A CRITICAL ASSESSMENT OF JOHN RAWLS'S
THEORY OF JUSTICE AS FAIRNESS

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ABSTRACT

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This dissertation is a critical analysis of John Rawls's theory of justice in its historical and philosophical context. To that end, his works from *A Theory of Justice* (1971) to *Justice as Fairness: A Restatement* (2001) are examined. Not only Rawls's theory of justice but also his approach to metaphysics and metaethics are also tackled to understand *justice as fairness* deeply. While setting out Rawls's main arguments and theses, a critical approach is adopted with his foremost critics. This study thus searches for answers to the questions such as whether Rawls's theory is workable, what does he precisely defends, what does he aim at with *justice as fairness*, and whether it is consistent or not. Unfortunately, it is seen that Rawls fails to propose a coherent egalitarian as well as liberal theory of justice. Hence, he could not reconcile the ideas of freedom and equality.

Keywords: John Rawls, Justice as Fairness, Egalitarian Liberalism, Social Contract, Distributive Justice

ÖZ

JOHN RAWLS'UN İNSAF OLARAK ADALET TEORİSİ'NİN ELEŞTİREL BİR DEĞERLENDİRMESİ

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Bu tez, John Rawls'un adalet teorisinin tarihi ve felsefi bir bağlamda eleştirel bir analizidir. Bu amaçla *Bir Adalet Teorisi*'nden (1971) *İnsaf olarak Adalet: Yeni bir İfade* (2001)'ye kadar olan eserleri incelenmiştir. Sadece Rawls'un adalet teorisi değil, aynı zamanda metafizik ve metaetiğe olan yaklaşımı da *insaf olarak adaleti* derinlemesine anlamak için ele alınmıştır. Rawls'un ana argümanları ve tezlerini ortaya koyarken, en önde gelen eleştirmenleriyle birlikte eleştirel bir yaklaşım benimsenmiştir. Bunun için bu çalışma, Rawls'un teorisinin çalışılabilir olup olmadığı, tam olarak neyi savunduğu, *insaf olarak adalet* ile neyi hedeflediği ve tutarlı olup olmadığı gibi soruların cevabını aramaktadır. Maalesef, Rawls'un tutarlı bir eşitlikçi ve aynı zamanda liberal bir adalet teorisi öneremediği görülmektedir. Dolayısıyla, o özgürlük ve eşitlik fikirlerini uzlaştıramamıştır.

Anahtar Kelimeler: John Rawls, İnsaf Olarak Adalet, Eşitlikçi Liberalizm, Sosyal Sözleşme, Dağıtıcı Adalet

To My Family

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CHAPTER 1

INTRODUCTION

What *Das Kapital* means for Marxists is equivalent to the meaning of *A Theory of Justice* for egalitarian liberals.[1] Although it did not influence the real world as *Das Kapital*, it has affected the intellectual world of liberals deeply. Even it is much more; because John Rawls's theory of justice became so significant that "[p]olitical philosophers now must either work within Rawls's theory or explain why not."[2] Its effect is thus not restricted to liberals. Any thinker working on justice should confront with Rawls's theory after 1971. For this reason, we critically examine *justice as fairness* and seek to determine whether it is workable or not.[3]

The scope of our study is limited by the early work of Rawls; because he puts forward his theory of *distributive* justice in *Theory* (1971).[4] After that he presents his conception of *political* justice in *Political Liberalism* (1993). Lastly, he

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[1] John Rawls, *A Theory of Justice* (Cambridge, MA.: Harvard University Press, 1971). From now on it is cited as *Theory*.

[2] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 183.

[3] Rawls dubbed his theory of distributive justice in *Theory* as "justice as fairness." So, justice as fairness refers to Rawls's theory of distributive justice; see Rawls, *Theory,* pp. 3-11.

[4] To distinguish the early work from the later work, I endorse Freeman's view that the *Dewey Lectures* "proves to be a transitional stage in Rawls's thought" (Samuel Freeman, "Introduction: John Rawls – An Overview," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman [New York: Cambridge University Press, 2003], p. 28*).* For that reason, the early work of Rawls refers to the writings before the *Dewey Lectures*, and the later work refers to the writings after the *Dewey Lectures*. For the distinction, see also Larry Krasnoff, "Kantian Constructivism," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy (Malden, MA: Wiley-Blackwell, 2014), pp. 73-85. Rawls too supports this interpretation, see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. xix. Even if the later work is not the focus of the dissertation, I refer to some of them when it is needed.

develops his account of *international* justice in *The Law of Peoples* (1999). That is to say, the problems and methodologies of the later work are different from the early work.[1] Since the problem of distributive justice is discussed in *Theory* and it is the beginning of the debate, we prioritize Rawls's early work. Hence, we will see whether Rawls's theory of *distributive* justice is consistent in itself.

One might ask why Rawls is so important. The answer is simple: Rawls is the philosopher who opened the social justice debate and made it a current issue in contemporary academic circles with the publication of *Theory*. In this work, he suggested an alternative theory of justice to the existing theories. After Rawls's *Theory* numerous philosophers wrote on social or distributive justice. Some rejected *Theory*, some endorsed, and others were influenced by it and developed alternative theories of justice. Nonetheless, since Rawls opened and kept the debate going, he deserves the lion's share; and he is already appreciated by other philosophers.

Rawls's *magnum opus* triggered the justice debate first in analytical philosophy and then in continental philosophy. Some philosophers criticized Rawls, others endorsed and improved Rawlsian theory. Rawls himself also replied to some criticisms. When all is said and done, a gigantic literature emerged from the justice debate. We are in Rawls's debt for having this rich literature and hot debates on

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[1] Although *Political Liberalism* seeks to improve some problems of *Theory*, it nonetheless can be read independently of *Theory*; because *Political Liberalism* deals with the problem of living together in democratic societies: "[h]ow is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?" (*Political Liberalism*, p. xx); for the problem of *Political Liberalism,* see also Samuel Freeman, *Rawls* (London: Routledge, 2007), pp. 324-327; and Thomas Pogge, *John Rawls: His Life and Theory of Justice*, trans. Michelle Kosch (New York: Oxford University Press, 2007), p. 26. *The Law of Peoples* offers a theory of international relations depending on Rawls's previous lecture; see John Rawls, "The Law of Peoples," (1993) reprinted in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), pp. 529-564; John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999); and Pogge, *John Rawls,* p. 26. Rawls does *not* apply his theory of distributive justice to international scale in *The Law of Peoples*; but puts forward another conception of international relations. His student Pogge attempts to apply *justice as fairness* to global level, see Thomas W. Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1990); and Thomas W. Pogge, "The Incoherence between Rawls's Theories of Justice," *Fordham Law Review* 72 (April 2004): pp. 1739-59. Thus, *The Law of Peoples* tackles another subject matter requires to be discussed separately, like *Political Liberalism*.

justice. Since Rawls is the precursor, catalyst, and developer of the debate, the philosopher deserves his reputation. Hence, scholars begin contemporary analytical political philosophy with Rawls's *Theory* (1971).[1]

In addition, depending on this vast literature, one might consider this study as redundant; but there are two significant reasons which make this study necessary. After *Theory*, most of the critics misunderstood Rawls's intention and theory.[2] Secondly, he is placed at various positions from the left to the right.[3] However, after Rawls replied to these criticisms, his real intention and position was revealed. Thus, we need to carefully inspect Rawls's work from *Theory* (1971) to *Justice as Fairness: A Restatement* (2001) in order to understand his theory of justice correctly.[4]

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[1] Philip Pettit, "Analytical Philosophy," in *A Companion to Contemporary Political Philosophy*, eds. Robert E. Goodin, Philip Pettit, and Thomas W. Pogge, 2nd ed., vol. 1 (Malden, MA: Blackwell, 2007), pp. 9-13; here Pettit observes that "[w]e are now living … in a post-Rawlsian world" (ibid., p. 13). See also Colin Farrelly, ed., *Contemporary Political Theory: A Reader* (London: Sage, 2004); Richard J. Arneson, "Justice after Rawls," in *Oxford Handbook of Political Theory*, eds. John Dryzek, Bonnie Honig, and Anne Phillips (Oxford: Oxford University Press, 2006), p. 45; Will Kymlicka, *Contemporary Political Philosophy: An Introduction,* 2nd ed. (New York: Oxford University Press, 2002), p. viii, 10, 53; *The Routledge Companion to Twentieth Century Philosophy*, ed. Dermot Moran (New York: Routledge, 2008), p. 31, 98, 188, 883, 888, 889, 903; Hirose initiates contemporary moral and political philosophy by Rawls too, see Iwao Hirose, *Egalitarianism* (New York: Routledge, 2015), p. 6. Cohen mentions *Theory* as the third significant book in the history of Western political theory after Plato's *Republic* and Hobbes's *Leviathan*, see G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), p. 11; and Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge, MA: Harvard University Press, 2005), pp. 110-116.

[2] The misunderstandings will be given throughout the dissertation, but the most frequently seen misunderstanding is the likening of Rawls's regime to "the welfare state;" see John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), pp. xiv-xv; Rawls revised the book for the German translation in 1975; unless otherwise stated *Theory* refers to the original edition (1971).

[3] For Rawls's reception as a *socialist*, see Nozick, *Anarchy, State, and Utopia*, pp. 149-172; William A. Edmundson, *John Rawls: Reticent Socialist* (New York: Cambridge University Press, 2017); and Quentin P. Taylor, "An Original Omission? Property in Rawls's Political Thought," *The Independent Review* 8, no. 3 (Winter 2004): pp. 387–400. For Rawls's reception as a *capitalist*, see C. B. Macpherson, "Rawls's Model of Man and Society," *Philosophy of the Social Sciences* 3, no. 4 (December 1973): pp. 341-347; and G. A. Cohen, "Incentives, Inequality, and Community," in *The Tanner Lectures on Human Values*, ed. Grethe B. Peterson, vol. 13 (Salt Lake City: University of Utah Press, 1992), pp. 263-329.

[4] John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001); hereafter cited as *Restatement.* Although *Restatement* seems as if it

The problem is therefore twofold: first, to figure out Rawls's exact position; and secondly to understand his aim and theory of justice. So, we shall outline the basics of *justice as fairness*, and critically examine its principal arguments and methodology. At the end of the inquiry, we will discover whether justice as fairness is possible or not. It is argued that Rawls's theory contains several complications and internal contradictions that cannot be overcome. Moreover, Rawls's set of primary goods and principles of justice are not valid for all societies at all times. They are just applicable to a Rawlsian society. Rawls and Rawlsians attempt to respond to the criticisms anyway. So, we will observe and assess the sustainability of justice as fairness by the critical analysis of both sides' arguments one after another.

In this dissertation, the author claims that Rawls defends a form of *egalitarian liberalism*. Egalitarian liberalism is the correct description of justice as fairness; because in this phrase the emphasis is on liberalism, rather than on egalitarianism. When we take into account the priority of liberty in Rawls's theory, this epithet makes sense. It appears that egalitarian liberalism mirrors Rawls's ideal of justice as fairness appropriately. Although Rawls is not a classical liberal, he is nevertheless within the liberal tradition. Thus, Rawls's egalitarianism is not as dominant as its liberal character. Nonetheless, justice as fairness has an egalitarian tendency. In other words, Rawls strives to construct a theory of justice which brings equality and liberty together, with a special emphasis on liberty.

This dissertation is a critical appraisal of Rawls's theory of distributive justice. We thus concentrate primarily on the text *Theory*. Since the text is written in a certain context, first we have to understand the context of the text. Therefore, we begin our inquiry by setting out the historical and philosophical context of *Theory* in line with Rawls's personal history. The social conditions and political conflicts that influence *Theory* are explained in section 2.1 of chapter 2. The rival theories of

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belongs to the later work, it is not; because it is a *re*statement of Rawls's theory of distributive justice.

justice as fairness (utilitarianism, and intuitionism) are summarized briefly in section 2.2. Then, Rawls's exact place and tradition (the social contract), upon which he depends, is examined; so that his theory is easily understood and critically assessed.

In section 2.3, we examine justice as fairness in detail. Rawls's main question is given: how can a *just* scheme of social collaboration be constructed and maintained? The basic notion of *Theory* is made clear: *pure procedural justice*. To that end, he puts forward the idea of "the original position."[1] Here, the idea is explained to show the conditions and constraints of the choice procedure. The criterion of just distribution is yielded thanks to the procedure. Rawls's principles of justice are examined one by one afterwards. Lastly primary goods, which *justice as fairness* frames the distribution of them, are reviewed.

In subsection 2.3.5, we observe the criticisms of Michael Walzer, Robert Nozick, and G. A. Cohen and determine whether Rawls can respond satisfactorily to them or not. Although they have different perspectives, all of them raise internal criticisms against Rawls. Such an inquiry first makes us understand Rawls's stance and purpose accurately. Secondly, it reveals fragile structure of *Theory*. Diverse viewpoints enlighten different aspects of justice as fairness. Even though Rawls answers to Nozick's objections depending on theoretical framework of *Theory*, he could not deal with the problems posed by Walzer and Cohen. From a libertarian perspective, Nozick holds that Rawlsian state violates individual property rights in the broad sense (i.e. *self-ownership*). Natural rights of life, liberty, and property are inalienable, and they cannot be infringed for a distributional patterned principle of justice. From a pluralist and communitarian perspective, Walzer claims that Rawls's set of *abstract* primary goods and principles of justice do not appeal to all societies; because the meanings of social goods, hence the principles of justice vary across societies. From an egalitarian perspective, Cohen argues that on the one hand persons make their personal choices *selfishly* in everyday life, on the other hand basic socioeconomic institutions are regulated with *egalitarian*

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[1] Rawls, *Theory*, rev. ed., p. 11.

principles of justice in Rawls's theory; there is a moral inconsistency here. To achieve an egalitarian society, both the private choices and the public realm/institutions should be governed by egalitarian attitudes; or else, Rawlsian project fails.

In section 2.4, Rawls's approach to metaphysics is examined and the metaphysical assumptions of justice as fairness are revealed. Even though Rawls seeks to keep away from metaphysical discussions from the outset, he could not escape from them. This possibly results from the topic. Justice cannot be tackled without metaphysical assumptions. At least, Rawls presumes that justice as fairness should reconcile the ideas of equality and liberty and rely on social consensus and unity. Thus, any theory of justice should involve some metaphysical claims. When doing political philosophy, one cannot avoid metaphysics.

In the last section, we discuss Rawls's "reflective equilibrium" as a method of ethical reasoning which seeks to transcend metaethical debates. However, he could not stay away from metaethical and methodological discussions. In particular, the method is charged with intuitionism and relativism. It is argued that since reflective equilibrium basically relies on *moral intuitions*, it cannot offer a sound basis for moral principles. Furthermore, others contend that reflective equilibrium is *relative to* the considered convictions of the persons. Since the method of reflective equilibrium relies on considered judgments of the persons, two different persons can equally justify their own moral principles in reflective equilibrium. Rawls's method therefore cannot find a remedy to intuitionism and relativism.

CHAPTER 2

JOHN RAWLS

(1921-2002)

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.[1]

2.1 His Life and the Historical Context

John Rawls is a twentieth-century philosopher who witnessed extraordinary wars and conflicts such as the Second World War, Vietnam War, Cold War, and Civil Rights Movement. In addition to the manifest calamities and injustices of these wars there are vast socioeconomic inequalities and inequities between the poor and the rich,[2] blacks and whites,[3] communists and capitalists[4] within American society in this era. It was a period of social, economic, political, and military conflicts. These events, disagreements, and injustices deeply affected Rawls's intellectual development and his masterpiece, *Theory* (1971).[5] In his own way, he responded

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[1] Rawls, *A Theory of Justice*, p. 3.

[2] Pogge, *John Rawls*, pp. 19-20; for the biography of Rawls see ibid., pp. 3-27.

[3] Rawls observed racial segregation in the American society from early childhood; see ibid., pp. 6-7.

[4] Frank Lovett, *Rawls's 'A Theory of Justice'* (London: Continuum, 2011), p. 2.

[5] Nagel confirms this interpretation as well: "his dominant concerns, which have always been the injustices associated with race, class, religion, and war" (Thomas Nagel, *Concealment and Exposure & Other Essays* [New York: Oxford University Press, 2002], p. 75).

to these events and conflicts. Rawls thus triggered a philosophical debate about social and political justice in 20th century analytical philosophy. To understand Rawls and his magnum opus we should examine turning points of his life and context of the text, *Theory*. Two perspectives are significant to understand Rawls and his influential book: historical and philosophical contexts. Let us take each of these in turn.

Rawls's intellectual life is deeply marked by the Second World War; because Rawls served in the US military as an infantryman during the war. There he "went through the remains of Hiroshima soon after its atomic destruction in August 1945, which, together with word of the Holocaust in Europe, had a profound effect upon him."[1] The experience of war "had such an impact on him that he declined a commission as an officer and left the Army."[2] Rawls had a direct experience of war in World War II which stroke him.[3] During the war, Rawls started to question Christianity; because in World War II, Christian doctrine was used to motivate soldiers.[4] Secondly, Rawls's learning of concentration camps, the Holocaust, other massacres and catastrophes of the Second World War induced him to cast doubts on the justice of God and think about *the problem of evil*. After that he went on questioning other doctrines of Christianity as well: "original sin, of heaven and hell, of salvation by true belief and based on accepting priestly authority.…the doctrine of predestination."[5] At last, especially for moral reasons Rawls renounced

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[1] Freeman, *Rawls*, p. 3.

[2] Eileen E. Morrison, *Ethics in Health Administration: A Practical Approach for Decision Makers* (London: Jones and Bartlett Publishers, 2006), p. 12.

[3] Particularly, the bombing of Hiroshima had such a great effect upon Rawls that he wrote an essay named "50 years after Hiroshima," *Dissent* (Summer 1995): pp. 323-327.

[4] John Rawls, *A Brief Inquiry into the Meaning of Sin & Faith with "On My Religion,"* ed. by Thomas Nagel (Cambridge, MA.: Harvard University Press, 2009), p. 262; this book includes both Christian (his undergraduate thesis: *A Brief Inquiry into the Meaning of Sin & Faith*) and secular ideas of Rawls (a statement of his religious journey: "On My Religion").

[5] Ibid., pp. 263-264.

his Christian faith by June of 1945.[1] "[I]n rejecting Christian doctrine, Rawls was rejecting Christianity's pessimism about human nature and its skepticism of humanity's capacities for justice, to find meaning in this life, and to redeem itself."[2] Then Rawls dedicated himself to the question of justice in this world: how can we realize a just society and political order? Is a just society possible? What are the conditions of a just socioeconomic system? How should socioeconomic values and political power be distributed in society to satisfy all persons fairly? What would be the criterion of justice? What would be the principles of fairness in the international scale? So, Rawls tried to answer these and other questions throughout his life from a reasonable ethical perspective. He sought to find realistic as well as moral principles of justice for our world.

The second war which affected Rawls's intellectual world strongly is the Vietnam War. Although he is not actively engaged in the Vietnam War, it also had a serious impact on Rawls's intellectual development. There are mainly two problems concerned with the Vietnam War that Rawls faced. The first is the fairness of war; the second is compulsory military service in the war and unequal attitude towards the poor in this period. In 1965, the USA sent combat troops, and officially entered the Vietnam War in order to prevent the spread of communism.[3] "From the very beginning, Rawls believed this war to be unjust and repeatedly defended his assessment in public."[4] However, he did not examine just war theory in depth such as Michael Walzer.[5] Rawls approaches the question from the perspective of

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[1] Ibid., p. 261.

[2] Freeman, *Rawls*, p. 11.

[3] Kevin Hillstrom, Laurie Collier Hillstrom, *Vietnam War: Almanac* (Detroit, MI: UXL, 2001), pp. 170-188.

[4] Pogge, *John Rawls,* p. 19.

[5] The issue of just war is largely problematized by Walzer in his book: Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

conscientious refusal.[1] What is more important, owing to the Vietnam war, Rawls sought to understand "the defects in the American political system"[2] and American society.[3] He observed that in fact the real problem is the political economy of the US: "wealth is very unevenly distributed and easily converted into political influence."[4] The rich and their companies can easily manipulate domestic and foreign policy decisions in the US:

> [t]he U.S. political process is structured so as to allow wealthy individuals and corporations (notably including those in the defense industry) to dominate the political competition through their contributions to political parties and organizations.[5]

In Eisenhower's words, "military-industrial complex,"[6] which is in the hands of the wealthy elite, leads politics. Rawls got annoyed of the use of state apparatus by the power elite in this way. Clues of these thoughts can be found in *Theory*.[7] The second problem that became apparent during the Vietnam War is the unequal practice of mandatory military service. Since most youths did not want to go into the military service, that is compulsory up to 26 years old, the US Department of

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[1] Rawls, *Theory,* pp. 368-382.

[2] Leif Wenar, "John Rawls," accessed May 4, 2016 in *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), edited by Edward N. Zalta, Stanford University, article first published March 25, 2008; substantive revision September 24, 2012, http://plato.stanford.edu/archives/win2013/entries/rawls/.

[3] Pogge, *John Rawls,* p. 19.

[4] Ibid., p. 19.

[5] Ibid., p. 19.

[6] Dwight D. Eisenhower: "Farewell Radio and Television Address to the American People," January 17, 1961, online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, http://www.presidency.ucsb.edu/ws/?pid=12086; although Eisenhower warned Americans in his Farewell Address (1961), but the US entered the Vietnam War in 1965.

[7] Rawls, *Theory,* pp. 221-226.

Defense made an exception to successful students. As a result, teachers played a critical role: "[o]ne failing grade could cause a student to be called up."[1] Rawls regarded this practice as unjust; because, rich and powerful parents could influence professors to give better grades to their children. There would be a manifest unequal treatment and undeserved advantage in this situation. Favoring one person because of coming from a wealthy family is a manifest injustice. Rawls and a group of professors at Harvard (including Michael Walzer) argued against this practice and proposed an equal selection procedure for mandatory military service (if it would be performed in any case).[2]

The Cold War also set the tone for the road to *Theory*; because Rawls wrote the book during the war. In an interview, Rawls uttered that he "began to collect notes around the fall of 1950"[3] on justice. With Rawls's first published paper, "Outline of a Decision Procedure for Ethics" (1951), Rawls started to lay the ethical grounds of his theory of justice[4] and published *Theory* in 1971. So, the book is developed between 1950 and 1971.[5] The Cold War began after 1945 and officially ended in 1991. Therefore, *Theory* is written during the Cold War. To recall the Cold War, it was an ongoing aggressive rivalry between "capitalist" United States and "communist" Soviet Union by means of proxy wars (e.g. the Vietnam War) that started after World War II and finished with the collapse of the Soviet Union.[1]

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[1] Pogge, *John Rawls,* p. 20.

[2] Ibid., pp. 20-21.

[3] "John Rawls: For the Record," interview by Samuel R. Aybar, Joshua D. Harlan, and Won J. Lee, *The Harvard Review of Philosophy* (Spring 1991), p. 39.

[4] John Rawls, "Outline of a Decision Procedure for Ethics," *The Philosophical Review* 60, no. 2 (April 1951): pp. 177-197; this article and its relationship with reflective equilibrium is examined in section 2.5 of this dissertation.

[5] Lovett and Freeman confirms this knowledge; see Lovett, *Rawls's 'Theory',* pp. 2-3 and Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (New York: Oxford University Press, 2007), p. 5.

In fact, the real struggle was about ideologies in the Cold War. Each camp sought to prove and universalize his own ideology across the world. The victory of one camp would be the victory of its ideology and worldview. When the Cold War was close to the end, Fukuyama proclaimed the "end of history" with the victory of liberalism.[2] So, the Cold War is in fact the clash of capitalism and Marxism. Rawls thus wrote his master piece in these turbulent times. Joseph Raz describes the Cold War aura as follows:

> [i]n an age where there seemed little to choose between the intellectually barren battle of dogmatic ideologies (capitalist and Marxist in particular), on the one hand, and the narrow, uninspiring, pragmatic squabbling over details with in each camp, on the other hand, *A Theory of Justice* demonstrated that there is room for rational theory-building on a grand scale.[3]

Under these circumstances, Rawls tries to show the possibility of a third way: a liberal but egalitarian theory of justice. He rationally aspires to pursue an egalitarian "property-owning democracy"[4] or "liberal socialist regime."[5] Rawlsian ideal regime is most likely *a liberal democracy* that seeks to mitigate inequalities and eliminate injustices.[6] Rawls attempts to reconcile the ideas of freedom and

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[1] The term "cold war" is first used by British author George Orwell in his political essay: "You and the Atom Bomb," *Tribune*, October 19, 1945; the term passes as follows: "James Burnham's theory has been much discussed, but few people have yet considered its ideological implications—that is, the kind of world-view, the kind of beliefs, and the social structure that would probably prevail in a state which was at once *unconquerable* and in a permanent state of "cold war" with its neighbours." Orwell, *The Collected Essays, Journalism and Letters of George Orwell*, ed. Sonia Orwell and Ian Angus, vol. 4, *In Front of Your Nose 1945 - 1950* (New York: Secker & Warburg, 1968), p. 9.

[2] Francis Fukuyama, "The End of History?," *The National Interest*, no. 16 (Summer 1989): pp. 3-18.

[3] Joseph Raz, "Facing Diversity: The Case of Epistemic Abstinence," *Philosophy & Public Affairs* 19, no. 1 (Winter 1990): p. 5. See also Dryzek, Honig, and Phillips, eds., *Oxford Handbook of Political Theory*, p. 14.

[4] Rawls, *Theory*, p. 274/242 rev.

[5] Rawls, *Theory*, rev. ed., p. xv.

[6] Rawls, *The Law of Peoples*, p. 128.

equality in his theory.[1] In addition to the Marxist criticism, he tries to reply to the conservative criticism as well: "Rawls sees justice as fairness as answering to the demands of both freedom and equality, a challenge posed by the socialist critique of liberal democracy and by the conservative critique of the modern welfare state."[2] In the following lines, we will discuss whether Rawls is successful in this project or not; but *Theory* is definitely composed in this historical context which is full of ideological discussions of political regimes and economic systems.

Another important issue that affects Rawlsian project is racial discrimination in the American society, i.e. "The Negro Problem," which is the remnant of the problem of slavery.[3] Even though slavery is abolished in 1865,[4] racial discrimination continued in the American society until the end of 1960s, i.e. the Civil Rights Movement.[5] After 1865, that is the abolition of slavery, the white establishment in

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[1] Rawls influenced from Isaiah Berlin in this idea when he was a fellow at Oxford, see Henry S. Richardson, "John Rawls (1921-2002)," in *The Internet Encyclopedia of Philosophy*, accessed May 19, 2016, http://www.iep.utm.edu/rawls/.

[2] Wenar, "John Rawls."

[3] Thomas Nagel tells the significance of slavery for Rawls as follows: "Black slavery is his paradigm of injustice, and it is a test for moral theories that they must explain its injustice in the right way" (Nagel, *Concealment and Exposure,* pp. 75-76).

[4] On December 6, 1865, the 13th Amendment was approved as part of the US Constitution. The amendment officially abolished slavery in all American states, but nonetheless the race problem remained. See Dorothy Schneider and Carl J. Schneider, *Slavery in America: American Experience* (New York: Facts on File, Inc., 2007), p. 369; Rawls examines the problem of slavery from the viewpoint of justice as fairness in an early paper that suggests his understanding, see John Rawls, "Justice as Fairness," *The Philosophical Review* 67, no. 2 (April 1958): pp. 187-192.

[5] For a critical assessment of the Civil Rights Movement see Franziska Meister, *Racism and Resistance: How the Black Panthers Challenged White Supremacy* (Bielefeld, Germany: Transcript, 2017), pp. 161-163 and Jason Zengerle, "The New Racism: this is How the Civil Rights Movement Ends," *New Republic*, August 11, 2014, https://newrepublic.com/article/119019/civil-rights-movement-going-reverse-alabama. In fact, the racism continues to reproduce itself in American society implicitly up to day; see *Michelle Alexander*, *The New Jim Crow*: Mass Incarceration in the Age of Colourblindness (New York: The New Press, 2012); Ta-Nehisi Coates, "Mapping the New Jim Crow," *The Atlantic*, October 17, 2014, https://www.theatlantic.com/politics/archive/2014/10/mapping-the-new-jim-crow/381617/; for these sources I am indebted to Dr. Alain Gabon; see also Terrance MacMullan, *Habits of Whiteness: A Pragmatist Reconstruction* (Bloomington: Indiana University Press, 2009); Manning Marable, *The Great Wells of Democracy: The Meaning of Race in American Life* (New York: BasicCivitas Books, 2002); Karen Fleshman, "Yes, Racism is Still a Problem in America," *The*

the American South re-established their authority with a number of laws known as the "black codes," which were intended to constrain work and public life of the freed blacks.[1] In this way, whites and blacks were segregated in public spaces, such as in the workplace, trains, schools, restaurants, hospitals etc. When blacks attempted to claim their civil rights in the courts, judges replied them with the doctrine of "separate but equal." In 1896, even the Supreme Court argued that if racially separate services were equal, they did not violate the Equal Protection Clause of the 14th Amendment to the US Constitution.[2] That is to say, according to the *separate but equal* policy, the transportation of blacks and whites in separate railroad cars is permissible. The practice of racial segregation in every sphere of life continued "legally" until 1954. Lastly, on May 17, 1954, the US Supreme Court unanimously decreed on the critical case *Brown v. Board of Education* that "in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are *inherently* unequal."[3] The end of legal segregation is begun by the *Brown* decision. In the following years, the *Brown* decision triggered other desegregation decisions as well. In addition to that a serial

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Blog, The Huffington Post, July 7, 2015 updated July 7, 2016, https://www.huffingtonpost.com/karen-fleshman/yes-racism-is-still-a-problem-in-america_b_7732498.html; Kenneth N. Addison, *"We Hold These Truths to Be Self-Evident…": an Interdisciplinary Analysis of the Roots of Racism and Slavery in America* (Lanham, Md.: University Press of America, 2009), p. 242. Recall Ferguson riots in 2014 and the movement of Black Lives Matter which burst out ironically in the Barack Obama administration; see Marc Lamont Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond* (New York: Atria Books, 2016). Since 1619, there is racism in America; but in this study, we will focus on the period which have an influence on Rawls's thought.

[1] In other words, it is called "Jim Crow" laws; see Schneider and Schneider, *Slavery in America*, p. 350, 490.

[2] Addison, *Roots of Racism and Slavery*, p. 203. The section 1 of 14th Amendment is: "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Congressional Research Service Library of Congress, *Constitution of the United States of America: Analysis, and Interpretation*, centennial ed. (Washington, DC: U.S. Government Publishing Office, 2016), p. 1829.

[3] Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), p. 495; italics added.

of civil disobedience actions took place by African-Americans.[1] First and foremost, on December 1, 1955, a black woman Rosa Parks denied to leave her place to a white citizen on bus, "defying the law by which blacks were required to give up their seats to white passengers when the front section, reserved for whites, was filled. Parks was immediately arrested."[2] Then increasing number of protests were organized to draw attention to unjust segregations across America. Rosa Parks's action "created the spark that would provide the momentum for the entire civil rights movement."[3] Then other black actors took role such as Martin Luther King, Jr., Stokely Carmichael, and Malcolm X.[4] They organized public demonstrations in order to gain civil rights of African-Americans and remove racial separation. When all is said and done, the civil rights struggle led to a change, and African-Americans achieved their civil rights and political liberties: The Civil Rights Act of 1964 and the Voting Rights Act of 1965 became law by President Lyndon B. Johnson. At the end of 1960s, racial segregation is formally ended and African-Americans gained their civil rights in the United States. All racial segregation in schools, buses, hotels, restaurants etc. outlawed and removed.[5]

These are possibly most important events of the 20th century that influenced Rawls's thought in some ways: The Second World War, Vietnam War, Cold War, and Civil Rights Movement. Rawls experienced these wars and events closely, and

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[1] Traces of the problem of civil disobedience can be found in Rawls's work; see Rawls, *Theory*, pp. 363-368.

[2] Jill Karson (ed.), *The Civil Rights Movement* (Detroit: Thomson Gale, 2005), p. 14.

[3] Ibid., p. 14.

[4] For the leaders of the movement and post-Civil Rights era, see Cedric Johnson, *Revolutionaries to Race Leaders: Black Power and the Making of African American Politics* (Minneapolis: University of Minnesota Press, 2007) and Manning Marable, *Race, Reform and Rebellion: The Second Reconstruction in Black America, 1945-1982* (London: Macmillan Press, 1984).

[5] Karson, *Civil Rights Movement*, p. 212.

recognized inequalities honestly. This was a period of mass atrocities and injustices that Rawls witnessed them directly. That is, in the mid-20th century, there were many historical questions that were waiting to be answered.[1] There is an urgent need for justice in the society. *Theory* was a response to these crucial social and political questions. Since these pressing questions made theoretical philosophy meaningless; practical philosophy, in particular *ethics* and *political philosophy*, began to increase in the Anglo-American world by the late 1960s.[2] At that point Jürgen Habermas acknowledges that "John Rawls's *A Theory of Justice* marks a pivotal turning point in the most recent history of practical philosophy, for he restored long-suppressed moral questions to the status of serious objects of philosophical investigation."[3] Before *Theory*, practical ethical problems were ignored in academic circles: "[i]n the decades immediately preceding the publication of Rawls's masterwork, American normative philosophy had largely confined itself to something called metaethics, the second-order analysis of moral language."[4] Philosophers were previously trying to solve moral questions by metaethics and linguistic analysis; but after *Theory*, normative inquiry taken seriously again by academic philosophy.[5] Jeffrey Stout interprets Rawls's work in this historical background as well: "Rawls was stepping into a near-vacuum, and doing so at a moment when the students who had come of age during the

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[1] Apart from the others, Rawls confirms our historical reading of *Theory* too, see Rawls, *Political Liberalism*, pp. xxviii-xxix; and in the interview, he underlines 1960s America that "I think it [*Theory*] gained attention from a conjunction of circumstances. You have to remember [the historical context.] … It was during the Vietnam War and soon after the Civil Rights Movement. They dominated the politics of the day. And yet there was no recent book, no systematic treatise, you might say, on a conception of political justice.… It was a matter of coincidence. Fifteen years earlier or later its [*Theory*'s] status would be entirely different." "John Rawls: For the Record," p. 42.

[2] See this piece for the zeitgeist of 1960s: Dale Jamieson, "Singer and the Practical Ethics Movement," in *Dale Jamieson, Singer and His Critics* (Oxford: Blackwell, 1999), pp. 2-5.

[3] Jürgen Habermas, "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *The Journal of Philosophy* 92, no. 3 (March 1995): p. 109.

[4] Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004), p. 294.

[5] Jamieson, "Singer and the Practical Ethics Movement," p. 3.

controversies over Civil Rights and the Vietnam War were demanding that normative inquiry be given a central place in the curriculum."[1] Rawls satisfied this demand with his master piece. Normative inquiry highly regarded in academic circles again.[2] The historical *context* of the *text* is thus explained; from now on, the philosophical background of *Theory* will be discussed.

2.2 The Philosophical Context

In the preface of *Theory*, Rawls states his purpose of writing the book, and places his work against utilitarianism and intuitionism:

> [d]uring much of modern moral philosophy the predominant systematic theory has been some form of utilitarianism. One reason for this is that it has been espoused by a long line of brilliant writers who have built up a body of thought truly impressive in its scope and refinement. We sometimes forget that the great utilitarians, Hume and Adam Smith, Bentham and Mill, were social theorists and economists of the first rank; and the moral doctrine they worked out was framed to meet the needs of their wider interests and to fit into a comprehensive scheme. Those who criticized them often did so on a much narrower front. They pointed out the obscurities of the principle of utility and noted the apparent incongruities between many of its implications and our moral sentiments. But they failed, I believe, to construct a workable and systematic moral conception to oppose it. The outcome is that we often seem forced to choose between *utilitarianism* and *intuitionism*. Most likely we finally settle upon a variant of the utility principle circumscribed and restricted in certain ad hoc ways by intuitionistic constraints. Such a view is not irrational; and there is no assurance that we can do better. But this is no reason not to try.[3]

Rawls thus primarily writes *Theory* against utilitarianism, and secondarily against intuitionism. He seeks to set up a theory which "provides a reasonably systematic

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[1] Stout, *Democracy and Tradition*, p. 294.

[2] On the other hand, Rawls's contribution protected and increased public reputation of philosophy: "*Theory* was a formative event for twentieth-century philosophy. It showed how philosophy can do more than play with its own self-invented questions (Are moral assertions capable of being true or false? Is it possible to know that the external world exists?)—that it can work thoroughly and creatively on important questions that every adult citizen is or should be taking seriously. Many thought, after reading this book, that it was worthwhile again to read, study, teach, and write philosophy." Pogge, *John Rawls*, p. viii.

[3] Rawls, *Theory*, pp. vii-viii; emphasis added.

alternative to utilitarianism."[1] To Rawls utilitarianism is so important because it "in one form or another has long dominated the Anglo-Saxon tradition of political thought."[2] Anglophone moral and political philosophy is mostly determined by the utilitarian tradition from the beginning of the 19th to the mid-20th century.[3] What is more, intuitionism backed up utilitarianism whenever necessary. Rawls is not content with that status quo and their conceptions of justice. He thus tries to construct a fair and moral theory of justice. Now let me explain Rawls's discontent with utilitarianism in detail.

2.2.1 Utilitarianism

Rawls argues that utilitarianism could not provide a satisfactory basis for constitutional democracy; because utilitarianism attempts to "maximize the net balance of satisfaction."[4] Utilitarians think of society as an individual. A rational individual seeks to maximize her desires' satisfaction by balancing her gains and losses. She calculates her profits and losses; if the net balance is positive, she is satisfied. Otherwise she is dissatisfied. So, losses are not important if gains are more than losses. By the same logic, utilitarians believe that society can balance its gains and losses. If net balance of satisfaction is positive, the society is well ordered and just. Otherwise, the society is not properly arranged and just.

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[1] Rawls, *Theory*, rev. ed., p. xi.

[2] Ibid.

