RAWLS' CONCEPTIONS OF CONSTITUTIONAL CONSENSUS AND OVERLAPPING CONSENSUS IN VIEW OF THE DEMOCRATIZATION LITERATURE[∗]

DEMOKRATİKLEŞME LİTERATÜRÜ ÇERÇEVESİNDE RAWLS'UN ANAYASAL UZLAŞMA VE ÖRTÜŞEN GÖRÜŞ BİRLİĞİ KAVRAMLARI

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Abstract

In this article, Rawls' conceptions of constitutional consensus and overlapping consensus are analyzed and evaluatedin relation to the democratization literature. Although Rawls wrote as a political thinker and didnot make explicit references to the democratization literature in his writings, one can discern a parallel between the democratization literature and Rawls' depiction of the stages for reaching an overlapping consensus. Regarding the connections between democratization literature and Rawls' conceptions of constitutional consensus and overlapping consensus, three conclusions are put forth in the article. The first is that Rawls' conception of the initial stage of constitutional consensus, which is practically a modus vivendi, corresponds to 'democratic transition.' The second argument is that Rawls' conception of (finalized) constitutional consensus corresponds to 'minimalist' and 'negative' democratic consolidation. And the third argument is that Rawls' conception of overlapping consensus corresponds to 'maximalist' and 'positive' democratic consolidation.

Keywords: John Rawls, constitutional consensus, overlapping consensus, democratization, negative and positive democratic consolidation, minimalist and maximalist democratic consolidation.

Öz

Bu makalede Rawls'un anayasal uzlaşma ve örtüşen görüş birliği kavramları, demokratikleşme literatürü çerçevesinde analiz edilip değerlendirilmiştir. Rawls bir siyaset düşünürü olarak yazmasına ve demokratikleşme literatürüne açık göndermelerde bulunmamasına ragmen, demokratikleşme literatürü ile Rawls'un örtüşen görüş birliğine ulaşmak için gerektiğini belirttiği aşamalar arasında bir paralellik gözlemlenmektedir. Makalede, demokratikleşme literatürüile Rawls'un anayasal uzlaşma ve örtüşen görüş birliği kavramları arasındaki bağlantılarla ilgili olarak üç temel tespit yapılmıştır. İlk olarak, Rawls'un bahsettiği, demokratik prosedürler üzerinde bir 'anayasal uzlaşma'nın ilk aşamasının, ki bu yalnızca bir modus vivendi'dir, literatürdeki 'demokrasiye geçiş' kavramına karşılık geldiği tespit edilmiştir. İkinci olarak, anayasal uzlaşmanın nihai ve sonlandırılmış halinin 'minimalist' ve 'negatif' demokratik pekişmeye denk düştüğü; üçüncü olarak ise, 'örtüşen görüş birliği' kavramının 'maksimalist' ve 'pozitif' demokratik pekişmeye karşılık geldiği tespit edilmiştir.

Anahtar kelimeler: John Rawls, anayasal uzlaşma, örtüşen görüş birliği, demokratikleşme, negatif ve pozitif demokratik pekişme, minimalist ve maksimalist demokratik pekişme.

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Introduction

It is interesting to note that there has not thus far emerged any articles or books that have specifically problematized Rawls' writings in terms of their relation to the democratization literature.[2] And I aim to do this here. In this study, Rawls' conceptions of constitutional consensus and overlapping consensus are compared and contrasted with the concepts in the democratization literature, and analyzed as to how they converge or diverge from one another.

As a political philosopher within the analytical tradition, Rawls writes on issues of democracy by abstracting from the concrete cases. His views on modus vivendi and constitutional consensus, as he also notes, are informed by the experiences of the Western democracies, and in this regard, they rely on a historical (empirical) basis. This basis makes it possible to analyze the modus vivendi and constitutional consensus with reference to the democratization literature. However, the overlapping consensus in terms of its relation to empirical cases is somewhat a different story since it does not necessarily rely on historical cases but rather points to the ideal democracy and is thus more normative than descriptive.[3]

Regarding the possible connections between democratization literature and Rawls' conceptions of constitutional consensus and overlapping consensus, three arguments are put forth in this article. The first argument is that Rawls' conception of the initial stage of constitutional consensus, which is practically a modus vivendi, corresponds to 'democratic transition.' The second argument is that Rawls' conception of (finalized) constitutional consensus corresponds to 'minimalist' and 'negative' democratic consolidation. The third argument is that Rawls' conception of overlapping consensus corresponds to 'maximalist' and 'positive' democratic consolidation. The arguments are summarized below:

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[2] *However, partial contributions of George Klosko (1993) and Neil Carlson (2002) need to be acknowledged here. Although these authors do not specifically or systematically problematize the relation of Rawls' writings to the democratization literature, they briefly touch upon the issue problematized here within the confines of their own works. Klosko in his study mentions Lipset's definition of a stable democracy and compares it to Rawls' notion of 'stability.' He also makes references to Easton's diffuse support in relation to the role of "value consensus" in Rawls' theory. On the other hand, Carlson in his Ph.D. proposal argues that Rawls has an "institutional" conception of democratic consolidation. Carlson argues that according to Rawls, democratic "institutions" create democratic "norms" among citizenry. Excluding these authors, who make only casual references on the relation of Rawls' writings to the democratization literature, Rawls' relation to the democratization literature has actually not been specifically analyzed thus far, which is done in this article.*

[3] *Overlapping consensus, as Rawls formulated it, can be considered as an 'ideal concept' in the Weberian sense "supposing a full overlapping consensus is never achieved but at best only approximated" (Rawls, 1996: 165).*

Table 1: 'Constitutional Consensus' and 'Overlapping Consensus' Compared with the Democratization Literature

RAWLS' CONCEPTIONS	THEIR IMPLICATIONS	WHAT THEY CORRESPOND TO IN THE DEMOCRATIZATION LITERATURE
Initial Stage of Constitutional Consensus →	Democratic procedures and institutions incorporated into the political system as a 'modus vivendi' =	*Democratic Transition*
Finalized Constitutional Consensus →	Popular consensus on democratic procedures and institutions, which is secured by civic political culture =	*Minimalist / Negative Democratic Consolidation*
Overlapping Consensus →	Popular consensus on a political conception of justice, and thus prevalence of deep political legitimacy and long-run stability within the polity =	*Maximalist / Positive Democratic Consolidation*

In order to be able to substantiate these arguments, first some general information on the basic concepts in the democratization literature is given below.

