

# Dinâmicas da Justiça e da Ética Pública em John Rawls

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## Tópicos

- A reinvenção do contratualismo em John Rawls.
- A razão pública como processo histórico de construção de consensos operativos.
- A premissa de uma sociedade plural, percorrida por diferentes concepções do mundo.
- A marca da experiência do federalismo judicial dos EUA.

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## A renovação do contratualismo

Alguns conceitos de 1971:

- “Véu de ignorância”.
- Justiça como equidade.
- Simulação de uma sociedade de adesão voluntária a partir da escolha de 2 princípios fundamentais.

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## Os dois princípios

- 1.º Princípio: Igualdade dos direitos e liberdades fundamentais (TJ, § 11, § 39 e § 46).
- 2.º Princípio: Da diferença económico-social e da igualdade de oportunidades (TJ, § 11).

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## O que é «public reason»?

“(...) in a democratic society public reason is the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.”

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## Diferença na concepção de razão pública

“The two books are asymmetrical, though both have an idea of public reason. In the first [TJ], public reason is given by a comprehensive liberal doctrine, while in the second [PL], public reason is a way of reasoning about political values shared by free and equal citizens that does not trespass on citizens’ comprehensive doctrines so long as those doctrines are consistent with a democratic polity (...) these doctrines in turn support reasonable political conceptions – although not necessarily the most reasonable – which specify the basic rights, liberties, and opportunities of citizens in society’s basic structure.” (IPR, §7, 179-180).

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## O que é “uma concepção política de justiça”

：“(...) [in TJ] the reader can reasonably conclude that justice as fairness was set as part of a comprehensive moral doctrine that might be developed (...) **justice as fairness is now presented as a political conception of justice** (...) we need the idea of an **overlapping consensus** of comprehensive, or partially comprehensive, religious, philosophical, and moral doctrines in order to formulate a more realistic conception of a well-ordered society, given the **fact of pluralism** of such doctrines in a liberal democracy. We also need the ideas of **a public basis of justification** and a **public reason** (...)” (JF, xvii)

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## Sociedade versus Comunidade

“Thus I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive doctrine. The fact of REASONABLE PLURALISM which characterizes a society with free institutions makes this impossible” (JF, §1: 3).

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## J. Madison: justiça e pluralismo

*“Justice is the end of government. It is the end of civil society [...] In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature (...) Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects.” (Madison, FP 51).*

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## Da desobediência civil...

“By resisting injustice within the limits of fidelity to law, it serves to inhibit departures from justice and to correct them when they occur. A general disposition to engage in justified civil disobedience introduces stability into a well-ordered society, or one that is nearly just (...) the theory of civil disobedience supplements the purely legal conception of constitutional democracy (...)

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## ...À ideia de “consenso por sobreposição”

“(...) I have assumed that in a nearly just society there is public acceptance of the same principles of justice (...) There can, in fact, be considerable differences in citizen’s conceptions of justice provided that these conceptions lead to similar political judgments. And this is possible, since different premises can yield the same conclusion. In this case there exists what we may refer to as OVERLAPPING rather than STRICT CONSENSUS. In general, the overlapping of professed conceptions of justice suffices for civil disobedience to be a reasonable and prudent form of political dissent.” (TJ, §59: 383-388).

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## “Pluralismo razoável” e “consenso constitucional”

“(...) at the first stage of constitutional consensus the liberal principles of justice, initially accepted reluctantly as a *modus vivendi* and adopted into a constitution, tend to shift citizens’ comprehensive doctrines so that they at least accept the principles of a liberal constitution (...) To this extent citizens’ comprehensive views are reasonable if they were not so before: **simple pluralism moves toward reasonable pluralism** and constitutional consensus is achieved. “ (PL, IV, §6. pp. 163-4).

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## A razão pública e o Supremo Tribunal

“It applies also in a special way to the judiciary and above all to a supreme court in a constitutional democracy with judicial review. This is because the justices have to explain and justify their decisions as based on their understanding of the constitution and relevant statutes and precedents.” (...)” (PL, VI, §1:214-216).

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## Limites do Supremo Tribunal

“It [the SC] upheld the Alien and Sedition Acts of 1798 and one need only mention Dred Scott (1857). It emasculated the Reconstruction amendments by interpreting them as a charter of capitalist liberty rather than the liberty of the freed slaves (...)” (PL,VI, §6: 233).

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## É necessária uma concepção política de justiça...

“We do not look to the comprehensive doctrines that in fact exist and then frame a political conception that strikes a balance between them expressly designed to gain their allegiance (...) Instead, we ask how to frame a conception of justice for a constitutional regime that both seems defensible in its own right and is such that those who support, or who might be brought to support, that kind of regime can also endorse that conception (...)

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## ...Tendo em vista obter o consenso por sobreposição

This leads to the idea of a political conception of justice that presupposes no particular comprehensive view, and hence may be supported by an enduring overlapping consensus of reasonable doctrines, given good fortune and enough time to gain allegiance to itself.” (JF, §11.5/6: 37-38).

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## Limites da razão pública...

“(...) its limits do not apply to our personal deliberations and reflections about political questions, or to the reasoning about them by members of associations such as churches and universities (...)” (PL, VI, §1:215).

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## ...abertos e flexíveis: o caso da família.

“(...) political principles do not apply directly to its [family] internal life, but they do impose essential constraints on the family as an institution and so guarantee the basic rights and liberties, and the freedom of opportunities of all its members (...) The family as a part of the basic structure cannot violate these freedoms. Since wives are equally citizens with their husbands, they have all the same basic rights, liberties, and opportunities as their husbands.” (Idea of Public Reason Revisited, §5: 161).

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