[3] Tim Mulgan, *Understanding Utilitarianism* (Stocksfield: Acumen, 2007), pp. 7-55; C. Welch, "Utilitarianism," in *The Invisible Hand*, eds. John Eatwell, Murray Milgate and Peter Newman, (Basingstoke: Macmillan, 1989), pp. 257-258; Marcus G. Singer, "Sidgwick and Nineteenth-Century British Ethical Thought," in *Essays on Henry Sidgwick*, ed. Bart Schultz (Cambridge: Cambridge University Press, 1992), p. 65; utilitarianism is discredited as an economic theory in the 1930s, see Geoffrey Brennan, "Economics," in *A Companion to Contemporary Political Philosophy*, pp. 120-132.

[4] Rawls, *Theory*, p. 24; Rawls is chiefly against classical utilitarianism that Henry Sidgwick advocates: "the kind of utilitarianism I shall describe here is the strict classical doctrine which receives perhaps its clearest and most accessible formulation in Sidgwick. The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it." Ibid., p. 22; see also Henry Sidgwick, *The Methods of Ethics,* 7th ed. (London: Macmillan, 1962).

Utilitarians thus consider aggregate welfare of society and assume society as a whole. In this approach, every single person is not considered. Individuals can be sacrificed for the welfare of the society. Public utility is the major principle of utilitarians. For instance, slavery is justified with this rationale in modern history.[1] Since "[u]tilitarianism does not take seriously the distinction between persons,"[2] Rawls is against the utilitarian doctrine. Utilitarianism does not secure "the basic rights and liberties of citizens as free and equal persons, a requirement of absolutely first importance for an account of democratic institutions."[3] Persons' basic liberties cannot be renounced for total utility or maximum social welfare.

Utilitarianism is thus against "the principle of equal basic liberties"[4] (hereafter referred to as EBL) of justice as fairness. Put another way, utilitarianism is not compatible with *equal* liberties which is Rawls's first principle of justice. As cited in the beginning of this chapter, to Rawls, "[j]ustice is the first virtue of social institutions, as truth is of systems of thought."[5] So legal, social, and political theories should be decided in view of justice: "laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."[6] To Rawls, utilitarianism is unjust because each "person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a

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[1] Daniel Kilbrid, "Slavery and Utilitarianism: Thomas Cooper and the Mind of the Old South," *Journal of Southern History* 59, no. 3 (August 1993): pp. 469-486.

[2] Rawls, *Theory*, p. 27.

[3] Rawls, *Theory*, rev. ed., p. xii.

[4] Rawls, *Theory*, p. 31; "equal basic liberties" refers to Rawls's first principle (EBL) which will be explained in section 2.3.

[5] Rawls, *Theory*, p. 3.

[6] Ibid.

greater good shared by others."[1] According to Rawls, therefore, utilitarianism must be abolished, because any kind of slavery that violates EBL is absolutely unacceptable. Justice as fairness does not consent to utilitarian doctrine that argues for "sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many."[2] Rights and liberties should be inalienable and enjoyed by each person equally: "[t]herefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests."[3] Maximum social welfare or public utility could not justify violation of rights of citizens; because basic liberties are non-negotiable in Rawls's theory.

For Rawls, *utilitarianism* could not guarantee the liberties of citizens, because its priority is *the idea of good*. Since utilitarianism is a teleological conception, the right is defined according to the good, which is maximum total utility. The right is determined by the good (*telos*). In utilitarianism, the good thus comes before the right: "the good is defined *independently* from the right, and then the right is defined as that which maximizes the good."[4] In utilitarian account of justice therefore the right is determined according to the maximum satisfaction of desires. Other evaluations are derived from this maximum principle.[5] From the utilitarian standpoint, "there is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared

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[1] Ibid., pp. 3-4.

[2] Ibid., p. 4.

[3] Ibid., p. 4.

[4] Ibid., p. 24; emphasis added.

[5] Against the utilitarian maximum principle, Rawls relies on *the maximin principle*; it will be examined in subsection 2.3.3.

by many."[1] For the reason that the good precedes the right in utilitarianism, it can justify the infringement of the rights of minorities. However, in Rawls's theory, "the concept of right is prior to that of the good."[2] So the rights of citizens cannot be violated for maximum utility; because unlike utilitarianism, justice as fairness is a "deontological theory."[3] It is a nonteleological account; the good is dependent upon the right, but not *vice versa*: the "priority of the right over the good in justice as fairness turns out to be a central feature of the conception."[4] In this way, rights and liberties of citizens is firmly and equally upheld. No one's rights are sacrificed for aggregate sum of satisfaction. Against utilitarianism, individuals' rights are not infringed for society in Rawls's theory: "*principles of right,* and so of *justice*, put limits on which satisfactions have value; they impose restrictions on what are reasonable conceptions of one's good."[5] Thus one cannot satisfy her desire at the expense of others' rights. Deontological theory provides essential foundations for a constitutional democracy due to the precedence of the right over the good. As a result, utilitarianism is "the archrival of the Rawlsian theory."[6] The other one is intuitionism, but what kind of intuitionism Rawls rejects? In the following lines the form of intuitionism, that Rawls argues against, will be examined.

2.2.2 Intuitionism

The other alternative moral view was intuitionism in the early twentieth-century Anglo-Saxon intellectual world.[7] Rawls objects to intuitionism as well as

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[1] Ibid., p. 26.

[2] Ibid., p. 31.

[3] Ibid., p. 30.

[4] Ibid., pp. 31-32; Rawls takes "the priority of right over the good" from Kant, see ibid., p. 31.

[5] Ibid., p. 31; emphasis mine.

[6] Jean Hampton, "Should Political Philosophy Be Done Without Metaphysics?," *Ethics* 99, no. 4 (July 1989): pp. 797-798.

[7] Lovett, *Rawls's 'Theory'*, p. 6.

utilitarianism. He however "does not think of it [intuitionism] as an epistemological or metaphysical theory."[1] That is to say, Rawls is not concerned with intuitionism as a foundationalist theory. He applies to intuitionism "to refer to the *structure* of a moral view."[2] Rawls just considers intuitionist theories first, as "a plurality of first principles which may conflict to give contrary directives in particular types of cases;"[3] and secondly, these theories "include no explicit method, no priority rules, for weighing these principles against one another: we are simply to strike a balance by intuition, by what seems to us most nearly right."[4] Rawls defines intuitionist theories with respects to these two characteristics in order to compare justice as fairness and intuitionism. So, he includes intuitionism to show a moral structure which do not have a systematic methodology for moral assessments. It is therefore a kind of *pluralistic intuitionism*; that is, Rawls's conception of intuitionism leads to ethical pluralism.[5] Because there are no priority rules between the first principles of justice: "[t]hat structure [of *intuitionism*] differs from both *utilitarianism* (which contains one such principle and a priority rule) and *justice as fairness* (which contains more than one such principle and a priority rule)."[6] Intuitionism is thus a plurality of first principles without a priority rule. In case of conflict with the first principles, the decision is made by intuition rather than a procedure. So, the intuitionist can reach two different conclusions and argue that both are correct. For the pluralistic intuitionist, in matters of justice and

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[1] Jon Mandle, *Rawls's Theory: An Introduction* (New York: Cambridge University Press, 2009), p. 44.

[2] Chris Naticchia, "Intuitionism," in *The Cambridge Rawls Lexicon*, eds. Jon Mandle and David A. Reidy, (Cambridge: Cambridge University Press, 2015), p. 371.

[3] Rawls, *Theory*, p. 34.

[4] Ibid., p. 34.

[5] Ibid., p. 35.

[6] Naticchia, "Intuitionism," p. 371; emphasis mine.

ethics, there is no one truth, but "a plurality of competing principles."[1] Principles of justice depend on viewpoints of persons and communities. "The only way" of refuting the intuitionist account, to Rawls, "is to set forth the recognizably ethical criteria that account for the weights which, in our considered judgments, we think appropriate to give to the plurality of principles."[2] Rawls believes that he can rebut intuitionism and solve the priority problem by constructing the *moral criteria*. Rawls considers that he can evaluate the first principles of justice reasonably and rationally. Since intuitionism rejects the existence of the priority rules among moral criteria, Rawls seeks to create reasonable constructive criteria and rules for the first principles and disprove moral intuitionism in this way. Rawls however does justice to intuitions as well. He does not reject the appeal to intuition completely. Rawls suggests that the appeal to intuition should be restricted as much as possible; otherwise men of "power and influence" will determine weighting of the first principles.[3] The appeal to intuition therefore should be limited all the way. Rawls explains the need for the priority rules in a theory in this manner:

> there is nothing necessarily irrational in the appeal to intuition to settle questions of priority. We must recognize the possibility that there is no way to get beyond a plurality of principles. No doubt any conception of justice will have to rely on intuition to some degree. Nevertheless, we should do what we can to reduce the direct appeal to our considered judgments. For if men balance final principles differently, as presumably they often do, then their conceptions of justice are different. The assignment of weights is an essential and not a minor part of a conception of justice. If we cannot explain how these weights are to be determined by reasonable ethical criteria, the means of rational discussion have come to an end.[4]

The appeal to intuition is not absurd, but a theory of justice requires the priority rules and acceptable ethical norms; or else conflicts cannot be resolved rationally.

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[1] Rawls, *Theory*, p. 39.

[2] Ibid., p. 39.

[3] Ibid., p. 35.

[4] Ibid., p. 41.

So, for Rawls, "assigning weights to competing principles of justice"[1] is necessary for a theory of justice. In this way, moral conflicts can be resolved rationally. According to Rawls, intuitionism could not provide satisfactory moral foundations. He thus strives to avoid intuitionism as far as possible; however, it is suspicious whether Rawls accomplished this task or not. The charge of intuitionism is examined in subsection 2.5.1.3. at length. That is enough for the time being about intuitionism and utilitarianism, which were the dominant moral theories while Rawls was writing *Theory*. First utilitarianism, and secondly intuitionism constitutes the rival traditions; but what about the tradition of *Theory*? Where does Rawls place himself? What is the philosophical background of justice as fairness? Now, it is time to tackle the philosophical tradition that Rawls's theory belongs to.

2.2.3 The Aristotelian Tradition?

To locate the tradition that justice as fairness relies on, one misrepresentation should be corrected. In *Theory*, Rawls suggests that justice as fairness is parallel to the Aristotelian tradition. Rawls just mentions the concept of *pleonexia* to show the congruence between his and Aristotle's theory of justice.[2] However, Rawls and Aristotle's theories of justice widely differ with respects to their approaches to the problem. Aristotle's account is "teleological,"[3] "qualitative,"[4] "indeterminate,"[5]

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[1] Ibid., p. 40.

[2] Rawls, *Theory*, p. 10.

[3] Gerasimos Santas, *Goodness and Justice: Plato, Aristotle, and the Moderns* (Malden, Mass.: Blackwell Publishers, 2001), p. 281; Anton-Hermann Chroust and David L. Osborn, "Aristotle's Conception of Justice," *Notre Dame Law Review* 17, no. 2 (1942): p. 134.

[4] M.W. Jackson, "Aristotle on Rawls: A Critique of Quantitative Justice," *The Journal of Value Inquiry* 19, no. 2 (1985): p. 109.

[5] Bernard Yack, *The Problems of a Political Animal: Community, Justice, and Conflict in Aristotelian Political Thought* (Berkeley: University of California Press, 1993), p. 130; Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Indiana: University of Notre Dame Press, 1988), p. 122; Martha Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy*, rev. ed. (Cambridge: Cambridge University Press, 2001), p. 302.

"character-centered,"[1] "aristocratic,"[2] and "perfectionist;"[3] whereas Rawls's conception is "deontological,"[4] "quantitative,"[5] "determinate,"[6] "state-of-affairs" centered,[7] "egalitarian,"[8] and "contractarian."[9]

In the first place, Aristotle's conception of justice is teleological; however, Rawls's theory is deontological. Aristotle prioritizes the idea of good whereas Rawls gives precedence to the idea of right.[10] To Aristotle, the just is defined by its contribution to the good of community.[11] However, to Rawls, the idea of good

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[1] Yack, *Political Animal,* p. 154.

[2] D. D. Raphael, *Concepts of Justice* (Oxford: Clarendon Press, 2001), p. 47; Manuel Knoll, "The Meaning of Distributive Justice for Aristotle's Theory of Constitutions," *ΠΗΓΗ/FONS*: I (2016): pp. 73-93.

[3] Steven Wall, "Perfectionism in Moral and Political Philosophy," in *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/win2016/entries/perfectionism-moral/; and Rawls, *Theory*, p. 325.

[4] Jackson, "Aristotle on Rawls," p. 100; Mandle, *Rawls's Theory,* p. 43.

[5] Jackson, "Aristotle on Rawls," p. 101.

[6] Yack, *Political Animal,* p. 128.

[7] Ibid., p. 154; Thomas Patrick Burke, *The Concept of Justice: Is Social Justice Just?* (London and New York: Continuum, 2011), p. 13.

[8] Samuel Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), p. 241.

[9] Freeman, *The Social Contract*, p. 4. In addition to these differences, their ways of founding are also dissimilar, see section 2.4.

[10] Rawlsian primacy of the right over the good is explained above; see subsection 2.2.1.

[11] Aristotle, *Nicomachean Ethics,* trans. Terence Irwin (Indianapolis: Hackett Publishing Company, Inc., 1985), 1129b19.

depends on the ideas of right and justice.[1] Rawls gives the first priority to the idea of justice; but, to Aristotle the idea of good comes first. That is, in Aristotle's view, the idea of good determines the idea of right and justice. Aristotle's political teleology is roughly as follows: Since everything has an end in nature, the *polis* has an end as well; and the aim of the *polis* is the good life.[2] Since justice is the common good and since the common good is the good life; justice exists for the good life (*telos*). Thus, an act is just in case of it supplies the good life.[3] In Aristotle's conception of justice thus distributions, dispositions, and decisions, etc., are evaluated from this teleological perspective. However, teleological doctrines are rejected by Rawls for the priority of the good rather than right.[4]

Secondly, for Aristotle justice is qualitative whereas for Rawls justice is quantitative. Their understandings of goods which are to be distributed does not overlap. For Aristotle, the goods which distributive justice is dealt with are "honour or wealth or safety."[5] But for Rawls, they are "liberty and opportunity, income and wealth, and the social bases of self-respect."[6] Aristotelian external goods are qualitative, spiritual, and noble whereas Rawlsian primary goods are social, economic, and measurable. In brief, for Aristotle, the distribuend is "honorific"[7] and "incommensurable;"[1] however, for Rawls, the distribuend is commensurable and comparable.[2]

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[1] Rawls, *Theory*, p. 31.

[2] Aristotle, *Politics*, trans. H. Rackham (Cambridge: Harvard University Press, 1932), 1280a30.

[3] Ibid., 1282b14-17; Aristotle, *Nicomachean Ethics,* 1129b19.

[4] Rawls, *Theory*, pp. 24-26.

[5] Aristotle, *Nicomachean Ethics,* 1130b2.

[6] Rawls, *Theory*, rev. ed., p. 54; Rawlsian account of primary goods will be tackled in subsection 2.3.4.

[7] Michael J. Sandel, "Distinguished Lecture: What's the Right Thing To Do?," *The Boston University Law Review* 91, no. 4 (July 2011): p. 1303.

Thirdly, Aristotle does not give standard rules or principles; whereas Rawls tries to precisely determine the principles of justice. Rawls aims to "eliminate the indeterminacy of ordinary political judgments about justice."[3] However, Aristotle reserves this indeterminacy for the judgments of just (lawful, fair, and virtuous) persons who consider the good of political community.[4]

Thus, fourthly, Aristotle's focus is mainly upon the just character whereas Rawls's focus is primarily upon the just state-of-affairs. Aristotle associates justice chiefly with *a state of character* rather than principles or procedures: "justice is the state that makes us doers of just actions, that makes us do justice and wish what is just."[5] Since "the states are recognized from their subjects,"[6] we should concentrate on just and unjust characters to understand justice and injustice. The second way is the investigation of opposite characters, because "one of a pair of contrary states is recognized from the other contrary."[7] This is why Aristotle inspects *pleonexia* and *dikaiosune* in his inquiry. Aristotle employs the concept of pleonexia to understand unjust person and so just person.[8] But Rawls's theory is an

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[1] Nussbaum, *The Fragility of Goodness*, p. 294; Robert L. Gallagher, "Incommensurability in Aristotle's Theory of Reciprocal Justice," *British Journal for the History of Philosophy* 20, no. 4 (2012): pp. 697-698.

[2] Jackson, "Aristotle on Rawls," pp. 100-109; John Rawls, "Social Unity and Primary Goods," in *Utilitarianism and Beyond*, eds. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 159-185.

[3] Yack, *Political Animal,* pp. 128-129.

[4] Aristotle, *Nicomachean Ethics,* 1129b1-19.

[5] Ibid., 1129a8-9.

[6] Ibid., 1129a19

[7] Ibid., 1129a18.

[8] Ibid., 1129b1-12.

entirely different project. Rawls aims at *states of affairs* rather than characters to organize a just society. In the original position behind "a veil of ignorance," he constructs a set of principles for major institutions.[1] These rules and principles is applied to basic institutions, not to individuals. To Rawls, "the primary subject of justice is the basic structure of society."[2] The emphasis thus shifts from persons towards states-of-affairs in justice as fairness. Rawls's rationale for social change is as follows:

> the essential point is that despite the individualistic features of justice as fairness, the two principles of justice are not contingent upon existing desires or present social conditions. Thus we are able to derive a conception of a just basic structure, and an ideal of the person compatible with it, that can serve as a standard for appraising institutions and for guiding the overall direction of social change.[3]

As Judith Shklar named, Rawls seeks to suggest a "normal model of justice"[4] for basic institutions. These institutions then will be transformed according to the normal model. The distinctive element is thus the basic structure in justice as fairness. Not individuals, actions, or states, but "an ideal state of affairs"[5] forces persons to choose principles of justice for basic institutions.

Another difference between Rawls and Aristotle's conception of justice is about their ideas on society. Aristotle supports aristocratic political community; whereas Rawls dreams of an egalitarian society. For Aristotle, women and slaves should not have political rights; because they are not citizens.[6] There is a *relative* equality

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[1] Rawls, *Theory*, p. 12.

[2] Ibid., p. 7.

[3] Ibid., p. 263.

[4] Judith N. Shklar, *The Faces of Injustice* (New Haven and London: Yale University Press, 1990), p. 17.

[5] Rawls, *Theory*, p. 246.

[6] Aristotle, *Politics*, 1253a10-1253a18, 1254a7-1255a2.

between free men (who are citizens) but it is proportional.[1] To be precise, justice is only applicable to free men[2] and it depends on their qualities: "if the people involved are not equal, they will not [justly] receive equal shares; indeed, whenever equals receive unequal shares, unequals equal shares, in a distribution, that is the source of quarrels and accusations."[3] Aristotle therefore supports *equality of equals*, not an absolute equality. Anyway, there appears a problem. Women and slaves is differentiable by their qualities; but since men is relatively equal, how can men be distinguished? Virtue (*arete*) and education (*paideia*) are the distinctive characteristics of free men according to Aristotle.[4] Virtuous and cultivated citizens thus deserve much more than the other vicious ones, because "those who contribute most to such [political] fellowships have a larger part in the state than those who are their equals or superiors in freedom and birth but not their equals in civic virtue, or than those who surpass them in wealth but are surpassed by them in virtue."[5] Thus, since the persons who have (civic) virtues further the good life of the community; they deserve the best, i.e. the government. This is the Aristocratic government of Aristotle that the best in virtue deserves the best in the *polis*: political leadership.[6] Therefore, Aristotle's best regime and conception of justice are aristocratic.[7] Rawls however defends an egalitarian theory of justice and society. Unlike Aristotle, Rawls adopts an egalitarian vision of society. Rawls

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[1] Aristotle, *Nicomachean Ethics,* 1134a27.

[2] Ibid., p. 1134b10-15.

[3] Ibid., p. 1131a23-25.

[4] Aristotle, *Politics*, 1283a25; one may understand education here in the modern, narrow sense; but the sense of *paideia* is broader than the modern concept of education. *Paideia* is the education and cultivation of soul as well as body, see Ibid., bks. VII, VIII.

[5] Ibid., 1281a5-8.

[6] Ibid., 1288a15-20; to remind, aristocracy is the rule of the best persons (*aristoi*).

[7] Knoll, "The Meaning of Distributive Justice," p. 87.

initially assumes all humans as equals regardless of their social and natural qualities.[1] He then maintains "equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice."[2] That is, all humans must "be treated as ends and not as means."[3] In the "original position," every single individual has a right to follow her own end consistent with the principles.[4] Rawls's idea of equality is thus not equality of equals, but equality of all human beings; but since some are more "lucky" than the others, "[s]ocial and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."[5] Inequalities are therefore justifiable on condition that the most advantaged maximally support the socioeconomic status of the most disadvantaged. Rawls distinguishes the principle of *fair* equality of opportunity (hereafter referred to as FEO) from formal equality of opportunity by positive action. For instance, to realize "genuine equality of opportunity," Rawls suggests, "greater resources might be spent on the education of the less rather than the more intelligent, at least over a certain time of life, say the earlier years of school."[6] Rawls thus expects an egalitarian society in the long run. To that end, he offers some positive arrangements for the most disadvantaged. Rawls believes that justice as fairness has a "tendency to equality" and supports "an egalitarian conception of justice;"[7] because, it promises equal liberties, "fair

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[1] Rawls, *Theory*, p. 19.

[2] Ibid., p. 19.

[3] Ibid., p. 180.

[4] Ibid.

[5] Ibid., p. 83.

[6] Ibid., pp. 100-101.

[7] Ibid., p. 100.

equality of opportunity," and "equal moral worth."[1] Justice as fairness is manifestly different from aristocracy; because, according to aristocratic view, "no attempt is made to regulate social contingencies beyond what is required by formal equality of opportunity."[2] Rawls's theory however seeks to adjust socioeconomic inequalities for the good of the most disadvantaged. Rawls holds "democratic equality"[3] rather than the aristocratic one: "[a]ristocratic and caste societies are unjust because they make these [social and natural] contingencies the ascriptive basis for belonging to more or less enclosed and privileged social classes."[4] As it is seen, Rawls observes aristocracy as unjust because of its aristocratic foundations. In contrast, he defends an egalitarian theory of justice and society.

Last but not least, Aristotle's account of justice is perfectionist, whereas Rawls's theory is contractarian. Aristotle's perfectionist argument is as follows: since all sciences and arts aim at a good, politics intends justice (that is the good of political community which is the common good). Since distributive justice is related to persons and things, equal persons should take equal things (*equality of equals*). But how can we distinguish equals from unequals? Since human beings have different capacities and merits, they perform something well and something not. Thus, all persons should take things fitting perfectly to their merits; and so, they will take things which they are perfectly competent. When all persons perform what they do best, the greatest good would be achieved in the *polis*. Among others, the best flutist therefore should take the best flute.[5] Thus a thing should be given to the person who performs it well in accordance with its end. The perfectly competent one performs it well according to its end, so she deserves the thing in

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[1] Ibid., p. 312.

[2] Ibid., p. 65, 74.

[3] Ibid., p. 75.

[4] Ibid., p. 102.

[5] Aristotle, *Politics*, 1282b14-33.

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question. Just distribution is the one in which each person gets the things they deserve according to the principle of perfection. This way of distribution contributes both to the perfection of *citizens* (human excellence) and to the perfection of the *polis* (political excellence) that leads to "a good life"[1] which is "perfect and self-sufficient."[2] Aristotle's conception of justice is therefore teleological and perfectionist in this sense.[3] However, Rawls's approach to the problem of justice is mainly contractarian. Indeed, as Samuel Freeman underlines, it is "social contractarian;"[4] because Rawls's theory hinges on an imaginary contract of the representatives in "the original position" that "corresponds to the state of nature in the traditional theory of the social contract."[5] However, "the original position" is neither historical nor real, but a hypothetical agreement functions as a "thought-experiment"[6] to select "the principles of justice for the basic structure of society."[7] Unlike Aristotle's conception of justice, major principles or ultimate ends of justice do not exist in nature or in the city. The principles are chosen by free representatives in an "initial position of equality."[8] In

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[1] Ibid., 1283a24.

[2] Ibid., 1280b33.

[3] Rawls rejects Aristotle's perfectionism because it conflicts with EBL and DP (consider the justification of slavery in Greeks because of noble citizens' realization of philosophy, art, etc.); see Rawls, *Theory*, pp. 325-332; however, others argue that perfectionism need not to conflict with others' perfectionism, see T. H. Green, *Lectures on the Principles of Political Obligation*, eds. P. Harris and J. Morrow (Cambridge: Cambridge University Press, 1986), pp. 7-8; Thomas Hurka, *Perfectionism* (New York: Oxford University Press, 1993), pp. 55-60; in particular see Richard Kraut, "Aristotle and Rawls on the Common Good," in *The Cambridge Companion to Aristotle's Politics*, eds. Marguerite Deslauriers and Pierre Destree (Cambridge: Cambridge University Press, 2013), pp. 359-367.

[4] Freeman, *The Social Contract*, p. 7.

[5] Rawls, *Theory*, p. 12.

[6] Rawls, *Restatement*, p. 17.

[7] Rawls, *Theory*, p. 11.

[8] Ibid.

this way, each person can pursue her own end in accordance with "a public conception of justice."[1] If a society is well-organized by a public understanding of justice then it is a "well-ordered society." In the well-ordered society, "(1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles."[2] Only in this fashion the original contract can be fair, open, and transparent. The publicity condition paves the way for a public understanding of justice; and it establishes "the fundamental charter of a well-ordered human association."[3] In this contractarian way, conditions and principles of a just society are achieved according to Rawls. The social contractarian approach thus defines reasonable and just conditions of collaboration with a public understanding of justice. Free, equal, and rational parties then decide the principles for major institutions: "[t]hese principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established."[4] The principles constitute the fundamental criterion of basic institutions, like the constitution of a state. In other words, it is a general agreement for the public justification of "the basic structure."[5] Particular agreements are defined according to this general agreement. The principles of justice therefore determine all the other rules, decisions, and policies. The agreed principles frame socioeconomic and political institutions. This is the contractarian grounds of *Theory* defended by Rawls.

Consequently, there are at least six differences between Rawls and Aristotle's theory of justice. First, Rawls's theory is deontological, whereas Aristotle's

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[1] Ibid., p. 5.

[2] Ibid.

[3] Ibid.

[4] Ibid., p. 11.

[5] Ibid.

conception is teleological. Second, Rawls's understanding is quantitative, whereas Aristotle's understanding is qualitative. Third, Rawls's theory of justice depends on precisely determined rules and procedures, whereas Aristotle's conception of justice relies on voluntary and discretionary judgments of persons. Fourth, Rawls's theory concentrates on states of affairs, whereas Aristotle's conception of justice concentrates on characters. Fifth, Rawls seeks an egalitarian society, whereas Aristotle conserves the hierarchical society. Sixth, Rawls is a social contractarian, whereas Aristotle is a perfectionist. Since their theories of justice widely differ, Rawls cannot be identified with the Aristotelian tradition. Therefore, relating Rawls's theory with the Aristotelian tradition is so far-fetched. Main characteristics of Aristotle and Rawls's theories of justice are very different. Rather than the Aristotelian tradition, justice as fairness fits well into the contractarian tradition.[1] Let us locate Rawls's exact position in the contractarian tradition.

2.2.4 The Social Contract Tradition

In the third section of *Theory*, entitled "the Main Idea of the Theory of Justice," Rawls clearly articulates that the objective of *Theory* is "to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant."[2] Then he adds in the footnote "Locke's *Second Treatise of Government*, Rousseau's *The Social Contract*, and Kant's ethical works beginning with *The Foundations of the Metaphysics of Morals* as definitive of the contract tradition. For all of its greatness, Hobbes's *Leviathan* raises special problems."[3] That is to say, Rawls

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[1] Fleischacker locates Rawls outside the Aristotelian tradition as well, see Fleischacker, *History of Distributive Justice*, pp. 1-16. Amartya Sen and Martha Nussbaum's capability approach is a good example of contemporary Aristotelian tradition; see Amartya Sen, *The Idea of Justice* (Cambridge, Mass.: Harvard University Press, 2009); Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000); and Martha C. Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011).

[2] Rawls, *Theory*, p. 11.

[3] Ibid., n. 4.

places his theory under the social contract tradition starting from Locke; however, he distinguishes it from Hobbes's theory. Why does Rawls set Hobbes's *Leviathan* apart from his *Theory*? Which matters pose problems in *Leviathan,* according to Rawls? In what respects do Hobbes and Rawls's theories differentiate? Replies to these questions can be found in Rawls's *Lectures on the History of Political Philosophy*. There, Rawls contends that Hobbes's *Leviathan* has some problems. First, Rawls points out that Hobbes forces us to make a choice between disorder (*State of Nature*) and unrestricted sovereign (*Leviathan*): "we are compelled to choose between *absolutism* and *anarchy*."[1] This either/or logic prevents persons to notice alternatives. The either/or structure is a logical fallacy indeed; there are other options as well. Constitutional democracy, to Rawls, demonstrated that persons can live together in peace. "*Constitutional democratic* institutions"[2] showed that stable and orderly regimes are possible too (absolutism is not the unique way of order). To have a stable and orderly society we are not obliged to obey an absolute and unaccountable sovereign like the Leviathan. Constitutional regimes in history proved that a secure and well-ordered society is possible without a supreme power. Thus, there is an alternative other than absolutism and anarchy. According to Rawls, another difficulty is Hobbes's identification of the Leviathan's laws with justice. Rawls rightly questions this assumption: "the Sovereign's laws are *necessarily* just. But, it is possible for the sovereign to enact laws that are *not good*—laws that are bad."[3] In fact there are two problems in Hobbes's argument. First the sovereign's laws may not be just. Second even if the laws may be just, they may not be good. However, since everybody contracted and authorized the sovereign to make laws, his laws are assumed to be just. Because in the beginning rights of men were attorned to the sovereign. The author of laws is thus both the sovereign and the public, according to Hobbes.[4] To Rawls

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[1] John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 2007), p. 84; hereafter cited as *History of Political Philosophy*.

[2] Ibid., p. 85.

[3] Ibid., p. 83.

[4] Thomas Hobbes, *Leviathan* (Oxford: Clarendon Press, 1965), p. 210.

nonetheless this understanding cannot do justice to laws.[1] Moreover, Rawls complains of Hobbesian individuals' recklessness and egocentricity. Rawls observes that "Hobbes has no room for a notion of *reasonable self-restraint*."[2] Hobbesian individuals cannot constrain their own interests by considering others. The individuals act with unlimited self-interest. Hobbesian individuals follow their own understandings of the good regardless of other persons' interests: "there are no moral constraints, such as others' moral rights, on their rational pursuit of their interests prior to the social contract."[3] Rawls does not approve the lack of "moral obligation."[4] Persons should control themselves for the sake of others. Hobbesian social contract however is based on self-interest only. The individuals consider *rationally* their own interests, but they do not take into consideration *reasonably* rights and interests of other individuals. Rawls draws attention to the difference between the *rational* and the *reasonable* in *History of Political Philosophy*:

> [w]e tend to use "reasonable" to mean being fair-minded, judicious, and able to see other points of view, and so forth; while "rational" has more the sense of being logical, or acting for one's own good, or one's interests. In my own work, and in this discussion, the reasonable involves fair terms of cooperation; while the rational involves furthering the good or advantage of oneself, or of each person cooperating.[5]

The reasonable is thus related to social and moral perspectives, whereas the rational focused on an individual perspective. In fact, like Rawls, Hobbes too consider the rational and the reasonable points of view; but, "Hobbes justifies *Reasonable* principles (with reasonable *content*) in terms of the *Rational*."[6] In

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[1] Rawls, *History of Political Philosophy*, p. 84.

[2] Ibid., p. 87.

[3] Freeman, *Rawls*, p. 15.

[4] Rawls, *History of Political Philosophy*, p. 87.

[5] Ibid., p. 54.

[6] Ibid., p. 55.

other words, the reasonable is determined according to the rational; which eliminates the moral point of view. In fact, to Rawls, self-interest is the primary authority in Hobbes's theory.[1] Self-interest determines the rational; so, *practical reasoning is deliberating* concerning what is the *rational* thing to do."[2] The principles thus would be "simply the product of a purely rational choice designed to promote individual interest."[3] To Rawls, the moral point of view is ignored in Hobbes's social contract doctrine. Rawls however considers both the *rational* and the *reasonable* points of view that are supplied by the moral perspective. In this way self-interest is balanced with others' interests. Rawls's original position accomplishes this goal.[4] The original position considers everyone's interests. In this sense Rawls differs from Hobbes. The original position, "is designed to show what are the most *reasonable* terms of cooperation among *rational* persons who are regarded as equals."[5] Impartial and reasonable conditions of cooperation is thus secured. Lastly, Rawls argues that Hobbesian theory does not have a sense of fairness. To Rawls, a good theory of cooperation should involve "a *sense of fairness*, as illustrated by his having no account of fair background conditions of binding covenants. Hobbes comes close to saying: To each according to their (rational) threat advantage."[6] The threat advantage in the state of nature hinders

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[1] However, others think that the matter is not so clear-cut. For instance, Williams claims that "Hobbes often relies on a more sophisticated view of human nature. He describes or even relies on motives that go beyond or against self-interest, such as pity, a sense of honor or courage, and so on. And he frequently emphasizes that we find it difficult to judge or appreciate just what our interests are anyhow" (Garrath Williams, "Thomas Hobbes: Moral and Political Philosophy," *The Internet Encyclopedia of Philosophy*, accessed June 16, 2018, URL = https://www.iep.utm.edu/hobmoral/). See also Thomas Hobbes, *De Cive* [*On the Citizen*], ed. and trans. Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998 [1642]).

[2] Rawls, *History of Political Philosophy*, p. 54.

[3] Freeman, *Rawls*, p. 16.

[4] For the original position see subsection 2.3.2.

[5] Freeman, *Rawls*, p. 16; emphasis added.

[6] Rawls, *History of Political Philosophy*, p. 87.

making a fair agreement. The more advantaged trumps the less advantaged in the deal that offends the latter's sense of justice. Hobbesian social contract therefore could not secure the less advantaged with a sense of fairness. Rawlsian social contract however seeks to assure the condition of the worst-off with a sense of fairness: "the conception of justice as fairness is correct in viewing each person as an individual sovereign, as it were, none of whose interests are to be sacrificed"[1] for public order. To Rawls, each person should be considered as free and equal. Only with this assumption fair terms of cooperation might be possible. *Reasonable self-control* and *fairness*, which do not exist in Hobbes's theory, "are essential to the notion of *social cooperation*, where cooperation is understood as distinct from mere social coordination and organized social activity."[2] Because of these moral deficiencies Rawls distances himself from Hobbes. Then to remedy the shortages and problems in Hobbes's theory he applies to John Locke's social contract doctrine.[3]

2.2.4.1 Locke

The distinction between John Locke and Thomas Hobbes, that satisfies Rawls, are Locke's liberal ideas as well as the reasonable perspective of free and equal individuals in the state of nature. The basic distinction between Locke and Hobbes derives from their concepts of "the state of nature." To Hobbes, it is a "state of war;" whereas, for Locke, it is a "state of perfect freedom and equality."[4] But persons are supposed to behave in accordance with the "law of nature"[5] in Locke's state of nature. There is an ethical constraint in his state of nature which lacks in

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[1] John Rawls, "The Sense of Justice," *The Philosophical Review* 72, no. 3 (July 1963): p. 304.

[2] Rawls, *History of Political Philosophy*, p. 87.

[3] Ibid., p. 88.

[4] Ibid., p. 115.

[5] John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), II, 6. References, in the footnotes to Locke's work, are by treatise and paragraph number.

Hobbes. Rights as well as duties are imposed on persons in Locke's doctrine. Locke's social contract doctrine is based on natural law; whereas Hobbes's doctrine is based on *interests*.[1] For this reason, Rawls prefers Locke to Hobbes in his theory.

Rawls takes chiefly the idea of social contract from Locke but transforms it according to his own conception. Rawls makes use of various ideas of Locke such as the state of nature, social contract, natural rights, duties and liberties. Then he reformulates these ideas according to his own project. For instance, "the state of nature" turns out to be "the original position;"[2] or "natural rights" comes to be Rawls's first principle (EBL).[3] Rawls thus revises and reformulates Locke's ideas parallel to the ideal of "justice as fairness." Rawls does not take his ideas *verbatim*; rather he presents them in a democratic and secular form.[4] He develops Locke's liberal ideas along with the notions of freedom and equality.

In the beginning of the second treatise, Locke thinks of a "state of nature" that all men were equal and free; they have equal rights, power, and jurisdiction.[5] All men are "equally sovereign over themselves,"[6] without "subordination or subjection."[7]

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[1] Freeman, *The Social Contract*, p. 19; Freeman, *Rawls*, p. 15.

[2] Rawls acknowledges this observation in *Theory*: "[i]n justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract" (Rawls, *Theory*, p. 12).

[3] For the resemblance between Locke's "natural rights" and Rawls's "equal rights," see ibid., p. 250; Locke, *Two Treatises of Government*, II, 87; and Samuel Freeman, "Original Position", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), ed. Edward N. Zalta, URL = <https://plato.stanford.edu/archives/win2016/entries/original-position/>.

[4] In fact, Locke is neither democrat nor secular, see ibid., p. 121, 140; Freeman confirms this remark, see Freeman, *Rawls*, p. x.

[5] Locke, *Two Treatises of Government*, II, 4.

[6] Rawls, *History of Political Philosophy*, p. 115.

[7] Locke, *Two Treatises of Government*, II, 4.

So, all persons are perfectly free, equal, rational, and reasonable;[1] but this does not mean that each can do whatever she wills. It is unlike a "*state of license.*"[2] Locke draws the line: although persons have the vast freedom "to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it."[3] Thus on the one hand, no one can misuse this liberty for oneself; on the other hand, no one can violate another one's natural rights. There is a delicate balance in the state of nature. Locke explicates the rationale behind it as follows:

> [t]he *state of nature* has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent*,* no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such *subordination* among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours.[4]

According to Locke, since God *made* all humans and sent them into the world, humans are the property of God. So, humans are subordinate to God alone and hence all humans are equal before God. That is also to say, there is no subordination among humans; because they are equal before God. Natural law, which is "the law of God as known by our natural reason,"[5] shows that there is no hierarchy between humans. There is only one hierarchy in nature; and this is between the "infinitely wise maker" and the man being made. In addition to that

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[1] Rawls, *History of Political Philosophy*, p. 129.