Basic Concepts in the Democratization Literature

There is an enormous and continuously growing literature on democratization and democratic consolidation, and it is technically not possible to cover all of the theories or theorists here. Therefore, a general account of the literature is provided with and the most relevant concepts and approaches discussed.

The first term to define is democratization. Potter defines democratization as "political changes moving in a democratic direction." (Potter, 1997: 3) It can be argued that democratization in general entails a "transition to relatively more democratic regime from undemocratic one, and a process of consolidation on the way to a consolidated democracy." (Usul, 2003: 18)

The initiation of democratic institutions in a country is called 'democratic transition' in the literature. As to when a transition is complete, Linz and Stepan argue:

> A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies and when the executive, legislative and judicial power generated

by the new democracy does not have to share power with other bodies *de jure*. (Linz and Stepan, 1996: 3)

On the other hand, O'Donnell has a conception of democratic transition that entails two stages:

> The first is the transition from the previous authoritarian regime to the installation of a democratic government. The second transition is from this government to the consolidation of democracy or, in other words, to the effective functioning of a *democratic regime*... The second transition will not be any less arduous nor any less lengthy; the paths that lead from a democratic government to a democratic regime are uncertain and complex, and the possibilities of authoritarian regression are numerous. (O'Donnell, 1992: 18)

Another issue is how democratic regimes come into being in a country. On this issue, there exist three main approaches in the literature: modernization approach, structural approach, and transition approach.

Theories on Democratization

Modernization approach

This approach is originated in the study of Seymour Martin Lipset (1959). According to Lipset, a certain level of industrialization and modernization leads to democratization. He argues that "the more well-to-do a nation, the greater the chances that it will sustain democracy." (Lipset, 1960: 31). This approach is affirmed by many follow-up studies; however, it is generally criticized with reference to two examples: Germany and India. It is argued that Germany enjoyed a high level of modernization, yet became a fascist regime under Hitler; India on the other hand has enjoyed democracy although it is not modernized. In this regard, it should be noted that according to Lipset, socio-economic correlations are only associational and do not necessarily indicate *cause* but they point to *probabilities* (Lipset, 1959: 69-105).

Structural Approach

This approach is rooted in the work of Barrington Moore (1966) and places explanatory primacy on the shifts in the structures of class and power within various societies. The structural approach analyzes long-term processes of historical change. Moore, in his study *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of Modern World* (1966), analyzes the relations between state, peasantry, landed upper class, and urban bourgeoisie in England, the US, Japan, Germany, Russia, China, and India. He concludes that different class structures and social changes in in these societies led to different political outcomes; democracy in some of them and fascism in others.

Moore argues that there are five general conditions for democratic development:

1. The development of a balance to avoid too strong a state or too independent a landed aristocracy,

2. A turn towards an appropriate form of commercial agriculture

3. The weakening of the landed aristocracy,

4. The prevention of an aristocratic- bourgeoisie coalition against the peasants and workers,

5. 'A revolutionary break from the past' led by bourgeoisie. (Moore, 1966:430-31)

On the other hand, the conditions, according to Moore, of a communist revolution are:

1. Bourgeoisie and working class are weak,

2. State is powerful,

3. The relationship between the peasants and the landlords is weak,

4. The landlords do not commercialize agriculture,

5. Peasants are in unity and in touch with groups which have organizational capabilities. (Potter, 1997:20)

Transition Approach

This approach is originated in the works of Dankwart Rustow (1970) and is developed by others particularly those with a special interest in Latin America. This approach emphasizes the role of elite choices, bargaining, and negotiation as central to the political processes of transition to democracy.

It can be said that while the structural approach emphasizes economic factors and social change from a macro perspective, the transition approach emphasizes from a micro perspective the role of human agency in democratic transitions.

Rustow, criticizing Lipset, argued that Lipset had merely a 'functional curiosity' as to what factors can best preserve or enhance the health and stability of a democracy. Rustow himself, on the other hand, had an interest in the developing countries and tried to understand "how a democracy comes into being in the first place." Rustow analyzed Turkey and Sweden in order to understand the historical course of democracy in these countries and concluded that these countries went through four main phases:

1. National unity,

2. Inclusive political struggle ,

3. Decision phase (for making a transition to democracy),

4. Habituation phase. (Rustow, 1970: 337-363)

As to the possible modes of making a democratic transition in a country, there exist two major modes in the literature: *raptura* and *pactada*. While *raptura* implies "a sudden break with existing institutional arrangements," *pactada* implies "a transition led and controlled by the power holders of the previous authoritarian

regime."[4]In order for a transition to be successful, Huntington argues, based on the historical cases, that transformation only occurred:

> if reformers were stronger than standpatters, if the government was stronger than the opposition, and if the moderates were stronger than the extremists [in both camps] (Huntington, 1991: 124-125).

