

Public Association as a Domain of Public Reason

1. *Introduction*

In laying out his theory of public reason, John Rawls is adamant that there be a clear distinction between private and public reason. Rawls says that political society under the theory of political liberalism is *not* an association. Associations, he says, are private communities, and the domain of private reason. Private reason, furthermore, occurs in the domain of private associations. Public reason, however, occurs beyond the scope of private associations, in an overlapping domain of shared reasons. In fact, Rawls says that public reasons are not bound by association at all. But I think this conceptual move is not necessary. I will argue that public reason, as Rawls describes it, does occur in the context of a public association, which is an association of individual citizens who share certain – specific ends – as shown by the concept of the overlapping consensus, amongst other components of the theory. There are ends of which the public agree, and those are the ends laid out by the principles of the political conception, which are expressed with the association of an overlapping consensus, realm of public reason, and in a minimum of requisite shared values, history, education, and other forms of ideas that are meant to bond citizens by public association, which makes public reason possible under the theory of public reason.

In the following I will argue that what I call the conception of *public association* is a necessary constituent to Rawls' theory of justice, especially in its most mature formulation.

Contra to Rawls, who claims that there is no such thing as a public association under the ideal theory of public reason liberalism and political liberalism in general, I believe that not only is there room for such a conception, but that it is a necessary conclusion that follows from the unified organization of liberal society that has an end in itself, which is a general public good, and which exists to secure the means by which myriad individuals, associations, institutions, and other groups may achieve ends all their own.

In §2, I will briefly discuss Rawls' position on the distinction between political society and (private) associations. Then, in §3, I will cover several key concepts as well as the main introduction of the conception of the public association along with several arguments for its application to Rawls theory of justice. Finally, I will conclude in §4.

2. Rawls' position on political society versus private association

Rawls wishes to make it clear that political society does not form an association. What I take to be a key motivating factor in this position is the distinction between public and private (or non-public) forms of reason. Another important factor that drives Rawls' insistence on this distinction is that associations, which are non-public or private entities or institutions, have shared and distinct individualized ends. What I mean by this is that the ends of say, one church, may be quite different than the ends of a non-religious club or other private institution. In this way, then, one association of citizens may have its own ends that are quite distinct from another association or private institution. Rawls puts it this way. The:

Contrasts between public and nonpublic reason (the reason of associations) are significant. They show that political liberalism does not view political society as

an association. Quite the contrary, it insists on the distinction between a political society and an association. Associations within society can be communities united on shared final ends; indeed, this is essential; were it not the case social life would lose its point.¹

I am suggesting, however, that the distinction is not significant, and that social life would still not lose its point if political society – or an element thereof – were to be considered as an association that is distinct – a *public association*. With this conception, I hope to show that the distinction between public and non-public reason may not only remain separate and vividly marked out, but they will remain more so. The very fact of the delineation between public and non-public suggests a form of association. In fact, it is an important form of association because the public association has explanatory power in terms of understanding not only the importance of the role of the public institutions and domain of authority of the liberal regime, but also how the ends of private associations are possible under the public association of the liberal regime. I am arguing that political liberalism, under Rawls' theory, suggests a basic public association that is fundamental to achieving the aims of the theory and the ends of the liberal regime, which are at a minimum, those ends that secure the public good and the principles that underlie the political conception, those of justice and fairness. This I hope to lay out in the sections that follow.

3.1 Key concepts and the conception of Public Association

¹ John Rawls, *Justice as Fairness: A Restatement*, (Belknap Press: An Imprint of Harvard University Press; 2nd edition. May 16, 2001. p. 94.)

Rawls, although he does not use the term, clearly indicates the requisite association of citizens who are united by a minimum set of shared history, value system, and system of governance, which is to be centralized in the form of judges and legislatures with a supreme court having the greatest degree of authority and power over the discourse of public reason. All of this together, along with the citizenry, of which the administrators of public law and policy speak for, constitute a political regime, that of a property-owning regime or some other possible liberal regime. The fact that it is a regime, which bonds a diversity of individuals and interests, implies that they are in an association, which I am calling a public association, which, I am arguing, is a concept that does not preclude the concept of public reason as being distinct from that of private reason.