[2] Locke, *Two Treatises of Government*, II, 6.

[3] Ibid., II, 6.

[4] Ibid.

[5] Rawls, *History of Political Philosophy*, p. 111.

God did not made humans for the use of another human. He made all humans equal in the world and did not authorize anyone with any supremacy or privileges over others. Therefore, in the state of nature, there is no political power and judicial authority among humans. No one has the right to interfere and grasp of others' life, liberty, property, etc. Preservation of these rights belong to every single person. Each person judges and preserves her own rights according to the natural law; but she also seeks to protect others' rights as far as possible.[1] To Locke, these are natural rights which are equal and inalienable; but the most important feature of them is their naturalness. In other words, they are not artificial, i.e. not "a politically or socially constructed—phenomenon."[2] Since natural law "assigns certain equal natural rights to all persons;"[3] they are basic, absolute, and immediate.[4]

One may ask if the state of nature is so good, why we need a political power? Why we need a government and other institutions? Could not we remain forever in this state? Why political society is required? Locke replies to these questions with human subjectivity in moral judgment and punishment. Since human beings have self-love, they prioritize their own interests when there is a point of conflict. So, if someone violates another one's rights, the sufferer cannot judge the case according to the principle of impartiality. Since she is a side of the case, she may punish the offender harshly. That will lead to a serial of injustices. Locke observes that political society is required to tackle these problems:

> hence nothing but confusion and disorder will follow, and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant, that *civil government* is the proper remedy for the

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[1] Locke, *Two Treatises of Government*, II, 6.

[2] Lovett, *Rawls's 'Theory'*, p. 8.

[3] Rawls, *History of Political Philosophy*, p. 120.

[4] Paul Kelly, *Locke's Second Treatise of Government* (London and New York: Continuum, 2007), pp. 46-7.

inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it.[1]

For the sake of fair trial and stability of society people need a political power and judicial authority. So, in order to protect their natural rights, humans transfer their powers to political society, "not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men; but to judge of, and punish the breaches of that law in others, as he is persuaded the offence deserves."[2] For that reason, individuals agree to state to secure their natural rights. The mission of political power is the preservation of property in the broad sense.[3] Locke indeed rejects *raison d'État* at the expense of the interest of society. A government is acceptable as far as it is subservient to the rights of people. They consent to the political power owing to this condition. Otherwise conditions of the legitimacy of the government would not be satisfied and political obligation would be baseless. Locke elaborates his idea of political society as follows:

> because no *political society* can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is *political society,* where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it.[4]

For Locke, the reason for the existence of the government is the preservation of the rights of citizens. In view of that citizens transfer their rights to the government. If not, they would remain in the state of nature. The reason of the transition to the political society is the protection and advancement of natural rights. Locke

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[1] Locke, *Two Treatises of Government*, II, 13; see also ibid., II, 90.

[2] Ibid., II, 87.

[3] This means life, health, liberty, persons' possessions; see ibid., II, 6, 27; and Rawls, *History of Political Philosophy*, p. 152.

[4] Locke, *Two Treatises of Government*, II, 87.

imagines the imaginary state to question the legitimacy of the government and to compare rights of humans between the present condition and the state of nature. So, if the present condition is well off than the state of nature, the government is justified; otherwise it is unacceptable. In *Theory*, Rawls underlines this feature as follows:

> the role of equal rights in Locke is precisely to ensure that the only permissible departures from the state of nature are those which respect these rights and serve the common interest. It is clear that all the transformations from the state of nature which Locke approves of satisfy this condition and are such that rational men concerned to advance their ends could consent to them in a state of equality.[1]

If this condition is satisfied, reformations are admissible; or else it is objectionable. Persons consent to the government if they get well off in the political society. Therefore, according to Rawls, Locke's social contract is a hypothetical thought experiment, not a historical experiment, to appraise the acceptability of political authorities. In *History of Political Philosophy,* Rawls implies that "Locke's criterion for a legitimate regime is hypothetical. That is, we can tell whether a form of regime is legitimate by seeing whether it could have been contracted into in the course of ideal history."[2] Rawls thus takes Locke's social contract as a thought experiment; and then he abstracts and transforms it into an original contract for constructing a just "basic structure." In other words, Lockean negative thought experiment becomes a positive creative device in Rawls's hands. Samuel Freeman, who is a Rawls scholar, draws attention to this transformation:

> [f]or Locke and Kant, the social contract had a reduced role; it was primarily a device for testing the legitimacy of existing political constitutions. Their agreements assumed, and were not designed to prove, a natural right of equal freedom, which was seen as justified on separate grounds. Rawls's social agreement has a more significant role since he seeks principles for designing basic social institutions, not just for testing constitutions.[3]

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[1] Rawls, *Theory*, p. 33.

[2] Rawls, *History of Political Philosophy*, p. 131; with the term ideal history, Rawls refers to the ideal narrative of the state of nature and the historical change; see ibid., pp. 128-129.

[3] Freeman, *The Social Contract*, p. 24, n. 17.

Rawls borrows the idea of social contract from Locke and gives it a central role with the "original position" in his theory. In this way, the representatives comes to an agreement on the principles which will mold the "basic structure of society."[1] In other words, Rawls says that "the content of the relevant agreement is not to enter a given society or to adopt a given form of government, but to accept certain moral principles."[2] Therefore, Rawls revises and reformulates classical social contract doctrine in order to contribute his own project. He eliminates its historical and social contingencies; and extracts the essence of the social contract. In this manner, the original position becomes an important constituent of justice as fairness, that is derived from the contractarian tradition.

If John Locke is the first pillar of Rawls's doctrine Immanuel Kant is the second but more significant pillar of *justice as fairness*. It is "derived primarily from Locke and Kant."[3] To prioritize, Locke and Kant are Rawls's major sources of inspiration in *Theory*.[4] So far, we have examined Locke's social contract doctrine; hereafter we shall examine Kant's social contract doctrine and ethics.

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[1] Rawls, *Theory*, p. 11.

[2] Ibid., p. 16.

[3] Josiah Ober, "The Polis as a Society Aristotle, John Rawls and the Athenian Social Contract," in *The Ancient Greek City-State*, ed. Mogens Herman Hansen (Copenhagen: Munksgaard, 1993), p. 140; Guyer also refers to Kantian and Lockean roots of Rawls, see Paul Guyer, *Kant on Freedom, Law, and Happiness* (Cambridge: Cambridge University Press, 2000), pp. 267-268.

[4] It can be explicitly and implicitly seen throughout the work. As it is mentioned above Rawls says that his goal is "to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant" (Rawls, *Theory*, p. 11.). To my mind, Rousseau can be ignored in this selection for the very similarity between Kant and Rousseau. This negligence is acceptable because Rawls refers to Kant countlessly whereas he refers to Rousseau just eleven times in *Theory*. For the similarity between Kant and Rousseau, see ibid, p. 256, 264; and Royce Mathias Royce, "Philosophical Perspectives on the Social Contract Theory: Hobbes, Kant and Buchanan Revisited," *Postmodern Openings* 1/4, (December 2010): pp. 51-52. Lovett argues that Rousseau is a "transitional figure between Locke and Kant" (Lovett, *Rawls's 'Theory'*, p. 9). Williams contends that Rousseau's social contract doctrine is underdeveloped but matured in Kant; see Howard Williams, "Kant on the Social Contract," in *The Social Contract from Hobbes to Rawls,* eds. David Boucher and Paul Kelly (London and New York: Routledge, 1994), pp. 146-147.

2.2.4.2 Kant

While Rawls takes advantage from Locke's liberalism, he also includes Kant's egalitarianism in *Theory*. In this fashion, Rawls tries to reconcile the ideas of liberty and equality. "The social contract can thus be seen as the linchpin for Rawls's egalitarian liberalism;"[1] because Kantian contractarianism regards contractors as "free and equal rational persons."[2] Recall that, as said by the moral law, each one is "to treat itself and all others *never merely as a means*, but always *at the same time as an end in itself*."[3] In addition to Lockean libertarian values, that is mentioned above, Kantian maxim brings forth egalitarian implications. With Kant's ethics and contractarianism, to Rawls, fair conditions of reasonable contract can be possible. In the original position, rational individuals act *autonomously* under equal terms to construct the basic principles of distributive justice. Rawls applies to Kant's ethics and contractarianism especially for this egalitarian project.[4] Let me explain these Kantian ideas and their relationships with Rawls's *Theory* respectively.

Rawls's understanding of *Kantian contractarianism*, which is later called *contractualism*,[5] approaches persons as moral equals so that they are fairly

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[1] Andrew Lister, "Social Contract," in *The Cambridge Rawls Lexicon*, p. 781. Although most of the scholars prefer "egalitarian liberalism" for Rawls's theory, it is first used by his student Nagel, see Thomas Nagel, "Rawls on Justice," *The Philosophical Review* 82, no. 2 (April 1973): pp. 222-233.

[2] Rawls, *Theory*, p. 252.

[3] Immanuel Kant, *Groundwork of the Metaphysics of Morals: A German-English Edition,* ed. and trans. Mary Gregor and Jens Timmermann (Cambridge: Cambridge University Press, 2011), p. 95.

[4] Rawls, *Theory*, p. 180.

[5] *Contractarianism* in the literature is now identified with Hobbes and Gauthier, whereas *contractualism* is related to Kant, Rawls, and Scanlon. However, the term contractarianism is preferred in this dissertation, because Rawls does not use contractualism in *Theory*. For the contractarian literature see Ann Cudd and Seena Eftekhari, "Contractarianism," *The Stanford Encyclopedia of Philosophy* (Spring 2017 Edition), ed. Edward N. Zalta, URL = https://plato.stanford.edu/archives/spr2017/entries/contractarianism/; David Gauthier, *Morals by Agreement* (Oxford: Oxford University Press, 1986); T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge:

represented in the decision procedure. Unanimous consent is expected in the original contract. To that end, Rawls has recourse to Kant's moral law; but what is the point of the moral law? What does it mean in the social contract? How can Kantian motto lead to an agreement on justice? Rawls asks similar questions, and enlightens contractarian meaning of "treating men as ends in themselves" as follows:

> [t]here is even a question whether it is possible to realize. How can we always treat everyone as an end and never as a means only? Certainly we cannot say that it comes to treating everyone by the same general principles, since this interpretation makes the concept equivalent to formal justice. *On the contract interpretation treating men as ends in themselves implies at the very least treating them in accordance with the principles to which they would consent in an original position of equality.* For in this situation men have equal representation as moral persons who regard themselves as ends and the principles they accept will be rationally designed to protect the claims of their person. The contract view as such defines a sense in which men are to be treated as ends and not as means only.[1]

Kantian contractarianism thus assumes that persons have equal moral worth and seeks their consent in the original contract. Moral persons are fairly and equally placed; so, none of them may behave each other as a means. Each person has an aim in itself means that one and all has a moral value and a right to decide for the criterion of social justice that will shape her life. She can approve or disapprove policies according to her own ends in agreement with behaving others as ends in themselves. She should not consider other persons as a means. That is, each one should respect others as equal moral persons. Rawls's Kantian contractarianism therefore "should publicly express men's respect for one another."[2] For Rawls, equal respect brings forth self-esteem; and it also implies human autonomy.[3] When

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Cambridge University Press, 1982), pp. 103-128. For other classifications of contractarianism, see Boucher and Kelly, *The Social Contract*, pp. 1-13; Freeman, *The Social Contract*, pp. 18-36; and Jean Hampton, "Two Faces of Contractarian Thought," in *Contractarianism and Rational Choice*, ed. Peter Vallentyne (Cambridge: Cambridge University Press, 1991), pp. 31-55.

[1] Rawls, *Theory*, pp. 179-180; emphasis added.

[2] Ibid., p. 179.

[3] Ibid., p. 179, 256.

persons altogether act autonomously according to the moral law, their self-esteem would be preserved. Otherwise it would be harmed; because for Kant, "acting unjustly is acting in a manner that fails to express our nature as a free and equal rational being."[1] To that end, everyone has to behave *autonomously* in line with the moral law. If not, someone will do injustice to other ones. According to Rawls's Kantian interpretation thus acting *autonomously* is parallel to acting *justly*. Acting justly and autonomously can be possible when each one treats other persons as ends in themselves. But then again there is an unclear term *autonomy*. What does autonomy mean in a conception of justice? How do moral persons act autonomously by the social contract? Rawls understands Kant's distinction between *autonomy* and *heteronomy* in this manner:

> Kant held, I believe, that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being. The principles he acts upon are not adopted because of his social position or natural endowments, or in view of the particular kind of society in which he lives or the specific things that he happens to want. To act on such principles is to act heteronomously. Now the veil of ignorance deprives the persons in the original position of the knowledge that would enable them to choose heteronomous principles.[2]

Autonomy is one's acting according to her own principles that are preferred by her freely and rationally. On the other hand, heteronomy is one's acting according to principles that are affected by social and natural factors. Rawls thus attempts to prevent heteronomy by the original position. Natural and social circumstances are eliminated by the veil of ignorance; because no one has the knowledge of her or others' socioeconomic status and natural talents behind the veil. "The parties arrive at their choice together as free and equal rational persons knowing only that those circumstances obtain which give rise to the need for principles of justice."[3] In this manner, individuals can act autonomously and chose the principles.

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[1] Ibid., p. 256; in relation to this interpretation with a nuance see Helga Varden, "Immanuel Kant-Justice as Freedom," in *Philosophy of Justice*, ed. Guttorm Fløistad (Dordrecht: Springer, 2014), pp. 213-229.

[2] Rawls, *Theory*, p. 252.

[3] Rawls, *Theory*, p. 252.

Furthermore, Rawls borrows the categorical imperative from Kant. Then he attains "the initial situation," which is "central to the whole theory and other basic notions are defined in terms of it."[1] That is, Kantian ideas of autonomy and categorical imperative constitutes Rawls's original position that is at the center of *Theory*. Hence, we should comprehend Rawls's appropriation of Kant's categorical imperative now. Rawls explains categorical and hypothetical imperatives in line with Kant. He describes *the categorical imperative* as follows: "Kant understands a principle of conduct that applies to a person in virtue of his nature as a free and equal rational being. The validity of the principle [the categorical imperative] does not presuppose that one has a particular desire or aim."[2] In other words, the categorical imperative derives from rationality (*pure practical reason*) and universal validity. On the contrary, *the hypothetical imperative* "directs us to take certain steps as effective means to achieve a specific end."[3] The hypothetical imperative is thus not universalizable. At that point, Rawls contends that his "*principles of justice* are also *categorical imperatives* in Kant's sense;"[4] because "[t]he argument for the two principles of justice does not assume that the parties have particular ends, but only that they desire certain social primary goods. These are things that it is rational to want whatever else one wants."[5] Social primary goods basically include "rights and liberties, opportunities and powers, income and wealth."[6] Rawls thinks that since primary goods are universalizable and the principles seek to organize the distribution of these goods, his principles are categorical imperatives as well. Regardless of the aims of oneself, each free and

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[1] Ibid., p. 516.

[2] Ibid., p. 253.

[3] Ibid.

[4] Ibid; emphasis added.

[5] Ibid.

[6] Ibid., p. 92; Rawls's notion of primary goods will be examined in subsection 2.3.4.

equal rational being would want social primary goods for everyone. "To act from the principles of justice is to act from categorical imperatives in the sense that they apply to us whatever in particular our aims are."[1] According to Rawls, therefore, the principles of justice are categorical imperatives in Kantian sense and the original position reflects this perspective.

The third significant resemblance is between the notion of "a kingdom of ends"[2] and "a well-ordered society."[3] Rawls articulates this parallel explicitly in his work;[4] and Freeman explains lucidly the similarity with respect to their theories:

> [t]he parallel between Kant's idea of the Kingdom (or Realm) of Ends and Rawls's idea of a well-ordered society deserves mention. As Kant's realm of ends is a social world in which everyone accepts and complies with the categorical imperative, Rawls's well-ordered society is a social world where all accept and normally satisfy the principles of justice. Moreover, as conscientious moral agents apply the categorical imperative by reasoning about maxims that are generally acceptable in a realm of ends, Rawls's parties in the original position choose principles of justice that will be generally acceptable among members of a well-ordered society.[5]

Rawls and Kant's understandings of the person and society thus overlap. Both philosophers agree that all persons are equal, free, and rational; and they should act in accordance with others' autonomy in a realm of ends or in a well-ordered society. To Kant, all individuals should act according to the categorical imperative in the kingdom of ends. To Rawls, all individuals should adhere to the public conception of justice which are consented to in the original position. The citizens of the kingdom of ends consider others as ends in themselves not as a means and

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[1] Ibid., p. 253.

[2] Kant, *Groundwork of the Metaphysics of Morals,* pp. 95-97.

[3] Rawls, *Theory*, pp. 453-454.

[4] John Rawls, "A Kantian Conception of Equality," (1975) reprinted in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), p. 264.

[5] Freeman, *Rawls*, p. 22.

expect others to behave with respect to the moral law. The members of the well-ordered society consider others as free and equal moral beings and expect others to act according to the agreed conception of justice.[1] Just like Kant's categorical imperatives regulate the kingdom of ends; Rawls's principles design major institutions "as a fair system of cooperation between free and equal persons."[2] Rawls acknowledges this similarity as follows: "[t]he principles regulative of the kingdom of ends are those that would be chosen in this position, and the description of this situation enables us to explain the sense in which acting from these principles expresses our nature as free and equal rational persons."[3] The conditions and mentality of the choice in the original position resemble the choice in the realm of ends. Kant's regulative ideas in the kingdom of ends are similar to Rawls's principles in the well-ordered society. In this way, equal rational beings may follow their understandings of the good freely.

Although these ideas of Kant are the source of inspiration for many philosophers, to Rawls, his striking contribution is the condition of publicity that is "clearly implicit in Kant's doctrine of the categorical imperative insofar as it requires us to act in accordance with principles that one would be willing as a rational being to enact as law for a kingdom of ends."[4] So the principles of justice should be public: "everyone will know about these principles all that he would know if their

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[1] For Rawls's well-ordered society see subsection 2.2.3 above.

[2] John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14, no. 3 (Summer 1985): p. 231.

[3] Rawls, *Theory*, p. 256.

[4] Ibid., p. 133; it is understood from this passage of Rawls: "[i]t is a mistake, I believe, to emphasize the place of generality and universality in Kant's ethics. That moral principles are general and universal is hardly new with him; and as we have seen these conditions do not in any case take us very far. It is impossible to construct a moral theory on so slender a basis, and therefore to limit the discussion of Kant's doctrine to these notions is to reduce it to trivality. The real force of his view lies elsewhere" (ibid., p. 251). Zinkin also examines the importance of publicity in Kant's ethics depending on Rawls's remarks, see Melissa Zinkin, "Making the Ideal Real: Publicity and Morality in Kant," *Kantian Review* 21, no. 2 (July 2016): pp. 237–259. Arendt underlines the concept of publicness in Kant as well, see Hannah Arendt, *Lectures on Kant's Political Philosophy,* ed. Ronald Beiner (Chicago: University of Chicago Press, 1982), pp. 47-50.

acceptance were the result of an agreement."[1] Rawls believes that thanks to the condition of publicity, "the general awareness of their universal acceptance should have desirable effects and support the stability of social cooperation."[2] So it is understood that the condition of publicity for the concept of right, which is a constraint for the choice of principles of ethics as well as justice,[3] would support the stability of social order; but what does the condition of publicity mean exactly and what is the role of publicity in a theory of justice? Kant explicates "publicness" in *Perpetual Peace* "as the *transcendental formula* of public right; 'All actions affecting the rights of other human beings are wrong if their maxim is not compatible with their being made public.'"[4] Publicness shows that which actions are morally right or wrong. This maxim is a moral as well as a juridical principle for Kant.[5] Publicness thus demonstrates rightness and fairness of the principles in a negative way:

> [f]or a maxim which I may not *declare openly* without thereby frustrating my own intention, or which must at all costs be *kept secret* if it is to succeed, or which I cannot *publicly acknowledge* without thereby inevitably arousing the resistance of everyone to my plans, can only have stirred up this necessary and general (hence *a priori* foreseeable) opposition against me because it is itself unjust and thus constitutes a threat to everyone.[6]

The publicness test reveals fairness of a maxim immediately. Therefore, "the transcendental principle of publicness" is negative but practical "in questions of

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[1] Rawls, *Theory*, p. 133.

[2] Ibid., p. 133.

[3] Ibid., 130; other "constraints of the concept of right" are "generality, universality, ordering, and finality," see ibid., pp. 130-136.

[4] Immanuel Kant, *Political Writings*, ed. Hans Siegbert Reiss (Cambridge: Cambridge University Press, 1991), p. 126.

[5] Ibid.

[6] Ibid.

right."[1] It provides shortcut solutions for tough social and moral problems. If one cannot express a principle of justice publicly, this means that there is an unfairness. Publicness is a simple but perfect key to tackle right and justice problems.

For these reasons, to Rawls, the condition of publicity is decisive and distinctive as a contractarian element.[2] It is distinguishing because the condition of universality cannot satisfy the condition of publicity. The distinction between these conditions exposes the significance of publicity. Rawls explains this fact as follows:

> [t]he difference between this condition [of publicity] and that of universality is that the latter leads one to assess principles on the basis of their being intelligently and regularly followed by everyone. But it is possible that all should understand and follow a principle and yet this fact not be widely known or explicitly recognized. The point of the publicity condition is to have the parties evaluate conceptions of justice as publicly acknowledged and fully effective moral constitutions of social life.[3]

For instance, in general, citizens approve some laws by the principle of *raison d'État*, but nobody knows them exactly. They are universalizable but not public. Everyone accepts the principle of *raison d'État*, but no one knows the content of reasons of state. Rawls thus claims that the condition of publicity is a prerequisite for the principles of justice. The representatives in the original position should know the principles openly and fairly. Kantian contractarianism necessitates the condition of publicity. Otherwise we would be acting against the moral law. The condition of publicity provides "openness"[4] and transparency which satisfies the conditions of the contractarian approach. In this way, the chosen principles would

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[1] Ibid.

[2] Rawls, *Theory*, p. 133.

[3] Ibid.

[4] Zinkin, "Making the Ideal Real," p. 238.

be realized and sustained. Rawls's principles thus "must not only be acceptable to all but public as well."[1]

As a result, Rawls seeks to realize Kant's ideas of autonomy, the categorical imperative, and the kingdom of ends in justice as fairness. He acknowledges his debt to Kant throughout the book: "[t]he theory that results is highly Kantian in nature. Indeed, I must disclaim any originality for the views I put forward."[2] Although Rawls's theory is deeply Kantian, it is not a carbon copy of Kant's account. Rawls differentiates his theory from Kant's doctrine in some points.[3] So, Rawls does not read Kant literally. He is absolutely inspired by Kant, *while writing Theory*; but Rawls made his own way. He interpreted Kant in his own style. For instance, Rawls appropriated Kant's kingdom of ends and created the notion of the well-ordered society. He suggested the concept of the original position by adopting Kant's ideas of autonomy and the categorical imperative.[4] Justice as fairness is therefore a *reconstruction* of previous philosophers' ideas. Rawls himself simply narrates what he was doing in the "Afterword" to the text *Future Pasts: The Analytic Tradition in Twentieth-Century Philosophy*:

> we learn moral and political philosophy—or indeed any part of philosophy—by studying the exemplars, those noted figures who have made cherished attempts at philosophy: and if we are lucky we find a way to go beyond them. My task was to explain Hobbes, Locke, and Rousseau, or Hume, Leibniz, and Kant as clearly and forcefully as I could, always attending carefully to what they actually said.
> The result was that I was loath to raise objections to the exemplars; that's too easy and misses what is essential. However, it was important to point out difficulties that those coming later in the same tradition sought to overcome, or to point to views those in another tradition thought were mistaken. (I think

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[1] Rawls, *Theory*, p. 252.

[2] Ibid., p. viii.

[3] See Rawls, *Theory,* pp. 256-257. Actually, in his later work he substantially diverges from Kant; see subsection 2.4.1.

[4] Rawls expresses that "[t]he original position may be viewed, then, as a procedural interpretation of Kant's conception of autonomy and the categorical imperative." Ibid., p. 256.

hereof the social contract view and utilitarianism as two traditions.) If this is not done, philosophical thought can't progress, and it becomes mysterious why later writers made the criticisms they did.[1]

Rawls thus attempts to create a theory by overcoming the difficulties and improving the strong elements of these philosophers. Here we have to underline one more point: although "many of Rawls's main ideas were deeply influenced by his understanding of Kant,"[2] he is not a continental philosopher. Rawls is an analytic philosopher who benefits from continental philosophy. He appropriates some conceptions from the continental philosophy and molds them according to his own project. Although he takes some arguments from continental philosophers, his argumentation and justification are typically an analytical one.[3] Rawls thus stands in the analytic tradition. American philosopher John Rawls melts continental elements in his pot, so to speak. He appropriates continental concepts and arguments; and makes them fit to the analytic philosophy. The continental philosophical concepts are shaped in Rawls's hands consistent with analytic political philosophy.

Therefore, *in general*, Rawls stands in the analytic tradition; and *in particular*, he stands in the social contract tradition from Locke to Kant.[4] In *Theory*, he seeks to

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[1] John Rawls, "Afterword: A Reminiscence," in *Future Pasts: The Analytic Tradition in Twentieth-Century Philosophy*, eds. Juliet Floyd & Sanford Shieh (New York: Oxford University Press, 2001), pp. 427-428.

[2] Freeman, *Rawls*, p. 21.

[3] Dagfinn Follesdal, "Analytic Philosophy: What is it and why should one engage in it?," *Ratio* 9, no. 3 (December 1996): pp. 193-208. In addition to that most scholars placed him in the Analytic Tradition; see Stephen P. Schwartz, *A Brief History of Analytic Philosophy: from Russell to Rawls* (New York: Wiley-Blackwell, 2012); A. P. Martinich and David Sosa, eds., *Analytic Philosophy: An Anthology* (Oxford: Blackwell, 2001); Philip Pettit, "Analytical Philosophy," in *A Companion to Contemporary Political Philosophy*, pp. 5-31; Jonathan Wolff, "Analytic Political Philosophy," in *The Oxford Handbook of the History of Analytic Philosophy*, ed. Michael Beaney (Oxford: Oxford University Press, 2013), pp. 795-822; and Hans-Johann Glock, "The Development of Analytic Philosophy," in *The Routledge Companion to Twentieth Century Philosophy*, ed. Dermot Moran (New York: Routledge, 2008), p. 98.

[4] However, this does not mean that he is not benefitted from other philosophers; for the impact of other philosophers on Rawls, see subsection 2.5.1.

revive the social contract tradition and develop a theory of justice in order to suggest an alternative to utilitarianism. Hence, Rawls thinks that he would perfect the tradition by constructing a theory of social justice consistent with liberal democracy.[1] In *Theory*, he attempts to accomplish this goal relying on the social contract tradition.

The historical and philosophical background of *Theory* is thus explained. Now we can examine *the text* in this *context*.

2.3 A Theory of Justice

Rawls starts his investigation by laying out the problem. To that end, he defines his notion of society in the first place. To Rawls, society is "a cooperative venture for mutual advantage,"[2] which makes life easier and better. Otherwise, everyone has to produce all the needs by herself that is a very hard work. Persons thus come and work together. Then, thanks to the collaboration, they produce much more than the needed quantity. At that point, the problem arises: "how the greater benefits produced by their collaboration are distributed[?]"[3] What would be the criterion of distribution? Need, merit, desert, entitlement, equality, effort, identity, status or contribution? On which criterion should the distribution be established? Since all human beings have self-love, they prefer to maximize their own interests. Therefore, there would be a conflict of interests between parties. This is the basic problem of distributive justice.[4] Rawls mainly seeks to solve this problem; but not only economic goods, he considers social and political advantages as well. To overcome the problem of distribution, Rawls thinks,

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[1] In *The Law of Peoples*, Rawls admits that "[i]n *Theory* and *Political Liberalism* I sketched the more reasonable conceptions of justice for *a liberal democratic regime* and presented a candidate for the most reasonable (Rawls, *The Law of Peoples*, p. 128); emphasis added.

[2] Rawls, *Theory,* p. 4.

[3] Ibid.

[4] It is also dubbed "social justice," (which Rawls prefers), or "economic justice;" all of them refer to the same problem of distribution; see Fleischacker, *History of Distributive Justice*, p. 1.

> [a] set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper *distributive shares*. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate *distribution* of the benefits and burdens of social cooperation.[1]

Rawls rightly holds that not a principle, but *a set of principles* can tackle this difficult task. Persons may define just distribution in this way. Thereby everyone may enjoy their rights and perform their duties according to the principles of justice. However, as it is seen in the quotation, Rawls's way of tackling the distributive question is different. He concentrates on "the basic institutions of society." His principles are put in application via these institutions. So, Rawls does not simply ask how we will distribute basic goods. Rather he asks this question: "*how are the institutions of the basic structure to be regulated as one unified scheme of institutions so that a fair, efficient, and productive system of social cooperation can be maintained over time, from one generation to the next?*"[2] He thus tries to construct a theory that regulates basic institutions according to the principles. Hence, Rawls uses the concept of justice "for the moral assessment of social institutions."[3] So when he utters the principles of justice, actually he points out *the ethical criteria of major institutions*; he does not mention it in the wider and ordinary sense. Since social justice is a *social* problem, he focuses on the major social institutions.[4] Rawls thinks that if he can change these major institutions, he can change the unjust state of affairs; then a just society can be possible. This is the reason of his focus on "the basic structure of society."[5]

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[1] Rawls, *Theory,* p. 4; emphasis added.

[2] Rawls, *Restatement,* p. 50; italics mine.

[3] Pogge, *John Rawls*, p. 28.

[4] A social problem cannot be solved by individual solutions. To solve a social problem, one should obviously focus on the social institutions.

[5] Rawls, *Theory,* p. 7.

However, what does it mean essentially? What does Rawls refer to when he mentions "the basic structure"? In fact, he refers to the basic institutions. In other words,

> [b]y major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start.[1]

Major institutions are thus neither state departments nor nongovernmental organizations, but social systems, practices, and norms that "structure relationships and interactions among agents."[2] That is, the basic structure "obviously include such things as the system of government and laws, but they also include some less obvious things, such as the organization of the economy and, in some cases, cultural conditions."[3] The basic structure therefore is the set of "the political constitution and the principal economic and social institutions which together define a person's liberties and rights and affect his life-prospects, what he may expect to be and how well he may expect to fare."[4] To understand the basic structure of society better, we might imagine two different societies that have dissimilar basic structures. First, think about a modern capitalist society which is ruled by liberal democracy. Jobs are assigned through the free market economy. There is the rule of law, private ownership, and other individual and civil rights (human rights in general). Second, imagine a communist society which is ruled by workers. Jobs are assigned through the command economy. Furthermore, there is

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[1] Ibid.

[2] Pogge, *John Rawls*, p. 28.

[3] Lovett, *Rawls's 'Theory'*, p. 17.

[4] John Rawls, "Distributive Justice," (1967) reprinted in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), pp. 133-134.

the one-party rule, common property, and other social rights (no human rights). Then, since organizations of these societies are so different, social practices and norms of these societies would differ significantly, and for this reason lives of citizens would dramatically change in these societies. These examples show that the basic structure determines overall functioning and aura of society. An individual alone cannot make serious change in this structure. One can just perform the duty imposed by the society. For instance, if one comes from a poor family, her possibility of being a senior manager or mogul in a capitalist society is almost zero. The decisive factor is the basic structure in the distribution of advantages and encumbrances. So, Rawls presumes that if one wants to change the condition of society, she should change the basic structure; because it affects the whole society from top to bottom, thereby unjust circumstances can be changed. The major institutions regulate worth of positions and opportunities, and allocates rights and duties of citizens. Then, Rawls's real intention comes out between the lines of *Theory*:

> [t]he intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit or desert.[1]

Rawls aims to mitigate profound social inequalities derived from social, economic, and political conditions. He assumes that no one actually deserves her social position because no one had chosen where she born in which class, country, race, gender etc. The advantaged ones thus get better positions and live well, the disadvantaged ones get worse and live under poor conditions. Socioeconomic inequalities continue to increase in this way. Rawls argues that we can reduce inequalities and achieve a just society by changing major institutions. To Rawls therefore first we should apply the principles of justice to the basic structure. Afterwards, we can determine the principles and rules of actual political,

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[1] Rawls, *Theory,* p. 7.

economic, and social institutions. Finally, this choice will influence political rights and socioeconomic conditions; and thereby the basic liberties and life expectations of persons would be changed.

For these reasons, Rawls contends that the issue of *Theory* is the problem of distribution. Although it has economic and political implications, Rawls prefers the term "social justice"[1] for his theory. Since "the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation,"[2] he defines it as "a theory of social justice." Moreover, he restrains it to the basic structure. Rawls elucidates his problem of justice as follows:

> if one supposes that the concept of justice applies whenever there is an allotment of something rationally regarded as advantageous or disadvantageous, then we are interested in only one instance of its application. There is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold for all cases.[3]

This passage clearly indicates that his subject matter is in fact *distributive justice*, but *not* allocative justice alone. Rawls's understanding of distributive justice is extensive than allocative justice.[4] His main interest is the problem of distribution of advantages and duties in major institutions. He attempts to tackle the problem of

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[1] Ibid.

[2] Ibid.

[3] Ibid., p. 8.

[4] Allocative justice is just interested in allocating a given sum of commodities among definite individuals; but Rawls's understanding of distributive justice deals with the problem via the *basic structure*. First, thanks to the principles, basic institutions are designed, and then these institutions distribute primary social goods according to the *pure procedural justice*. So distributive shares are determined by pure procedural justice. There is not a direct sharing and distribution in Rawls's theory. For the difference between allocative and distributive justice, see Rawls, *Restatement*, pp. 50-51; Rawls, *Theory,* p. 64, 83-89; and Pete Murray, "Allocative Justice," and "Distributive Justice," in *The Cambridge Rawls Lexicon*.

distribution of "primary goods"[1] by designing basic institutions. Therefore, it is a theory of distributive justice that frames the distribution of socioeconomic and political advantages and burdens via the basic structure. It is applicable when there is a problem of sharing and distribution in the basic institutions. Rawls supports this understanding as follows: "[a] conception of social justice, then, is to be regarded as providing in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed."[2] Hence, Rawls seeks to find a *criterion* for evaluating the basic structure. He interested in the problem of distribution from this perspective. To that end, Rawls puts forward "an account of certain distributive principles for the basic structure of society,"[3] because it is the "fundamental problem"[4] of society. Samuel Fleischacker affirms this interpretation as well. According to Fleischacker, Rawls's theory fits exactly into the modern definition of distributive justice, but not the ancient one.[5] The distinction between ancient and modern understandings of distribution is the modern state as a guarantor of social justice: "'Distributive justice' in its modern sense calls on the state to guarantee that property is distributed throughout society so that everyone is supplied with a certain level of material means."[6] The state is liable for supplying

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[1] Notice that primary goods are not just tangible assets or products. For the primary goods, see subsection 2.3.4.

[2] Rawls, *Theory,* p. 9.

[3] Ibid., p. 10.

[4] Ibid.

[5] Fleischacker, *History of Distributive Justice*, p. 114.

[6] Ibid., p. 4; for a detailed summary of the ancient and modern understandings of distributive justice see Ibid., pp. 1-16. Thomas Patrick Burke distinguishes the modern and the ancient understandings of social justice by way of alluding to Rawls as follows: "[f]rom the traditional viewpoint, whatever is unjust is also unfair or unequal, but the proposition cannot be inverted: not everything that is unequal is necessarily unjust. There is a difference between justice and fairness. In the new view, however, justice is identified with fairness. Whatever is unequal or unfair is by that very fact considered unjust. This is so even if the subject matter of judgment is not an action but a state of affairs. And that unequal state of affairs is unjust *no matter how it came about*. So we have the bizarre situation that a state of affairs can be labeled "unjust" even though no one has done anything wrong in producing or permitting it, or indeed done *anything* to produce it" (Burke, *The Concept of Justice*, p. 13).

the basic needs of its citizens; so it regulates the distribution of resources and opportunities for all.[1] Each person deserves basic rights and requirements unconditionally. The state thus should assure just distribution between its citizens. This is the distinctive characteristic of the modern understanding of distributive justice. Fleischacker adds that "[i]t is equally essential to the modern notion of distributive justice that people deserve certain goods *regardless* of their character traits or anything they have done."[2] Rawls thinks so as well. For this reason, he attempts to reduce socioeconomic inequalities. As a result, according to Fleischacker, Rawls's understanding of social justice tally with the modern concept of distributive justice and "he provided such a clear definition of what people were already talking about in the past two centuries, when they talked about 'distributive justice.'"[3] Rawls's theory is therefore a typical theory of distributive justice in the modern sense and Rawls is a key figure of modern distributive justice.

In addition to that, it is a theory for the basic structure. It is not a magic wand that is applicable to all spheres of life. That is to say, it may not be valid in the private sphere, daily life, business life, or between states.[4] To Rawls, these spheres of life "may require different principles arrived at in a somewhat different way,"[5] hence

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[1] To give some examples of this viewpoint, Shue first contends that each person deserves "basic rights: subsistence, security, and liberty;" see Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1980); secondly, van Parijs and Vanderborght argues that each person should have "unconditional basic income;" see Philippe van Parijs and Yannick Vanderborght, *Basic Income: A Radical Proposal for a Free Society and a Sane Economy* (Cambridge, Mass.: Harvard University Press, 2017); finally, Sen and Nussbaum holds that the state should provide "the basic necessary conditions of the capability to choose and live a fully good human life;" for the Capability Approach see Martha Nussbaum and Amartya Sen, "Capability and Well-being," in *The Quality of Life*, eds. Martha Nussbaum and Amartya Sen (Oxford: Clarendon Press, 1993), pp. 30–53; and Nussbaum, *Creating Capabilities*.