It is noted by various authors that the success of a transition to democracy in a country depends on many internal as well as external factors, including the international environment and relations. (See Pridham, 1995: 166-203)

Democratic Consolidation

Pridham argues that democratic consolidation is still a 'nebulous' term as a theoretical construct and means different things to different people (Pridham, 1995: 167). There are different and competing conceptions of democratic consolidation within the literature. Each conception relies on a different understanding of what 'democracy' is and what comprises the minimum requisites of democratic consolidation. In this regard, the minimalist and maximalist conceptions, as well as negative and positive conceptions, compete with each other to define democratic consolidation. Before embarking on these diverse conceptions and their differences, how different authors define democratic consolidation is mentioned below.

Adam Przeworski's definition is the best known. According to him, a democracy is consolidated when "democracy becomes the only game in the town." On the other hand, Larry Diamond defines democratic consolidation as "achieving broad and deep legitimation, such that all significant political actors at both elite and mass levels believe that the democratic regime is the most right and appropriate for their society, better than any realistic alternative they imagine." (Diamond, 1996: 33).

Minimalist versus Maximalist Definitions of Democratic Consolidation

The difference between minimalist and maximalist conceptions of democratic consolidation is that "a [minimalist] procedural understanding of democracy... constitutes a basic institutional understanding of democracy, which includes the right to suffrage, majority rule, or political freedom in general." (Ganbat, 2004: 8). A maximalist understanding of democracy on the other hand, means the flourishing of a broad democratic culture among the citizens, and according to some other authors, it means direct citizenship participation into political decisions especially on issues concerning social justice and social rights. Gamba Ganbat notes that a substantive (maximalist) understanding goes beyond a procedural definition and deals with social justice, socio-economic equity, civil liberties and quality of life (Ganbat, 2004: 8-9).

Minimalist Democratic Consolidation

Minimalist democratic consolidationrefers to the consolidation of procedural or formal democracy, and is best characterized and examplified by Schumpeter's understanding of democracy, which highly influenced Lipset, Linz, Stepan, and

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[4]It is noted by Özbudun that pacts are generally seen when a rough equality of power exists between the government and opposition. (Özbudun, 2000: 14)

Diamond.[5] Schumpeter defined democratic consolidation as "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote." (Schumpeter, 1970: 269).

Another minimalist theorist, Schmitter defines the minimalist conception of a consolidated democratic regime as "the process of transforming the accidental arrangements, prudential norms, and contingent solutions that have emerged during the transition into relations of cooperation that are reliably known, regularly practiced, and voluntarily accepted by those persons or collectivities that participate in democratic governance."[6]

Dahl, a paradigmatic author for minimalists, defined polyarchies (democracies) in relation to whether or not they have civil and political rights as well as fair competitive and inclusive elections. Dahl stated that polyarchies display the following characteristics:

1. Elected officials

2. Free and fair election

3. Inclusive suffrage

4. Right to run for office

5. Freedom of expression

6. Alternative information

7. Associational autonomy (Dahl, 1989: 3-20).

According to Dahl, these are the "procedural minimal" conditions of democracy which have had much influence on the consolidation literature. Some authors expand Dahl's minimum criteria by adding rule of law, civil rule and control over military, minority rights, and accountability.[7]

Linz and Stepan, although being closer to the procedural approaches in general, try to find, as noted by Özbudun (2000:4), a mid-way between minimalist and maximalist approaches and explain democratic consolidation by a tri-partite criteria: behavioral, attitudinal, and constitutional consolidation. Linz and Stepan define these three dimensions of consolidation as follows:

> *Behaviorally,* a democratic regime in a territory is consolidated when no significant national, social, economic, political, or institutional actors spend significant resources attempting to achieve their objectives by creating a non-democratic regime or by seceding from the state.

> *Attitudinally,* a democratic regime is consolidated when a strong majority of public opinion, even in the midst of major economic problems and deep dissatisfaction with incumbents, holds the belief that democratic

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[5] *Schumpeter's understanding of democracy is referred to as "Schumpeterian democracy."*

[6] *Compare this with Rawls's constitutional consensus, and also see Schmitter, 2001: 67-68.*

[7] *Diamond adds and emphasizes the importance of minority rights as a requisite of procedural consolidation, while Burrell and Calvert put forth the importance of civilian control over military as a requisite for democratic consolidation. (Diamond, 1996: 3).*

procedures and institutions are the most appropriate way to govern collective life, and when support for anti-system alternatives is quite small or more-or-less isolated from pro-democratic forces.

Constitutionally, a democratic regime is consolidated when governmental and nongovernmental forces alike become subject to, and habituated to, the resolution of conflict within the bounds of the specific laws, procedures, and institutions sanctioned by the new democratic process. (Linz, 1996: 16).

Following Linz and Stepan, another author, Merkel, argues that there are four levels of consolidation: constitutional consolidation, representative consolidation, behavioral consolidation, and the consolidation of civic culture. Regarding constitutional consolidation which parallels Rawls' constitutional consensus, Merkel argues that "existence of a constitution would reduce the contingency in the political life. Mutual distrust within the political elites would be prevented by it. The constitutional set of meta-rules defines the norms and procedures of conflict mediation."[8]

At another level of analysis, Easton makes a distinction between what he calls specific support and diffuse support. Whereas specific support is the support of the public for certain government policies and outcome, diffuse support is the 'long-term support' for the entire political system without specific performance or output of the system. It is support that underlines the regime as a whole and the political community." (Easton, 1975: 445).

What now follows is an examination of maximalist conceptions argue and how they view democratic consolidation.

Maximalist Democratic Consolidation

There are two alternative notions of maximalist democratic consolidation. According to the first and more well known view, democratic consolidation involves the "inculcation of democratic culture among the citizens through a long socialization process." (Özbudun, 2000: 2). The second one, which actually suits the purpose of this article better, depicts maximalist democratic consolidation in relation to attaining democratic legitimacy, especially on issues of social justice and social rights. Since Rawls as a theorist refers to the need for social justice and social rights, it is argued here that his notion of overlapping consensus approaches the maximalist and substantive conceptions of democratic consolidation.