In opposition to the theory of a public association that is characterized as a liberal regime or State may be a sort of loose association of unfederated private associations that might be captured under an anarchist or non-state socialist theory or some approximation thereof. But this is clearly not what Rawls has in mind in his ideal theory of political liberalism. Although Rawls does leave the question open as to the potential in a form of liberal socialism (note: *Restatement*, p. 178), it is not one that would lack the associative element of a government, state, or regime. Furthermore, Rawls is discussing public reason in the context of regimes of governance, which are supposed to have a shared history of liberalism. The idea of an unassociated, unfederated and loosely connected private and self-determining associations is nowhere in his ideal theory. The conceptual public association that I am arguing for is conceptually missing, yet nevertheless, it is vaguely implicit in his theory and is precisely that glue which bonds the private associations together, uniting them under one government. Moreover, the public association as characterized as a property-owning regime is connected by levels of degree in terms of liberalism and moral

theory, to other state associations, which are said to range from most liberal to least or only tolerable. This leads to associations of larger scale, but elaboration is beyond the interest of this essay.

3.2 Diversity in association

The diversity of association within an association does not preclude the fact of association. Just as there are many diverging interests and opinions, sometimes in opposition, within private associations, so too are there diverging interests and opinions within public associations. Members of a church or workers union may find themselves in a debate over specific issues concerning the association, and this does not, under the theory, preclude it from maintaining its status as a private association. Likewise, citizens may and certainly will find themselves debating opposing opinions in reasonable, public discourse, while nevertheless maintaining the structure of the public association. Acknowledging the fact of public association does not harm the distinction between private and public reason. The concept of public reason does not require the prohibition of public association but necessitates it under the theory of political liberalism.

3.3 Public Reason

What is the ground for public reason? While government holds the monopoly on coercive force, citizens nevertheless form a “corporate body,” which I claim is a form of public association. It is the fact of the public association that it allows (or enables) the citizenry to “present to one another publicly acceptable reasons for their political views.”² Public reason falls within the

² John Rawls, *Justice as Fairness: A Restatement*, (Belknap Press: An Imprint of Harvard University Press; 2nd edition. May 16, 2001. p. 91.

domain of “fundamental issues” and not those of legislation, which concern such things as “tax legislation and laws regulating property,” etc., according to Rawls’ theory of justice.

Among the values or what may be referred to as ends of public reason are virtues of “reasonableness and fairmindedness’ along with a “duty of public civility.”³ Public reason is a necessary component to the theory of a fair and just liberal regime because it provides a framework within which citizens may “act reasonably and responsibly as “citizens as a corporate body” along with “associations such as firms and labor unions, universities and churches.”⁴ It is strange that “corporate body” is used to describe the union of a disparate collection of citizens who are public actors, yet is nevertheless contrasted with private associations and claimed not to be an association. I will go into further detail in the following sections why I think this distinction is problematic and why the concept of a public association is fitting and preferable to that of “corporate body” or that which forms an overlapping consensus.

This distinction that I am drawing is not minor, but significant, in that it provides a clearer picture of what sort of association constitutes the sphere of public reason, and that is the public association or “corporate body” of citizens constituting the element of the citizenry of a liberal regime. Remember, this is to be distinguished from private associations, which are also largely made up of the citizenry, but within the private sphere. I find it unnecessary to prohibit the concept of association as applicable to the public sphere since that is what happens in the context of an overlapping consensus between free and equal citizens: they are bound by their public association, of which they agree to, but nevertheless, by which they are each bound.

³ Ibid., p. 92.

⁴ Ibid.