[2] Fleischacker, *History of Distributive Justice*, p. 13.

[3] Ibid., p. 115.

[4] Rawls, *Theory,* p. 8.

[5] Ibid.

he confines his theory to the major institutions of *one* society. Rawls maintains that "I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies."[1] Practically he confines *Theory*'s scope to national boundaries. He postpones the question of global justice until working out social justice in a state. Rawls thus assumes that there is an isolated society and seeks to solve merely the problem of distribution in this society. Well, it is understood that Rawls puts forward a theory of distributive justice for major institutions, but what kind of a society does he imagine? Liberal, socialist, conservative, or any other? Certainly, he presupposes a liberal society in *Theory*: "[j]ustice as fairness aims to describe a just arrangement of the major political and social institutions of a liberal society."[2] Thus, it is a theory of distributive justice for a *liberal* society within the bounds of a state. That is, Rawls does not apply it to nonliberal societies and international relations as it is. In *The Law of Peoples* Rawls discusses these issues, but not in *Theory*. It also does not examine retributive justice, environmental justice, and justice in the workplace.[3] So, *Theory* deals with socioeconomic and political problems of citizens of "the modern democratic state."[4] Thus it is interested in "the grounds of the basic religious and political liberties, and of the basic rights of citizens in civil society, including here freedom of movement and fair equality of opportunity, the right of personal property, and the protections of the rule of law."[5] Depending on Rawls's investigation of these economic, social, and political rights, however, one should not suppose that *Theory* is based on rights. In his late article, "Justice as Fairness: Political not Metaphysical," to put the record straight, Rawls argues that

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[1] Ibid.

[2] Wenar, "John Rawls." See also Rawls, *The Law of Peoples*, p. 30.

[3] Rawls, *Political Liberalism*, p. xxviii.

[4] Ibid.

[5] Ibid.

> I prefer not to think of justice as fairness as a right-based view; indeed, Dworkin's classification scheme of right-based, duty-based and goal-based views … is too narrow and leaves out important possibilities…. I think of justice as fairness as working up into idealized conceptions certain fundamental intuitive ideas such as those of the person as free and equal, of a well-ordered society and of the public role of a conception of political justice, and as connecting these fundamental intuitive ideas with the even more fundamental and comprehensive intuitive idea of society as a fair system of cooperation over time from one generation to the next. Rights, duties, and goals are but elements of such idealized conceptions. Thus, justice as fairness is *a conception-based*, or as Elizabeth Anderson has suggested to me, *an ideal-based view*, since these fundamental intuitive ideas reflect ideals implicit or latent in the public culture of a democratic society.[1]

Rawls's theory is therefore an ideal-based theory that defines liberties and responsibilities in accordance with the principles. *Theory* does not rely on rights; but it is founded on *the ideal of justice as fairness* that comprises a family of ideas of the liberal democratic society. Consequently, rather than *A Theory of Justice*, the title should be *The Theory of Distributive Justice of the Liberal Democratic Society for the Basic Structure*. This title is truer than the former and reflects the content of *Theory* accurately.

Lastly, Rawls confine justice as fairness to ideal theory (*strict compliance theory*). In ideal theory, "[e]veryone is presumed to act justly and to do his part in upholding just institutions."[2] That is, all the people obey the rules and perform their duties as it should be. In short, it is like a *fair play*: each one plays the game compatible with the rules and no one has an unfair advantage. On the contrary, in non-ideal theory some persons act unjustly and do not fulfill their duties in the society (*partial compliance theory*). That is to say, some people break the rules and have an unfair advantage, such as theft, bribery, or any kind of violation. Non-ideal theory thus deals with the real-life problems: "the problems of partial compliance theory are the pressing and urgent matters. These are the things that

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[1] Rawls, "Political not Metaphysical," p. 236, n. 19; italics added.

[2] Rawls, *Theory,* p. 8.

we are faced with in everyday life."[1] In other words, it can be said that non-ideal theory tackles what "is;" whereas ideal theory examines what "ought to be." That's why Rawls prioritizes ideal theory in his investigation: "[t]he reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems."[2] After, "what ought to be" is suggested, "what is" can be elucidated and assessed. In *Theory*, Rawls thus limits justice as fairness to strict compliance theory. Partial compliance theory then can be studied. Given the constraints and presuppositions of *Theory*, we shall examine the gist of justice as fairness now.

2.3.1 The Main Idea of *Theory*: Justice as Fairness

The fundamental assumption of *Theory* is roughly as follows: *if free, equal, and rational persons select the principles of justice by following a fair procedure, the choice will be just. Free, equal, and rational persons choose the principles in the original position (which is a fair procedure); so, the choice is just.* So, *Theory* is a kind of procedural justice. It pays attention to the fairness of the choice procedure rather than the result. It just secures that "the outcome is not conditioned by arbitrary contingencies or the relative balance of social forces. Thus justice as fairness is able to use the idea of *pure* procedural justice from the beginning."[3] For that reason, Rawls seeks to "set up a fair procedure so that any principles agreed to will be just."[4] This is the fundamental idea of *Theory*: "it is for precisely this reason that the just outcome can only be the one factually obtained after carrying out the procedure. If the procedure is just, the outcome *is* just, whatever it may

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[1] Ibid., pp. 8-9.

[2] Ibid., p. 9.

[3] Rawls, *Theory,* p. 120; I put an emphasis on "pure," because of its purely procedural character; see also Rawls, *Political Liberalism*, pp. 72-73.

[4] Rawls, *Theory*, p. 136.

be."[1] Rawls bases his theory of justice on this presumption. In his first paper on justice he defends that "the fundamental idea in the concept of justice is *fairness*."[2] Hence, Rawls aims at fair procedures for the right choice of the principles. To understand the intuitive idea behind *Theory*, we can consider the classical example of fair division of a cake. Imagine that there are two brothers and a whole cake. They could not find how to divide the cake fairly. Dividing the cake equally is not so simple as it is seen. If they divide the cake equally, big brother will claim that since his is bigger he deserves a big slice. Certainly, the little brother will object to this division because of having an unequal share. They will fail to agree. Which criterion they will apply? How they will share the cake? At last, since they could not find a just solution they consult with their grandfather. The grandfather states big brother that "divide the cake into two pieces, however you please;" then he says to the little cadet, "once your brother has divided the cake, you choose whatever you want." Since the second piece will fall to the big brother, he divides the cake equally. This is the only way of taking the largest share possible for the big brother. This wise solution depends on the commonsensical idea that if the parties can agree on and follow a *fair procedure* unanimously without knowing their outcome in advance, they will choose the most just principle for all. A *fair procedure* thus yields a *criterion of justice* and a *just outcome*. This is Rawls's point of departure. He carries this idea forward and develops *Theory*.

The idea of "the original position" is to make this just procedure possible. Owing to the initial situation, Rawls strives to "nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural

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[1] Cristina Lafont, "Procedural justice? Implications of the Rawls–Habermas Debate for Discourse Ethics," *Philosophy & Social Criticism* 29, no. 2 (March 2003): p. 165; similar interpretation is given by Gledhill: "pure procedural justice, while there is no independent criterion for the right result, there is a fair procedure that *translates* its fairness to the outcomes provided it has been properly followed" (James Gledhill, "Procedure in Substance and Substance in Procedure: Reframing the Rawls-Habermas Debate," in *Habermas and Rawls: Disputing the Political*, eds. James Gordon Finlayson and Fabian Freyenhagen [New York and London: Routledge, 2011], p.189).

[2] Rawls, "Justice as Fairness," p. 164; emphasis added.

circumstances to their own advantage."[1] To this end, he puts forward "a veil of ignorance"[2] that conceals the information of the representatives' socioeconomic status, personal features, cultural characteristics, worldviews secret. In the original position, everyone is like Lady Justice. Her eyes are covered so that she is not affected by the complainant or defendant. Thus, she can judge the case impartially and decide for the sake of justice alone. In the same manner, the parties evaluate and choose the first *principles* of major institutions *for all* without bias. The original position "ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances."[3] Therefore it is "a purely hypothetical situation"[4] of equality that provides fair conditions of a just choice. Put another way, the initial situation is a state of perfect symmetry: "[s]ince all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain."[5] Given that everyone has equal negotiating power, the agreement would be fair and the result of the procedure would be just. Rawls's theory arises out of this idea:

> [t]he original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name "justice as fairness": it conveys the idea that the principles of justice are agreed to in an initial situation that is fair.[6]

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[1] Rawls, *Theory,* p. 136.

[2] Ibid., p. 12.

[3] Ibid.

[4] Ibid.

[5] Ibid; Rawls explicitly says that "the parties are symmetrically situated in the original position" (Rawls, *Restatement*, p. 18).

[6] Rawls, *Theory,* p. 12.

Hence, the notion of *justice* in the phrase refers to justice resulting from major institutions; and the concept of *fairness* points out the fair procedure which is defined by the original position of equality to guarantee fair conditions of agreement.

Before examining the principles, three characteristics of the representatives in the original position should be explained. Rawls assumes that the representatives are free, equal, and rational. To begin with, the first feature means that they are not bound by any external power. Rawls assumes that they enter into the society voluntarily for cooperation. That is to say, "its members are autonomous and the obligations they recognize self-imposed."[1] Rawls thus envisions persons as individuals who enter into a society voluntarily and make a contract for a cooperation. Although this is not so in the real world, there is one case similar to Rawls's thought experiment: migrants sign a contract when they migrate to a country. They sign the contract "voluntarily" in order to work and live in that country. Migrants therefore approve the conditions of the contract voluntarily; but certainly, they do not have equal negotiating power as in the original position.[2] Rawls imagines an ideal situation that the persons cooperate and select the principles freely.[3]

The second characteristic of the representatives is their being *rational* decision makers. They follow their own advantages alone, that is they are "mutually disinterested."[4] They do not seek to harm or benefit to other parties. In other

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[1] Ibid., p. 13.

[2] Because in general they escape from a war, famine, or natural disasters etc.; under these circumstances they cannot negotiate with a state equally. So, they are forced to sign some contracts by the host country.

[3] Recall Kantian notions of autonomy, kingdom of ends, and the categorical imperative as explained above for free, equal, and rational persons in the original position; see subsection 2.2.4.2.

[4] Rawls, *Theory,* p. 13.

words, they are neither "egoists"[1] nor altruists.[2] The agents in the original position is *not* interested in the advantages of others;[3] because they are the *representatives* of the people they stand for. That is, the agents in the initial situation is not the persons as such. The interests of real persons are represented by the agents. So, "[t]he parties, as representatives of free and equal citizens, act as *trustees* or guardians. Thus, in agreeing to principles of justice, they must secure the fundamental interests of those they represent."[4] For this reason, the representatives cannot make choice altruistically. They are similar to *homo oeconomicus*: "the concept of rationality must be interpreted as far as possible in the narrow sense, standard in economic theory, of taking the most effective means to given ends."[5] They follow and seek to maximize the gains of the persons they represent without considering others. They may grant some rules or procedures if and only if they do not conflict with the interests of the persons they represent: "[t]o justify to others that they ought to accept certain rules or obligations, one needs to show them that it would have been in their own interest to agree to them."[6] For that reason, "the persons in the original position try to acknowledge principles which advance their system of ends as far as possible."[7] They are purely self-interested and "mutually disinterested."[8] They may approve some sort of regulative principles only if they comply with the objectives of the group they represent.

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[1] Ibid.

[2] Pogge, *John Rawls*, p. 61.

[3] Rawls, *Theory,* p. 13.

[4] Rawls, *Restatement*, p. 84; emphasis added.

[5] Rawls, *Theory*, p. 14.

[6] Pogge, *John Rawls*, p. 61.

[7] Rawls, *Theory,* p. 144.

[8] Ibid.

The third characteristic of the representatives is their being *equal* moral persons. Given that the representatives positioned behind a veil of ignorance, they "view themselves as equals, entitled to press their claims upon one another;"[1] because they do not know the personalities, advantages, and disadvantages of the persons they stand for. The most important point is that they do not know their own socioeconomic status as well. In the original position, "all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on."[2] There is no superiority or power asymmetries between human beings. Each person has equal moral worth.[3] That is, each one pursues her own understanding of the good. Someone's good or the common good cannot trump anyone's understanding of the good. Each one's understanding of the good is worthy of respect. For instance, a utilitarian may argue that we should sacrifice a group of people (e.g. slaves) for the greater good. The utilitarian thinks that the total level of utility can be maximized in this way: for greater advantages, a small amount of people may be sacrificed. The utilitarian might justify manifest injustices on these grounds. However, once we consider "people as equals," we cannot sacrifice anybody. What is more, nobody would accept to be sacrificed on an equal footing:

> [s]ince each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction. In the absence of strong and lasting benevolent impulses, a rational man would not accept a basic structure merely because it maximized the algebraic sum of advantages irrespective of its permanent effects on his own basic rights and interests. Thus it seems that the principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage.[4]

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[1] Ibid., p. 14.

[2] Ibid., p. 19.

[3] See subsection 2.2.4.2. for Kantian roots of this idea.

[4] Rawls, *Theory,* p. 14.

Consequently, equal persons would not approve inegalitarian principles for the sake of aggregate welfare of society, or any other grounds. Free, equal, and rational parties would not sacrifice anyone's interests. Well, the persons would not choose utilitarian principles in the initial situation; but which principles would they select for major institutions? What would they select for major institutions if they did not know their socioeconomic position, natural endowments, and identities? Rawls deems that free, equal, and rational representatives would select the following two principles:

> *First:* each person is to have an equal right to the most extensive *basic liberty* compatible with a similar liberty for others.
> *Second:* social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to *everyone's advantage*, and (b) attached to positions and offices *open to all*.[1]

This is the first formulation of the principles. Later on, Rawls will develop it. EBL lays down the priority of liberty: each human being deserves equal liberties unconditionally. EBL thus puts emphasis on *the idea of freedom*. Given that every person is worthy of freedom without any exception, everyone should have basic rights consistent with the liberties of other citizens. EBL therefore "requires equality in the assignment of basic rights and duties."[2] To guarantee equal liberty, Rawls has recourse to the equal rights and liberties. Otherwise, it would be similar to the irony in Orwell's *Animal Farm*: "[a]ll animals are equal, but some animals are more equal than others."[3] So, the more equal ones would enjoy their rights and liberties more than the others. In this way, they would be truly free and independent, whereas the inferior ones could not be free and independent as the more equal ones. Therefore, in order to realize equal liberties, persons should be seen as equals first. That is, equal rights and duties should be assigned to all. Then, they can enjoy their freedom. Rawls thus does not tolerate any form of inequality

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[1] Ibid., p. 60; italics added.

[2] Ibid., p. 14.

[3] George Orwell, *Animal Farm* (Harmondsworth: Penguin, 1975 [1945]), p. 114.

in EBL. However, when he considers the second principle of justice, he allows inequalities provided that they are good for all, in particular to the most disadvantaged. Rawls clarifies the second principle as follows: "social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society."[1] In this manner, every single person's condition gets better and no one's rights are sacrificed for the sake of greater goods; because one's situation do not get worse by means of the second principle. It is like a win-win situation (i.e. a non-zero-sum game).[2] All the parties profit from the principles of justice. One's gain is not the loss of the other. At the end of the day, the more advantaged as well as the less advantaged win, and parties' shares get bigger. So, social cooperation continues. That is, *the principles* chosen are *rational* as well as *ethical*. Because they are in everyone's interest, and nobody's liberties are infringed. In the original position, socioeconomic inequalities are regulated for everyone's advantage, with a special emphasis on the disadvantaged group. To Rawls therefore choosing the principles of justice would be rational as well as moral.[3]

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[1] Rawls, *Theory,* pp. 14-15.

[2] It is a term in Game Theory that denotes a type of game which sum of the payoffs is not constant (zero); the prisoner's dilemma is the famous case of a nonzero-sum game. On the other hand, in a zero-sum game, the outcome of the game is constant; that is, one's gain is the loss of the other (e.g. chess). Fudenberg and Tirole admits that "most games of interest in the social sciences are non-zero-sum;" see Drew Fudenberg and Jean Tirole, *Game Theory* (Cambridge, Mass.: The MIT Press, 1991), p. 4. Schmidtz acknowledges that "Rawls's most central, most luminously undeniable point is that a free society is not a zero-sum game. It is a mutually advantageous cooperative venture. That is why, when given a choice, people almost always choose to live together: They are better off together" (David Schmidtz, *The Elements of Justice* [New York: Cambridge University Press, 2006], p. 196). For a formal analysis of Rawls's theory in this context, see Robert Paul Wolff, *Understanding Rawls: A Reconstruction and Critique of a Theory of Justice* (Princeton: Princeton University Press, 1977), pp. 142-179. Yet, Nozick argues that Rawls presumes social life as a "constant-sum game, wherein if greater ability or effort leads to some getting more, that means that others must lose" (Nozick, *Anarchy, State, and Utopia*, p. 228).

[3] Rawls, *Theory,* p. 75, 106, 120, 123, 567, 568, 577. Weithman observes that Rawls aims to match "the right" (denotes the just) and "the good" (denotes the rational) in *Theory* akin to Nash equilibrium; however, he failed to solve the problem of stability. Hence, he reorganized justice as fairness in *Political Liberalism* to deal with the problem; for the scholarly discussion of the problem of stability, see Paul Weithman, *Why Political Liberalism? On John Rawls's Political Turn* (New York: Oxford University Press, 2010). Yet Rawls argues that DP satisfies the prospects of the worst-off better than Nash equilibrium, see figure 1 in Rawls, *Restatement*, p. 62; and Amartya K. Sen, *Collective Choice and Social Welfare* (Amsterdam: North-Holland, 1979), p. 136.

It may appear at first sight that justice as fairness is similar to utilitarianism; however, when carefully considered one can see that it is "contrary to utilitarianism,"[1] because of the infringement of the principles of justice in utilitarianism. First of all, utilitarianism violates EBL: "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others."[2] Utilitarianism infringes the rights of some groups for greater advantages enjoyed by others. It calculates total utility by subtracting the loss from the gain of society. If the net sum of utility is bigger than zero, the system works satisfactorily. If it is negative, it is not effective. In this rationale, if the net sum of utility is positive, then the disadvantages which is experienced by the few may be ignored. The total advantage of the society outweighs the disadvantage of the few; hence the rights of the oppressed are justified on these utilitarian grounds. But this justification definitely contradicts with Rawls's first principle, because it declares that each human being is equal and should have equal rights parallel to a similar freedom for all. From the perspective of EBL, the rights of anybody cannot be bargained with greater social well-being. Above all, utilitarianism does not take people as free and equal moral beings. It views "society as a whole" similar to "the principle of rational choice for one man."[3] Utilitarianism puts society in place of individual, and reasons in this manner. It considers society as if one person and works out as a whole, such that "many persons are fused into one."[4] Then like one man it counts up the possibilities and choices of the society. Rawls draws a parallel between a utilitarian and a businessman as follows:

> [t]he nature of the decision made by the ideal legislator [utilitarian] is not, therefore, materially different from that of an entrepreneur deciding how to

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[1] Rawls, *Theory,* p. 15; see subsection 2.2.1. above on utilitarianism.

[2] Ibid., p. 60.

[3] Ibid., pp. 26-27.

[4] Ibid., p. 27.

maximize his profit by producing this or that commodity, or that of a consumer deciding how to maximize his satisfaction by the purchase of this or that collection of goods.[1]

In this reasoning, the rights and liberties of persons are dependent on the total profit of society. According to the utilitarian viewpoint, the rights of human beings are subject to bargaining. If they diminish the efficiency and effectiveness of social institutions, they can be suspended. In particular, the rights and liberties of persons are considered when they contribute to the economy.[2] The utilitarian thus views humans as capital or usable goods in order to make benefit. As a result, "[u]tilitarianism does not take seriously the distinction between persons;"[3] even it does not see them as moral equals.

Utilitarianism also contradicts with Rawls's difference principle (referred to as DP hereafter). It proposes that socioeconomic inequalities are just if and only if they are compensated for the most disadvantaged group. If the inequalities make the condition of the disadvantaged group better off, they are permissible. However, utilitarianism does not promote the condition of the disadvantaged group; even it sacrifices their rights and liberties. At best their condition would be stable; but Rawls asks for more. He suggests that socioeconomic inequalities should be organized for the advantage of all without neglecting and even improving the rights of the most disadvantaged. In other words, major institutions are to be

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[1] Ibid.

[2] This is why slavery is abolished. Huston admits that "[e]conomics drove the choice between slavery and nonslavery, and morality was hardly going to prevent an American from taking full advantage of the situation regardless of who got run over" (James L. Huston, *Calculating the Value of the Union: Slavery, Property Rights, and the Economic Origins of the Civil War* [Chapel Hill and London: The University of North Carolina Press, 2003], pp. 147-148); additionally Bradley claims that "[s]lavery, once it became economically questionable … could be justifiably abolished" (Anthony B. Bradley, *The Political Economy of Liberation: Thomas Sowell and James Cone on the Black Experience* [New York: Peter Lang, 2012], p. 45); furthermore Wolf tells that Adam Smith and Benjamin Franklin "criticized slavery as less efficient than free labor" (Eva Sheppard Wolf, "Early Free Labor Thought and the Contest over Slavery in the Early Republic," in *Contesting Slavery: the Politics of Bondage and Freedom in the New American Nation*, eds. John Craig Hammond and Matthew Mason [Charlottesville and London: University of Virginia Press, 2011], p. 32).

[3] Rawls, *Theory,* p. 27.

organized so that the more advantaged should maximally contribute to the situation of the least advantaged. But since utilitarianism consider the society as a whole, it does not care for the disadvantaged and give precedence to the worst-off. Utilitarianism does not take steps to improve the socioeconomic status of the disadvantaged. It calculates the net balance of satisfactions alone. The harm of the few or least advantaged is negligible from the utilitarian perspective. If the advantages are greater than the disadvantages, there is no problem for the utilitarian. Yet, Rawls's principles of justice "rule out justifying institutions on the grounds that the hardships of some are offset by a greater good in the aggregate."[1] Because the principles of justice hold that it is unjust to give up rights of persons for the sake of the total welfare. As it is quoted in the beginning of this chapter, for Rawls "[j]ustice is the first virtue of social institutions,"[2] so it is "uncompromising."[3] Rawls gives precedence to justice *categorically* in the determination of social institutions at the outset. Then he makes concessions on behalf of the least advantaged. If concessions will benefit all, especially for the worst-off, they may be permissible. Otherwise, they should not be accepted and applied to social institutions. Justice comes first for Rawls. The rights or liberties of persons are not "subject to political bargaining or the calculus of social interests."[4] That is, for Rawls, justice trumps utility. This is the essence of Rawls's understanding; justice has categorical priority among other principles. Rawls therefore rejects the idea that "some should have less in order that others may prosper;"[5] but approves "the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved."[6] This advancement may

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[1] Ibid., p. 15.

[2] Ibid., p. 3.

[3] Ibid., p. 4.

[4] Ibid.

[5] Ibid., p. 15.

[6] Ibid.

justify socioeconomic inequalities according to Rawls. If not, as in the case of utilitarianism, it is an unjust social structure. Consequently, Rawls do not give countenance to utilitarian justice. Neither Rawls's first nor the second principle is compatible with utilitarianism. Rawls thus criticizes utilitarianism and develops *Theory* as an alternative to it. For that reason, to understand *Theory* we need to keep in mind utilitarianism throughout the text.

Furthermore, the choice of the principles is concerned with social cooperation. If the disadvantaged parties could not be satisfied, they would not cooperate effectively; then, the welfare of society would be diminished as well. The least advantaged parties should therefore be satisfied as well as the most advantaged parties. Rawls explicates this social fact behind the principles as follows:

> [t]he intuitive idea is that since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated. Yet this can be expected only if reasonable terms are proposed. The two principles mentioned seem to be a fair agreement on the basis of which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all.[1]

Thanks to the principles of justice, everyone would cooperate voluntarily in an effective system; and hence the interest of each person would be fulfilled. If the condition of the disadvantaged persons is not considered, they would not cooperate effectively; thus, efficiency and effectiveness of the system would be reduced and socioeconomic status of all would be weakened, as in the utilitarian scheme. That is to say, in an ineffective and inefficient system everyone will lose; whereas in an effective and efficient system every single person will win. Therefore, not only the well-off but also the worst-off should be considered in a well-ordered and well-functioning society; so that all the parties will benefit from the cooperation. Rawls thus seeks to match *the just* with *the good* in justice as fairness.[2] So, when basic

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[1] Ibid.

[2] That reminds Rousseau's introductory note in *The Social Contract*: "[i]n this investigation I shall always strive to reconcile what right permits with what interest prescribes, so that justice and utility

institutions were designed consistent with the principles; everyone will be better-off, and this situation will be just.

After the gist of *Theory* is set out, now we can go into the details. Rawls argues that "justice as fairness, like other contract views, consists of two parts: (1) an interpretation of the initial situation and of the problem of choice posed there, and (2) a set of principles which, it is argued, would be agreed to."[1] That is, the fundamental elements of *Theory* are "the original position" and "the principles of justice." Let us elaborate on these components in turn, to penetrate Rawls's conception deeply.

2.3.2 The Original Position

Rawls's original position is akin to "an Archimedean point for devising the principles of justice."[2] Archimedes says, "Give me a place to stand on, and I will move the Earth;"[3] and Rawls so to says, "Give me a place to stand on, and I will construct a theory of justice." The Archimedean point draws attention to two facts. First, if one can find a fulcrum, she can perform what she wishes. Second, owing to the fulcrum, she can do it easily. Hence, due to the original position, Rawls thinks that he can generate and justify the principles without effort. It is the reference point for Rawls; hence it should be understood and examined carefully.

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may not be at variance" (Jean-Jacques Rousseau, *The Social Contract and The First and Second Discourses*, trans. and ed. Susan Dunn [New Haven and London: Yale University Press, 2002], p. 155). Rawls examines the congruence of the right and the good in chapter IX of *Theory*, entitled "The Good of Justice;" in the introduction of this chapter he maintains that "in a well-ordered society an effective sense of justice belongs to a person's good, and so tendencies to instability are kept in check if not eliminated" (Rawls, *Theory*, p. 513).

[1] Ibid., p. 15.

[2] M.W. Jackson, 'The Least Advantaged Class in Rawls's Theory', *Canadian Journal of Political Science* 12, no. 4 (1979): p. 727.

[3] E. J. Dijksterhuis, *Archimedes*, trans. C. Dikshoorn (Princeton: Princeton University Press, 1987), p. 15.

As it is mentioned above, Rawls begins his inquiry with the concept of society as "a cooperative venture for mutual advantage,"[1] and seeks out the "fair terms of social cooperation."[2] The questions however come out directly: *who will specify the conditions of cooperation,* and secondly *how they will be defined?* First one is relatively easy: free, equal, and rational persons engaged in cooperation will decide on the fair conditions of collaboration.[3] Yet the second one is a tough question. Rawls anyway endeavors to solve the latter one by the original position. It is a "hypothetical and nonhistorical"[4] *thought experiment* that specifies fair terms of agreement and forces persons to select the principles of justice under equal conditions. Because if certain conditions are not imposed on the parties, they might decide with bias in favor of their own socioeconomic and political position. Moreover, they might choose the principles which fit and support their personal characteristics, natural abilities, cultural and physical features. Thus, in order to make a fair agreement that defines the fair conditions of collaboration, Rawls thinks, we have to prevent "the accidents of natural endowment and the contingencies of social circumstance as counters in quest for political and economic advantage."[5] Given that these particularities and circumstances are "arbitrary from a moral point of view,"[6] we have to nullify these social, historical, economic, political, and cultural contingencies in the "original position of equality."[7] Otherwise, the agreement cannot be "valid and fair," hence "the terms

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[1] Rawls, *Theory,* p. 4.

[2] Ibid., p. 21.

[3] Ibid., p. 13.

[4] Rawls, *Restatement*, p. 16; for the relation between Locke's state of nature and Rawls's original position see subsection 2.2.4.1 above.

[5] Rawls, *Theory,* p. 15.

[6] Ibid.

[7] Ibid., p. 180.

agreed to will not be regarded as fair."[1] Rawls however believes that with the original position he can satisfy "the conditions for valid and fair agreements."[2] Thus, the fair conditions of collaboration and the principles of justice would be yielded.

The moral perspective inherent in the original position is not essentially an original viewpoint when we look at the history of moral philosophy.[3] Rawls's contribution is making this moral point of view mandatory and giving a concrete form in a conception of justice. Rawls embodies the ethical perspective by describing circumstances of justice and restraining moral reasoning in a set of conditions. Jon Mandle approves that "[b]y considering the choice from the original position, Rawls holds, we can bring our more abstract commitments together to generate principles of justice that can then be applied to more concrete cases."[4] In this way, abstract moral perspective is transformed into a fair choice situation that yields the principles of distributive justice and fair terms of social collaboration. The initial situation pushes for conditions on the contracting parties to take fair and impartial perspective. Although they are not saints, they are morally required to choose justice criteria. The conditions and constraints of the original position are imposed

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[1] Rawls, *Restatement*, p. 15.

[2] Ibid.

[3] Kant's categorical imperative is explained above, see subsection 2.2.4.2. Hume applies to the notion of "the judicious spectator" to explain the moral perspective, see David Hume, *A Treatise of Human Nature* (Oxford: Oxford University Press, [1739] 1978), p. 581; and Rawls, *History of Political Philosophy*, pp. 184-187; and Enes Eryılmaz, "Politics, Law, and Morality: David Hume on Justice," (master's thesis, METU, 2011), pp. 33-37. Smith appropriates the concept as "the impartial spectator," see Adam Smith, *The Theory of Moral Sentiments*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2002); and Alexander Broadie, "Sympathy and the Impartial Spectator," in *The Cambridge Companion to Adam Smith*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2006), pp. 158-188. Jean-Jacques Rousseau puts forward "the general will" to reflect the ethical perspective, see Rousseau, *The Social Contract,* pp. 164-230; and Rawls, *History of Political Philosophy*, pp. 223-234.

[4] Jon Mandle, "The Choice from the Original Position," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy (Malden, MA: Wiley-Blackwell, 2014), p. 128.

on rational persons for impartial selection of the principles.[1] The circumstances of the original position can be summarized as follows:

1. The contracting agents pick the principles from a *catalogue of historical understandings of justice*. In the catalogue, there are Rawlsian, utilitarian, intuitionistic, perfectionist, and egoistic conceptions of justice and their certain combinations.[2] Persons thus select the principles of justice from these alternatives, like a multiple-choice exam.

2. The principles are chosen behind a "veil of ignorance." It conceals the information of social and ethnic origin, socioeconomic condition, sexuality, age, personal characteristics, natural talents, learned abilities, education of the individuals they represent. Moreover, they are not informed about the understandings of the good, lifeways, worldviews, society's nature, culture, generation, and civilization of the individuals they represent. But, at the same time the contracting parties know the principles of human psychology, sociology, politics, economics, and other sciences which are concerned with the choice of the principles. That is, the veil permits the agents to become aware of *general facts* about persons and societies, yet forbids *particular facts* about decision makers and the community which they represent.

3. The contracting parties are also informed by the "circumstances of justice" before they choose the principles.[3] The circumstances show the conditions that justice requires. With the circumstances of justice human cooperation and hence justice becomes "possible and necessary."[4] The conditions are

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[1] Pogge, *John Rawls,* p. 63.

[2] For Rawls's exact list of alternative theories, see Rawls, *Theory,* p. 124.

[3] In fact, Rawls takes circumstances of justice from Hume; but he interprets them according to his own project, see David Hume, *An Enquiry Concerning the Principles of Morals*, ed. J. B. Schneewind (Indianapolis, IN: Hackett Publishing, 1983), sec. III, pt. I, and Hume, *A Treatise of Human Nature,* bk. III, pt. II, sec. ii.

[4] Rawls, *Theory,* p. 126.

mainly classified as the objective and subjective. The objective circumstances are moderate shortage of resources, physical and mental equivalence of persons, and fair play in society. The subjective circumstances are citizens' having different worldviews and "plans of life."[1] Since they have limited benevolence, and pursue different and conflicting goals, their interests clash; hence they need the virtue of justice in order to live together peacefully.[2] However, they are also aware that to follow their understandings of the good they demand necessary "primary social goods,"[3] but social and economic resources are not unlimited. Thus, they must choose a public understanding of justice and work together to achieve their objectives.

4. The principles should be *general, universal, public, ordering,* and *final.* For Rawls, these are "the formal constraints of the concept of right,"[4] thus any conception of justice should satisfy these conditions. First, the principles of justice "should be general. That is, it must be possible to formulate them without the use of what would be intuitively recognized as proper names, or rigged definite descriptions."[5] Secondly, the principles of justice should be "universal in application. They must hold for everyone in virtue of their being moral persons."[6] Thirdly, the principles of justice should be public.[7] Fourthly, a theory of justice should order "conflicting claims."[1]

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[1] Ibid., p. 127.

[2] The rationality of the contracting parties is clarified above, see subsection 2.3.1; and Rawls, *Theory,* pp. 142-145.

[3] Ibid., p. 92; in general, they are "rights and liberties, opportunities and powers, income and wealth" (ibid). Primary goods will be examined later in subsection 2.3.4.

[4] Ibid*.,* p. 130.

[5] Ibid., p. 131.

[6] Ibid., p. 132.

[7] The condition of publicity is explained above in subsection 2.2.4.2.

That is, "a conception of justice be complete, that is, able to order all the claims that can arise (or that are likely to in practice)."[2] And the last constraint is the finality. The chosen theory of justice should be final authority. No other authority should trump the conception of justice: "the system of principles as the final court of appeal in practical reasoning."[3] That is, the principles should be "conclusive."[4]

5. The contracting parties also know that each person asks for more primary goods rather than less, but no one sacrifices her liberties for a larger share. They know the priority and necessity of the idea of right to reach their goals.[5] In addition to that the agents are not driven by *jealousy*: "a rational individual does not suffer from envy. He is not ready to accept a loss for himself if only others have less as well. He is not downcast by the knowledge or perception that others have a larger index of primary social goods."[6] They just seek to "advance their system of ends as far as possible."[7] As it is mentioned above, the parties are free, equal, and rational decision makers. Moreover, all the agents have a sense of justice; but this "capacity for justice in a purely formal sense: taking everything relevant into account, including the general facts of moral psychology, the parties will adhere to the principles eventually chosen."[8] As it is explained

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[1] Rawls, *Theory,* p. 134.

[2] Ibid.

[3] Ibid., p. 135.

[4] Ibid.

[5] Rawls, *Theory,* pp. 142-143.

[6] Ibid., p. 143.

[7] Ibid., p. 144.

[8] Ibid., p. 145.

in the beginning of the discussion,[1] *Theory* is an ideal theory (*strict compliance*). To assure this feature, the parties should have a sense of justice and adhere to the agreed principles. If they could not obey, they would not agree on the principles. If they accept the principles, they keep them all together. Last but not least, a conception of justice should be stable, that is "it should generate its own support."[2] To be precise, "its principles should be such that when they are embodied in the basic structure of society men tend to acquire the corresponding sense of justice."[3] That is to say, if a conception of justice is stable, persons develop and maintain just social institutions for the sake of justice. In such a society, everyone obeys the principles of justice, and knows that others also follow. In this way, the sense of justice would be fostered; and hence the conception of justice and social institutions would be stable.[4]

Under these circumstances, Rawls contends that, the representatives pick the principles for major institutions. Rawls thinks that justice as fairness is the most rational, reasonable, and steady understanding of justice in the original position. The parties unanimously select the principles in any time. In the initial situation, "since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments."[5]

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[1] See section 2.3.

[2] Rawls, *Theory,* p. 138.

[3] Ibid.

[4] This does not mean that the stability would not change; but even if the social institutions lack the stability, they can restore itself: "stability means that however institutions are changed, they still remain just or approximately so, as adjustments are made in view of new social circumstances. The inevitable deviations from justice are effectively corrected or held within tolerable bounds by forces within the system. Among these forces I assume that the sense of justice shared by the members of the community has a fundamental role" (Ibid., p. 458). For Rawls's exact description of the original position, see ibid., pp. 122-150.

[5] Ibid., p. 139.

Given that the contracting parties are motivated by the same interests on an equal footing, they reach the same final agreement. Actually, the veil conceals the knowledge of the socioeconomic status, natural endowments, and identity of the people they represent; so there is no difference between the parties: "[t]herefore, we can view the choice in the original position from the standpoint of one person selected at random."[1] So, although the choice seems like a general agreement of the parties, in fact it is the selection of one agent.

The original position is thus "a device of representation"[2] that characterizes the parties as free, equal, and rational representatives who decide on the principles under certain conditions. In this manner, according to Rawls, all the contracting parties are persuaded to consent to the principles.[3] Rawls summarizes the original position as follows:

> [a]s such it models our considered convictions as reasonable persons by describing the parties (each of whom is responsible for the fundamental interests of a free and equal citizen) as fairly situated and as reaching an agreement subject to appropriate restrictions on reasons for favoring principles of political justice.[4]

The original position reflects the parties' considered judgments in effect. It helps to formulate the principles of justice relying on the conditions and considered judgments; because Rawls states that "reflective equilibrium works *through* the original position."[5] So the initial situation frames the terms and constraints of the

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[1] Ibid.

[2] Rawls, *Restatement*, p. 18.

[3] Laden discusses that the original position is a rhetorical mechanism to persuade his utilitarian audience; for this provocative reading see Anthony Simon Laden, "Constructivism as Rhetoric," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy (Malden, MA: Wiley-Blackwell, 2014), pp. 59-72.

[4] Rawls, *Restatement*, p. 18.