Regarding what substantive democracy entails, Mary Kaldor and Ivan Vejvoda propose the following:

we consider substantive democracy as a process that has to be continuously reproduced, a way of regulating power relations in such a way to maximize the opportunities for individuals to influnce the conditions in which they live, to participate in and influence debates about the key decisions which effect society.(Kaldor and Vejvoda, 1997: 62)

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[8] *Compare this with Rawls' notion of constitutional consensus, which he argues creates institutionalization of conflict mediation in a civil and democratic way.*

Another author, William I. Miller notes that maximalist notions of democracy emphasize the need for economic and social rights to secure everyone's ability to exercise civil/political rights and thereby secure the quality of democracy. As a general notion, it can be argued that proponents of radical democracy, deliberative democracy, economic democracy, democratic socialism, and property-owning democracy are closer to maximalist notions of democracy and democratic consolidation. (See Carter and Stokes, 1998). It can also be argued that T.H. Marshall's conception of democracy and democratic citizenship also approaches the 'substantive' notions of democracy and citizenship rather than the formal and procedural definition of these concepts.

Negative versus Positive Consolidation

There are alternative definitions of negative and positive consolidation in the writings of scholars working on this issue. I will focus on the views of Linz, Pridham, and Schedler.

Linz explains negative consolidation in terms of doing away with disloyalties. He writes:

> democratic consolidation in term of avoiding democratic breakdown involves doing away all disloyalties: an explicit rejection of democratic regime and/or its instruments such as political parties, a willingness of political elites to resort to violence, force, fraud, or other unacceptable means to get the power; and "knocking at the barracks door."(Linz, 1978: 30)[9].

On the other hand, democratic consolidation in the positive sense is related to the question of "how and/or through which institutions consolidation can be achieved." (Usul, 2003: 22). Possible ways for this aim, as noted, are:

> drafting, revising, and ratifying a new democratic constitution, ensuring the rule of law, establishing democratic representative, legislative and executive institutions; elimiting all human rights violations, and all kinds of discrimination, abolishing tutelary power, and 'reserved domains', formation of an autonomous and robust civil society; and ensuring a reanably fair electoral system. (Usul, 2003: 22).

According to Pridham, negative and positive democratic consolidation are as follows:

> Negative consolidation includes the solution of any problems remaining from the transition process and, in general, the containment or reduction, if not removal, of any serious challanges to democratization. The latter usually take the forms of groups or individuals characterized as anti-system. Negative consolidation is achieved when their presence or impact becomes numerically or politically insignificant, for example they either become neutralized and opt out of the political game or they may become converted to democratic politics.

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[9] *Compare this with the modus vivendi of Rawls and how it could turn into a constitutional consensus where the above disloyalties and anti-democratic attitudes are removed and the democratic regime is consolidated.*

Positive consolidation places more emphasis on attitudinal patterns, and it refers especially to wider or deeper levels of the overall process. It includes the inculcation of democratic values at both elite and mass levels, and, therefore, it involves some remaking of the political culture in a direction that is system-supportive for a new democracy. Positive consolidation refers to longer-term change, while negative consolidation may be achieved in a shorter time span. (Pridham, 1995: 168-169).

Andreas Schedler offers an alternative definition of negative and positive consolidation, which he declares to be different than Pridham's conceptualization. Schedler classifies regimes into four categories: authoritarianism, semi-democracy, liberal democracy, and advanced democracy. Schedler defines negative and positive consolidation as such:

We may call 'negative' those two concepts of democratic consolidation that are concerned with democratic stability and try to avoid regressions to either non-democratic or semi-democratic regimes. And we may call 'positive' those two notions of democratic consolidation that are concerned with democratic advances and try to attain progress towards either minimal or high-quality democracy (Schedler, 1997: 10-11).

After having explained negative and positive consolidation, the influence of political culture on democratic consolidation is discussed in the next section.

The Influence of Political Culture on Democratic Consolidation

Almond and Verba, the two key figures of political culture studies, point out that civil society and civic culture is quite crucial for democracy and democratic consolidation. According to Almond and Verba, the civic characters of political culture involve interpersonal trust, tolerance towards differences, and lack of support for revolutionary change. (Almond and Verba, 1963: 1203-1230). These elements of political culture are considered as neo-Tocquevillian values, and it is widely assumed in the democratization literature that these values directly influenced theorists such as Putnam, Schmitter, and Diamond (Usul, 2003: 65). In fact, they influenced Diamond to such an extent that regarding the importance of political culture on democratic consolidation, he argues that "democratic consolidation can... only be fully understood as encompassing *shift in political culture.*" (Diamond, 1999: 65)

Regarding the relation between institutionalization and civic values, Diamond notes:

Strengthening the formal representative, and governmental structures of democracy so that they become more coherent, complex, autonomous, and adaptable and thus more capable, effective, valued, and binding... institutionalization enhances trust and cooperation among political actors... Thus it helps to draw reliable boundaries around the uncertainty of politics and to facilitate trust, tolerance, and moderation, civility, and loyalty to the democratic system. (Diamond, 1975: 75)[10]

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[10] *Compare Diamond's argument with Rawls's institutionalist notion of democratic consolidation that institutions come first and they create the civil culture. Rawls relies on the supposition that democratic*

In the next section, Rawls' constitutitional consensus will be analyzed in view of the above mentioned concepts in the democratization literature.