3.4 Overlapping Consensus

The overlapping consensus forms one part of the characterization of what I am conceptualizing as the public association, which forms the central space that makes public reason possible under the theory of justice that Rawls outlines. Remember, the private association is distinct from that of the public. Rawls denies that there is such a public association, but only a “corporate body” of public citizens. Under Rawls’ theory of justice as fairness, but perhaps any legitimate conception of political liberalism, there must emerge an “allegiance to institutions and to the conception that regulates them.”⁵ Rawls says further that “as citizens come to appreciate what a liberal conception achieves, they acquire allegiance to it, an allegiance that becomes stronger over time.” I am arguing that this characterizes a necessary form of association – a public association, which Rawls draws our attention to in his theory of “an overlapping consensus.”⁶ This consensus would not be possible without such an association of free and equal citizens under Rawls’ theory of justice. Moreover, this is distinct from a *modus vivendi*, which is a literal association between individuals or groups, but not a public association, which may nevertheless emerge from a *modus vivendi*; indeed, which must develop if the theory itself is to be well-formed and follow its own logical assumptions of liberal progressive development over generations.

3.5 Associations

A reason Rawls is adamant that political society is not an association is because “we do not enter it voluntarily.”⁷ This is certainly true in one sense, but neither do citizens enter into some private

⁵ Ibid., p. 194.

⁶ Ibid.

⁷ Ibid. p. 4.

associations voluntarily. To use only one example, some infants who are born into Catholic families are baptized long before they have a say in the matter. Furthermore, they are essentially born into the private institution. While families are not considered private associations, they are considered private domain, which include the citizenry. That individuals do not enter into society freely should not preclude the conception of a public association since it does not preclude individuals from forming private associations, which they also, at times, do not enter freely. One objection may be that citizens are free to leave private associations but not public society. This, however, is not a worry, since I am not claiming that citizens should be free to leave the public association, nor is there a concern why this should preclude the concept from being adapted to the theory. The public and private associations are distinct, after all. There are certainly other private associations or institutions that have family memberships. When a new member of the family is born, they are automatically a part of the organization – like society – they are born into them. Being born into a society, therefore, does not preclude one from being a part of a public association of citizens, under the distinction I am drawing out, and according to Rawls' theory. The public association demarcates the “outer limit” of freedom that leads to the concept of public reason.⁸

What Rawls refers to as “the background system of fair social cooperation” is one constituency of the public association, which is also based on “public rules and on what individuals and associations do in light of those rules.”⁹ The latter associations mentioned are private. Furthermore, the public association makes the private association between people in a diverse society with competing and contrasting interests possible. It is that association between

⁸ Ibid.

⁹ Ibid., p. 72.

citizens where the “main political and social institutions of society fit together into one system of cooperation.”¹⁰ In this way, the public association is where the interests of the private associations intersect, or where the political regime finds its limits marked out by the threshold of public reason; it is where the domain of private reason turns into the domain of the public. The fact that reason overlaps into a consensus is made possible by such an association.

To illustrate further how the concept of public association is necessary and useful according to the theory, consider that not every regime allows for the public association. Illiberal or non-democratic regimes, for example, might be arranged in such a way as to make public association impossible or undesirable, or perhaps impose such a restriction as to make all associations necessarily those within private institutions or contained by the private or authoritarian regimes that is in itself the final arbiter concerning social and political matters. This would also apply to those regimes that profess a public association but in name only, while in practice the public association becomes null since the regime fails to act according to the association of the public. In this way, then, what is referred to as the “public association” would ultimately be in practice, a private association of individuals or citizens acting in coordination that may be opposed to the authority of the overarching regime, rather than unified with it. An unstable regime may be characterized as one that fails to adhere to its professed principles. The authoritarian regime, as final arbiter of all political matters, is by definition private since the public’s authority, in the political context, is virtually non-existent or wholly subverted. Thus, the public association where public reason has its seat and sets its limits, not only by word but also deed, is a distinct and applicable concept to ideal liberal theory.

¹⁰ Ibid., p. 10.

The concept of public association is further characterized by its relation and application to the private associations as is expressed in the idea of the overlapping consensus, as mentioned in the previous section. The sphere of public association, distinct from that of private, prohibits churches from burning heretics, although it has nothing to do with their being banned from churches. The public association intervenes when universities “discriminate in certain ways” by constraining “fair equality of opportunity.”¹¹ Furthermore, it ensures equal rights of property in the family, especially between women and men and protects the welfare of children.¹² In this sense – and only in this sense – then, the public association is where the principles of political conception are imposed on all citizens in equal measure to ensure the principles of fairness and equality. This is how “public justice” is possible and takes form.