[5] Rawls, quoted in Samuel Freeman, "Original Position."

principles. In Pogge's words, "we can think of the original position as a *meta-criterion* of social justice."[1] So, the original position defines the reasonable and rational conditions of justice as fairness. The contracting representatives then choose the principles consistent with the meta-criterion of the original position in reflective equilibrium. Hence these principles of justice should match considered judgments of the parties as well. On the one hand, the parties revise their considered convictions according to the principles, and the reverse; on the other hand, they choose the principles consistent with the original position. The parties keep on this process until they come to a state of equilibrium:

> [b]y going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted.[2]

In reflective equilibrium, the original position, the principles of justice, and considered convictions are balanced. The ultimate goal is therefore to achieve reflective equilibrium. As it is showed roughly in figure 1, the procedure continues when the parties arrive at a reasonable coherence among the set of conditions, principles, and judgments.[3] In this way, Rawls seeks to construct a valid and fair understanding of justice that comprises a set of reasonable conditions, principles, and judgments. Hence when the conditions of the original position and considered judgments best fit with the principles, *justice as fairness* would be reached and justified.

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[1] Pogge, *John Rawls,* p. 42.

[2] Rawls, *Theory,* p. 20.

[3] For the complete figure of the reflective equilibrium, see Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (New York: Cambridge University Press, 1996), p. 51.

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┌─────────────────────────────────────────┐
│                                           │
│            Original Position              │
│                  ⇕                        │
│          Principles of Justice            │
│                  ⇕                        │
│          Considered Judgments             │
│                                           │
└─────────────────────────────────────────┘
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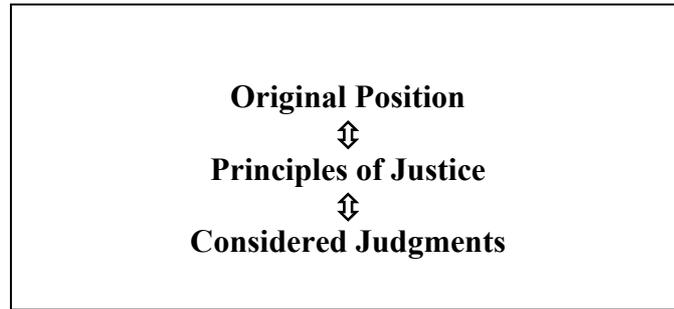
Figure 1 Short form of reflective equilibrium. Notice that arrows are double-sided. The procedure works from *both ends* until all the factors cohere.

Having thus explained the original position; hereafter the principles of justice can be examined in detail. Reflective equilibrium will be discussed fully in subsection 2.5.1. Now, let us tackle Rawls's principles and their rationale.

2.3.3 The Principles of Justice

At the outset Rawls presupposes that "the strict equality principle"[1] would be selected in the original position. Given that the representatives are not informed about the socioeconomic condition and natural endowments of the persons they stand for, (as the sharing of a cake by two brothers explained above, see 2.3.1), prudence tells that equal distribution is the rational choice. Rawls articulates the strict egalitarian starting position as follows:

> [s]ince it is not reasonable for him to expect more than an equal share in the division of social goods, and since it is not rational for him to agree to less, the sensible thing for him to do is to acknowledge as the first principle of justice one requiring an equal distribution.[2]

Hence, the representatives start reasoning for basic institutions "with a principle establishing equal liberty for all, including equality of opportunity, as well as an

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[1] Julian Lamont and Christi Favor, "Distributive Justice", *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2017/entries/justice-distributive/>.

[2] Rawls, *Theory,* p. 150.

equal distribution of income and wealth."[1] Well, if Rawls approves the strict equality principle, why he offers justice as fairness? Because the reasoning does not end here. In the revised edition of *Theory*, he explicates the transition from strict egalitarianism to justice as fairness in this manner:

> even holding firm to the priority of the basic liberties and fair equality of opportunity, there is no reason why this initial acknowledgment should be final. *Society should take into account economic efficiency and the requirements of organization and technology*. If there are inequalities in income and wealth, and differences in authority and degrees of responsibility, that work to make everyone better off in comparison with the benchmark of equality, why not permit them?[2]

That is to say, because of the reasons of social organization, technology, and productivity, some inequalities maybe permissible if they make socioeconomic condition of each person better-off, without sacrificing their basic liberties. Rawls's principles are better than strict egalitarianism, because justice as fairness increases primary social goods of each citizen with respect to equal distribution. The representatives in the original position thus leave strict egalitarianism for the sake of justice as fairness. Given that in an efficient and well-organized basic structure, sum of social primary goods will increase, everybody's share will increase as well. So that even though there would be some inequalities, everyone's share will be bigger than the initial situation of strict equality. Moreover, since the agents do not move by envy, they would not be discouraged with the inequalities. They will understand that although there are socioeconomic inequalities, "the basic structure should allow these inequalities so long as these improve everyone's situation, including that of the least advantaged, provided that they are consistent with equal liberty and fair opportunity."[3] This idea leads to DP, which distinguishes Rawls's theory from other liberal theories of justice. Socioeconomic inequalities should make everyone better-off, in particular the worst-off. To assure

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[1] Ibid., p. 151.

[2] Rawls, *Theory*, rev. ed., pp. 130-131; emphasis added.

[3] Ibid., p. 131.

this principle, Rawls gives "veto"[1] power to the least advantaged. If they reject a principle of justice, it will be excluded from the list. The more advantaged thus should justify inequalities to the less advantaged by DP.[2]

The problem is which inequalities are permissible and which are not. For instance, do free persons renounce their basic freedoms for greater socioeconomic rights? Since the persons have a "highest-order interest as free persons,"[3] they certainly refuse to accept "greater gains at the expense of the equal liberties;"[4] because "free persons conceive of themselves as beings who can revise and alter their final ends and who give first priority to preserving their liberty in these matters."[5] Thus when the subject is about the basic liberties, inequalities are not permissible; even though they take less socioeconomic advantages. But if the basic liberties are protected and if socioeconomic inequalities are to everyone's advantage, particularly the worst-off; then these secondary inequalities may be allowed. To Rawls, "[t]he priority of liberty means that whenever the basic liberties can be effectively established, a lesser or an unequal liberty cannot be exchanged for an improvement in economic well-being."[6] That is to say, free persons would not consent to the utilitarian principle; because a liberty can be exchanged for an economic good in utilitarianism. The important thing is the average or net sum of satisfaction for the utilitarian. So, a utilitarian might sacrifice her liberty for more social or economic capital. Free and equal persons therefore reject utilitarian conceptions. Liberty and justice come first for them. The persons therefore agree

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[1] Ibid.

[2] DP will be examined in subsection 2.3.3.2.

[3] Rawls, *Theory*, rev. ed., p. 132

[4] Ibid., p. 135.

[5] Ibid., pp. 131-132.

[6] Ibid., p. 132.

on "the serial order" of the principles: "the first principle [EBL] is prior to the second [principle of justice]."[1] So, the second principle cannot trump EBL: "[t]his ordering means that infringements of the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages."[2] In other words, for economic efficiency, "effective realization of the equal liberties"[3] cannot be suspended. The principles should thus be applied to major institutions in the serial order.

	Strict Egalitarianism	Rawlsianism	Utilitarianism	Capitalism
The Most Advantaged	10, 10	10, 40	12, 50	12, 80
The More Advantaged	10, 10	10, 25	10, 40	10, 50
The Least Advantaged	10, 10	10, 15	8, 20	8, 8

Figure 2 Social primary goods of the parties in alternative basic structures. First entry of each box represents the units of *basic liberties* enjoyed by the related parties (concerning with EBL), and the second one represents the units of *socioeconomic goods* gained by the related parties (concerning with Rawls's second principle).

Figure 2 may be helpful to understand the rationale of justice as fairness. It roughly shows the outcome of each conception for the most, the more, and the least advantaged parties. Under strict egalitarianism, it is seen that all the parties have both equal liberties and equal shares of socioeconomic advantages. But why a rational person prefers strict egalitarianism when she can take a larger share with a similar liberty? So, the representatives leave out the strict egalitarian choice. Utilitarianism increases everyone's share, but together with a decrease in the basic liberties of the least advantaged. Although all the parties gain much more in

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[1] Ibid., p. 53.

[2] Ibid., pp. 53-54.

[3] Ibid., p. 132.

utilitarianism relative to strict egalitarianism and Rawlsianism, the principle of utility is dismissed by EBL. Utilitarianism is thus rejected by justice as fairness. As it is seen in the figure, capitalism maximizes total profit; but both EBL and DP are violated in capitalist structure. Even though maximum total revenue is obtained in capitalism, the least advantaged parties take worse than equal share which is the point of reference. In addition to less social and economic goods, the basic liberties of the least advantaged is also infringed in capitalist system. So, it is evident that only Rawlsianism satisfies the principles of justice. In Rawlsian basic structure, everyone's (including the least advantaged) equal basic liberties are protected, and socioeconomic goods are augmented for all. What is more, Rawlsian basic structure is more efficient than strict egalitarianism. Although shares of social and economic goods are not equal, share of each party is greater than equal share in Rawlsian society. Furthermore, Rawlsian basic structure effectively preserves equal basic liberties; it does not sacrifice them for greater economic benefits. For Rawls, therefore, his theory is the rational and reasonable understanding of justice based on "our considered judgments of justice."[1]

However, this justification is not enough for Rawls. He seeks to consolidate justice as fairness in a systematic way. To that end, he applies to the *maximin rule* which is modeled in game theory and decision theory. Rawls claims that "it is useful as a heuristic device to think of the two principles as the maximin solution to the problem of social justice. There is a relation between the two principles and the maximin rule for choice under uncertainty."[2] He makes an analogy between *the choice in the original position* and *the choice in a situation of uncertainty*. Rawls thinks so on the ground that "the two principles are those a person would choose for the design of a society in which his enemy is to assign him his place."[3] Although the persons are not so pessimistic, the veil provides this aspect because

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[1] Ibid., p. 132.

[2] Ibid.

[3] Ibid., pp. 132-133.

of the lack of knowledge about their socioeconomic status and personal characteristics (i.e. anyone can be the member of the least advantaged). In a similar choice situation under uncertainty, "[t]he maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others."[1] Given that the veil conceals socioeconomic positions, the chosen principle should maximize the minimum outcome. Again, consider figure 2 to understand the maximin solution. The maximin rule suggests looking to the worst outcomes and selecting the least bad option. So, Rawlsianism offers the least bad option; because its least bad option (10, 15) is better than the worst outcomes of strict egalitarianism (10, 10), utilitarianism (8, 20), and capitalism (8, 8). Maybe Rawlsianism is not the top-grossing choice, but it guarantees optimum outcome for all; because anyone can be the least advantaged. Basically, the maximin rule is a "*risk minimizing* approach to uncertainty;"[2] so it focuses on the worst outcome in a specific time. The maximin rule does not aims to maximize average or total utility, but it calculates "the *maximum minimorum;* and the rule directs our attention to the worst that can happen under any proposed course of action, and to decide in the light of that."[3] Hence, the worst outcome in figure 2 is the outcome of the least advantaged in capitalist structure (8, 8). So, capitalism and utilitarianism (8, 20) is eliminated. There remain two choices: strict egalitarianism (10, 10) and Rawlsianism (10, 15). Therefore, Rawlsian basic structure provides the maximin solution for choice under uncertainty: (10, 15).

Rawls nevertheless does not defend the maximin strategy categorically. For Rawls, the maximin is a plausible method when three conditions are satisfied. "First, since the rule takes no account of the likelihoods of the possible circumstances, there

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[1] Ibid., p. 133.

[2] Lovett, *Rawls's 'Theory',* p. 98.

[3] Rawls, *Theory*, rev. ed., p. 133, n. 19.

must be some reason for sharply discounting estimates of these probabilities."[1] Since there is no reason such strong, one could not foresee the likelihoods. Second, "the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule."[2] Third, "the rejected alternatives have outcomes that one can hardly accept. The situation involves grave risks."[3] Thus when someone could not estimate the probabilities of the possible outcomes and if these outcomes are very risky, this person would obviously aim to guarantee his position. She may desire more goods; but if there are serious risks, she prefers the secure option. She aims to maximize her return if and only if it guarantees the minimum. Under these circumstances, the maximin rule provides the best solution. This maximin choice is akin to the choice of an elderly unskilled worker in a metropolis. Imagine that he sets up his own business, but he cannot predict the likelihood of failure or success. If he fails, he will lose all the savings which he earned throughout his life, and most probably he could not earn this amount of money again. He therefore chooses to continue his old job in the factory. In this way, he guarantees the maximin salary, and hence minimizes the risk.

If we look at the original position through the maximin rule, we may observe that the original position satisfies these conditions. First condition is already included in the veil: "the veil of ignorance excludes all knowledge of likelihoods. The parties have no basis for determining the probable nature of their society, or their place in it. Thus, they have no basis for probability calculations."[4] That is to say, the parties neither know the basic structure nor the status of the group they stand for. Rawls interprets the second condition regarding EBL (*the priority of liberty*):

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[1] Ibid., p. 134.

[2] Ibid.

[3] Ibid.

[4] Ibid., p. 134.

"[t]he minimum assured by the two principles in lexical order is not one that the parties wish to jeopardize for the sake of greater economic and social advantages."[1] The agents do not prefer more socioeconomic advantages at the cost of their basic freedoms. Free agents do not take the risk of "greater gains at the expense of the basic equal liberties."[2] Last condition is also counted in the original position. Since the representatives are not informed of socioeconomic status of the persons they stand for, the representatives think that they might be a member of the least fortunate class. "For example, it has sometimes been held that under some conditions the utility principle (in either form) justifies, if not slavery or serfdom, at any rate serious infractions of liberty for the sake of greater social benefits."[3] So the persons might be a slave or serf which is probable and very risky. All the conditions of the maximin rule are thus fulfilled in the original position. For Rawls, "[t]he original position exhibits these special features to a sufficiently high degree in view of the fundamental character of the choice of a conception of justice."[4] Hence, "the maximin rule is a useful maxim and of the way in which the arguments for the two principles of justice can be subsumed under them."[5] That is to say, Rawls considers that the representatives select *justice as fairness* in the list of alternative understandings by means of the *maximin rule* as well.[6] Let us examine the principles of justice one by one and understand the details and content of *Theory*.

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[1] Ibid., p. 135.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] For the short list of alternatives, see subsection 2.3.2 above.

2.3.3.1 The first principle of justice

As it is explained above, the principles would be applied to major institutions.[1] Since the principles approach to the basic structure from different aspects, "[t]heir formulation presupposes that, for the purposes of a theory of justice, the social structure may be viewed as having two more or less distinct parts, the first principle applying to the one, the second principle to the other."[2] So, EBL is related to the "design of the political structure which secures the basic liberties."[3] That is to say, "the first principle applies primarily to the constitution and associated institutions (e.g. courts)."[4] In the revised edition of *Theory*, Rawls puts forward EBL: "each person is to have an equal right to *the most extensive scheme of equal basic liberties* compatible with a similar *scheme of liberties* for others."[5] Notice that in the original edition, he had used "basic liberty" and "liberty," rather than "basic liberties." In the preface to the revised edition, Rawls acknowledges that this change was resulted from H. L. A. Hart's critique.[6] But Rawls had not aimed at some absolute and distinctive value like "liberty as such." Rawls corrects this and other misunderstandings about his account of liberty in a later article entitled "The Basic Liberties and Their Priority" (1982):

> [n]o priority is assigned to liberty as such, as if the exercise of something called "liberty" has a preeminent value and is the main if not the sole end of political and social justice. There is, to be sure, a general presumption against imposing legal and other restrictions on conduct without sufficient

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[1] See section 2.3.

[2] Rawls, *Theory*, rev. ed., p. 53.

[3] Mandle, *Rawls's Theory,* p. 48.

[4] Pablo Gilabert, "The Two Principles of Justice (In Justice as Fairness)," in *The Cambridge Rawls Lexicon*, p. 846.

[5] Rawls, *Theory*, rev. ed., p. 53; italics mine. For the former version of EBL see Rawls, *Theory*, p. 60 or subsection 2.3.1 above.

[6] Rawls, *Theory*, rev. ed., p. xii. See also H. L. A. Hart, "Rawls on Liberty and Its Priority," *University of Chicago Law Review* 40, no. 3 (Spring 1973): pp. 534–555.

reason. But this presumption creates no special priority for any particular liberty. Hart noted, however, that in *A Theory of Justice* I sometimes used arguments and phrases which suggest that the priority of liberty as such is meant; although, as he saw, this is not the correct interpretation.[1]

Thus, rather than "liberty" Rawls puts forward "basic liberties" in the new formulations of EBL. His account of basic liberties depends on the cumulative development of rights which is experienced in "the history of democratic thought." In this tradition, "the focus has been on achieving certain specific liberties and constitutional guarantees, as found, for example, in various bills of rights and declarations of the rights of man. The account of the basic liberties follows this tradition."[2] So, Rawls seeks to define the basic liberties according to the democratic tradition. Rawls specifies "the basic liberties" in a nutshell as follows:

> political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.[3]

Rawls contends that everyone should enjoy these liberties *equally*. There is no concession or compromise in EBL. Nevertheless, this is an incomplete list. The full list of basic liberties relies on "the particular circumstances—social, economic, and technological—of a given society."[4] He however defines a bundle of "basic liberties" for a liberal society. Consequently, the basic liberties contain political liberties, free speech and assembly, liberty of conscience, the right to integrity of the individual, the right to hold *personal* property, and the rights defined by the

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[1] John Rawls, "The Basic Liberties and Their Priority," in *Tanner Lectures on Human Values*, vol. III, ed. S. McMurrin (Salt Lake City: University of Utah Press, 1982), pp. 5-6.

[2] Ibid., p. 6.

[3] Rawls, *Theory*, rev. ed., p. 53.

[4] Ibid., 54; Rawls inserted this note to the revised edition in order to explain his plural "basic rights" approach rather than a monolithic, absolute, and universal set of "basic liberty."

rule of law. The list is familiar to us with a slight difference. Rather than "private" Rawls prefers the word "personal" for property. That is to say, personal property does not "protect the capitalist freedom to privately own and control the means of production, or conversely the socialist freedom to equally participate in the control of the means of production."[1] The right to *personal property* just protects personal belongings which are "necessary for citizens' independence and integrity."[2] That is, personal property consists of "control over one's living space and a right to enjoy it without interference by the State or others."[3] Therefore, not private property (which includes the possession of productive assets) but "personal property" is a basic right for Rawls.[4]

In addition, there is a priority rule which is introduced above briefly.[5] The full definition of the *priority rule* of EBL is in this manner:

> FIRST PRORITY RULE (THE PRIORITY OF LIBERTY)
> The principles of justice are to be ranked in lexical order and therefore the basic liberties can be restricted only for the sake of liberty. There are two cases:
> (a) a less extensive liberty must strengthen the total system of liberties shared by all;
> (b) a less than equal liberty must be acceptable to those with the lesser liberty.[6]

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[1] Freeman, *Rawls*, p. 49.

[2] Rawls, *Theory*, rev. ed., p. xvi.

[3] Freeman, *Rawls*, pp. 48-49.

[4] In fact, private property is the matter of the second principle that tackles socioeconomic institutions. Recall that EBL is mainly concerned with the political structure. Thus, the problem of private property will be examined at the end of subsection 2.3.3.2.

[5] For the precedence of liberty and order of the principles, see subsection 2.3.3.

[6] Rawls, *Theory*, rev. ed., p. 266; Rawls sometimes prefers "lexical order" as in this quotation; and sometimes uses "serial order" in *Theory*; both have the same referent which is like the *alphabetical ordering*. We order words according to their first letter, then we consider the second letter etc. If the first letter is the same, we then consider the second letter. If the first letter is not the same, we send it to its place. Like this we judge basic structures. If a basic structure satisfies EBL, then we proceed to the second principle. If a basic structure does not satisfy EBL, we rule out this option; so, there is no need to consider the second principle anymore. In Rawls's words: "[t]he two

The priority rule thus claims that EBL comes before the second. Hence, the basic liberties cannot be "justified, or compensated for, by greater social and economic advantages."[1] So each single person should have and enjoy equal basic liberties. Hence, the basic liberties can be limited if and only if the restriction serve liberties again, not for any other "thing." According to Rawls, a state of exception is possible when "the total system of liberties shared by all" became stronger and it is "acceptable to those with the lesser liberty." Well, it seems like reasonable, but what does it mean exactly? Of course, the best way to understand these cases is thinking through examples. For the first case consider the right to hold public office. It may be limited to bolster the total scheme of liberties; because if it is not restrained, present administrators and bureaucrats keep on holding their positions (e.g. certain families may dominate some important positions). Thus, to maintain and consolidate the total scheme of liberties, the right to hold public office may be restricted. For the second case, Rawls puts forward the right to vote: "[i]f some have more votes than others, political liberty is unequal; and the same is true if the votes of some are weighted much more heavily, or if a segment of society is without the franchise altogether."[2] These unequal liberties is justified if they are acceptable to those with the lesser liberty. These cases point out the circumstances of the permissible unequal basic liberties. Under these conditions, according to Rawls, the basic liberties may be curbed; but the crux of the matter is *the priority of the basic liberties*. These exceptions are allowable when the exception is on behalf of the basic liberties. That is, "basic liberties may not be restricted for the sake of non-basic liberties."[3] When the matter of negotiation is between a basic

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principles are in lexical order, and therefore the claims of liberty are to be satisfied first. Until this is achieved no other principle comes into play" (ibid., p. 214).

[1] Ibid., p. 54; of course, first, basic needs of each single person must be satisfied prior to the basic liberties. So, according to Rawls, the fulfillment of everybody's *basic needs* is "a necessary condition for citizens to understand and to be able fruitfully to exercise the basic rights and liberties" (Rawls, *Restatement*, p. 17, n. 7).

[2] Ibid., p. 217.

[3] Freeman, *Rawls*, p. 66.

and non-basic liberty, there is no concession. The basic liberties "have a central range of application within which they can be limited and compromised only when they conflict with other basic liberties."[1] If and only if these conditions hold, the basic liberties may be curtailed; "however they are adjusted to form one system, this system is to be the same for all."[2]

On the one hand, the basic liberties have a categorical priority over non-basic liberties. On the other hand, there is no categorical priority between the basic rights. The basic liberties may be curbed to make the total system of liberties stronger and that should be admissible to the persons with the reduced liberty. So, the priority actually means *the priority of the basic liberties* over non-basic liberties. For Rawls, there is no priority between the basic rights. Hence *Theory* faces a set of problems. What distinguishes basic from non-basic liberties? How the contracting parties consider some liberties as basic and others non-basic? Since there is no priority between the basic liberties, how conflicts between the basic liberties will be adjudicated? What is the criterion for the conflicts between the basic rights? How the contracting parties measure and compare the extent of the basic rights according to system of basic liberties? Imagine that there are two systems of basic liberties, C and S. In system C, freedom of speech is more extensive, but only because the right to hold public office is restricted; whereas in system S, the right to hold public office is extensive, but only because freedom of speech is restricted. Which system should be selected according to justice as fairness? Rawls replies that "the representative citizen" would decide according to "the perspective of those who have the lesser political liberty."[3] However, the reply is not convincing and sufficient. There are some gaps that should be filled in

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[1] Rawls, *Theory*, rev. ed., p. 54.

[2] Ibid.

[3] Ibid., p. 203.

Rawls's account of liberty. These questions roughly outline Hart's critique of Rawls's first principle.[1]

After that Rawls attempted to reply the criticisms by revising EBL: "[e]ach person has an equal right to *a fully adequate* scheme of equal basic liberties which is compatible with a similar scheme of liberties for all."[2] Notice that in the new formulation, Rawls inserts "a fully adequate scheme" instead of "the most extensive scheme" in order to show that the point is not quantitative maximization of liberties but "to guarantee equally for all citizens the social conditions essential for the adequate development and the full and informed exercise of these [moral] powers in…'the two fundamental cases.'"[3] The basic liberties and their priority are thus specified by the requirements of the realization and flourishing of the ethical capacities in the two basic cases. Well, but what are "the two moral powers and fundamental cases" in Rawls's terminology? The ethical capacities are "powers of moral personality."[4] The first one is "the capacity for a sense of justice" which is "is the capacity to understand, to apply and normally to be moved by an effective desire to act from (and not merely in accordance with) the principles of justice as the fair terms of social cooperation."[5] The first one reflects human capacity for being *reasonable*. The second one is "the capacity for a conception of the good" which is "the capacity to form, to revise, and rationally to pursue such a conception, that is, a conception of what we regard for us as a worthwhile human life."[6] The second ethical capacity reflects human capacity for being *rational*.

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[1] For the details of Hart's criticisms, see Hart, "Rawls on Liberty and Its Priority," pp. 534–555.

[2] Rawls, "The Basic Liberties," p. 5; italics mine.

[3] Ibid., p. 47.

[4] Ibid., p. 16.

[5] Ibid.

[6] Ibid.

Now, the application of each of the ethical capacities corresponds to a fundamental case. The *first fundamental case* is "connected with the capacity for a sense of justice and concerns the application of the principles of justice to the basic structure of society and its social policies."[1] For instance, political liberties get under this fundamental case. The *second fundamental case* is "connected with the capacity for a conception of the good and concerns the application of the principles of deliberative reason in guiding our conduct over a complete life."[2] For example, the liberty of conscience is placed under this fundamental case. These basic liberties are needed to protect "the adequate development and the full and informed exercise of both moral powers in the social circumstances under which the two fundamental cases arise in the well-ordered society in question."[3] The *importance of a liberty* therefore relies on "whether it is more or less essentially involved in, or is a more or less necessary institutional means to protect, the full and informed and effective exercise of the moral powers in one (or both) of the two fundamental cases."[4] A liberty need not be just related to a fundamental case. It can be concerned with both fundamental cases. For instance, "the rights and liberties covered by the rule of law - can be connected to the two fundamental cases by noting that they are necessary if the preceding basic liberties are to be properly guaranteed."[5] The weight of liberties are thus determined by its contribution to the flourishing and fulfillment of the two moral powers. So, when a basic liberty clashes with another basic liberty, we inspect their "central range of application;"[6] because "the area of exercise of a liberty in which it is most

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[1] Ibid., p. 47.

[2] Ibid.

[3] Ibid., p. 48.

[4] Ibid., p. 50.

[5] Ibid.

[6] Rawls, *Theory*, rev. ed., p. 54.

essential to realize one of the moral powers"[1] overlaps one or both of the fundamental cases. The basic liberty which has greater significance to realize and develop the moral powers trumps the other one. So, the basic liberties should be restricted or regulated (while protecting central range of each equal basic liberty) in order to attain "a fully adequate scheme" to exercise and cultivate the two moral powers of all.[2] Rawls's new understanding therefore counts none of the basic liberties as "absolute."[3] Put another way, none of the basic liberties is prior to another. In this fashion, "the basic liberties can be made compatible with one another, at least within their central range of application,"[4] to have and maintain a completely satisfactory system of basic liberties. For instance, free speech is a basic liberty for Rawls. However, this does not come to meaning that it should be protected without limits. When freedom of speech conflicts with equal political liberties, freedom of speech may be restricted for equal political liberties while protecting their central range of applications. That is, political speech may be limited to time and place to protect "the fair value of political liberty"[5] for the least advantaged. This example "illustrates how the freedom of political speech as a basic liberty is specified and adjusted at later stages so as to protect its central range, namely the free public use of our reason in all matters that concern the justice of the basic structure and its social policies."[6] In this way, the basic liberties are restricted to make them consistent with the scheme of liberties that is "fully adequate" for persons' ethical capacities.

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[1] Freeman, *Rawls*, p. 69.

[2] For the difference between "restriction" and "regulation," see Rawls, "The Basic Liberties," pp. 9-10.

[3] Rawls, *Theory*, rev. ed., p. 54

[4] Rawls, "The Basic Liberties," p. 11.

[5] Rawls, *Theory*, rev. ed., p. 197.

[6] Rawls, "The Basic Liberties," p. 63.

Rawls seeks to answer the question how to determine precisely basic and non-basic liberties *in practice,* with "the four-stage sequence."[1] The principles are applied to institutions in four steps. At the end of this procedure liberties are specified and enjoyed completely. The original position is the *first level* of the sequence: the contracting representatives agree on the principles. Secondly, "they move to a constitutional convention. Here they are to decide upon the justice of political forms and choose a constitution: they are delegates, so to speak, to such a convention."[2] In this constitutional level, in line with the principles, the contracting parties "design a system for the constitutional powers of government and *the basic rights* of citizens."[3] In the *third level*, the legislature enacts laws consistent with the first and second stages. Put another way, socioeconomic policies are realized according to the original position and just constitution which is determined in the preceding stages. The *fourth level* is "that of the application of rules to particular cases by judges and administrators, and the following of rules by citizens generally."[4] Hence, the last stage is "'the judicial and administrative stage'"[5] which is carried on according to the former stages. At the end of the four-stage sequence, practical issues can be examined in view of justice as fairness. Put another way, Rawls's principles cannot be applied to specific cases immediately. The four-stage sequence should be pursued step by step in the first place. After that a specific problem can be considered in the fourth stage; because persons can know their characteristics in the last step. The veil of ignorance is raised step by step from the first to the fourth stages. In the original position (1), the veil covers the representatives' eyes so as nobody knows socioeconomic position, natural

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[1] Rawls, *Theory*, rev. ed., p. 171.

[2] Ibid., p. 172.

[3] Ibid; emphasis added.

[4] Ibid., p. 175.

[5] Freeman, *Rawls*, p. 73.

talents, personal characteristics, understandings of the good of the individuals they stand for and specific form of the society in question. In the constitutional level (2), the veil is partly moved in order to show "the relevant general facts about their society, that is, its natural circumstances and resources, its level of economic advance and political culture, and so on."[1] So that they can "choose the most effective just constitution, the constitution that satisfies the principles of justice and is best calculated to lead to just and effective legislation"[2] for their society. In the legislative level (3), the veil is unveiled much more, because the representatives need to know "the socioeconomic structure of their society…economic and welfare system (including education, health care, property, contract, inheritance, taxation, and labour regulation)"[3] to determine laws and policies in accordance with their society. In the judicial and administrative stage (4), as it is mentioned above, the veil is completely removed; hence they can "apply the previously agreed laws and policies to particular cases."[4] It is evident that the required knowledge are disclosed step by step, to provide and support impartial decision making.[5]

In sum, first, the criteria of justice are specified. Afterwards, the political constitution is determined according to the principles of justice; yet it mostly falls into the area of EBL. Given that Rawls thinks of the basic structure as two parts, he constitutes "a division of labor between stages in which each [principle] deals with different questions of social justice."[6] Since EBL mainly deals with the

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[1] Rawls, *Theory*, rev. ed., pp. 172-173.

[2] Ibid., p. 173.

[3] Miriam Ronzoni, "The Four-Stage Sequence," in *The Cambridge Rawls Lexicon*, p. 291.

[4] Ibid.

[5] Rawls, *Theory*, rev. ed., pp. 175-176.

[6] Rawls, *Theory*, rev. ed., p. 174.

political structure and given that in the second stage a political constitution is chosen, EBL works in this level. So, the basic liberties of individuals are defined, and constitutional structure of state is designed from the viewpoint of the original position. In the legislative stage, socioeconomic policies and laws are shaped according to the second principle (i.e. FEO and DP). Since in this stage the socioeconomic policies are defined and *the second principle* regulates socioeconomic inequalities, the second principle takes an active role in the third stage. As it is seen, "the priority of the first principle over the second is mirrored in the priority of the second stage over the third, and of constitutional constraints over legislation."[1] Hence, "violations of equal liberties are likely to be less controversial than the injustice of social and economic policies, and hence a constitutional protection is appropriate for the former but not for the latter."[2] Put another way, EBL is protected constitutionally in the second stage whereas non-basic liberties are regulated in the third stage. So, the priority rules are reflected in the four-stage sequence. In the fourth stage, therefore, persons may exercise their moral powers. All in all, to do justice to Rawls's understanding of liberty, the four-stage process should be understood first; because the principles are embodied, and basic and non-basic liberties of citizens elaborated in this process.[3]

There appears one more fundamental problem in Rawls's *Theory*. As it is explained above, persons are represented by agents. Since they do not know particular features, socioeconomic status, natural endowments, understandings of the good of the citizens they stand for, "it may seem impossible for the parties to ascertain these persons´ good and therefore to make a rational agreement on their behalf."[4] In other words, how representatives can know *desiderata* of the persons

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[1] Ronzoni, "The Four-Stage Sequence."

[2] Ibid.

[3] Rawls, "The Basic Liberties," p. 7. Freeman however thinks that the four-stage sequence does not resolve the question of the basic liberties but postpones it; for Freeman's criticism see Freeman, *Rawls*, pp. 74-75.

[4] Rawls, "The Basic Liberties," p. 21.

they represent? To that end, Rawls puts forward the concept of social primary goods. Here "social primary goods," should not be misunderstood; because they do not refer to material objects only. According to Rawls, "primary goods are singled out by asking which things are generally necessary as social conditions and all-purpose means to enable persons to pursue their determinate conceptions of the good and to develop and exercise their two moral powers."[1] *Social primary goods* are defined as follows:

1. The basic liberties….
2. Freedom of movement and free choice of occupation against a background of diverse opportunities….
3. Powers and prerogatives of offices and positions of responsibility….
4. Income and wealth….
5. The social bases of self-respect….[2]

So, EBL sets up the distribution of (1) and other freedoms in (2). FEO establishes the distribution of (2). DP sets up the distribution of (3) and (4). Proper application and realization of all the principles guarantees (5). Since the principles approach different aspects of the basic structure, there is a department of labor in the dispersion of primary goods too. Given that EBL comes before the second, *equal* distribution of the basic liberties comes first. Then *the second principle* frames the distribution of opportunities, privileges of offices, socioeconomic advantages, and resources. In this fashion, "[t]he basic structure of society is arranged so that it maximizes the primary goods available to the least advantaged to make use of the equal basic liberties enjoyed by everyone."[3] Rawls calls them primary goods because he considers them as "general means all rational persons are presumed to want for their pursuit of their ends (whatever these are)."[4] Rawls thinks that he had

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[1] Ibid.

[2] Ibid., pp. 22-23; I have omitted Rawls's remarks to show social primary goods clearly.

[3] Ibid., p. 41.

[4] Gilabert, "The Two Principles of Justice," p. 847.

solved the abovementioned problem thanks to social primary goods. So, although the representatives stand behind a veil of ignorance, they can select a conception of justice for the people they stand for; because primary goods are "things that every rational man is presumed to want"[1] to achieve their goals. The representatives' choice thus would be acceptable and reasonable for the people they represent. Primary goods thus provide necessary conditions to enable the flourishing and realizaton of persons' two ethical capacities.[2] The rational choice is therefore like a general social contract for all that gives chance to realize persons' moral powers. Having seen the development and functioning of Rawls's first principle, now we can focus and examine the second principle in detail.

2.3.3.2 The second principle of justice

Rawls's second principle contains two principles indeed: DP and FEO. They work in tandem to reduce "structural inequalities."[3] The second principle intends socioeconomic institutions (recall that EBL mostly deals with the political structure) to regulate socioeconomic inequalities.[4] So while EBL specifies the basic liberties, the second "applies…to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility."[5] In fact, EBL has a negative perspective that protects equal basic liberties, whereas the second principle has a positive perspective that lessens socioeconomic inequalities for the least advantaged. In other words, it may be said that the second principle proposes positive discrimination for the least advantaged; however, EBL assures persons' equal basic liberties.[1] Thus, EBL seeks to realize

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[1] Rawls, *Theory*, rev. ed., p. 54.

[2] Rawls's notion of primary goods will be tackled in subsection 2.3.4.

[3] Mandle, *Rawls's Theory,* p. 15.

[4] Rawls, *Theory*, rev. ed., p. 53.

[5] Ibid.

freedom; and the second principle pursues equality and hence to achieve an egalitarian society. Rawls embodies equality in the second principle as follows:

> [s]ocial and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.[2]

In the preface for the revised edition of *Theory*, Rawls proposes that justice as fairness has two objectives. The first one is to offer a "convincing account of basic rights and liberties, and of their priority,"[3] that is formulated EBL. The second one is "to integrate that account with an understanding of *democratic equality*, which led to the principle of fair equality of opportunity and the difference principle."[4] He then explains that "[i]t is these two principles, and particularly the difference principle, which give justice as fairness its liberal, or *social democratic*, character."[5] It is understood that with the second principle, in particular DP, Rawls seeks to put forward a theory of justice which defends social democratic values, especially freedom and equality. However, what does Rawls mean exactly by the concept of "democratic equality"? In order to explain his notion of equality, Rawls

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[1] Colin Farrelly, "Justice in Ideal Theory: A Refutation," *Political Studies* 55, no. 12 (February 2007): pp. 851-852; Nagel, *Concealment and Exposure*, p. 93.

[2] Rawls, *Theory*, rev. ed., p. 72; "expected" is inserted in the revised edition, it is absent in the original edition, see Rawls, *Theory*, p. 83.

[3] Rawls, *Theory*, rev. ed., p. xii.

[4] Ibid; emphasis added.

[5] Ibid; italics mine. In the USA, the word *liberal* is used to refer the Left or *social democrat*; so, Rawls mentions the same referent. Both characterizations point out Rawls's *egalitarian liberalism*. For the meaning of liberalism in the United States, see Nagel, *Concealment and Exposure*, p. 87; G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), p. 120; and Lee Thé et al., February 24, 2015, "Why are the terms liberal and left in the US used interchangeably?," *Quora*, accessed September 12, 2018, https://www.quora.com/Why-are-the-terms-liberal-and-left-in-the-US-used-interchangeably.

explicates three concepts of equality: formal equality, liberal equality, and democratic equality.[1]

Formal equality implies "negative equality of opportunity", as Thomas Nagel expresses it, which "means the absence of barriers to competition for places in the social and economic hierarchy, so that anyone can rise to a position for which he is qualified."[2] In brief, Rawls explains formal equality as "careers open to talents."[3] In addition, when the principle of efficiency is implemented, "the system of natural liberty"[4] is achieved. Rawls imagines that his principles are replaced with other ones, mutatis mutandis (here for instance the principle of efficiency takes the place of DP, and the principle of "careers open to talents" takes the place of FEO, while holding EBL).[5] So, the principles of efficiency and careers open to talents supply formal equality. Put another way, "[t]he system of natural liberty asserts, then, that a basic structure satisfying the principle of efficiency and in which positions are open to those able and willing to strive for them will lead to a just distribution."[6] It is assumed that since there is no barrier based on race, class, gender, religion or any other arbitrary criterion for jobs, and the system is efficient; formal equality would provide a fair share to all. To be precise, natural liberty is "often called *laissez-faire capitalism*, markets are unregulated while government maintains the background institutions (property, contract law, etc.) necessary for

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[1] See sections "Interpretations of the Second Principle," and "Democratic Equality and the Difference Principle" in chapter II of *Theory*.