Constitutional Consensus in View of the Democratization Literature

Before reflecting upon constitutional consensus in further detail in light of the democratization literature, Rawls' relation to the three theories of democratization need to be discussed here. Concerning Rawls' relation to these theories, it can be argued that in terms of his depiction of the initial stage of constitutional consensus (modus vivendi), Rawls is close to the transitional approach, since a modus vivendi is based on a pact among elites and is a result of deliberations. On the other hand, it can be argued that Rawls' notion of finalized constitutional consensus can be related also to the modernization approach since a finalized constitutional consensus seems to pre-require a relatively developed urban setting.

Rawls' reference to elite pacts in the context of modus vivendi might explain democratic transitions, but it can be argued that human choices or their interactions cannot on its own explain everything about how democracies endure. The literature, in fact, suggests that income level and higher development makes it more likely for established democracies to endure. Thus, it can be argued that veil of ignorance and rational choices will more likely be applicable and relevant where structural factors, like income and literacy, would support the flourishing of 'rational citizens' in the first place. (That's also directly connected to Rawls' emphasis on property-owning democracy and social justice, which he sees as central to democracy.)

It can be argued that democratic survival might require both a sufficient level of rational human choice, as well as a reasonable level of human development (HDI, income, urbanism, etc.) Development might be more conducive to having more space for pro-democratic choices in the public forums, individual and collective, that might enhance democratic survival in the long run, which is supported by empirical evidence in the modernization literature.

In order to be able to further elaborate on the relation between constitutional consensus and the democratization literature, first it is explained how Rawls devised the notion of constitutional consensus. Rawls states that he borrowed the term 'constitutional consensus' from Kurt Baier (Rawls, 1996: 158) Rawls made out of it a more specific and elaborate term. In Rawls' usage, a 'constitutional consensus,' when achieved, guarantees the basic political rights and liberties. Reflecting upon the content of these rights, Rawls writes:

> Basic political rights and liberties are the right to vote and freedom of political speech and association, and whatever else is required for the electoral and legislative procedures of democracy—there is disagreement among those holding liberal principles as to the more exact content and boundaries of these rights and liberties, as well as on what further rights and liberties are to be counted as basic and so merit legal if not constitutional protection. The constitutional consensus is not deep and it is also not wide:

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institutions created initially under modus vivendi socializes people into democratic norms and creates a civic culture in time.

it is narrow in scope, not including the basic structure but only the political procedures of democratic government (Rawls, 1996: 159).

Defining the constitutional consensus as a consensus on procedural matters of democracy, Rawls points out that a constitutional consensus needs to meet three basic requirements.

As to how a constitutional consensus comes about, Rawls, relying on the historical experiences of Western democracies, argues that a constitution satisfying the basic political rights and liberties could possibly be accepted first as a modus vivendi, and then affirmed and internalized by the people as citizens' democratic practices mature within time. That is to say, the democratic institutions according to Rawls would first be introduced into the system and then institutionalization would hopefully generate certain democratic attitudes and virtues among the citizens. The following quotation on constitutional consensus reflects Rawls' approach to the issue of how a democratic regime comes into being:

> Suppose that at a certain time, because of various historical events and contingencies, some liberal principles of justice are accepted as a mere modus vivendi, and are incorporated into existing political institutions. This acceptance has come about, let us say, in much the same way as the acceptance of the principle of toleration came about as a modus vivendi following the Reformation: at first reluctantly, but nevertheless as providing the only workable alternative to endless and destructive civil strife. Our question then is this: how might it happen that over time the initial acquiescence in a constitution satisfying these liberal principles of justice develops into a constitutional consensus in which those principles themselves are affirmed? (Rawls, 1996: 159).

This quotation, when read along with some other references in *Political Liberalism*, demonstrates that Rawls sees the source of constitutional rule in the 'endless and destructive civil strife' and as a possible way that the citizens find their way out of it. He suggests that the groups in civil strife somehow agree on a constitution (first as a modus vivendi) and incorporate the democratic institutions into the system in order to moderate the harsh political rivalry among themselves. This reminds one of Rustow's famous sayings which is, "a people who are not in conflict about some rather fundamental matters would have little need to devise democracy's elaborate rules for conflict resolution." (Rustow, 1970: 362).

Rawls points out that a constitution guaranteeing basic political rights and liberties is made by a constitutional convention. On this issue, he notes:

> Delegates to such a convention (still regarded as representatives of citizens as free and equal persons but now assigned a different task) are to adopt, from among the just constitutions that are both just and workable the one that seems most likely to lead to just and effective legislation. (Which constitutions and legislations are just is settled by the principles of justice already agreed to in the original position) (Rawls, 1996: 336).[11]

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[11]*Rawls notes that the delegates incorporate only the first principle of justice into the constitution and not the second principle, which Rawls justifies as such: "Although delegates have a notion of just and effective*

Thus, it follows that a liberal constitution, according to Rawls, would be created out of a social need to end the strife by the political elites (delegates), and accepted by them through some sort of a pact-making, which he says could possibly be accepted first as a mere "modus vivendi."[12]

Having clarified the status of the initial stage of constitutional consensus (modus vivendi) as such, it can be argued that this initial stage implies a 'democratic transition' (through pact-making). As Rawls acknowledges, this transitional stage is quite fragile and its success and consolidation is contingent upon long-term civil and political development. The mere fact that democratic institutions are incorporated into the constitutional structure of a country would not guarantee the longevity and consolidation of these institutions.

However, Rawls seems to think that the modus vivendi stage is critical as the initial stage of a long chain of events that are supposed to lead to an overlapping consensus. It is a fact that many European states started first under conditions that can be compared to modus vivendi, but now they have a constitutional consensus on certain political rights and liberties and basic design of government (See Reidy, 1999).