Moreover, the public association has a certain jurisdiction over private associations that the latter do not have over the former. The private association, therefore, concerns the public. It is in its capacity to provide reasons that may be reflected by the political principles laid out in agreement, and which citizens find to be reasonable. The domain of the public association, however, extends or has the authority to extend into the domain of private associations to protect fundamental rights of citizens. The “principles of justice” apply only insofar as they are needed to “protect the rights and liberties of” private associations, such as churches, but not limited to them.¹³ The public association ends at the limits of the interests of the political conception of justice according to a particular liberal regime. This is distinct from the conception of justice or system of rules that may exist independently from the public association within private

¹¹ Ibid., p. 11.

¹² Ibid.

¹³ Ibid., p. 164.

associations, which may have, and certainly will have, opposing values and rules and their own models and theories of justice.

Not only does the public association encompass or overlap within private institutions and associations such as churches, unions, or (private) corporations of individuals, but also into the institutions or associations of family units. It, therefore, imposes “essential constraints on the family as an institution” and guarantees “the basic rights and liberties and fair opportunities of all its members,” especially those who have not reached legal adulthood, those who are to some degree dependent or disabled, and those who are deemed elderly, amongst others affected.¹⁴

I am referring to a “public association” which is to be distinguished from what Rawls refers to merely as “associations” in his theory of justice which are private. In contrast to what I am calling “public associations,” Rawls’ “associations” are also “private associations,” which Rawls makes clear. Although these concepts are distinct, they do share conceptual space that in a sense have some overlap. This demands further explanation. The sole public association, as I have alluded to in previous sections, has a certain priority over the numerous private associations. But no private association has priority over the public association. The authority of the public association, therefore, overlaps that of the private, but the private has no authority over the public. Moreover, not only does the public association have authority that overrides that of the private associations (to include family units), it also has a duty to impose certain limits on private associations. Recall that an integral element of the public association is to chalk out those limits within which every citizen can ensure fairness and justice according to the principles of the liberal political conception. Thus, the theory of political liberalism “does not regard the

¹⁴ Ibid., p. 164.

political and non-political domains as two separate, disconnected spaces.”¹⁵ For “a domain is not a kind of space, or place, but rather is simply the result or upshot, of how the principles of political justice are applied, directly to the basic structure and indirectly to the associations within it.”¹⁶ And this is what I refer to as the domain of the public association.

Rawls also describes the sphere of public reason and deliberation as a “corporation” of citizens. He says that “public reason is the form of reasoning appropriate to equal citizens who as a corporate body impose rules on one another backed by sanctions of state power.”¹⁷ This further shows that the public association, which I am framing as the domain of public reason, is not reducible to the realm of liberal government, the latter being only one aspect of a public association, that which is the final arbiter in cases of legislation, judicial affairs, and enforcement of law and regulation of public reason. This contrasts with non-public reason, which is restricted to the domain of private association where non-public reasons may be given in the context of (private) associations, churches and universities or “scientific associations and private clubs,” etc.¹⁸

It is important to further distinguish the public association from that of a community, which it is not. As for community, Rawls has in mind “a body of persons united in affirming the same comprehensive, or partially comprehensive doctrine.”¹⁹ To better understand this distinction, consider the relationship between, say, rival groups of individuals who live far apart from each other, perhaps in different nations, but which come together to trade or make certain pacts. These rival groups do not form a community, but they do associate with one another.

¹⁵ Ibid., p. 166.

¹⁶ Ibid.

¹⁷ Ibid., p. 92.

¹⁸ Ibid.

¹⁹ Ibid., p. 3.

Thus, an association can be formed without it necessarily being a community. The further question of a public community united by the values and ideals of the nation state along with an overlapping system of indoctrination or education and historical narrative will be tabled as it is beyond the scope of this discussion.²⁰

In its perhaps most abstract conception, the liberal society's "good" is that binding glue that makes the whole of the public association possible – and not only possible, but stable. Furthermore, "this good is realized by citizens, both as persons and as a "corporate body."²¹ Moreover, it is the fact of the public association that makes the private associations possible in a liberal society. The public association is that association which both allows for the freedoms of private association while concomitantly protecting the freedoms of citizens via liberal institutions that make the relationship between public and private association possible.

