in a very restrictive sense - the rejection of any social equalization. Rawls (1998:70) originally seemed to lean more toward the first position: In addition to "guaranteeing the fair value of political liberties" (Rawls 1998:70), which should not be merely formal, "egalitarian liberalism" demanded "fair (and again not merely formal) equality of opportunity" (Rawls 1998:70). Accordingly, Johannes Frühbauer (2007:81) sees three principles in Rawls's principles of justice: "First, the principle of equal fundamental rights and freedoms; second, the principle to justify inequalities (difference principle); and third, the principle of fair equality of opportunity."

But how did Rawls define equal opportunity? "Equality of opportunity means equal opportunity to leave the less fortunate behind in the personal contest for influence and social position" (Rawls 1975:128). So Rawls was not concerned with substantive equality - for

example, in the form of equal access to educational opportunities - but with purely formal "equality of opportunity" with equal competitive chances for all. Rawls saw it as a task of society to ensure that positive natural qualities and aptitudes "at least do not deteriorate and serious defects do not spread" (Rawls 1975:129).

This position is not unproblematic. Did Rawls (1975:129) represent a socio-biological "elite concept"? Therefore, I reproduce here the whole - as it seems to me quite problematic - paragraph: "In the primordial state, then, people want to give their descendants the best inherited characteristics (their own they regard as fixed). A reasonable policy in this field is owed by the earlier generations to the later ones, for it is, after all, an intergenerational question. Thus, society must take care over time that the natural characteristics at least do not deteriorate and that serious defects do not spread. These measures have to be guided by principles that those involved would agree to for the sake of their descendants. I mention this speculative and difficult matter to show once again how the difference principle can change problems of social justice. If there is an upper bound on endowment, one might suppose that we would eventually arrive at a society whose members enjoy the greatest possible equal freedom and the highest equal endowment. But I do not wish to pursue this idea here" (Rawls 1975:129). It seems that Rawls is subject to a twofold error of thought here: On the one hand, maximum transmission of "positive" hereditary endowments does not automatically guarantee greater social justice. This is because institutional and structural specifications may just as often allow less positive traits to prevail as the standard. However, defined, "good hereditary traits" need not be the most assertive hereditary traits at all. Furthermore, it would have to be clarified what can be considered "good dispositions" and what cannot. On the other hand, Rawls falls for the old, naive formal-liberal fallacy that individual self-determination and freedom automatically lead to a society that is "good" in an ethical-moral sense, such as interpersonal solidarity. After almost 40 years of market liberalism, we unfortunately know better. By the way, Rawls (1975:129) seemed to be well aware of the problematic nature of this position when he referred to the problem of eugenics at this point, - and when the refrained from dealing with it (Rawls 1975:129).

But back to Rawls' view of equality of opportunity, Rawls (1998:70/71) further qualified his very minimal form of equality by the "difference principle," according to which social and

economic inequalities are acceptable if they are associated with offices and positions that give the maximum advantage to the least advantaged members of society (Rawls 1998:70/71). Rawls believed that this is the case when two conditions are met: First, if the institution is "just (fair), i.e., conforms to the two principles of justice; second, that one voluntarily accepts its benefits or takes advantage of the opportunities it offers for advancing one's interests" (Rawls 1975:133). For the two principles of justice, according to Rawls, are, first, equal fundamental rights and freedoms for all people and, second, social inequality only insofar as it is (a) "to everyone's advantage and (b) ... associated with positions and offices open to everyone" (Rawls 1975:81).

3.   Control Questions

1.   According to Herdegen, by what criterion is rationalism to be measured? 2.
2.   How did Rawls formulate the central concern of the liberal state to create a lasting rational consensus?
3.   Which main question does Rawls want to answer with his theory of justice?
4.   What does Rawls mean by reciprocity and why is it not identical with the advantage of the individual?
5.   What are the three main types of conflicts in the public sphere that Rawls sees and which of them can liberalism solve?
6.   What does Rawls mean by "public reason"?
7.   What does Rawls mean by "overlapping consensus"?
8.   What is the problem with making human rights or other content the basis of such "overlapping consensus"?
9.   Explain Rawls' theory of justice and name his principles of justice (points A - E).
10.   How do you judge Rawls' view of equality of opportunity?
11.   Why is Rawls' statement that characteristics and dispositions "should not deteriorate" problematic?

4.   Links

Ideen und Leben von John Rawls
http://plato.stanford.edu/entries/rawls/

John Rawls: Eine Theorie der Gerechtigkeit
http://www.zeit.de/1983/10/eine-theorie-der-gerechtigkeit

Zu John Rawls Theorie der Gerechtigkeit
http://www.ethikseite.de/rawls.html

Rawls „overlapping consensus": inkohärent und überflüssig
http://www.academia.edu/181155/Overlapping_Consensus_Incoherent_or_Superfluous

5.   Cited literature and further readings

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