It is crucial to restate that acquiescence in the constitution during the modus vivendi stage is not a principled and unconditional acceptance of the democratic rules of the game, but a "circumstantial equilibrium in military political and economic power among feuding camps"[13]What Rawls calls modus vivendi can be considered as a pact made by warring groups which are almost equal in power and therefore cannot dominate over the rival.[14] Rawls' modus vivendi can also be compared to O'Donnell's notion of "two transitions." It can be argued that Rawls' initial stage of constitutional consensus (i.e. modus vivendi) corresponds to what O'Donnell calls the 'first transition.' It can also be argued that the finalized constitutional consensus corresponds to what O'Donnell calls the 'second transition.' Because it is through modus vivendi that democratic *government* is initiated, it is through constitutional consensus that the democratic *regime* is consolidated.

As was stated before, Rawls' conception of 'constitutional consensus' corresponds to minimalist and negative democratic consolidation. In order to substantiate this argument, constitutional consensus will first be compared with minimalist and then negative conceptions of democratic consolidation. The following section is devoted to a comparison of Rawls's constitutional consensus with the minimalist conceptions put forth by authors such as Dahl, Schumpeter, Schmitter,

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legislation, the second principle of justice, which is part of the content of this notion, is not incorporated into the constitution itself. Indeed, the history of successful constitutions suggests that principles to regulate economic and social inequalities, and other distributive principles, are generally not suitable as constitutional restrictions. Rather, just legislation seems to be best achieved by assuring fairness in representation and by other constitutional devices." (Rawls, 1996: 337.)

[12]*Rawls notes that the typical use of the phrase "modus vivendi" is to characterize a treaty between two states whose national aims and interests put them at odds. In negotiating a treaty, each state would be wise and prudent to make sure that the agreement proposed represents an equilibrium point; that is, the terms and conditions of the treaty are drawn up in such a way that it is publicly knowledge that it is not advantageous for either state to violate it.*

[13] *See references to modus vivendi in Yonah, 2000: 132.*

[14]*It is noted by Özbudun that pacts are generally seen "when a rough equality of power exists between the government and opposition." (Özbudun, 2000: 18.)*

O'Donnell, and some other authors who are more or less close to the minimalist notions of democratic consolidation.

Constitutional Consensus and Minimalist Democratic Consolidation

When comparing Rawls and his conception of 'constitutional consensus' with minimalists, it would be appropriate to compare first with Robert Dahl. Dahl argues that a polyarchy would be defined in relation to having civil and political rights plus fair competitive and inclusive elections. Thus, Rawls' constitutional consensus is close to Dahl's definition if subtracting civil rights from the equation, the civil rights that are not directly related to political rights, and if adding the cultivation of civic culture to the equation, which Rawls deems necessary for a functioning democracy.[15] In this regard, it can be said that Rawls' constitutional consensus would be very close to Merkel's definition of democratic consolidation, which is comprised of four levels: consolidation of civic culture, and constitutional, representative, and behavioral consolidation.

Among minimalist approaches, Rawls' constitutional consensus approximates Schmitter's definition of democratic consolidation. According to Schmitter, democratic consolidation is:

> the process of transforming the accidental arrangements, prudential norms, and contingent solutions that have emerged during the transition into relations of cooperation that are reliably known, regularly practiced, and voluntarily accepted by those persons or collectivities that participate in democratic governance (Schmitter, 1988: 12).

This definition of Schmitter's is very close to what Rawls intends to convey by his conception of constitutional consensus.

Diamond's comments on the transitional approach actually best summarizes and approaches the concept of constitutional consensus. Diamond argues that the transitional approaches consider that:

> Democratic consolidation occurs once there emerges a "consensually unified elite" that shares a common commitment to the rules of the democratic game, abroader set of norms about the rules of political conduct, and a dense structure of interaction that fosters personal familiarity and trust (Diamond, 1999: 218).

With reference to Linz and Stepan's tripartite criteria of democratic consolidation, namely behavioral, attutudinal, and constitutional consolidation, it can be argued that Rawls' constitutional consensus implies elements of all three criteria. When a constitutional consensus is realized, the citizens are habituated to the resolution of conflict "within the bounds of the specific laws, procedures, and institutions sanctioned by the new democratic process" (constitutional consolidation). The citizens attitudinally accept democracy and consider it the most appropriate regime for their society (attitudinal consolidation), and behaviorally they do not

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[15] *This dimension, namely civic culture and its relation to democratic institutionalization, is expressed by Diamond as such: "Institutionalization enhances trust and cooperation among political actors... Thus it helps to draw reliable boundaries around the uncertainty of politics and to facilitate trust, tolerance, and moderation, civility, and loyalty to the democratic system." (Diamond, 1999: 75)*

engage in violence, or anti-system activities (behavioral consolidation). Thus, constituitional consensus in Rawlsian terms implies all three of behavioral, attudinal, and constitutional consolidation in Linz and Stepan's terms.

In relation to a comparison between Rawls' concepts and "extended procedural minimum" of democratic consolidation, it needs to be emphasized that Rawls does not mention minority rights, human rights, or accountability as the requisites of a constitutional consensus, and regards these issues as 'substantive,' and therefore, the subject matter of 'overlapping consensus.' However, rule of law and civil control over the military can be considered within the limits of constitutional consensus since these two are directly related to the "electoral and legislative procedures of democracy," which Rawls says is necessary for constitutional consensus.[16]

The regime support that is depicted as part of a constitutional consensus by Rawls parallels what Easton calls "diffuse support." Whereas the continuation of a democratic regime (as modus vivendi) would be dependent upon "specific support," the continuation of a constitutional consensus would be independent of government performance, and would rather be a function of 'diffuse support.'