While the public association is not necessarily an end, for that may be any comprehensive doctrine or otherwise, it is a good in itself; it is a public good. This meets the same objections that Rawls' theory met, but without the concept of the public association, namely, that it is an "individualistic view and sees political institutions as purely instrumental to individual or associational ends."²² But as Rawls makes clear, the political conception is not a comprehensive doctrine meant to be an end in itself, but I argue that the association between individual members

²⁰ Note: Rawls says that a democratic society "is not itself a community, nor can it be in view of the fact of reasonable pluralism. For that would require the oppressive use of government power..." (Rawls, Restatement). Here I am not arguing that a democratic society is a community or a public association, but that the latter forms only one necessary element of a democratic society. Whether such a public association requires the use of oppressive government power is beyond the scope of this discussion.

²¹ Ibid., p. 198.

²² Ibid.

of the public is a good in itself, even if not a final good. If it were the final good, it is not clear how it could be said to be an end for a liberal society.

The public association is rooted in the public good. According to Rawls, “social unity so understood” by the conception of a well-ordered society “is the most desirable conception of unity available to us.”²³ The conception of the public association is in part determined by the bounds of social unity that take place at the interstices of the overlapping consensus. “Citizens,” therefore, “do have final ends in common.”²⁴ Furthermore, “the same political conception” shared by citizens who take part in the public association also “share one basic political end,” which is an end “of high priority,” namely, that end which reflects their shared principles under the liberal regime, which are realized “through their political cooperation.”²⁵ All citizens, moreover, share the public end of wishing to grant each other justice. This means that the citizens form a political society that is a community which shares “certain final ends.”²⁶ This community, which is a political community, forms an association that is public, a public association.

The good that is the end of the public association “is a shared final end” and “the good realized is social: it is realized through citizens’ joint activity in mutual dependence on the appropriate actions being taken by others.”²⁷ Rawls likens it to an orchestra or members of a sports team coming together to take joy in a success that is the end of their joint and creative effort. When what I am calling the public association succeeds, it does so by achieving its end of justice, which is to secure the free and equal pursuit of every individual good within the limits of

²³ Ibid., p. 199.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid., p. 200.

²⁷ Ibid., p. 201.

the political conception. Rawls is hinting at “the idea of the good of political society as a social union of social unions.”²⁸ This I am calling the public association.

3.6 *Shared Ideas*

How do citizens come to agree on shared ends and principles that make up what I am conceiving as a public association, which forms the central association between citizens in a liberal political society? The citizens, according to Rawls’ theory of justice, are subject to a basic but uniform minimum education, which, presumably, must be taught at all institutions of education, whether private or public, to include home-schooling. Children must, therefore, be taught from a young age a basic and shared history of liberal society and certain values that are in no small part the early seeds that grow into ideas and beliefs that are to be shared and held in common and which form the principles of the public association. Those values and beliefs not held in common constitute individual comprehensive doctrines and other privately held and taught (or received) systems of belief, which may be myriad. Insofar as the latter do not interfere with the principles and ends of the public association, then they are beyond its scope of interest and authority.

The public is further associated by certain ideas concerning history, basic educational needs, and the principles and values that undergird the whole public sphere. Thus, there are “historic texts and documents that are common knowledge.”²⁹ What constitutes an historical text and common knowledge, however, must be selected. (It is presumably government officials who will have the *final say*, although it is plausible that the public might have some input concerning some, if even *minor* way.) Nevertheless, “the fund of implicitly shared ideas and principles”

²⁸ Ibid.