[2] Nagel, *Concealment and Exposure*, p. 93.

[3] Rawls, *Theory*, rev. ed., p. 57.

[4] Ibid; Rawls borrows this concept from Smith. For the concept of natural liberty, see Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, vol. 2, eds. R.H. Campbell and A.S. Skinner (Indianapolis: Liberty Press, 1976), p. 687.

[5] Ibid.

[6] Ibid.

markets to function."[1] That is to say, wealth, income, and positions are determined by the free market under these conditions. If you are a talented man (e.g. a basketball player), you can be rich; however, if you don't have any natural endowment, you may possibly be the least advantaged and even become worse. Thus, although formal equality of opportunity prevents "forms of bias that displace merit as the basis of appointment or promotion,"[2] it "permits distributive shares to be improperly influenced by these [natural and social] factors so *arbitrary from a moral point of view*."[3] However, natural liberty allows the reproduction of natural and social inequalities. Formal equality remains indifferent to these inequalities which no one deserves. When we consider them from a moral perspective, we will understand that our natural endowments and social starting positions are not in our power. Of course, we cannot equalize all the factors, but we can regulate these inequalities for the advantage of the worst-off at least. Yet, natural liberty does not attempt to reduce or mitigate social and natural inequalities. Rawls criticizes formal equality of opportunity because of being inactive and inegalitarian indeed:

> since there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions, the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. The existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets—that is, natural talents and abilities—as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune.[4]

Given that formal equality is a *negative* approach and does not make an endeavor to correct natural and social inequalities, Rawls refuses natural liberty. The goods of fortune are contingent and undeserved, so these inequalities should not have an

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[1] Freeman, *Rawls*, p. 219.

[2] Nagel, *Concealment and Exposure*, p. 118.

[3] Rawls, *Theory*, rev. ed., p. 63; emphasis added.

[4] Ibid., pp. 62-63.

effect on distributive shares or should be regulated for the advantage of the worst-off. For Rawls, initial natural distribution of talents is not unjust, but letting these inequalities to continue is unjust.[1] Since formal equality of opportunity lacks positive action to mitigate natural and social circumstances, it is unacceptable.

Liberal equality however attempts to make the condition of the least fortunate better by FEO. With this principle, liberal equality takes a step further. Liberal equality presumes that

> there is a distribution of natural assets, those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.[2]

FEO thus aims to prevent social inequalities, so that people who have similar talents will have similar chances and opportunities. In this way, they can attain the positions they deserve independent of their social class. FEO is a *positive* approach. Contrary to formal equality, it makes effort to offer "equal prospects of culture and achievement" to the people who have similar motivations and talents; because fairness demands more than formal equality. FEO "requires that everyone, whatever his starting place in life, have the same opportunity to develop his natural talents to the level of which he is capable so that he can compete for a position, when the time comes, without handicaps that are due to a deprived background."[3] That is to say, a child coming from an advantaged family and a child coming from a disadvantaged family should have fair chances to achieve their career aspirations in line with their natural endowments. As Rawls stresses it, "[t]he thought here is

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[1] Ibid., p. 87.

[2] Ibid., p. 63.

[3] Nagel, *Concealment and Exposure*, p. 93.

that positions are to be *not only open in a formal sense*, but that all should have a *fair chance* to attain them."[1] FEO should therefore make positive arrangements to correct social disadvantage. For this reason, negative equality of opportunity is not enough. Social conditions of the disadvantaged groups should be improved. To that end Rawls offers that, "excessive accumulations of property and wealth" might be prohibited and "equal opportunities of education for all" should be ensured. For instance, "the school system, whether public or private, should be designed to even out class barriers."[2] FEO thus strives to eliminate social inequalities that leads to unfair distribution of resources, and enables everyone "to realize his potentialities," plus assures that "the doors are open to anyone who qualifies."[3]

Although Rawls agree with equality of opportunity under liberal equality, nonetheless he is discontent with the liberal conception; because "it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents."[4] Put another way, liberal equality attempts to correct social and historical contingencies, but it preserves *natural* contingencies; because liberal equality takes for granted initial natural distribution and does not make an effort to mitigate natural inequalities. Rawls continues, "[w]ithin the limits allowed by the background arrangements, distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective."[5] To Rawls, both natural and social contingencies are arbitrary, so the reproduction of inequalities depending on natural and social factors is unfair: "[t]here is no more reason to permit the distribution of income and wealth to be

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[1] Rawls, *Theory*, rev. ed., p. 63; italics mine.

[2] Ibid.

[3] Nagel, *Concealment and Exposure*, p. 93.

[4] Rawls, *Theory*, rev. ed., p. 64.

[5] Ibid.

settled by the distribution of natural assets than by historical and social fortune."[1] A just basic structure should alleviate social as well as natural inequalities over time.

In addition to that, liberal equality (like formal equality) adopts *the principle of efficiency*. The efficiency principle developed by Italian economist-sociologist Vilfredo Pareto is known as "Pareto optimality" or "Pareto efficiency."[2] It "holds that a configuration is efficient whenever it is impossible to change it so as to make some persons (at least one) better off without at the same time making other persons (at least one) worse off."[3] On the other hand, a system is inefficient if it is possible to improve it in order to make some people wealthier without making other ones poorer. That is to say, some sources are mismanaged in the inefficient system. However, a scheme satisfies the requirement of Pareto-efficiency, if there are no way of improving at least one's condition without worsening other(s). At this point, Rawls argues that "[t]he principle of efficiency does not by itself select one particular distribution of commodities as the efficient one. To select among the efficient distributions some other principle, a principle of justice, say, is necessary."[4] Because, various arrangements which use and distribute their resources efficiently might satisfy Pareto-efficiency. A capitalist as well as a communist system might satisfy the principle of efficiency.[5] One can satisfy Pareto-efficiency if it is impossible to improve an arrangement on behalf of some individual(s) without making worse for others. The principle of efficiency does not

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[1] Ibid.

[2] For the Pareto efficiency and criticisms, see Douglas Vickers, *Economics and Ethics: An Introduction to Theory, Institutions, and Policy* (Westport, CT: Greenwood, 1997), pp. 91-92.

[3] Rawls, *Theory*, rev. ed., p. 58.

[4] Ibid., p. 59; for Rawls examination of Pareto-efficiency in detail, see ibid., pp. 59-62.

[5] In addition to possible outcomes of Pareto-efficiency, it upholds historical inequalities as well, see Vickers, *Economics and Ethics,* p. 92; and Partha Dasgupta, *Economics: A Very Short Introduction* (New York: Oxford University Press, 2007), pp. 82-83.

consider who takes what one by one. It just takes the efficiency of the system into consideration; but what about the principles of justice? Is an efficient plutocracy just? Is setting up an efficient system which merely considers the advantages of the wealthy fair? Or should a system focus on the middle class or the worst-off group? It is evident that the principle of efficiency could not select from among Pareto-efficient schemes; but, "[t]he problem is to choose between them, to find a conception of justice that singles out one of these efficient distributions as also just."[1] So, the principle of efficiency could not point out a just choice. Since liberal equality and formal equality follows the principle of efficiency, both conceptions could not provide a fair solution to the problem. Thus, although liberal equality is more just than formal equality, it is nevertheless not enough. Rawls holds that justice demands egalitarian moral perspectives rather than Pareto-efficiency; because "the principles of justice are prior to considerations of efficiency."[2] For this reason, Rawls puts forward democratic equality against liberal and formal equality.

Democratic equality merges FEO with DP. So, it holds liberal equality of opportunity, but prefers DP to the efficiency principle. In this way, Rawls believes that he would achieve a fairer and egalitarian understanding. FEO prevents social inequalities from being translated into unequal socioeconomic advantage and DP allows natural inequalities to affect distributive shares but on the condition that these inequalities contribute to "the greatest expected benefit of the least advantaged."[3] DP "is most distinctive about his [Rawls's] position,"[4] because other principles are already present in the liberal tradition. However, DP offers a new perspective for the liberal tradition that seeks to design social and economic

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[1] Rawls, *Theory*, rev. ed., p. 61.

[2] Ibid., p. 60.

[3] Ibid., p. 72.

[4] Freeman, *Rawls*, p. x.

institutions in favor of the worst-off group so that they can take "a greater share of income, wealth, and economic powers more generally, than it would under any other economic arrangement."[1] If and only if socioeconomic inequalities satisfy this condition, justice as fairness allows structural inequalities. "If, from a position of equality, the more advantaged gain at the cost of the least advantaged, the difference principle would disallow such an inequality."[2] For instance, a white-collar worker (who is more talented and comes from a wealth family) may earn more than an unskilled worker, but the unskilled worker should also be subsidized as large as possible in this scheme. Because neither a white-collar worker nor an unskilled worker deserves her position actually. If equal opportunity would have been provided to the unskilled worker, she can be a white-collar worker as well. According to Rawls, on the one hand, "[n]o one deserves his greater natural capacity nor merits a more favorable starting place in society;"[3] on the other hand one cannot deny or ignore these arbitrary inequalities. First we have to acknowledge inequalities resulting from nature and luck: "[t]he natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts."[4] Hence we have to regulate these inequalities for the benefit of the worst-off. If we leave these inequalities to free market (as in *formal equality*), this would be the real injustice. Major institutions

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[1] Ibid., p. 105.

[2] Mandle, *Rawls's Theory,* p. 51.

[3] Rawls, *Theory*, rev. ed., p. 87.

[4] Ibid. Meanwhile we should say that Rawls does not defend luck egalitarianism. Rawls and luck egalitarianism's point of departure is similar (people shouldn't be disadvantaged because of natural lottery), but they draw different conclusions. Rawls reaches to DP, whereas luck egalitarians arrive at various principles that underlines choice and responsibility. For the nuance between Rawls and luck egalitarians, see Mandle, *Rawls's Theory,* pp. 24-33; Elizabeth S. Anderson, "What is the Point of Equality?," *Ethics* 109, no. 2 (January 1999): pp. 287-293; Samuel Freeman, "Rawls and Luck Egalitarianism" in *The Social Contract*, pp. 111-142; and Samuel Scheffler, "What is Egalitarianism?," *Philosophy & Public Affairs* 31, no. 1 (Winter 2003): pp. 24–31; and Kok-Chor Tan, "A Defense of Luck Egalitarianism," *Journal of Philosophy* 105, no. 11 (November 2008): pp. 665-667.

should thus be designed for the maximum benefit of the least fortunate. Otherwise society would reproduce these socioeconomic inequalities by transforming natural contingencies into socioeconomic benefits. To Rawls the reproduction of socioeconomic inequalities via the basic structure is unjust. Socioeconomic institutions should therefore be restructured "so that these contingencies work for the good of the least fortunate."[1] The second principle, especially DP, takes an active role in this arrangement. In this way, Rawls suggests that "we are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return."[2] As it is mentioned above, Rawls considers society as a "cooperative venture for mutual advantage;"[3] so individuals work together in order to fulfill their needs and share socioeconomic benefits fairly. Since no one deserves their natural talents and socioeconomic status as such, persons have to share socioeconomic advantages which are produced by social cooperation. DP therefore gives precedence to the least fortunate group. Socioeconomic inequalities might be maintained so long as they better the worst-off group. Rawls thus imagines natural endowments as a collective resource in this regard:

> [t]he difference principle represents, in effect, an agreement to regard *the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution.* Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well.[4]

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[1] Rawls, *Theory*, rev. ed., p. 87.

[2] Ibid.

[3] Ibid., p. 74.

[4] Ibid., p. 87. In the original edition, italicized phrase is given as follows: "the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be" Rawls, *Theory,* p. 101. He changed the statement in the revised edition because of the misunderstanding about natural endowments as a "collective asset." For the misunderstanding, see Nozick, *Anarchy, State, and Utopia*, pp. 228-229; and Michael Sandel, *Liberalism and the Limits of*

Since nobody earns her natural talents, social and economic benefits gained by natural capacity have to be shared for the good of the worst-off. Rawls therefore permits socioeconomic inequalities to the extent that they are good for the less fortunate. If the more fortunate contribute to the less fortunate, they can enjoy their socioeconomic advantages derived from natural endowments; or else inequalities are unacceptable. Socioeconomic institutions should be reorganized for the benefit of the less fortunate; hence they can enjoy fair opportunities and socioeconomic advantages. If we leave the market economy to its own devices, most possibly the worst-off gets worse. This may affect the condition of the more fortunate as well. Since society is a "cooperative venture for mutual advantage," if the less advantaged group gets worse, the wealth of the more advantaged will decrease as well. Social classes are mutually dependent on each other.[1] Rawls holds that "the more advantaged, when they view the matter from a general perspective, recognize that the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life."[2] Furthermore, Rawls continues, "they recognize also that they can expect the willing cooperation of all only if the terms of the scheme are reasonable."[3] So, when DP is implemented to socioeconomic institutions, the more fortunate does not bestow something on the less fortunate. The more fortunate has to approve DP for social cooperation, i.e. for one's benefit. For instance, think about dustmen. If there were not dustmen, who will collect the garbage? How the condition of society would be? In this situation, dustmen would be the most important class of society. So, the well-to-do has to consider the least fortunate. DP is for the good of the least fortunate together with the most fortunate.

Justice, 2nd ed. (Cambridge: Cambridge University Press, 1998), pp. 77-81. For Rawls's clarification, see Rawls, *Restatement*, pp. 74-77; and subsection 2.3.5.2.

[1] This relationship is similar to Hegel's master/slave dialectic, see G.W.F. Hegel, *Phenomenology of Spirit*, trans. A.V. Miller (New York: Oxford University Press, [1870] 1977), pp. 111-119.

[2] Rawls, *Theory*, rev. ed., p. 88.

[3] Ibid.

DP "expresses a conception of reciprocity. It is a principle of mutual benefit."[1] This is why it is a principle of justice rather than compassion.

DP focuses on the least advantaged first rather than the most advantaged. It designs the basic structure from the viewpoint of the worst-off. In Pogge's words, DP states that "[a] basic structure that creates socioeconomic inequalities must be to the greatest possible benefit of the lowest socioeconomic position."[2] Similar to the maximin rule, DP concentrates on the least advantaged group: "[t]his interpretation fits precisely with the use of the maximin rule in the original position: concerned with the worst case, the parties assess each design of socioeconomic institutions from the standpoint of the worst socioeconomic position it would generate."[3] So, selecting DP is rational and reasonable. If someone reflects in the initial situation, she would most probably make a choice according to the worst-case scenario; hence she would imagine that the persons she represents will be located in the least fortunate group. Then she would seek to design major institutions to enhance the social minimum of the most disadvantaged. For this reason, "the difference principle favors, for a given society and time period, those designs of socioeconomic institutions that would produce *the best possible worst socioeconomic position*."[4] Justice as fairness thus does not focus on the middle or upper class and then support the poor. On the contrary, Rawlsian theory of justice frames major socioeconomic and legal institutions according to the worst-off. Freeman underlines that "[t]he difference principle

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[1] Ibid.

[2] Pogge, *John Rawls,* p. 107.

[3] Ibid. Although the maximin rule is parallel to DP, Rawls avoids equalizing them: "[e]conomics may wish to refer to the difference principle as the maximin criterion, but I have carefully avoided this name for several reasons. The maximin criterion is generally understood as a rule for choice under great uncertainty … whereas the difference principle is a principle of justice. It is undesirable to use the same name for two things that are so distinct. The difference principle is a very special criterion: it applies primarily to the basic structure of society via representative individuals whose expectations are to be estimated by an index of primary goods" (Rawls, *Theory*, rev. ed., p. 72).

[4] Pogge, *John Rawls,* p. 107; emphasis added.

goes deeper than" government assistance programs or welfare benefits for the needy and "functions on a different plane."[1] It arranges socioeconomic institutions for the maximum advantage of the least fortunate so that, "[l]egal institutions specifying rights of property and contract, and economic institutions that make production, trade, and consumption possible are to be designed from the outset focusing on the prospects of the economically least advantaged."[2] That is to say, the entire socioeconomic structure should be reformed according to the worst-off group from the beginning to the end. In justice as fairness, the least advantaged group is systematically considered in the design of socioeconomic institutions. The least fortunate is largely supported by DP. This is why Rawls characterizes his theory in terms of social democracy. Democratic equality, which Rawls defends, takes into account DP together with FEO rather than other principles that supports plutocracy. Rawlsian basic structure is therefore constructed on behalf of the worst-off from the outset. Freeman explicates the functioning of justice as fairness as follows:

> [r]ather than setting up the economic system so that it optimally promotes some other value (efficiency, aggregate utility, freedom to choose, etc.) and then allowing its benefits to "trickle down" to the poor – as if their well-being were an afterthought, the last thing to be taken care of by the social system – the difference principle focuses first on the prospects of the least advantaged in determining the system of ownership and control, production and exchange.[3]

Justice as fairness thus favors the worst-off rather than the better-off. Trickle-down economics presumes that if policies benefit the rich, then the wealth accumulated by the rich will trickle-down automatically and benefit all vertically.[4] So,

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[1] Freeman, *Rawls*, p. 99.

[2] Ibid.

[3] Ibid.

[4] Although politicians defend tax policies depending on trickle-down economics, the empirical evidence shows the opposite. For trickle-down economics, see H. W. Arndt, "The 'Trickle-Down' Myth," *Economic Development and Cultural Change* 32, no. 1 (October 1983): pp. 1-10; Zygmunt Bauman, *Does the Richness of the Few Benefit Us All?* (Cambridge: Polity Press, 2013); Thomas

according to Freeman, "Rawls's position is exactly the opposite: the difference principle requires societies to focus on the economically least advantaged first and take measures to maximize their economic prospects."[1] Put another way, if the basic structure will support a social class, this should be the least advantaged class not the most advantaged. To that end, DP seeks to maximize socioeconomic benefits of the least fortunate group. "Under the difference principle only incentives designed to maximally benefit the least advantaged, not the most advantaged, are permitted; permissible incentives and inequalities are those that leave the least advantaged better situated than all other workable alternatives."[2] That is to say, if socioeconomic inequalities are not good for the least fortunate, they have to be eliminated. So, unlike trickle-down economics, the emphasis is on the most disadvantaged in justice as fairness. For that reason, Freeman maintains that "it is more accurate to say that under the difference principle wealth and income are allowed to "suffuse upwards" from the less advantaged, rather than "trickle down" from the more advantaged."[3] Rawls therefore concentrates on the least fortunate and designs socioeconomic institutions from this perspective. So, DP is the cornerstone of Rawls's theory. It is distinguished from other liberal theories by DP.

Nevertheless, what does DP mean exactly? How does the worst-off receive a favor from socioeconomic inequalities? How does DP give Rawls's theory an egalitarian character? What would the socioeconomic structure be like after DP is applied to socioeconomic institutions? Let us attempt to answer these questions. In *Theory*, Rawls enlightens DP in a nutshell as follows:

Sowell, *Trickle Down Theory and Tax Cuts for the Rich* (Stanford, CA: Hoover Institution Press, 2012).

[1] Freeman, *Rawls*, p. xii.

[2] Ibid.

[3] Ibid.

[t]his principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate.[1]

DP supplies a "non-market criterion"[2] for judging socioeconomic inequalities of the basic structure; hence socioeconomic institutions can be designed for the worst-off group. For example, we can determine whether an economic system is just or not depending on DP; or we can choose from a list of alternative systems relying on DP. The most just one would be the most beneficial to the worst-off in compliance with the prior principles. Recall that FEO and DP pitch in together, and EBL is prior to the second principle. Under these circumstances, if the more advantaged contributes to the less advantaged via the basic structure their greater economic and social benefits can be justified and maintained. Otherwise socioeconomic inequalities would be unjust and impermissible. Equal distribution is a better choice if socioeconomic inequalities do not improve the expectations of the less fortunate. Equal distribution of socioeconomic advantages is the default position: "unless there is a distribution that makes both persons better off … an equal distribution is to be preferred."[3] As it is mentioned above, equal distribution is the point of reference to compare principles of justice.[4] If there is a possibility which makes the more fortunate and the less fortunate better-off, it is more sensible to choose this option. Else equal distribution is more reasonable. The more advantaged should therefore justify greater benefits by increasing the share of the worst-off relative to equal distribution. DP relies on this idea.

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[1] Rawls, *Theory*, rev. ed., p. 65.

[2] Freeman, *Rawls*, p. 104.

[3] Rawls, *Theory*, rev. ed., pp. 65-66.

[4] See subsection 2.3.3.

Rawls explicates DP by illustrating the distribution of social primary goods. For simplicity, he restricts the figure to two persons (see figure 3 below). OP curve shows "the contribution to X_2's expectations made by the greater expectations of X_1."[1] In other words, OP curve represents social primary goods of the most advantaged and the least advantaged depending on each other. "The point O, the origin, represents the hypothetical state in which all social primary goods are distributed equally."[2] O is not then absolute poverty, rather it is equal distribution of primary goods. P in "OP curve" denotes "production."[3]
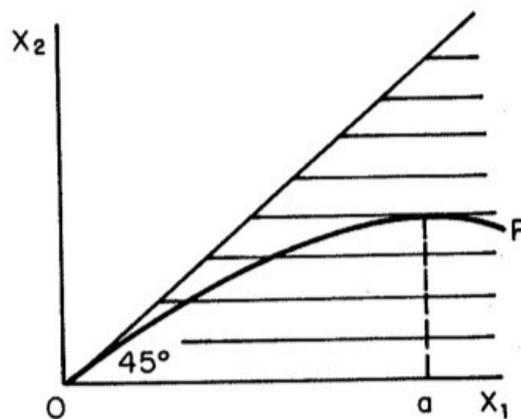
Figure 3 Distribution of social primary goods for two persons. X_1 represents the most advantaged person, X_2 represents the least advantaged person. OP curve represents the prospects of X_1 and X_2 according to DP.
Source: Figure from Rawls, *Theory*, rev. ed., p. 66, fig. 6.

So, when production increases right along the OP curve, primary goods of X_1 and X_2 rises in proportion to their positions up to the point "a" (Suppose that X_1 is an entrepreneur and X_2 is an unskilled worker). After point "a" however X_2's share diminishes whereas X_1's share increases disproportionately. Therefore point "a" satisfies both DP and the efficiency principle, according to Rawls. At that point

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[1] Rawls, *Theory*, rev. ed., p. 66.

[2] Ibid.

[3] Rawls, *Restatement*, p. 61.

X_2's share is maximized as well as X_1's share is optimized. In addition to that, both of them gains more than equal distribution. Since they cooperate, their stock of primary goods increases. So, we can think of the situation as a non-zero-sum game.[1] DP thus provides a productive and fair scheme of social cooperation. In other words, "[t]he OP curve itself captures Rawls's assumption that departures from equality under cooperative circumstances are productive and can result in a gain to both the least advantaged as well as the most advantaged up to a point."[2] Given that both parties gain, DP justifies socioeconomic inequalities. If the inequality is eliminated, shares of both will decrease. Rawls expands on the conditions of the "just" inequality as follows:

> [t]he inequality in expectation is permissible only if lowering it would make the working class even more worse off. Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the prospects of laboring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on.[3]

That is to say, if the inequality is allowed, businessmen and laborers will cooperate efficiently that will increase productivity, and that will rise the expectations of both parties. So that both classes will get better.[4] Otherwise, laborers and

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[1] Philippe van Parijs, "Difference Principles" in *The Cambridge Companion to Rawls*, p. 203. Also, for various readings of DP see ibid., pp. 200-240.

[2] Freeman, *Rawls*, p. 109.

[3] Rawls, *Theory*, rev. ed., p. 68.

[4] Rawls assumes that society is "close-knit," i.e. "it is impossible to raise or lower the expectation of any representative man without raising or lowering the expectation of every other representative man, especially that of the least advantaged" (Ibid., p. 70) and "chain-connected" that is to say "if an advantage has the effect of raising the expectations of the lowest position, it raises the expectations of all positions in between" (Ibid., p. 69). It seems that Rawls makes these assumptions in order to show "the dynamic relationships among these different social positions" (Jon Mandle, "Chain Connection," in *The Cambridge Rawls Lexicon*, p. 90) and the condition of the middle-class. For instance, J. E. J. Altham argues that DP remains inadequate when there is a choice between two basic structures such as the conditions of the least advantaged class are similar, but the conditions of the middle class are different. For Altham's clever discussion of DP, see J. E. J. Altham, "Rawls's Difference Principle," *Philosophy* 48, no. 183 (January 1973): pp. 75-78.

entrepreneurs will both get worse. In this way, the expected benefit of the least fortunate would be maximized and the higher prospects of the most fortunate would be justified. Nonetheless the important point is that the least advantaged trumps the most advantaged in justice as fairness; so, the latter should justify existing inequalities, not the former: "[t]he burden…is on those who claim that a structural inequality is justified to show that it really would satisfy the difference principle. If they cannot do this, then the inequality is unjust."[1] Recall that the least advantaged group has the power of "veto"[2] in the original position. According to Rawls, therefore, "[t]aking equality as the basis of comparison, those who have gained more must do so on terms that are justifiable to those who have gained the least."[3] This conditionality adequately guarantees the socioeconomic benefits of the least fortunate.

DP distributes social primary goods via the basic structure, but what are the social primary goods exactly? As it is mentioned in the end of subsection 2.3.3.1, DP frames the sharing of "[p]owers and prerogatives of offices and positions of authority and responsibility,"[4] "[i]ncome and wealth,"[5] and "[t]he social bases of self-respect."[6] So, the distribuend is not only income. In other words, "what the difference principle demands, the highest feasible lowest index position, is not simply equivalent to the highest feasible minimum income rate."[7] For instance, "[t]he difference principle could permit lower income rates when for the least

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[1] Mandle, *Rawls's Theory,* p. 52.

[2] Rawls, *Theory*, rev. ed., p. 131.

[3] Ibid.

[4] Rawls, *Restatement*, p. 58.

[5] Ibid.

[6] Ibid., p. 59. See also Rawls, *Theory*, rev. ed., pp. 53-54, 80.

[7] Pogge, *John Rawls,* p. 116.

advantaged position the financial loss is outweighed by a gain in the residual bases of self-respect."[1] Recall that public school teachers have low-income rates in general; however their social bases of self-respect is higher. Their personal and social rights are satisfactory. So, they compensate their low-income rates. Briefly, DP designs the distribution of social positions, economic benefits, and "social factors affecting self-respect."[2] The distribuend is thus a combination of these "social and economic benefits."[3] Well the problem emerges immediately as follows: how to measure and compare these primary social goods? Income can be measured, but what about welfare and the social foundations of self-esteem? Some primary social goods "are not self-evidently translatable into monetary magnitudes."[4] Rawls nonetheless seeks to overcome this difficulty by an "index of primary goods."[5] The prospects of the most disadvantaged representative are calculated according to the index which includes aforementioned primary goods. First, the worst-off representative is identified in a basic structure via the index. Then, the expectations of the worst-off representative are compared across different socioeconomic positions in order to choose the best possible index value. The combination of primary goods at issue is evaluated from the perspective of the least advantaged representative.[6] While estimating the index value of the worst-off, the overall index is considered over a "complete life."[7] Thomas Pogge explains this condition as follows: "the lowest income position, for instance, is

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[1] Ibid. For the relation between DP and social foundations of self-respect, see Joshua Cohen, "Democratic Equality," *Ethics* 99, no. 4 (July 1989): pp. 727–751.

[2] Stuart White, "Democratic Equality as a Work-in-Progress," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy (Malden, MA: Wiley-Blackwell, 2014), p. 188.

[3] Rawls, *Theory*, rev. ed., p. 87.

[4] Van Parijs, "Difference Principles," p. 212.

[5] Rawls, *Theory*, rev. ed., p. 72.

[6] Ibid., pp. 79-80.

[7] Rawls, *Restatement*, p. 59.

occupied not by those with the lowest wage rate at a given moment in time, but rather by those who face the lowest wage rates over their whole lifetimes."[1] Therefore, "interpersonal comparisons of well-being"[2] were made according to the overall index of the least advantaged representative over their entire lifetimes. In this manner, DP designs socioeconomic institutions for the maximum advantage of the least fortunate via the index "by seeing how well off the least advantaged are under each scheme, and then to select the scheme under which the least advantaged are better off than they are under any other scheme."[3] So, DP works through the index.

The evaluation of the prospects of the least fortunate might make someone to suppose that Rawls defends a "form of outcome egalitarianism."[4] In other words, DP aims at equality of outcomes. Van Parijs however argues that it is "a deep misunderstanding of Rawls's difference principle."[5] This misinterpretation "fails to accommodate, in particular, his repeated emphasis on stating the principle in terms of *lifetime expectations of categories of people* rather than in terms of particular individual's situations at particular times."[6] It is clarified that the expectations of the worst-off should be measured over a complete life, but what about the category of the worst-off? Who are the least advantaged class? How should we understand the least fortunate group? It is evident from the above-mentioned method that the least advantaged class should be the group of people

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[1] Pogge, *John Rawls,* p. 110. For the difficulties and possible solutions of the index of primary goods, see ibid., pp. 110-115 and Rawls, *Theory*, rev. ed., pp. 80-81.

[2] Rawls, *Theory*, rev. ed., p. 78.

[3] Rawls, *Restatement*, pp. 59-60.

[4] Van Parijs, "Difference Principles," p. 213.

[5] Ibid.

[6] Ibid; italics added.

"who have the lowest index of primary goods, when their prospects are viewed over a complete life."[1] For instance, if a person is really poor at early ages according to the index, but she hits the jackpot and maintain her wealth satisfactorily in the remaining life by various jobs. Of course, we cannot admit that she is in the least advantaged class anymore. Rawls eliminates these possibilities. In justice as fairness, "the least advantaged are, by definition, those who are born into and who remain in that group throughout their life."[2] However, this does not mean that they are at rock bottom, such as homeless, unemployed journeymen or handicapped.[3] The least advantaged class is "the bottom position."[4] That is to say, it should be a "social position."[5] To be a question of social justice, one should cooperate and participate in society; because, according to Rawls, "[t]he primary subject of justice, as I have emphasized, is the basic structure of society."[6] The principles applies to the basic structure. "This structure favors some starting places over others in the division of the benefits of social cooperation. It is these inequalities which the two principles are to regulate."[7] Since Rawls seeks out "fair terms of cooperation"[8] between free and equal people, he is concerned with the individuals who work together and contribute to social cooperation in a way.

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[1] Rawls, "Social Unity and Primary Goods," p. 164.

[2] Ibid.

[3] To Rawls these people "take us beyond the theory of justice" (Rawls, *Theory*, rev. ed., p. 84). They are irrelevant for a theory of justice, see ibid., pp. 82-84 and Freeman, *Rawls*, p. 106.

[4] Rawls, *Theory*, rev. ed., p. 79.

[5] Ibid., p. 82 and Van Parijs, "Difference Principles," p. 214.

[6] Rawls, *Theory*, rev. ed., p. 82. For the subject of social justice, see section 2.3.

[7] Rawls, *Theory*, rev. ed., p. 82.

[8] Rawls, *Restatement*, p. 179.

Rawls's theory therefore does not consider neither "the leisure class"[1] nor the poverty-stricken people;[2] but rather it copes with "normal cooperating members of society."[3] For this reason, Rawls is concerned with professional social positions. The least advantaged class is thus the people who have the *lowest socioeconomic position*, hence have the lowest prospects in a social scheme. But the relation is mediately defined. This nuance distinguishes DP from other outcome-egalitarian principles. Van Parijs holds that "the difference principle is an opportunity–egalitarian principle, and its being phrased in terms of expectations associated with social positions rather than directly in terms of primary goods is of crucial importance in this respect."[4] Rawls therefore defends *opportunity egalitarianism* rather than outcome egalitarianism. Van Parijs supports his understanding of DP as follows:

> [t]he difference principle does not require us to equalize or maximin these outcomes but only to maximize what the representative incumbent of the worst social position can expect, that is, the average lifetime index of social and economic advantages associated with a position accessible to all the least fortunate (in the normal range). Correctly understood, the difference principle is therefore far more responsibility-friendly (or ambition-sensitive) and hence less egalitarian (in outcome terms) than it is often taken to be.[5]

So, DP seeks to increase the expectations of the lowest socioeconomic status, and hence maximize "the social minimum as high as possible;"[6] but this does not mean

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[1] Thorstein Veblen, *The Theory of the Leisure Class*, ed. Martha Banta (New York: Oxford University Press, [1899] 2007), p. 7. Rawls does not take into account "the leisure class," but later he adds "leisure time" to the list. See Rawls, *Collected Papers*, p. 252-53; Rawls, *Restatement*, p. 179; and Rawls, *Political Liberalism*, pp. 181-2, n. 9. See also Van Parijs's examination of leisure pp. 217-232.

[2] Freeman, *Rawls*, p. 106.

[3] Rawls, *Restatement*, p. 60.

[4] Van Parijs, "Difference Principles," p. 214.

[5] Ibid., p. 216.

[6] Nagel, *Concealment and Exposure*, p. 121.

that it embraces equality of outcomes. In this sense DP is not egalitarian; even it requires socioeconomic inequalities to maintain social cooperation and productivity. Pogge underlines this feature of the principle: "Rawls interprets the difference principle so that it not merely permits but actually demands inequalities that are to the benefit of the lowest socioeconomic position."[1] Otherwise, according to Rawls, both the least advantaged and the most advantaged fails. Whereas if there are permissible inequalities, both get better: "because over time the greater returns to the more advantaged serve, among other things, to cover the costs of training and education, to mark positions of responsibility and encourage persons to fill them, and to act as incentives."[2] Hence permissible inequalities increase efficiency and effectiveness in social cooperation. Therefore, Rawls is not strongly egalitarian actually. On the contrary, DP requires socioeconomic inequalities in order to perform its function efficiently and effectively. It does not attempt to eliminate socioeconomic differences completely. To be precise, Rawls does not aspire to a communist society. "The difference principle demands only that social and economic *inequalities* be to the benefit of the least advantaged members of society."[3] It is evident from the figure 3 as well.[4] Rawls thus does not propose a strict outcome egalitarianism: "Rawls' theory is egalitarian but not necessarily equalizing."[5] He just suggests opportunity egalitarianism. The more is up to person's efforts. DP attempts to improve the expectations of the worst socioeconomic position; but not "aim[s] for an equal distribution of all primary goods."[6] Because DP endeavors to maximize the expectations of the least

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[1] Pogge, *John Rawls,* p. 113.

[2] Rawls, *Restatement*, p. 63.

[3] Pogge, *John Rawls,* p. 113.

[4] For a developed version of figure 3, see Rawls, *Restatement*, pp. 62-63.

[5] Ryan Long, "Egalitarianism," accessed November 9, 2018 in *The Internet Encyclopedia of Philosophy*, eds. James Fieser and Bradley Dowden, https://www.iep.utm.edu/egalitar/#SH2e.

[6] Ibid.

fortunate, who has the lowest index *related to social positions*, via a just collaboration system.[1] So, Rawls's theory does not determine and distribute the income of the citizens directly. They earn their own distributive shares through social cooperation. For that reason, Rawls gives precedence to FEO over DP.

We now return to the least advantaged class. Well, who are exactly the worst-off group according to Rawls? In the revised edition of *Theory*, Rawls explicates three characteristics of the least advantaged class:

> let us single out the least advantaged as those who are least favored by each of the three main kinds of contingencies. Thus this group includes persons whose family and class origins are more disadvantaged than others, whose natural endowments (as realized) permit them to fare less well, and whose fortune and luck in the course of life turn out to be less happy, all within the normal range (as noted below) and with the relevant measures based on social primary goods.[2]

In this passage, Rawls points out social, natural, and chance contingencies. The least advantaged class thus should be the intersection group; but they should not be vagabonds or beggars. They should be normal persons who work together. According to this definition, "the unskilled worker"[3] perfectly matches up with the profile. An unskilled laborer satisfies all of the conditions: he is naturally untalented, socially disadvantaged, and least fortunate person in a capitalist society. The unskilled laborer however is not valid in every social scheme. In a feudal society, the least advantaged would be the serf. Hence, "the worst off under any scheme of cooperation are simply the individuals who are worst off under that particular scheme. They may not be those worst off in another."[4] So, "the unskilled worker" is not a "rigid designator."[5] The least advantaged depends on the related

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[1] Rawls, *Theory*, rev. ed., p. 83.

[2] Ibid.

[3] Ibid., p. 84.

[4] Rawls, *Restatement*, p. 59, n. 26.

[5] Ibid.

social scheme. Anyway, the worst-off group comprises of the members of the lowest socioeconomic position associated with the index over the entire life. Freeman concludes that "the least advantaged are, in effect, people who earn the least and whose skills are least in demand – in effect, *the class of minimum-wage workers.*"[1] We shall cite, for instance, a shift worker, porter, or shop assistant as a member of the worst-off class. The worst-off therefore refers to "*the least advantaged working person*"[2] who is an unqualified worker with a minimum salary throughout one's whole life, and these people constitute the category of the least advantaged.

Recall that DP is not implemented individually. It is put into practice via socioeconomic institutions. As Freeman explains it, "the difference principle applies in the first instance to regulate economic conventions and legal institutions, such as the market mechanism, the system of property, contract, inheritance, securities, taxation, and so on."[3] DP affects the social and individual life owing to these institutions. That is to say it is "a principle for institutions, or practices, rather than for particular actions or persons."[4] So, DP is "applied directly by legislators and regulators as they make decisions about the rules that govern the many complicated institutions within which economic production, trade, and consumption take place."[5] After that individuals would reap the benefits of DP. It thus "applies directly to institutions and only indirectly to individuals."[6] So this specification of DP is significant to Rawls. A theory of social justice should focus

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[1] Freeman, *Rawls*, p. 106; emphasis added.

[2] Ibid.

[3] Freeman, *Rawls*, p. 99.

[4] Van Parijs, "Difference Principles," p. 222.

[5] Freeman, *Rawls*, p. 100.