Comparing Rawls with Lipset, it can be argued that what Rawls puts forth as important pillars of democratic consensus, namely mutual respect, toleration, and moderation are also emphasized by Lipset as the legitimacy dimension of democracy. Lipset argues "a stable democracy requires relatively moderate tension among the contending political forces. And political moderation is facilitated by the capacity of a system to resolve key dividing issues before new ones arise." (Lipset, 1959: 97).

In comparing Rawls and Rustow, it can be said that Rustow's four stages that he noted Sweden and Turkey went through in establishing democracies are parallel to modus vivendi and constitutional consensus. According to Rustow, these two countries went through these stages:

1. National unity,

2. Inclusive political struggle,

3. Decision phase (for making a transition to democracy),

4. Habituation phase.

It can be argued that phase 2 and 3 (inconclusive political struggle and decision phase) can be compared to the struggles of modus vivendi and phase 4 (habituation phase) can be compared to the constitutional consensus (habituation to the democratic constitution).

Overall, it can be argued that constitutional consensus corresponds to 'minimalist' democratic consolidation, and that 'constitutional consensus' is quite parallel with the way Dahl, Schumpeter, O'Donnell, or Schmitter define democratic consolidation.

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[16] *Diamond adds and emphasizes the importance of minority rights as a requisite of procedural consolidation, while Burrell and Calvert put forth the importance of civilian control over military as a requisite for democratic consolidation. (Burnell and Calvert, 1999: 3).*

Constitutional Consensus and Negative Democratic Consolidation

Rawls' constitutional consensus can primarily be read as a theory on 'negative' democratic consolidation since constitutional consensus implies the relative democratization of anti-system groups and the disappearance of systemic challenges. A constitutional consensus, unlike overlapping consensus, is limited and does not go as far as enhancing all the democratic values or norms but only the political norms pertaining to democratic government.

In a country where constitutional consensus exists, there would just be respect for the political rights and liberties pertaining to democratic procedures, and people would be civil and tolerant, however not democratic in terms of the values that go beyond basic political procedures. What this refers to is that in a country where constitutional consensus exists, the regime would not yet incorporate democratic values such as freedom of conscience, freedom of speech,[17] or equality of opportunity, which require an overlapping consensus to be built. Put differently, people would not be socialized into these values during a constitutional consensus. However, as an overlapping consensus is being built, people would be socialized into these democratic values as a result of a long socialization and deliberation process.

An overlapping consensus implies the socialization of people into a broad and wide range of (liberal) democratic values, and thus guarantees the active participation of the citizens into the democratic culture and democratic values. In this regard, it can be argued that while a constitutional consensus implies a 'negative' consolidation, an overlapping consensus implies a 'positive' consolidation.'[18]

Overlapping Consensus in View of the Democratization Literature

It can be argued that overlapping consensus goes beyond the minimal requisites of procedural democracy and aims for a deeper democratic culture and a broader base of economic democracy. It is clear from Rawls' writings that he does not consider constitutional consensus enough for long run stability and genuine democratic consolidation in a country for reaching an enduring and secure democratic regime (Rawls, 1996: 165-167)[19]. He therefore strives for a deeper societal consensus, which he terms 'overlapping consensus.' Rawls presupposes that unless the basic structure of a society is affirmed by an overlapping consensus, that democratic polity will not be totally consolidated. In this regard, Rawls naturally finds constitutional consensus insufficient when compared to overlapping consensus. Regarding this issue, Rawls says:

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[17] *As noted before, Rawls makes a distinction between freedom of speech on political issues on the one hand, and freedom of speech on philosophical, religious, or moral issues on the other. While a constitutional consensus guarantees the former, only an overlapping consensus guarantees the latter.*

[18] *Here, it needs to be acknowledged that as much as a constitutional consensus secures certain democratic attitudes, it might have some connection to positive consolidation as well, however this is not a dominant dimension of constitutional consensus since constitutional consensus is only a consensus on minimal democratic procedures without securing other more substantive and deeper democratic values. Rawls associates deeper and wider dimensions of democratic consolidation with what he calls 'overlapping consensus,' therefore overlapping consensus is related in this study to positive consolidation, while constitutional consensus is rather related to negative consolidation since it is foremost related to the disappearance of anti-democratic groups and the sustenance of minimal procedures.*

[19] *See also Klosko, 1993: 348-359.*

A purely political and procedural constitutional consensus will prove too narrow. For unless a democratic people is sufficiently unified and cohesive, it will not enact the legislation necessary to cover the remaining constitutional essentials and basic matters of justice, and conflict will arise about these. There must be fundamental legislation assuring freedom of association and freedom of movement; and beyond this measures are required to assure that the basic needs of all citizens can be met so that they can take part in political and social life. (Rawls, 1996: 166).

Rawls goes as far to say that a constitutional consensus is only a literal consensus:

A constitutional consensus at the level of principles viewed apart from any underlying conception of society and citizen—each group having its own reasons—is a *consensus taken literally.* It lacks the conceptual resources to guide how the constitution should be amended and interpreted. (Rawls, 1996: 165).

What this implies is that Rawls sees constitutional consensus as generally more favorable than modus vivendi, but not as good and preferable as overlapping consensus. One can interpret Rawls' emphasis on the need for an overlapping consensus as a striving towards a maximalist democratic consolidation.

Overlapping Consensus and Maximalist Democratic Consolidation

While Rawls relates minimal and procedural issues to 'constitutional consensus,' he relates the substantive issues, such as political and economic issues, as well as long-run legitimacy to the stage of 'overlapping consensus.' As it was noted, whereas a constitutional consensus is confined to only democratic procedures of government, an overlapping consensus takes place around a conception of justice which supposedly arranges the whole structure of a society in a just and legitimate way. An overlapping consensus, according to Rawls, would yield deep legitimacy regarding economic and social matters. In this regard, it can be argued that an overlapping consensus is potentially quite broad, deep, and maximalistic.