²⁹ John Rawls, *Political Liberalism*, (Columbia University Press. 1993.) p. 14.

must be derived and inculcated in some way so as to pass on certain fundamental and shared ideas “from one generation to the next.”³⁰ Public norms are manufactured and developed in the public space, within the domains of public institutions, which are supposed to reflect principles of freedom and equality. Citizens come to understand and accept this because “citizens are made aware of and educated to this conception.”³¹ Thus, “to realize the full publicity condition is to realize a social world within which the ideal of citizenship can be learned and may elicit an effective desire to be that kind of person.” In this way, “the political conception as educator characterizes the wide role” by instilling the values and principles of the political conception in every citizen.³² In short, the political regime is united by a “political ideal of citizenship,” and citizens “are educated to that ideal by the public culture and its historical traditions of interpretation.”³³ It is in this space of public association where such ideas must be formed, where the private ends and the public association begin. While there may be myriad reasons individuals wish to be citizens and take part in the democratic project, those that form the public association are necessarily shared and uniform. “For unless a democratic people are sufficiently unified and cohesive,” it will scarcely be equipped to form a constitutional consensus.³⁴

As I’ve hinted, the public educational demands are minimized to the extent that they inform all citizens as to their basic rights. Education under the theory of political liberalism requires that “children’s’ education include such things as knowledge of their constitutional and civic rights.”³⁵ Examples that Rawls provides include that children should know that apostasy is

³⁰ Ibid.

³¹ Ibid., p. 71.

³² Ibid.

³³ Ibid., p. 85-86.

³⁴ Ibid., p. 166.

³⁵ Ibid., p. 199.

not a crime under a liberal regime and that their freedom of conscience is protected. These are presumably the sort of things they will be taught even in private educational systems so as to ensure that they will be well-suited “to be fully cooperating members of society” and honor the basic political values, which constitute the substrate of what I am conceiving as the public association.³⁶ Furthermore, under Rawls’ theory, the formal education systems, whether private or public, have a relatively minor role in educating the young to be well-equipped and informed citizens. “Citizens must have a sense of justice and of the political virtues that support political and social institutions. The family must endure the nurturing and development of such citizens in appropriate numbers to maintain an enduring society.”³⁷ In this respect, then, the burdens of educating the young to the shared values of public association are largely placed onto the private sphere of family. Like private associations, therefore, the realm of the public association has the authority to intervene in the affairs of the family if it should fail to properly educate their young and the future citizenry of the liberal society. If this were not the case, it seems implausible that enough well-equipped citizens could be ensured and maintained to sustain the liberal regime generation upon generation. Although Rawls does not go into detail, it seems that such potential interventions are requisite to securing the possibility of a shared liberal public association.

4. *Concluding Remarks*

I have been arguing that Rawls’ theory of public reason occurs in the context of what I conceive as a public association, which forms the central space within which citizens share specific ends. These ends are framed within a domain of an overlapping consensus, which forms one

³⁶ Ibid.

³⁷ Ibid., p. 467.

theoretical component of the public association. The public association, furthermore, is a natural constituent to the theory of justice, which applies to liberal society in general, and which makes freedom and equality between citizens who consider each as such a possibility.

The public association follows from the unified organization of liberal society. It forms the theoretical space by which justice exists to maintain freedom and equality for every citizen as well as freedom and equality for every private association, institution, and family as each relates to the other. Thus, the diversity of private association is possible through the unification of a just system of a just liberal regime as reflected by the public association of every citizen and in the basic principles upon which they agree. If there is a public end, it is that of justice, which is a public good and the essential and fundamental good of the public association.

There is much more that can be said of the public association and there is sure to be further considerations of potential problems with its theoretical and possible practical application. How the fundamental ideas and shared values are formed and *inculcated* to make the public association possible, for instance, is only one of several concerns. How precisely it relates to the liberal regime in terms of national boundaries and its relation to governmental institutions is another important matter. Furthermore, I think that other political theories in the history of political liberalism to include its antecedents will need to be analyzed with the aim of finding similarities and other issues that may show the public association to be flawed, further applicable, or in need of alteration and elaboration. The political philosophies of Aristotle, Plato, Hobbes, Kant, Hegel, and Mill will need to be considered, along with others who have had an influence on the development of political liberalism in general, but on Rawls in particular. I've found strong echoes of Rawls' mature theory in both Kant and Hegel, for instance. But this will

be worked out in subsequent work. For now, I can only say that the public association is an applicable conception to the theory of public reason liberalism.

Russell Webster, Bowling Green, OH, May 2021

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