[6] Ibid., p. 101.

on "the basic structure of society."[1] Since DP is related to socioeconomic inequalities, it aims at social, economic, and legal institutions.

In addition, DP is restricted by the prior principles of justice. Since the second principle comprises of two distinct principles (i.e. FEO and DP), actually, we have three principles in serial order in the final formulation:[2]

1. The principle of equal basic liberties (EBL)
2a. The principle of fair equality of opportunity (FEO)
2b. The difference principle (DP)

Principle 1 comes before principle 2a, and principle 2a is prior to principle 2b. In *Restatement*, Rawls affirms that "[w]e cannot possibly take the difference principle seriously so long as we think of it by itself, apart from its setting within prior principles."[3] So, to understand Rawls's democratic equality, we should take into account prior principles as well. That means DP or any other cannot design the basic structure alone. It is arranged so that first, EBL cannot be violated; and secondly, FEO is provided to all. Then DP can frame socioeconomic institutions for the worst-off.

To clarify, Rawls contends that EBL comes before the second principle.[4] That is, EBL is both prior to FEO and DP. This priority denotes that neither better equality of opportunity nor a rise in socioeconomic advantages can justify an infringement of equal basic liberties. EBL have an absolute advantage over FEO and DP. For instance, positive discrimination policies for the disadvantaged groups in public offices violates the individual right to public office (which is one of equal basic

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[1] Rawls, *Theory*, rev. ed., p. 6. See also section 2.3. above.

[2] See Rawls, *Restatement*, pp. 42-43.

[3] Ibid., p. 46, n. 10.

[4] Rawls, *Theory*, rev. ed., pp. 131-132.

liberties).[1] Or assuming native endowments as a common asset and distributing social and economic advantages collectively, which are derived from persons' talents and abilities, contradicts with the psychological and physical integrity of individuals (that is included under EBL).[2] Moreover, Rawls presents that within the second principle, FEO comes before DP.[3] Put another way, the expectations of the worst-off cannot be improved at the expense of fair opportunities. For example, imagine an inexperienced young boy coming from the unskilled working-class and he offers that "I don't want education anymore! From now on give my educational expenditures in cash." If DP was prior to FEO, he would be right. However, since it is exact opposite, rather than paying educational costs in cash, Rawls would motivate him to take advantage of the educational opportunities. Because if he attends a school, he would develop his talents and capacities, and might be a professional rather than being an unskilled laborer. Then he would be wealthier in the long-term rather than the other option. Democratic equality therefore establishes a hierarchy within the principles of justice and within social primary goods: 1. Liberty 2. Opportunity 3. Wealth.[4] EBL cannot be

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[1] Ibid., p. 53. About the problem Samuel Freeman says that "[s]o-called "affirmative action," or giving preferential treatment for socially disadvantaged minorities, is not part of FEO for Rawls, and is perhaps incompatible with it. This does not mean that Rawls never regarded preferential treatment in hiring and education as appropriate. In lectures he indicated that it may be a proper corrective for remedying the present effects of past discrimination. But this assumes it is temporary. Under the ideal conditions of a "well-ordered society," Rawls did not regard preferential treatment as compatible with fair equal opportunity. It does not fit with the emphasis on individuals and individual rights, rather than groups or group rights, that is central to liberalism" (Freeman, *Rawls*, pp. 90-91). Thomas Nagel understands Rawls's account of positive discrimination in a similar vein; see Nagel, *Concealment and Exposure*, p. 93, n. 3.

[2] Rawls, *Restatement*, pp. 75-76.

[3] Rawls, *Theory*, rev. ed., p. 77.

[4] Andrew Lister, "Lexical Priority: Liberty, Opportunity, Wealth," in *The Cambridge Rawls Lexicon*, pp. 435-6; see social primary goods at the end of subsection 2.3.3.1. Although lexical priority appears to be strict, Nagel suggests that "[t]his priority means something only if there is a potential conflict" (Nagel, *Concealment and Exposure*, p. 121) between the principles of justice. Van Parijs also argues that "if the priority rules are taken literally, as implementation of the two principles in serial order would leave the difference principle with nothing to play with, and hence would clash with what Rawls himself would regard as a "reasonable conception of justice" (Van Parijs, "Difference Principles," pp. 224-226). Pogge also points out the problematic in lexical priority and claims that Rawls too noticed this difficulty and revised some elements of *Theory*; see Pogge, *John Rawls,* p. 79, 101-105, 129-133.

renounced for FEO; and FEO cannot be renounced for the sake of income or wealth. Hence, in *democratic equality*, every citizen would enjoy EBL, persons who have similar talent and ability, including the least advantaged, would have similar expectations regardless of their social origin (via FEO), and socioeconomic inequalities would be permissible if they contribute to the maximum advantage of the least fortunate (DP).

It is seen that "[t]he point of *democratic* equality requires reference to all three principles of justice, and the modifier cannot be understood without that wider reference."[1] To grasp the meaning of democratic equality we have to bear in mind EBL, FEO, and DP in relation to each other. The eminent Rawls interpreter Norman Daniels holds that "Rawls's egalitarianism is complex in what it requires, since his "democratic equality" rests on three principles of justice that interact with and limit each other."[2] Having set out the limitations between the principles of justice, now we can turn to the interaction between them. First, we start with the relationship within the second principle; because, as it is mentioned above, FEO "complements the difference principle."[3] Both seek to set up a just distribution of socioeconomic advantages. To that end, DP and FEO works together. FEO opens up educational and professional opportunities to all actively at the outset; "so that they [naturally and socially disadvantaged persons] are able to develop their capacities in order to effectively take advantage of the full range of opportunities available in society."[4] In this way, everyone, including the least advantaged, develop their natural endowments, and attain professional positions; hence individuals increase their income and wealth. In addition to that DP designs socioeconomic institutions to benefit maximally to the worst-off class. According

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[1] Norman Daniels, "Democratic Equality: Rawls's Complex Egalitarianism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (New York: Cambridge University Press, 2003), p. 245.

[2] Ibid., p. 241.

[3] Freeman, *Rawls*, p. 91.

[4] Ibid., p. 93.

to Pogge, "[t]his means, roughly, that the net income rates for various types of work should be influenced, through taxes and subsidies, for example, in such a way that the lowest net income rate is as high as possible."[1] Thus, on the one hand, FEO provides opportunities for persons to develop their natural talents and skills, so that having equal access to offices and positions "for persons similarly endowed and motivated"[2] irrespective of their social origin. On the other hand, DP regulates socioeconomic inequalities to the good of the worst-off. Both of them frame the related parts of the basic structure to guarantee a fair share. However, above DP and FEO, there is EBL which gives justice as fairness its democratic character. The adjective "democratic" in democratic equality "points to the connection between the Second and the First Principles and their joint role in meeting our needs as citizens."[3] EBL secures aforementioned set of equal basic liberties and the fair value of civil liberties for all.[4] Hence, "[w]ith background institutions of fair equality of opportunity and workable competition required by the prior principles of justice the more advantaged cannot unite as a group and then exploit their market power to force increases in their income."[5] Equal political liberties, which are included in EBL, forbid the more advantaged to influence the design of the basic structure for their own wealth. For instance, "background institutions prevent doctors from forming an association to push up the cost of medical care and thus to raise the income of doctors, say by restricting entry into the medical profession, or by agreeing to charge higher fees."[6] Therefore, the principles of justice should be considered in this framework. They work in tandem in lexical

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[1] Pogge, *John Rawls,* p. 184.

[2] Rawls, *Theory*, rev. ed., p. 243.

[3] Daniels, "Democratic Equality," p. 245.

[4] See subsection 2.3.3.1.

[5] Rawls, *Restatement*, p. 67.

[6] Ibid.

order: EBL is prior to FEO, and FEO comes before DP. The ultimate "end of social justice," according to Rawls, is "to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all;"[1] because, "the precedence of liberty entails equality in the social bases of respect."[2] So that everyone can "express their nature as free and equal moral persons."[3] It is evident that these thoughts exists in the principles. Rawls claims that the principles are also in line with "the traditional ideas of liberty, equality, and fraternity… liberty corresponds to the first principle, equality to the idea of equality in the first principle together with equality of fair opportunity, and fraternity to the difference principle."[4] Thus the motto of the French Revolution is embodied in the principles of justice.

In this context, let us consider property rights in democratic equality, both to understand how the principles work and discover the place of private property rights in Rawls's theory. Recall that it is an "ideal-based" conception rather than a "rights-based" conception.[5] To begin with, the ideal of justice as fairness depends on "the idea of society as a fair system of cooperation."[6] So, persons do not have an *absolute* right of private property in a Rawlsian society. Individual property rights are determined by the principles that are applied to the basic institutions. In justice as fairness thus "individual property rights are the consequence, and not the foundation, of the justice of economic institutions."[7] Rawls's account of property

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[1] Rawls, *Theory*, rev. ed., p. 179.

[2] Ibid., p. 478.

[3] Ibid., p. 450.

[4] Ibid., p. 91. For the idea of fraternity and DP, see G. A. Cohen, *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, MA: Harvard University Press, 2000), pp. 134-136.

[5] See section 2.3. above.

[6] Rawls, *Theory*, rev. ed., p. xv.

[7] Nagel, *Concealment and Exposure*, p. 92.

is unlike traditional theories of property.[1] Since the principles of justice is lexically ordered, it is right to grasp Rawls's idea of property in accordance with the principles. As it is mentioned above, private property is not approved by EBL.[2] The basic liberties just include "a right to *personal* property as necessary for citizens' independence and integrity."[3] That is to say, we must have "at least certain forms of real property, such as dwellings and private grounds"[4] to cultivate and exercise our ethical capacities.[5] Personal property supplies "a sufficient material basis for personal independence and a sense of self-respect."[6] Therefore, personal property both excludes the right to private ownership of productive assets and the right to collective ownership of productive assets.[7] That is, Rawls rejects

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[1] Neither David Hume nor John Locke's account of property is parallel to Rawls's account; see David Gauthier, "David Hume, Contractarian," in *Social Justice: From Hume to Walzer,* eds. David Boucher and Paul Kelly (New York: Routledge & Kegan Paul, 1998), pp. 18-41; Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford University Press, 2002), pp. 43-59; Jeremy Waldron, "Property and Ownership," *The Stanford Encyclopedia of Philosophy (*Winter 2016 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2016/entries/property/>; and for Taylor's critical assessment see Taylor, "An Original Omission?," pp. 387–400.

[2] See subsection 2.3.3.1.

[3] Rawls, *Theory*, rev. ed., p. xvi; emphasis added.

[4] Rawls, *Restatement*, p. 114, n. 36.

[5] The two ethical capacities are: "the capacity for a sense of justice" and the "capacity for a conception of the good" (Ibid., pp. 18-19).

[6] Ibid., p. 114. In *Theory*, Rawls explicates that self-respect comprises first "a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions. When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavors. It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism" (Rawls, *Theory*, rev. ed., p. 386).

[7] Ibid., p. xvi, 54; and Rawls, *Restatement*, p. 114. Although Rawls rejects capitalist and communist accounts of property in principle, he nonetheless leaves the determination of property rights to the legislative level of the four-stage process: "wider conceptions of property are not used because they are not necessary for the adequate development and full exercise of the moral powers, and so are not an essential social basis of self-respect. They may, however, still be justified. This depends on

both *laissez-faire* capitalism and communism (*command economy*).[1] Hence, the private and collective property rights, according to Rawls, "are not basic; and so they are not protected by the priority of the first principle."[2] If we look at FEO, at first sight, it appears irrelevant to the problem of private property. However, when establishing FEO, he offers some actions:

> [democratic equality] seeks, then, to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining equal opportunities of education for all.[3]

To assure equality of opportunity (that will lead to a just distribution) for the socially and naturally disadvantaged persons, Rawls suggests the regulation of the free market by imposing some structural constraints, such as "preventing excessive accumulations of property and wealth." Rawls does not thus approve an absolute right of private property. Rawlsian government may impose taxes upon private property when upper classes accumulate property disproportionately. Their excessive capital may be taxed to provide equality of opportunity for the least advantaged. This is justified on account of the fact that the fair value of political

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existing historical and social conditions. The further specification of the rights to property is to be made at the legislative stage, assuming the basic rights and liberties are maintained" (Rawls, *Restatement*, p. 114); see also subsection 2.3.3.1. For different interpretations of Rawls on property, see Daniel Little, "Rawls and Economics," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy (Malden, MA: Wiley-Blackwell, 2014), pp. 516-517. Wells argues provocatively that personal property is not consistent with Rawls's theory. Rawls can only justify "the right to actually rent housing and to be eligible to rent personal items" (Katy Wells, "The Right to Personal Property," *Politics, Philosophy & Economics* 15, no. 4 [2016]: p. 374); see also ibid., pp. 358-378.

[1] Freeman, *Rawls*, p. 49, 104, 105; and Van Parijs, "Difference Principles," p. 223.

[2] Rawls, *Theory*, rev. ed., p. 54.

[3] Ibid., p. 63.

liberty and FEO might be "put in jeopardy when inequalities of wealth exceed a certain limit; and political liberty likewise tends to lose its value, and representative government to become such in appearance only."[1] For instance, the affluent families may create privileged opportunities for their children by virtue of their economic and political power that violates FEO. To Rawls therefore government might "forestall accumulations of property and power likely to undermine the corresponding institutions."[2] Last but not least, property rights should satisfy DP. If property differences maximally benefit to the condition of the worst-off, property rights would be permissible. Otherwise, as stated above, government prevents disproportionate accumulations of property. Rawls thus recognizes merely *personal* property as a basic right. More than personal property should be justified by improving the lowest socioeconomic position in line with FEO and fair value of political liberty. If the principles of justice would not be fulfilled in serial order, excessive accumulations of property would be abolished by Rawlsian government.

Now let us examine Rawlsian government and its place in the political spectrum. In *Restatement*, Rawls counts five types of political and social system: "(a) laissez-faire capitalism; (b) welfare-state capitalism; (c) state socialism with a command economy; (d) property-owning democracy; and finally, (e) liberal (democratic) socialism."[3] The first three "violates the two principles of justice in at least one way."[4] *Laissez-faire capitalism* "secures only formal equality and rejects both the fair value of the equal political liberties and fair equality of opportunity. It aims for economic efficiency and growth constrained only by a rather low social minimum."[5] In addition to that laissez-faire capitalism cannot satisfy DP and

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[1] Ibid., p. 246.

[2] Ibid.

[3] Rawls, *Restatement*, p. 136.

[4] Ibid., p. 137.

[5] Ibid.

recognizes the right to private ownership of productive assets. *The welfare state* "also rejects the fair value of the political liberties, and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed."[1] Furthermore, welfare-state capitalism "permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands."[2] Thus, the welfare state also could not fulfill the principles of justice.[3] *State socialism with a centrally planned economy* infringes EBL, because it is "guided by a general economic plan adopted from the center and makes relatively little use of democratic procedures or of markets."[4] Hence, communism is eliminated by EBL. Rawls's criterion of justice therefore rules out these regimes; only "property-owning democracy" and "liberal socialism" can pass Rawls's test successfully.

Although Rawls admits liberal socialism as compatible with his theory in principle, he adopts property-owning democracy in practice.[5] He appropriates the notion "property-owning democracy" from economist Edward Meade.[6] First

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[1] Ibid., pp. 137-138.

[2] Ibid., p. 138.

[3] Samuel Freeman explains in detail Rawls's rejection of the welfare state on behalf of a property-owning democracy, see Freeman, *Rawls*, pp. 131-136.

[4] Rawls, *Restatement*, p. 138.

[5] In the preface of *Theory,* Rawls says that "justice as fairness leaves open the question whether its principles are best realized by some form of property-owning democracy or by a liberal socialist regime. This question is left to be settled by historical conditions and the traditions, institutions, and social forces of each country. As a political conception, then, justice, as fairness includes no natural right of private property in the means of production (although it does include a right to personal property as necessary for citizens' independence and integrity), nor a natural right to worker-owned and -managed firms. It offers instead a conception of justice in the light of which, given the particular circumstances of a country, those questions can be reasonably decided" (Rawls, *Theory*, rev. ed., p. xv-xvi); see also ibid., pp. xiv-xv, 242-247; Simone Chambers, "Justice or Legitimacy, Barricades or Public Reason? The Politics of Property-Owning Democracy," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Wiley Blackwell, 2012), p. 22; and Alan Thomas, *Republic of Equals: Predistribution and Property-Owning Democracy* (New York: Oxford University Press, 2016), p. xviii.

[6] James E. Meade, *Efficiency, Equality and the Ownership of Property* (Oxford: Routledge, 2012).

readers of *Theory* supposed offhand that Rawls points out the welfare state.[1] However, Rawls dismisses the welfare state as inadequate and unfair:

> [t]o see the full force of the difference principle it should be taken in the context of property-owning democracy (or of a liberal socialist regime) and not a welfare state: it is a principle of reciprocity, or mutuality, for society seen as a fair system of cooperation among free and equal citizens from one generation to the next.[2]

It is evident that to apply DP satisfactorily Rawls prefers "property-owning democracy," not welfare-state capitalism. Since DP is a principle of mutuality, it requires a just collaboration system. Rawls's theory therefore entails a property-owning democracy. Although there appears some similarity between the welfare state and property-owning democracy, they are so different with respect to aims, values, and approaches.[3] For the very reasons, Rawls criticizes welfare-state capitalism in order to create an alternative to it. He seeks to "bring out the distinction between a property-owning democracy, which realizes all the main political values expressed by the two principles of justice, and a capitalist welfare state, which does not. We think of such a democracy as an alternative to capitalism."[4] For the reason that the welfare state is a form of capitalism, it cannot be an alternative to capitalism. Rawls thus "distinguishes between a property-owning democracy and a capitalist welfare state and maintains that the latter

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[1] For this misunderstanding, in the preface of *Theory*, he declares that "[a]nother revision I would now make is to distinguish more sharply the idea of a property-owning democracy (introduced in Chapter V) from the idea of a welfare state. These ideas are quite different, but since they both allow private property in productive assets, we may be misled into thinking them essentially the same" (Rawls, *Theory*, rev. ed., p. xiv). As an example of the misinterpretation, see Wolff, *Understanding Rawls*, p. 195.

[2] Rawls, *Theory*, rev. ed., p. xv.

[3] For the difference between welfare-state capitalism and property-owning democracy, see Meade, *Efficiency, Equality and the Ownership*, pp. 38-65; Richard Krouse and Michael McPherson, "Capitalism, 'Property-Owning Democracy,' and the Welfare State," in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton, NJ: Princeton University Press, 1988), pp. 79–105; Gavin Kerr, *The Property-Owning Democracy: Freedom and Capitalism in the Twenty-First Century* (New York: Routledge, 2017), pp. 82-83.

[4] Rawls, *Restatement*, p. 135.

conflicts with justice as fairness."[1] Welfare-state capitalism lacks a genuine egalitarian tendency, whereas "the background institutions of property-owning democracy work to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy, and indirectly, political life as well."[2] On the contrary, "welfare-state capitalism permits a small class to have a near monopoly of the means of production."[3] So that the privileged wealthy few dominates economics as well as politics. However, a property-owning democracy offers "a much broader distribution of wealth."[4] Rawls continues explaining property-owning democracy in contradiction of welfare-state capitalism as follows:

> [p]roperty-owning democracy avoids this, not by redistributing income to those with less at the end of each period, so to speak, but rather by ensuring the widespread ownership of productive assets and human capital (educated abilities and trained skills) at the beginning of each period; all this against a background of equal basic liberties and fair equality of opportunity. The idea is not simply to assist those who lose out through accident or misfortune (although this must be done), but instead to put all citizens in a position to manage their own affairs and to take part in social cooperation on a footing of mutual respect under appropriately equal conditions.[5]

In contrast to the welfare state, property-owning democracy makes certain that free and equal citizens have equal access to opportunities and benefit from their endowments and skills in a just collaboration system. Fair conditions are assured at the outset by means of EBL and FEO. *Free* and *equal citizens* earn their social and economic advantages by their talents and efforts under these circumstances. In other words, property-owning democracy does not *bestow* citizens' benefits and

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[1] Ibid., p. 8, n. 7.

[2] Ibid., p. 139.

[3] Ibid.

[4] Pogge, *John Rawls,* p. 133.

[5] Rawls, *Theory*, rev. ed., p. xv.

rights. Welfare-state capitalism however seems like a form of paternalism[1] and seek to justify gross injustices and inequalities after the event. By contrast, property-owning democracy prevents unfair conditions and disproportionate economic and political power from the beginning for a just distribution via basic institutions.[2] Hence, it prepares the ground for a just scheme of collaboration on an equal footing. So, Rawls's theory is neither a theory of rectificatory justice nor remedial justice,[3] but distributive justice in normal times: "[w]hile some income transfers will always be necessary within property-owning democracy, Rawls is interested in a system that has no need of large-scale income *re*distribution."[4] Because, "[t]he least advantaged are not, if all goes well, the unfortunate and unlucky—objects of our charity and compassion, much less our pity—but those to whom reciprocity is owed as a matter of political justice among those who are free and equal citizens along with everyone else."[5] Rather than compassion or care, reciprocity is required in property-owning democracy. So, free and equal individuals can compete and cooperate in a just basic structure and take their fair shares with self-respect.

Another important distinction between welfare-state capitalism and property-owning democracy is their different aims: "[i]n a welfare state the aim is that none should fall below a decent standard of life, and that all should receive certain protections against accident and misfortune—for example, unemployment

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[1] For the relation between paternalism and the welfare state, see Susanne MacGregor, "Welfare, Neo-Liberalism and New Paternalism: Three Ways for Social Policy in Late Capitalist Societies," *Capital & Class* 67 (Spring 1999): pp. 91-118.

[2] Thad Williamson and Martin O'Neill, "Property-Owning Democracy and the Demands of Justice," *Living Reviews in Democracy* 1 (2009): p. 3.

[3] Freeman, *Rawls*, pp. 106-108.

[4] Chambers, "Politics of Property-Owning Democracy," p. 22

[5] Rawls, *Restatement*, p. 139.

compensation and medical care."[1] To that end, at the end of each period, "the needy" are identified and income is redistributed for their assistance.[2] "Yet given the lack of background justice and inequalities in income and wealth, there may develop a discouraged and depressed underclass many of whose members are chronically dependent on welfare. This underclass feels left out and does not participate in the public political culture."[3] This treatment is both humiliating and creates an *underclass* whose members are habitually dependent on the state. In this way, they do not take part in socioeconomic and political life. However, in a property-owning democracy, "the aim is to carry out the idea of society as a fair system of cooperation over time among citizens as free and equal persons."[4] For that purpose, "basic institutions must from the outset put in the hands of citizens generally, and not only of a few, the productive means to be fully cooperating members of a society."[5] Hence, citizens can meet their own social and economic needs by reaping the fruits of their own labor. Precisely at this point, "educational institutions play a crucial role;" Pogge adds "[a]ll citizens are to be educated in such a way that they can participate, fully and as equals, in the economic and social life of their society and are motivated to do so by their secure sense of being, and being seen and treated as, equal citizens."[6] In a Rawlsian basic structure, there should not be a degraded "underclass"[7] as in the welfare state; and "there would be much less need for welfare payments, though they could hardly be

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[1] Rawls, *Theory*, rev. ed., p. xv.

[2] Rawls, *Restatement*, p. 140.

[3] Ibid.

[4] Rawls, *Theory*, rev. ed., p. xv.

[5] Ibid.

[6] Pogge, *John Rawls,* p. 134.

[7] Rawls, *Restatement*, p. 140.

wholly eliminated."[1] In property-owning democracy the social foundations of the self-esteem of the most disadvantaged is preserved in "a society as a fair system of cooperation" by their contribution as well as by "general subsidy schemes benefitting the less well paid."[2] Thus they are not identified specifically as in welfare-state capitalism. In property-owning democracy, free and equal citizens cooperate and earn their own primary goods with a sense of fairness and self-esteem.

As a consequence, if we think of a spectrum of political regimes (see figure 4), beginning from libertarian *laissez-faire* capitalism on the right up to the *command economy* communism on the left, property-owning democracy falls between the welfare state and liberal (market) socialism. Rawlsian government therefore stands in the left of center.

Command-economy communism	Market socialism	*Property-owning democracy*	Welfare-state capitalism	Liberal equality	Classical liberalism	Libertarian *laissez-faire*

Figure 4 Political regimes in the spectrum.
Source: Figure from Freeman, *Rawls*, p. 105; emphasis added.

2.3.4 Primary Goods

Having set out Rawls's principles of justice in detail, now we can examine the notion of primary goods. What is the function of primary goods precisely in a theory of justice? Intuitively, it appears clear and distinct; however, when it is inspected closely, its crucial importance and role will be seen better. In the well-ordered society, persons have "conflicting and incommensurable conceptions of the good."[3] Although they have diverse and opposing understandings of the good, they have to cooperate to achieve their ends. So how they will determine the

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[1] Pogge, *John Rawls,* p. 134.

[2] Van Parijs, "Difference Principles," p. 221.

[3] Rawls, "Social Unity and Primary Goods," p. 164.

criteria of distributive justice constrained by the veil of ignorance?[1] How the representatives can know desiderata of citizens they represent in this situation, and decide on the principles which design major institutions to frame their distributive shares of political liberties and socioeconomic benefits? To be brief, what will be the metric of distribution? Accordingly, the representatives in the original position need "a public standard which all may accept;"[2] so that they can define and compare persons' requirements. The concept of primary goods meets this need by suggesting "[w]orkable criteria for a public understanding of what is to count as advantageous in matters of justice."[3] Hence, interpersonal comparisons can be made impartially. This is the rationale behind primary goods. They provide "objective grounds for these comparisons."[4] In the implementation of the principles to major institutions, therefore, Rawls puts forward the index of primary goods to define the least fortunate class and to compare socioeconomic positions of the least advantaged in different basic structures.[5]

Primary goods are divided into two groups: natural and social. *Natural primary goods* comprise "health and vigor, intelligence and imagination."[6] Although basic institutions have an effect on their conditions, natural primary goods are not in direct command of institutions like social primary goods.[7] As it is explained above, the natural distribution is *amoral*, because we cannot change natural facts

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[1] See the end of subsection 2.3.3.1. above.

[2] Rawls, "Social Unity and Primary Goods," p. 170.

[3] Ibid.

[4] Rawls, *Theory*, rev. ed., p. 78.

[5] Rawls, *Restatement*, pp. 59-60; van Parijs, "Difference Principles," p. 212.

[6] Rawls, *Theory*, rev. ed., p. 54.

[7] Ibid.

such as race, birthplace, and natural endowments;[1] but we can change major institutions which "profoundly affect the consequences of natural inequalities through the distribution of those primary goods which are directly under their control: the *social primary goods*."[2] Justice as fairness thus mainly deals with social primary goods that are allocated via basic institutions. So, when Rawls mentions "primary goods" in his writings he refers to social primary goods. They are "*social* because their distribution can be determined through the institutions of the basic structure, and they are *primary* because they are general means all rational persons are presumed to want for their pursuit of their ends (whatever these are)."[3] Rawls suggests a set of social primary goods for this task:

(a) First, *the basic liberties* as given by a list, for example: freedom of thought and liberty of conscience; freedom of association; and the freedom defined by the liberty and integrity of the person, as well as by the rule of law; and finally the political liberties;
(b) Second, *freedom of movement and choice of occupation against a background of diverse opportunities*;
(c) Third, *powers and prerogatives of offices and positions of responsibility*, particularly those in the main political and economic institutions;
(d) Fourth, *income and wealth*; and
(e) Finally, the *social bases of self-respect*.[4]

Social primary goods include both tangible and intangible assets. They are basic liberties, opportunities, and resources that provide necessary means and conditions for all who follow various worldviews. The serial ordering is mirrored in social primary goods' order as well. Since EBL precedes the second principle, and FEO comes before DP, "all citizens in a well-ordered society have the same equal basic liberties and enjoy fair equality of opportunity. The only permissible difference

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[1] See subsection 2.3.3.2.

[2] Van Parijs, "Difference Principles," p. 211.

[3] Gilabert, "The Two Principles of Justice," p. 847; italics mine.

[4] Rawls, "Social Unity and Primary Goods," p. 162; emphasis added. The full list of the basic liberties is given above, see subsection 2.3.3.1. Although he lists social primary goods, the "list is not claimed to be exhaustive; Rawls was, for example, prepared to include such goods as leisure" (Andreas Follesdal, "Primary Goods, Social," in *The Cambridge Rawls Lexicon*, p. 644).

among citizens is their share of the primary goods in (c), (d), and (e)."[1] That is to say, the relevant socioeconomic inequalities are concerned with DP. Other primary goods (a) and (b) are already distributed equally. For this reason, DP is distinctive in *Theory*. It makes a difference for the advantage of the most disadvantaged. Thanks to social primary goods, the most disadvantaged, who has the minimum index of primary goods over a lifetime, is specified.[2] Then, the principles are implemented through basic institutions for the distribution. Although it appears a utilitarian calculation at the outset, "justice as fairness rejects the idea of comparing and maximizing satisfaction in questions of justice."[3] Rawls underlines that "[w]hile an index of primary goods serves some of the purposes of a utility function, *the basic idea is different*: primary goods are social background conditions and all-purpose means generally necessary for forming and rationally pursuing a conception of the good."[4] That is, Rawls's theory does not consider aggregate satisfaction of desire, utility, welfare, or happiness.[5] It tries to offer a strong ground for the flourishing and realization of the two ethical capacities. Later, Rawls connected primary goods to the two ethical capacities: "the capacity for a sense of right and justice (the capacity to honor fair terms of cooperation and thus to be *reasonable*), and the capacity for a conception of the good (and thus to be *rational*)."[6] In other words, social primary goods are "various social conditions

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[1] Rawls, "Social Unity and Primary Goods," p. 162.

[2] For the index of primary goods, see above subsection 2.3.3.2.

[3] Rawls, "Social Unity and Primary Goods," p. 169.

[4] Ibid; italics mine.

[5] In *Theory*, Rawls points out objective and public characteristics of primary goods: it is "an agreement to compare men's situations solely by reference to things which it is assumed they all normally need to carry out their plans. This seems the most feasible way to establish a publicly recognized objective and common measure that reasonable persons can accept. Whereas there cannot be a similar agreement on how to estimate happiness as defined, say, by men's success in executing their rational plans, much less on the intrinsic value of these plans" (Rawls, *Theory*, rev. ed., p. 81).

[6] Rawls, "The Basic Liberties," p. 16; italics mine. In the preface of *Theory*, Rawls explains the reason behind this change: "second serious weakness of the original edition was its account of

and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good."[1] So, social goods are necessary means to realize the capacity for a sense of fairness and the capacity for an understanding of the good (e.g. primary goods include political liberties because they are necessary in the flourishing and realization of individuals' capacity for a sense of fairness). Primary goods prepare the ground for the flourishing and realization of the two ethical capacities of free and equal individuals. So that citizens can follow their "determinate conceptions of the good."[2] Therefore, Rawlsian "principles of justice are to ensure to all citizens the equal protection of and access to these conditions, and to provide each with a fair share of the requisite all-purpose means."[3] Justice as fairness thus sets up the basic structure to distribute social primary goods fairly and impartially for persons' realization of the ethical capacities.

Furthermore, Rawls presumes that social primary goods can be gauged with objectivity and compared publicly.[4] It is evident from the structure of Rawls's theory. Since the lifetime expectations of the most disadvantaged is measured by

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primary goods. These were said to be things that rational persons want whatever else they want…. Unhappily that account left it ambiguous whether something's being a primary good depends solely on the natural facts of human psychology or whether it also depends on a moral conception of the person that embodies a certain ideal. This ambiguity is to be resolved in favor of the latter: persons are to be viewed as having two moral powers … and as having higher-order interests in developing and exercising those powers. Primary goods are now characterized as what persons need in their status as free and equal citizens, and as normal and fully cooperating members of society over a complete life. Interpersonal comparisons for purposes of political justice are to be made in terms of citizens' index of primary goods and these goods are seen as answering to their needs as citizens as opposed to their preferences and desires" (Rawls, *Theory*, rev. ed., p. xiii).

[1] Rawls, *Restatement*, p. 57.

[2] Rawls, "Social Unity and Primary Goods," p. 165.

[3] Ibid., p. 169.

[4] Rawls, "Social Unity and Primary Goods," pp. 159-185; Rawls, *Theory*, rev. ed., pp. 78-81; and Rawls, *Restatement*, pp. 58-60.

the index of primary goods;[1] each of the primary goods should be measurable and comparable.[2] As it is explained above, (a) and (b) is out of question because of their equal distribution. So, (c), (d), and (e) should be measurable and comparable. That is, powers of offices; income and wealth; and the social foundations of self-esteem must be measurable and comparable.[3] However, Rawls ignores (c) and (e) for the sake of argument.[4] So, "income and wealth" remain in the "simplest form."[5] Even in this form there appears a problem: although income can be measured, wealth cannot be measured quantitatively. Yet, Rawls defines income and wealth as follows: "understood broadly as they must be, [income and wealth] are all-purpose means (having an exchange value) for achieving directly or indirectly a wide range of ends, whatever they happen to be."[6] Given that he explains income and wealth in terms of assets which have an exchange value, income as well as wealth can be seen as measurable and comparable. Rawls supports this idea: "while measures of income and wealth are not easy to devise, the relative standing of citizens, granted such a measure, is in principle a publicly decidable matter."[7] Consequently, we can assume that income and wealth is at least measurable for Rawls's restricted aims.

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[1] See above 2.3.3.2.

[2] Van Parijs, "Difference Principles," p. 212.

[3] In *Restatement*, for instance, Rawls indicates objectivity of social primary goods: "[t]o highlight the objective character of primary goods, note that it is not self-respect as an attitude toward oneself but the social bases of self-respect that count as a primary good" (Rawls, *Restatement*, p. 60).

[4] Rawls, "Social Unity and Primary Goods," p. 163.

[5] Ibid.

[6] Ibid., p. 166

[7] Ibid., p. 163. Economist Robert Sugden also understands wealth in line with income: "Rawls usually treats these two goods as if they were different ways of talking about the same thing: often he uses the words "income and wealth" as a composite formula. Since wealth is just the capitalized value of a flow of income, little is lost by considering income alone" (Robert Sugden, "Harsanyi, Rawls, and the Search for a Common Currency of Advantage," in *Justice, Political Liberalism and Utilitarianism: Themes from Harsanyi and Rawls*, eds. Marc Fleurbaey, Maurice Salles and

2.3.5 Criticisms

Having set out Rawls's theory and sketched the arguments for it, now we can turn to major criticisms which are raised against Rawls's conception of justice. Since *Theory* was appeared in 1971, justice as fairness is criticized by almost all perspectives (e.g. utilitarians, communitarians, libertarians, feminists, conservatives, socialists, liberals, democrats, and so on).[1] Hence, it is impossible to review all of the literature here. Thus, we will focus on the main challenges that hit at the very root of Rawls's theory. To that end, we will examine the criticisms of Michael Walzer, G. A. Cohen, and Robert Nozick in turn, and see whether the problems they pose are manageable or not in the Rawlsian paradigm.

2.3.5.1 Walzer's critique

In *Spheres of Justice*: *A Defense of Pluralism and Equality*, Michael Walzer strikes at the very essence of Rawls's theory from a communitarian and pluralistic standpoint.[2] He argues that Rawls's approach to justice is uniformist,

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John Weymark (New York: Cambridge University Press, 2008), p. 251; in this work, Sugden attempts to fill the gaps in Rawls's index of primary goods, see ibid., pp. 247-260.

[1] For Rawls's critics and their arguments, see Freeman, *The Cambridge Companion to Rawls*; Mandle and Reidy, *A Companion to Rawls*; Pogge, *John Rawls,* pp. 178-188; Sen and Williams, *Utilitarianism and Beyond*; Mandle, *Rawls's Theory,* pp. 170-200; Lovett, *Rawls's 'Theory',* pp. 144-153; Fleurbaey, Salles, and Weymark, *Justice, Political Liberalism and Utilitarianism: Themes from Harsanyi and Rawls*; Catherine Audard, *John Rawls* (Stocksfield, UK: Acumen, 2007), pp. 275-292; Chandran Kukathas and Philip Pettit, *Rawls: A Theory of Justice and its Critics* (Stanford: Stanford University Press, 1990); Norman Daniels (ed.), *Reading Rawls: Critical Studies on Rawls' Theory* (New York: Basic Books, 1989); Thom Brooks and Fabian Freyenhagen (eds.), *The Legacy of John Rawls* (London and New York: Continuum, 2005); Allan Bloom, "Justice: John Rawls Vs. The Tradition of Political Philosophy," *American Political Science Review* 69, no. 2 (June 1975), pp. 648-662; and Henry Richardson and Paul Weithman (eds.), *The Philosophy of Rawls: A Collection of Essays,* 5 vols. (New York and London: Garland, 1999).

[2] We have to note that "Walzer's *Spheres of Justice* emerged from a seminar that Michael Walzer taught on Rawls's work" (Daniel Weinstock, "Communitarianism," in *The Cambridge Rawls Lexicon*, p. 121). Although we cannot mention a monolithic communitarian camp, Michael Walzer, Alasdair MacIntyre, and Charles Taylor agree on the negation of Kantian contractarianism: "communitarians differ in significant respects. MacIntyre, for example, presents his anti-contractarianism as part of a damning indictment of post-enlightenment culture, whereas Taylor and Walzer want to salvage key 'liberal' values but derive them from non-contractarian foundations. However, what they all share is a rejection of the resurrection of Kantian contractarianism inspired by Rawls's *A Theory of Justice*" (David Boucher and Paul Kelly, "The Social Contract and its Critics: An overview," in *The Social Contract from Hobbes to Rawls*, p.

universalistic, and Platonic. Rawls's theory is a "'top-down' conception of theorising about justice which is implicit in contractarianism and the 'distributive paradigm'."[1] To Walzer, Rawls designs a theory of justice in his ivory tower and seek to impose his own "external blueprint of a just society without sufficient sensitivity to the specific values affirmed in particular societies. In that sense, it is disconnected and undemocratic."[2] Rawlsian rational persons, like Plato's philosopher-kings,[3] selects a set of principles facing "an abstract set of goods" in the imaginary choice position and reach to "a singular conclusion."[4] Although, it seems like this choice situation demonstrates that Rawls's principles is the single solution; this "distributive paradigm"[5] is constructed by virtue of the restraints of the "original position."[6] The essential question is which principles would persons select if the veil is taken. "What would individuals like us choose, who are situated as we are, who share a culture and are determined to go on sharing it? And this is a

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24). For Rawls's appeal to contractarianism against the community, see Rawls, *Theory*, rev. ed., pp. 233-234.