When an overlapping consensus is possibly reached in a country, that would imply that citizens do not just passively accept and are content with a generic liberalism, but rather they actively affirm (liberal) democracy and its substantive values with a moral justification derived from within their own comprehensive doctrines. What this means is that different groups like the religious conservatives, nationalists, social democrats, and other groups may actively affirm the substantive values of (liberal) democracy from within their own world-views. Each might accept certain liberal democratic values for quite different reasons, but they might somehow reach a consensus eventually. For example, 'equality of opportunity' could possibly be justified on quite different grounds, say by a social democrat and a religious conservative; or by a businessman and a worker. However, Rawls assumes that such differences would not be a problem, as long as people reach a consensus on the value of equality of opportunity at a certain level of generality.

Overlapping Consensus and Interest Struggles

Rawls, as a political theorist, is aware of the interest struggles within society while establishing a well-ordered democratic society and in this regard, he points out the necessity of finding an equilibrium among the conflicting economic and political interests.[20] He notes that unless a solution is reached to moderate the economic rivalry, an overlapping consensus would practically be impossible. He notes:

> If the liberal conceptions correctly framed from fundamental ideas of a democratic political culture are supported by and encourage deeply conflicting political and economic interests, and if there be no way of designing a constitutional regime so as to overcome that, a full overlapping consensus cannot, it seems, be achieved. (Rawls, 1996: 168)

Overlapping Consensus and Economic Democracy

Rawls maintains that the focus of an overlapping consensus is a 'class of liberal conceptions that vary within a certain more or less narrow range.' Rawls' liberal alternative in this regard is 'justice as fairness' which he says is based on the two principles of justice.

Rawls argues that the two principles of justice would normally be compatible with either a property-owning democracy or a liberal (market) socialism. In this regard, Rawls' understanding of justice as fairness to provide political and economic justice approaches the maximalist notions of democracy such as 'economic democracy' which takes democracy not only as merely a 'form' but also as a positive mechanism to empower people as 'citizens.' It could be argued that such a social democratic conception of citizenship would in general be parallel to T.H. Marshall's notion of democracy and citizenship.[21]

Overlapping Consensus and Positive Consolidation

Regarding negative and positive consolidation, it can be said that whereas a constitutional consensus primarily guarantees 'negative' consolidation, an overlapping consensus goes beyond this and strives for the active affirmation by the citizens of a wide range of democratic norms and values (including equality) by virtue of a long socialization and deliberation process, and thus overlapping consensus conceptually approaches positive and maximalist notions of democratic consolidation.[22] According to Rawls, a democratic regime, reaching such a consensus, would not only be institutionally consolidated, but also it would enjoy deep political and economic legitimacy and long-run stability.

Some Criticisms against Rawls' Insistence on Overlapping Consensus as the Basis of Political Stability

Rawls' insistence on forming an overlapping consensus and his depiction of modus vivendi and constitutional consensus as insufficient for providing stability in

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[20] *One can possibly read well-ordered society as a maximally consolidated democracy.*
[21] *Rawls in this regard writes: "...below a certain level of material and social well-being, and of training and education, people simply cannot take part in society as citizens, much less equal citizens" (Rawls, 1996: 166).*
[22] *Rawls states that reaching an overlapping consensus would require a long and intensive deliberation process among the citizens on substantive political issues. (Rawls, 1996: 158-168).*

the society is criticized by some authors such as Baier and Dauenhauer. Baier, from whom Rawls borrows the concept of constitutional consensus, argues that a constitutional consensus is enough for securing stability; therefore, an overlapping consensus, as Rawls suggests, is not needed. Dauenhauer, on the other hand, argues that a stable democracy does not require a constitutional consensus or overlapping consensus to be stable, but instead a modus vivendi, the initial rules of which are well established. He argues that a democracy would sufficiently be secured by an appropriate design of government and separation of powers and that is quite sufficient for stability and there is no need for any normative consensus such as constitutional consensus or overlapping consensus, which he argues would harm stability itself.

In this regard, from these discussions and criticisms, it can be concluded that while Baier and Dauenhauer side with a relatively minimalistic conception of democratic consolidation, Rawls sides with a more maximalistic conception of democratic consolidation.

Constitutional Consensus, Overlapping Consensus, and Linearity

Although Rawls considers overlapping consensus as a single concept, such a consensus cannot possibly happen once and for all in all matters. That is to say, it requires a consensus on many diverse issues. For example, there could be an overlapping consensus on distribution of justice, but this would not necessarily guarantee an overlapping consensus on ethnic relations, or vice versa. Therefore, an overlapping consensus should be thought as an issue with multi-components. Furthermore, each component might be at a different and unequal level of development.

In a country in which a constitutional consensus does not exist yet, there could well be certain issues on which an overlapping consensus prevails among social and political groups. For example, a country that is still trying to settle basic political rights and liberties (i.e. constitutional consensus), might well have a consensus on issues of distribution of wealth, gender issues, or religious matters, in ways that may principally be not incompatible with liberal democracy. In this regard, in the Turkish case, although Turkey, as a borderline case, is still trying to consolidate constitutional consensus, this factor should not prevent the Turkish citizens from discussing the possibility of a (overlapping) consensus on certain issues such as distribution of wealth, secularism, or ethnicity.

In this regard, although Turkey is still coping with issues of constitutional consensus, it does not have the luxury of giving up the quest for a possible overlapping consensus on certain issues. Turkey is in a position to carry out both of them simultaneously. On the one hand, Turkey should try to secure constitutional consensus and, on the other hand, it should look for ways to secure a possible overlapping consensus on various political issues, such as the distribution of wealthor the Kurdish issue.

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