[1] Boucher and Kelly, *Social Justice: From Hume to Walzer*, p. 10.

[2] Mandle, *Rawls's Theory,* p. 183.

[3] See Plato, *The Republic of Plato*, trans. Allan Bloom (New York: Basic Books, 1968).

[4] Michael Walzer, *Spheres of Justice*: *A Defense of Pluralism and Equality* (New York: Basic Books, 1983), p. 5.

[5] Influenced by Walzer, Young calls this form of distributive justice as "the distributive paradigm." She argues that defenders of the distributive logic go wrong by focusing on distribution and assuming abstract premises; hence distributive theories of justice are so abstract that cannot be applicable to real problems. See Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), pp. 3-38.

[6] Walzer, *Spheres of Justice*, p. 5. However, Amartya Sen argues that even in the original position alternative principles can be yielded: "I have to express considerable scepticism about Rawls's highly specific claim about the unique choice, in the original position, of one particular set of principles for just institutions, needed for a fully just society. There are genuinely plural, and sometimes conflicting, general concerns that bear on our understanding of justice. They need not differ in the convenient way – convenient for choice, that is – that only one such set of principles really incorporates impartiality and fairness, while the others do not" (Sen, *The Idea of Justice,* pp. 56-57*)*; see also Sen, *Collective Choice and Social Welfare,* pp. 135-140.

question that is readily transformed into, What choices have we already made in the course of our common life? What understandings do we (really) share?"[1] So, Walzer implies that justice as fairness is a theory among numerous theories of justice that make sense in a specific culture, community, and understanding; because "[j]ustice is relative to social meanings."[2] That is to say, Rawls's universal, "abstract and culturally decontextualized conception"[3] of primary goods and principles of justice are useless and "meaningless."[4] To have a meaning, they have to be located in a specific community at a given time. The principles of justice and goods, which are distributed according to particular principles, are understood and produced *within a social context*:[5] "'[t]here is no single set of primary or basic goods conceivable across all moral and material worlds—or, any such set would have to be conceived in terms so abstract that they would be of little use in thinking about particular distributions.'"[6] Walzer gives the example of "bread" to reveal the diversity of meanings in different societies: "[b]read is the staff of life, the body of Christ, the symbol of the Sabbath, the means of hospitality, and so on."[7] Accordingly, if we take bread as the staff of life, it would be a primary good for community *x*; but community *y* may not take it as the staff of life, so it would not be a primary good for community *y*. Just community *x* takes good *b* as primary at time *t*. Since there are thousands of communities, and millions of goods at time *t*, there would be countless combinations of primary goods in the world (when time changes some primary goods may no longer be

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[1] Ibid.

[2] Ibid., p. 312.

[3] Weinstock, "Communitarianism," p. 121.

[4] Walzer, *Spheres of Justice*, p. 8.

[5] Ibid., p. 6.

[6] Ibid., p. 8.

[7] Ibid.

primary as well). Because "goods have different meanings in different societies,"[1] the meanings of social primary goods depend on the social and historical background. Therefore, it is impossible to universalize an abstract set of primary goods for all.

Since the members of the society "conceive and create goods" in social interactions, Walzer claims that "distributions are patterned in accordance with shared conceptions of what the goods are and what they are for. Distributive agents are constrained by the goods they hold; one might also say that goods distribute themselves among people."[2] That is, shared social understandings determine the conception, creation, and distribution of social goods indeed. As social meanings change between societies, distributions of social goods and principles of justice change too. So, Walzer argues that

> the principles of justice are themselves pluralistic in form; that different
> social goods ought to be distributed for different reasons, in accordance with
> different procedures, by different agents; and that all these differences derive
> from different understandings of the social goods themselves—the inevitable
> product of historical and cultural particularism.[3]

Different meanings of the social goods differentiate methods and principles of justice. Since social goods have diverse meanings in dissimilar communities and cultures, distributive principles should be pluralistic too. In brief, Walzer translates the diversity of shared meanings in social goods into the pluralistic principles. The principles of justice should also be pluralistic for the reason that

> [d]istributive criteria and arrangements are intrinsic not to the good-in-itself
> but to the social good. If we understand what it is, what it means to those for

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[1] Ibid., p. 7.

[2] Ibid. Even Walzer contends that "[a] solitary person could hardly understand the meaning of the goods or figure out the reasons for taking them as likable or dislikable. Once people like in crowds, it becomes possible for individuals to break away, pointing to latent or subversive meanings, aiming at alternative values—including the values, for example, of notoriety and eccentricity" (Ibid., pp. 7-8).

[3] Ibid., p. 6.

whom it is good, we understand how, by whom, and for what reasons it ought to be distributed. All distributions are just or unjust relative to the social meanings of the goods at stake.[1]

So, the philosopher should leave the ivory tower and look at social goods one by one for relevant principles. The principles of social justice are contingent upon social understandings, and social understandings are contingent upon social goods. To understand the principles thus the philosopher should first understand the social meanings of the goods properly and particularly. Then he may discover the principles of justice. Otherwise, he will arrive at the wrong conclusions, because of starting from the wrong premises. In traditional societies, for instance, occupations hand down from father to son. If a man's father is a scholar, he becomes a professor and keeps his father's chair in the university. The traditional society see this practice as just. However, in modern societies, a woman can be a professor and hold a chair in a university, if she has the required level of education and knowledge regardless of her father's occupation. The modern society weigh this treatment as just. As it is seen, social understandings determine criteria of justice and desert; hence they vary across societies and cultures. In some societies, the criterion becomes ancestry, in others education and knowledge. Consequently, shared social meanings of social goods constitute criteria of distributive justice, and they differ depending on space and time.[2]

Given that every single social good has its own social understanding and principles of justice, we need distinct internal principles of justice for each social good within its sphere. We should not confuse and diffuse a social good's distributive criterion with another social good. Each should be applied to its own sphere. This is the logic behind Walzer's *Spheres of Justice*: "[w]hen meanings are distinct, distributions must be autonomous. Every social good or set of goods constitutes, as it were, a distributive sphere within which only certain criteria and arrangements

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[1] Ibid., pp. 8-9.

[2] Ibid., p. 9.

are appropriate."[1] For that reason, "[m]oney is inappropriate in the sphere of ecclesiastical office; it is an intrusion from another sphere. And piety should make for no advantage in the marketplace, as the marketplace has commonly been understood."[2] Money is the medium of exchange in the marketplace; so, it should be used in the economic sphere. Piety is the criterion of religious services; so, it should be valid in the religious sphere. If one confuses the criteria of the spheres, he leads to injustice.[3] For Walzer, "[i]njustice occurs when the distribution of a good is inconsistent with its meaning but is determined by – is "dominated by" – some other good from outside its sphere."[4] Since there is not a single fixed list of social primary goods, Walzer concludes that "[t]here is no single standard. But there are standards (roughly knowable even when they are also controversial) for every social good and every distributive sphere in every particular society."[5] Shared social meanings are thus very significant. One has to consider the social meanings of particular goods in its own sphere, not abstract primary goods of a universal point of view, while searching for the criteria of distributive justice.

Unfortunately, Rawls does not reply in detail to Walzer's objections; but just responds to the challenge that Rawls's method of political philosophy is Platonic and depends on "so many abstract conceptions,"[6] rather than on "the great game of

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[1] Ibid., p. 10.

[2] Ibid.

[3] *Spheres of Justice* reflects the liberal character of Walzer indeed, see Richard Bellamy, "Justice in the Community: Walzer on Pluralism, Equality and Democracy," in *Social Justice: From Hume to Walzer*, pp. 166-167.

[4] Mandle, *Rawls's Theory,* pp. 183-184.

[5] Walzer, *Spheres of Justice*, p. 10.

[6] Rawls, *Political Liberalism*, p. 44.

politics."[1] In *Political Liberalism*, Rawls observes that "[w]e turn to political philosophy when our shared political understandings, as Walzer might say, break down, and equally when we are torn within ourselves," and when we have "deep political conflicts."[2] Under these circumstances, Rawls says that "the work of abstraction is set in motion."[3] This is the meaning of political philosophy. After fragmented societies face with grave political problems, political philosophy comes into play and seeks to find solutions by abstracting their considered judgments, "from the most general to the most particular."[4] The parties arrange and correct the principles based on their considered convictions "until judgments at all levels of generality are at last in line on due reflection."[5] When the parties "find a description of the initial situation [the original position] that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted,"[6] they reach reflective equilibrium.[7] Nonetheless there is no hierarchy in reflective equilibrium as in the deduction or induction. In reflective equilibrium, the parties "work from both ends."[8] So, Rawls maintains that

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[1] Rawls, *History of Political Philosophy*, p. 4. Rawls rejects Platonic political philosophy in favor of the democratic one; on the relation between political philosophy and politics and Rawls's reply to Walzer, see Rawls, *History of Political Philosophy*, pp. 2-8.

[2] Rawls, *Political Liberalism*, p. 44.

[3] Ibid. The context of Rawls's theory bears resemblance to the context of Immanuel Kant's transcendental idealism. Both arose out of a fragmented and chaotic society with political problems. For the historical and intellectual context that influenced Kant, see Terry Pinkard, *German Philosophy 1760-1860: The Legacy of Idealism* (Cambridge: Cambridge University Press, 2002), pp. 1-15; for Rawls in historical and philosophical context, see sections 2.1 and 2.2.

[4] Rawls, *Political Liberalism*, p. 45.

[5] Ibid.

[6] Rawls, *Theory*, rev. ed., p. 18.

[7] For the details of reflective equilibrium, see subsection 2.5.1., subsection 2.3.2., and figure 1.

[8] Rawls, *Theory*, rev. ed., p. 18.

> [i]t is a mistake to think of abstract conceptions and general principles as always overriding our more particular judgments. These two sides of our practical thought (not to mention intermediate levels of generality in between) are complementary, and to be adjusted to one another so as to fit into a coherent view.[1]

Since Rawls's generalizations and abstractions rely on persons' considered judgments, it is not undemocratic and invalid in principle. Rawls rightly concludes that his "work of abstraction, then, is not gratuitous: not abstraction for abstraction's sake. Rather it is a way of continuing public discussion when shared understandings of lesser generality have broken down."[2] In this way, Rawls justifies his work of abstraction; and even he argues that "[w]e should be prepared to find that the deeper the conflict, the higher the level of abstraction to which we must ascend to get a clear and uncluttered view of its roots."[3] After the philosopher understands roots of the question, he descends to earth again "to look to the fundamental ideas implicit in the public political culture and seek to uncover how citizens themselves might, on due reflection, want to conceive of their society as a fair system of cooperation over time."[4] As it is seen, the philosopher goes between his ivory tower and the real world, or between the cave and the city. Rawls, especially in his later work, claims that he does not stay in the cave.[5] Moreover, Rawls argues that he suggests solutions to real life's problems deriving from shared values and ideas of the society.[6] According to Rawls, he starts the

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[1] Rawls, *Political Liberalism*, p. 45.

[2] Ibid., pp. 45–46.

[3] Ibid., p. 46.

[4] Ibid.

[5] Although some contend that after all both Rawls and Walzer arrived at the same point, it is not exactly true, see Stephen Mulhall and Adam Swift, "Rawls and Communitarianism" in *The Cambridge Companion to Rawls*, pp. 479-480.

[6] The discussion is developed in section 2.4.

discussion from shared understandings and goes on, whereas Walzer starts and concludes with shared meanings.[1]

To sum up, Walzer argues that first, Rawls have a top-down methodology and hence undemocratic. In reply to this criticism, Rawls emphasizes that the original position (hence reflective equilibrium) is not a one-sided (from top to bottom) reasoning. It depends on person's considered convictions. However, according to moral philosopher R. M. Hare, Rawls rigged "the original position so as to yield principles which fit his own considered judgments."[2] So, the choice is essentially Rawls's choice. The principles are thus *given* to readers as if they have been choosing them in the original position. However, readers do not select *the* principles indeed. Hence Walzer is right in arguing that Rawls's methodology is Platonic. Secondly, Walzer objects to Rawls's set of *abstract* primary goods. He contends that since social goods have different meanings in different societies, one cannot constitute a universal and abstract set of primary goods and criteria of justice that are always valid everywhere. Yet, Rawls holds that social primary goods are "all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good."[3] So, for Rawls, primary goods are essential for all. For instance, think about the life of a *cynic*. What would she need to pursue the cynic way of life? Liberties, opportunities, professional positions, offices, socioeconomic gains, or the social foundations of self-esteem? The cynic challenges most of these social goods, because she is against social conventions. Since social goods are social conventions, the cynic is against social goods as well.

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[1] Rawls, *Political Liberalism*, p. 44, n. 47. Rawls acknowledges his debt to Joshua Cohen and Thomas Scanlon on Walzer's conception of justice, see Joshua Cohen, "Book Review of Spheres of Justice," *The Journal of Philosophy* 83, no. 8 (August 1986): pp. 457-468; and T. M. Scanlon, "Local Justice," *London Review of Books*, September 5, 1985, pp. 17-18.

[2] R. M. Hare, "Rawls' Theory of Justice," *Philosophical Quarterly* 23 (April 1973): pp. 144-155 and 23 (July 1973): pp. 241-251 reprinted in Daniels, *Reading Rawls*, p. 86. I refer to the latter one. See also Laden, "Constructivism as Rhetoric," pp. 59-72.

[3] Rawls, *Restatement*, p. 57.

In fact, all these social goods are social impediments to the good life; because they make persons dependent on objects (against self-sufficiency) and hinder the ethical life which is living in accord with nature.[1] She needs some of the basic liberties (freedoms of speech, movement, and conscience etc.) and training opportunities from Rawls's list.[2] None of the others is required in order to pursue the cynic way of life.[3] So, the cynic does not care much for Rawlsian primary goods. The cynic shows that Rawlsian primary goods are not inclusive and attractive enough for all.[4] The meanings of social goods depend on communities. Since the goods have different meanings in different communities, criteria of distributive justice diverge as well. A certain set of primary goods and principles are not applicable to all communities.

Although it seems like Rawls is right in arguing that since shared political understandings are broken down in our societies, we have to apply to abstraction and political philosophy; we can still talk about shared understandings of communities. Of course, we cannot mention the shared understanding of a nation state, but we can talk about a shared understanding of a community; and states are composed of communities: *the state is a community of communities*. As former Canadian Prime Minister Joe Clark puts it: "[g]overnments make the nations work by recognizing that we are fundamentally a community of communities."[5] So,

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[1] Julie Piering, "Cynics," in *The Internet Encyclopedia of Philosophy*, accessed December 25, 2018, https://www.iep.utm.edu/cynics/.

[2] Ibid.

[3] Recall the dialogue between Diogenes of Sinope's and Alexander the Great: "[w]hen he was sunning himself in the Craneum, Alexander came and stood over him and said, 'Ask of me any boon you like.' To which he replied, 'Stand out of my light.'" (Diogenes Laertius, *Lives of Eminent Philosophers*, trans. R.D. Hicks, *Loeb Classical Library* [London: William Heinemann, 1925], vol. II, p. 41).

[4] More examples can be given against Rawlsian understanding of primary goods, consider the ascetic and stoic attitudes.

[5] Joe Clark: "Campaign Speech During the 1979 Election," accessed June 5, 2019, https://www.edu.gov.mb.ca/k12/cur/socstud/foundation_gr6/blms/6-4-3b.pdf; see also Amitai Etzioni, "The Responsive Community: A Communitarian Perspective," *American Sociological Review* 61, no. 1 (February 1996): pp. 9-11.

communities protect their shared understandings in a way. Otherwise, we might fall into radical individualism and nihilism. Thanks to the community (e.g. a philosophical, religious, geographical, cultural, or ethnic community, etc.), we constitute and conserve our selves, shared understandings, and ethical values. For the very reason, when shared political understandings are broken down and when we have profound disagreements, we turn to our communities (such as the family home). In normal times, we do not call for communal ties. In the era of crisis, we are in need of our communities to take shelter, support each other, and find a way out of the impasse. Therefore, we have to take communities seriously and define the meanings of goods and criteria of justice according to communities. *Equal respect for communities* demands this basis. To show another community equal respect means to treat it as a being which has intrinsic ethical value and self-authenticating sources of truth claims on equal footing with other communities. Otherwise, we impose "our truth" upon other communities; which is an undemocratic attitude. Accordingly, it is seen that Walzer is mainly right in his objections, and Rawls could not answer to Walzerian criticisms satisfactorily.

2.3.5.2 Nozick's critique

Even if we assume that there is a Rawlsian society which considers Rawls's list of social goods as primary, one can still question justice as fairness. This critic is Robert Nozick who is Rawls's colleague at Harvard. In *Anarchy, State, and Utopia* (1974), Nozick objects and proposes his alternative from a historical, individualist, and (right-wing) libertarian perspective to Rawls's *Theory* (1971). Nozick makes a systematic and extensive criticism of justice as fairness in his work. Since it is impossible within the compass of this dissertation to explain all the theory and criticism here, Nozick's theory will be summarized and his essential objections to justice as fairness will be examined.[1]

In *Anarchy, State, and Utopia*, Nozick begins his criticism by drawing the lines of a legitimate state: "[t]he minimal state is the most extensive state that can be

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[1] For Nozick's complete criticism of justice as fairness, see Nozick, *Anarchy, State, and Utopia*, esp. chapter 7.

justified. Any state more extensive violates people's rights."[1] So, Nozick seeks for the acceptable limits of the minimal state even for an individualist anarchist. According to Nozick, only the "*night-watchman state* of classical liberal theory, limited to the functions of protecting all its citizens against violence, theft, and fraud, and to the enforcement of contracts, and so on"[2] can be legitimized. Thus, a state more comprehensive than the night-watchman state infringes natural rights of life, liberty, property, and contract (Lockean rights); hence becomes illegitimate. Next, Nozick constructs his "entitlement theory" in order to refute Rawls's theory. Although he does not suggest a fully-fledged theory, like Rawls, he nonetheless proposes a set of principles of justice influenced by Locke. Nozick's entitlement theory thus hinges on a historical viewpoint. According to Nozick, "the justice of a distribution depends not on the extent to which it approximates some ideal profile, but rather on whether it evolved in a morally acceptable way."[3] Since "past circumstances or actions of people can create differential entitlements or differential deserts to things,"[4] to evaluate the fairness of a distribution we have to look its way of acquisition: "[a] distribution is just if it arises from another just distribution by legitimate means."[5] So, Nozick's theory demands *first,* "the principle of justice in acquisition" that defines the just measure of "the *original acquisition of holdings*, the appropriation of unheld things."[6] *Secondly*, it demands "the principle of justice in transfer" which describes the just measure of "the

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[1] Ibid., p. 149.

[2] Ibid., p. 26; italics mine. Nozick seeks to justify the minimal state which arises from Locke's state of nature; see ibid., pp. 3-119.

[3] Pogge, *John Rawls,* p. 179.

[4] Nozick, *Anarchy, State, and Utopia*, p. 155.

[5] Ibid., p. 151.

[6] Ibid., p. 150.

transfer of holdings from one person to another."[1] Relying on these first principles, Nozick sets forth the principles of "the entitlement theory" as follows:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.[2]

Nozick maintains that if we had abided by these principles of justice since the beginning of the state of nature, the world would remain to be just.[3] That is to say, if persons acquire holdings (i.e. possessions) according to these principles, they are entitled to their holdings. However, if they violate any of the principles while acquiring a holding (by means of robbery, force, or fraud etc.), they lead to injustice. Legitimate transactions derive from repeated application of these principles. But since persons violate the principles of justice, we need "the principle of rectification of injustice."[4] It corrects unjust acts which stemmed from "previous violations of the first two principles of justice."[5] Consequently, Nozick assumes that if each person obtains her holdings according to the principles of just acquisition and just transfer, then her holdings are just; and "[i]f each person's

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[1] Ibid.

[2] Ibid., p. 151. Although it appears like Nozick has a well-founded theory of justice, it is not justified soundly. Nozick frequently appeals to examples and armchair intuitions to justify his ideas; and he could not give good reasons and arguments on behalf of the first principles of the entitlement theory; see Jonathan Wolff, *Robert Nozick: Property, Justice and the Minimal State* (Stanford: Stanford University Press, 1991), p. 78; Wolff's work is a critical examination of Nozick's *Anarchy, State, and Utopia* in the context of contemporary debates. See also Nagel's critical review of Nozick's book: Thomas Nagel, "Libertarianism without Foundations," *Yale Law Journal* 85, no. 1 (November 1975): pp. 136-149.

[3] Nozick, *Anarchy, State, and Utopia*, p. 151.

[4] Ibid., p. 153.

[5] Ibid., p. 152.

holdings are just, then the total set (distribution) of holdings is just."[1] This is the general outline of Nozick's entitlement theory. In the following sections of the book, he works out his historical theory of justice against theories of justice who endorse "*current time-slice principles*."[2]

As a result, Nozick's theory underlines that to assess the justice of a distribution one has to consider the past of possessions and inspect whether it is acquired and transferred legitimately. Simply examining the end-state, one cannot appraise the justice of a distribution: "[t]he entitlement theory of justice in distribution is *historical*; whether a distribution is just depends upon how it came about."[3] To Nozick, the important question is *how the distribution happened*, not "who ends up with what."[4] If someone seizes a property by stealing or force, then it is an unjust acquisition. Or, if a person tricks another to transfer to her bank account some money, it is a fraudulent transfer; and hence unfair. Thus, Nozick's point is that to understand just distribution one should consider the historical formation of the distribution, not the end result.

Nozick argues that theories of distributive justice go wrong by approaching "production and distribution as two separate and independent issues."[5] These theories assume that distributive shares are earned as if independently from the production. However, according to the entitlement theory, "these are *not* two separate questions. Whoever makes something, having bought or contracted for all other held resources used in the process (transferring some of his holdings for

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[1] Ibid., p. 153.

[2] Ibid.

[3] Ibid.

[4] Ibid., p. 154.

[5] Ibid., p. 160.

these cooperating factors), is entitled to it."[1] So, goods are produced by someone's resources or natural resources which they are entitled to via the principles of justice. Then, they use some of their resources for the production and obtain some products. Therefore, the end product depends on previous resources that they are entitled to. In the *free market*, these transactions are regulated by voluntary contracts. Entrepreneurs make contracts with workers and produce goods and services. So, although Nozick does not approve of "end-result" and "patterned" principles, if it is needed in any case; he puts his libertarian pattern as follows:

> [f]rom each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet expended or transferred.[2]

Hence, individuals are free to choose what they want in Nozick's libertarianism. Either we can transfer our money to produce some goods or we can hold our possessions if we do not make anyone worse off.[3] This maxim also implies that "we can sell our labor whomever we wish and (more importantly) buy it from whoever will consent."[4] Even, if we wish we can sell our freedom: "slavery is unjust only when people become slaves through force or deception, not when they freely give up their liberty."[5] According to Nozick, individuals have freedom of choice in their property (broadly understood). Thus, we reach to Nozick's *self-ownership* argument which lies behind his libertarianism: "each person is the morally rightful owner of his own person and powers, and, *consequently*, that each

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[1] Ibid.

[2] Ibid.

[3] At this point, Nozick is influenced by Lockean proviso: "enough and as good." See Dale Murray, "Robert Nozick: Political Philosophy," in *The Internet Encyclopedia of Philosophy*, accessed January 5, 2019, https://www.iep.utm.edu/noz-poli/#SH3h.

[4] Ibid.

[5] Pogge, *John Rawls,* p. 179.

is free (morally speaking) to use those powers as he wishes, provided that he does not deploy them aggressively against others."[1] This means that each person own herself and her resources, e.g. her talents, labor, body, the products made by her mental, bodily, and material resources. Unless she uses her powers to make others worse off, she has absolute property rights over herself and her external assets.[2] Thus, one cannot take from her any part of her property without her own consent. Hence, for Nozick, the full argument is as follows: since I have *the right to self-ownership*, I am the owner of "myself" and whatever belongs to me. Therefore, I have *the right to choose* what I want to do with my person and properties including the fruits of my labor parallel to the principles of just acquisition and just transfer.[3] However, if one misuses individual property rights, the principle of rectification of injustice applies. So, it is seen that as in *laissez-faire* capitalism, individuals are completely free in their lives in Nozick's libertarian framework.[4] The state interference is only required for maintaining rectificatory justice and the background institutions of the free market. Accordingly, nothing but the minimal state is needed to protect private property rights. An extensive state overrides individual rights of life, liberty, and property.[5]

When Nozick views Rawls's theory through the lens of the entitlement theory, he perceives three critical problems. The major problem with justice as fairness is that

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[1] Cohen, *Self-Ownership, Freedom, and Equality*, p. 67. Cohen thinks that for Nozick self-ownership has the utmost importance, not liberty, see ibid., pp. 67-68; see also the "eye lottery" example which is raised against the critics who reject Nozick's self-ownership argument in ibid., p. 70.

[2] Ibid., p. 69; and Nozick, *Anarchy, State, and Utopia*, pp. 175-177.

[3] Ibid., p. 171.

[4] Ibid., p. 320. See also Freeman, *Rawls*, p. 189.

[5] In Rawls lexicon, Nozick's view can be formulated as follows: "a person's basic natural right might be characterized (roughly) as the right to exercise one's capacity to act in accordance with any freely chosen, rational plan of life that does not involve coercive interference with any other person's doing likewise" (Michael Gorr, "Rawls on Natural Inequality," in *Equality and Liberty: Analyzing Rawls and Nozick*, ed. J. Angelo Corlett [London: Macmillan, 1991], p. 26).

Rawlsian state violates private property rights in the broad sense (i.e. *self-ownership*). Rawlsian state, for Nozick, is more comprehensive than the minimal state which aims at the *re*distribution of resources on behalf of the least advantaged; hence it overrides already existing private property rights: "[f]rom the point of view of an entitlement theory, redistribution is a serious matter indeed, involving, as it does, the violation of people's rights."[1] Justice as fairness therefore could not do full justice to the right of self-ownership. For that reason, Nozick designates DP as "the main culprit"[2] of illiberal ideas included in Rawls's theory. Nozick observes that DP appropriates "the results of someone's labor" by taxation which is "equivalent to seizing hours from him and directing him to carry on various activities."[3] Because, the more advantaged should work more to compensate taxes and subsidies that are given to the least advantaged.[4] Hence, these regulations force the more advantaged "to do certain work, or unrewarded work, for a certain period of time, they [Rawlsian policy makers] decide what you are to do and what purposes your work is to serve apart from your decisions."[5] In this way, Rawls takes the right to determine what to do with your own life, liberty, and property (s*elf-ownership*), and "makes them a *part-owner* of you; it gives them a property right in you."[6] Persons thus lose their "*full* self-ownership rights"[1] in

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[1] Nozick, *Anarchy, State, and Utopia*, p. 168.

[2] Helga Varden, "Nozick, Robert," in *The Cambridge Rawls Lexicon*, pp. 561-562. For Nozick's critique of DP see Nozick, *Anarchy, State, and Utopia*, pp. 167-174, 189-197, 204-207, 210-212. Although DP is the main problem according to Nozick, he rejects FEO as well: to ameliorate the circumstances of the most disadvantaged, some resources should be taken from the well-off and used to education and training of the most disadvantaged. But this action would worsen the situation of the well-off and violate person's entitlements by seizing the resources of the well-to-do. FEO is therefore against Nozick's entitlement theory; see ibid., pp. 235-238; and Freeman, *Rawls*, p. 98. However, Nozick may approve of EBL. It appears that they agree on *the priority of liberty* alone; see Nozick, *Anarchy, State, and Utopia*, pp. 160-164; and Rawls, *Theory*, rev. ed., pp. 214-220.

[3] Ibid., p. 172.

[4] See ibid., pp. 169-170.

[5] Ibid., p. 172.

[6] Ibid.

favor of "(partial) ownership by others of people and their actions and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people."[2] Since DP designs basic institutions on behalf of the least advantaged, "[e]ach person has a claim to the activities and the products of other persons, independently of whether the other persons enter into particular relationships that give rise to these claims, and independently of whether they voluntarily take these claims upon themselves."[3] This makes persons partly owning themselves, not fully; because the least advantaged has a claim to the products of the more advantaged independent of their will. Rawls's theory is thus taken to be incongruent with classical liberalism by Nozick.[4]

Furthermore, Nozick argues that "no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives."[5] Both end-state principles and patterned principles are unhistorical. *End-state principles* focus on the end result of the distribution alone (hence it is also called end-result principles). They do not consider "productive processes" that lead to "the set of holdings."[6] *Patterned principles of justice* distribute shares according to a "pattern," such as "to each according to his moral

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[1] Cohen, *Self-Ownership, Freedom, and Equality*, p. 213.

[2] Nozick, *Anarchy, State, and Utopia*, p. 172.

[3] Ibid.

[4] Offhand, one might suppose that Nozick is a capitalist without mercy. Although he defends *laissez-faire* capitalism, this does not mean that he is against the poor or the worst-off. He is against a "*central* distribution" (ibid., p. 149) which is made by another person, group, or authority. In line with Nozick's entitlement theory, "persons who favor a particular end-state pattern may choose to transfer some or all of their own holdings so as (at least temporarily) more nearly to realize their desired pattern" (ibid., pp. 232-233); see also ibid., p. 348, n. 48; cf. Cohen, *Self-Ownership, Freedom, and Equality*, pp. 19-37, 68-69, 85-91.

[5] Nozick, *Anarchy, State, and Utopia*, p. 163.

[6] Ibid., p. 155.

merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on."[1] For instance, DP is a patterned principle that distributes shares according to the maximum advantage of the least fortunate. Moreover, Nozick observes that DP is an end-state principle of justice, because "[a] procedure that founds principles of distributive justice on what rational persons who know nothing about themselves or their histories would agree to *guarantees that end-state principles of justice will be taken as fundamental*."[2] DP thus just considers the end-state; hence it is unhistorical as well as patterned, to Nozick. So that it requires unending interference with persons' lives to realize the ideal of justice as fairness. As Hume articulates it, "[r]ender possessions ever so equal, men's different degrees of art, care, and industry will immediately break that equality."[3] For that reason, one has to continually "correct" the result of the distribution in order to be fit for the pattern. To Nozick thus imposing certain distributional patterns upon individuals is an illiberal *utopic* vision; and Rawls has a similar vision, typical of the utopian theorists.[4]

As a second objection, Nozick questions the possibility of emigration in a Rawlsian state. Nozick makes his readers to think about a society, which everyone works in line with Rawls's principles of justice against their will. So, they maximally contribute to the well-being of the worst-off. Consider a choice situation, such that there is an alternative basic structure in another country:

> if emigration from the country were allowed, anyone could choose to move to another country that did not have compulsory social provision but otherwise

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[1] Ibid., pp. 156-157.

[2] Ibid., pp. 198-199.

[3] Hume, *An Enquiry Concerning the Principles of Morals*, p. 28.

[4] See Nozick, *Anarchy, State, and Utopia*, pp. 326-330. On the contrary, Nozick offers "a framework for utopias" so that persons can pursue their own utopias: "a place where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one can *impose* his own utopian vision upon others" (ibid., p. 312).

was (as much as possible) identical. In such a case, the person's *only* motive for leaving would be to avoid participating in the compulsory scheme of social provision. And if he does leave, the needy in his initial country will receive no (compelled) help from him. What rationale yields the result that the person be permitted to emigrate, yet forbidden to stay and opt out of the compulsory scheme of social provision?[1]

It is evident that any free and rational person would select the country which does not involve compulsory social arrangements. If she does not want to contribute to the worst-off, she would leave Rawlsian state. If she wants to contribute, she would (most probably) choose to contribute voluntarily, not by force. In any case therefore she would leave Rawlsian state. The right to migrate shows that persons would choose the more libertarian state rather than extensive states with obligatory contributions and taxes. According to Nozick, Rawlsian property-owning democracy is one of them. Persons would not choose Rawlsian basic structure when there are possible libertarian alternatives. Rawlsian property-owning democracy should not force its citizens to contribute to the worst-off. Otherwise, the more advantaged would possibly leave Rawlsian state. For Nozick, therefore, the right to migrate poses a theoretical problem for Rawls's theory.

Finally, Nozick objects to Rawls's perception of the dispersion of natural endowments (hence personal holdings) as "arbitrary from a moral point of view."[2], Rawls does not, of course, reject the natural lottery; but he condemns natural liberty (*formal equality*) which permits natural endowments to affect distributive shares.[3] So that initial inequalities deriving from the natural lottery are reproduced by socioeconomic institutions. In this way, "the initial distribution of assets" leads to the "existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets—that is, natural talents and abilities—as these

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[1] Ibid., p. 173. In his famous article, Joseph Carens contends that if Rawls's theory is taken in global scale, "the principle of free migration" would mostly be endorsed; see Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics* 49, no. 2 (Spring 1987): pp. 255-262.

[2] Rawls, *Theory*, rev. ed., p. 63.

[3] See *formal equality* under subsection 2.3.3.2.

have been developed or left unrealized, and their use favored or disfavored over time."[1] Rawls thus rejects the continuance of morally arbitrary factors' effect on distributive shares; because individuals do not gain their natural endowments (no one chooses her natural features).[2] However, Nozick argues that although persons do not choose and deserve their natural endowments, they are nevertheless "entitled to their natural assets."[3] Since persons are entitled to their natural endowments, to Nozick, "they are entitled to whatever flows from it (via specified types of processes)."[4] Therefore, "[w]hether or not people's natural assets are arbitrary from a moral point of view, they are entitled to them, and to what flows from them."[5] Nozick surely acknowledges that the natural lottery is arbitrary, because it is an accident: "there is no moral reason why the fact ought to be that way."[6] But he rejects the "*connection* between the claim that the distribution of natural assets is arbitrary and the statement that distributive shares should not depend upon natural assets."[7] Persons are entitled to their distributive shares resulting from their natural endowments, according to the entitlement theory of justice. Although natural assets might be arbitrary, distributive shares are not arbitrary (if holdings are acquired and transferred in line with the entitlement theory). In addition to that natural contingency is not the only factor that determines distributive shares. Consider two brothers. The big brother is clever and talented; the little brother is not talented as the big brother. Yet the little

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[1] Rawls, *Theory*, rev. ed., pp. 62-63.

[2] Ibid., p. 87.

[3] Nozick, *Anarchy, State, and Utopia,* p. 225.

[4] Ibid.

[5] Ibid., p. 226.

[6] Ibid., p. 227.

[7] Ibid., p. 224; emphasis added.

brother is diligent, whereas the big brother is lazy. In the course of time, the little brother utilizes educational opportunities efficiently and fully develops his natural capacities. However, since the big brother is lazy, he couldn't develop his natural capacities and misses the opportunities. Eventually, the big brother becomes an unskilled worker, whereas the little brother becomes a professional (e.g. doctor, engineer etc.). As it is seen, brothers pave the way for their own destinies. Both of them make their own choices. The little brother chooses hard work, develops his natural capacities, and benefit from the opportunities. On the other hand, the big brother, who was more talented at first, misses the opportunities and worsens his conditions by not working hard enough. In this way, the little brother is entitled to more advantaged positions, and the big brother is entitled to least advantaged positions (hence distributive shares differ relatively). At that point, Nozick rightly asks: "[w]hy shouldn't holdings partially depend upon natural endowments? (They will also depend on how these are developed and on the uses to which they are put.)"[1] Since persons are autonomous beings, they make their own choices; and they are responsible for their choices and their consequences. In this sense, persons are responsible for their natural endowments and distributive shares. To Nozick, therefore, neither natural endowments nor distributive shares are arbitrary; because "moral entitlements may arise from or be partially based upon such [natural] facts."[2] Hence how persons made use of their natural assets justifies person's entitlements.

Rawls replies to Nozick in an article entitled: "The Basic Structure as Subject" (1978). After re-emphasized the distinguishing and significant role of the basic structure concerned with justice as fairness, he supports his position against

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[1] Nozick, *Anarchy, State, and Utopia,* p. 216. Furthermore, Nozick argues that the persons in the original position should be informed about their natural characteristics; because otherwise they cannot know "*anything* about themselves, for each of their features (including rationality, the ability to make choices, having a life span of more than three days, having a memory, being able to communicate with other organisms like themselves) will be based upon the fact that the sperm and ovum which produced them contained particular genetic material" (ibid., p. 227).

[2] Ibid., p. 227.

Nozick.[1] Starting from the last criticism of Nozick, he argues that even persons' natural endowments are influenced by social circumstances: "an ability is not, for example, a computer in the head with a definite measurable capacity unaffected by social circumstances."[2] Natural capacities can be developed under favorable conditions. If social, economic, and educational opportunities are not provided, natural capacities cannot come to fruition. Rawls maintains that "[a]mong the elements affecting the realization of natural capacities are social attitudes of encouragement and support and the institutions concerned with their training and use."[3] For instance, children in the entertainment age want to be a famous and rich when they grow up. So that instrumental reason rather than theoretical reason develops in "the culture industry;"[4] because, major institutions appreciate visual and commercial arts rather than philosophy. One does not need to contemplate in the entertainment age. Rational capacities thus do not develop in this society.[5] From this wide perspective, it is seen that social conditions influence the development of natural capacities as well.[6] In addition to that think about two

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[1] John Rawls, "The Basic Structure as Subject," in *Values and Morals: Essays in Honor of William Frankena, Charles Stevenson, and Richard B. Brandt*, eds. A. Goldman and J. Kim (Dordrecht, Holland: D. Reidel Publishing, 1978), pp. 47-69. This article is reprinted in Rawls, *Political Liberalism*, pp. 257-288. I quote from the former. For the basic structure, see also section 2.3.

[2] Rawls, "The Basic Structure," p. 56.

[3] Ibid.

[4] Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment: Philosophical Fragments*, trans. Edmund Jephcott, ed. Gunzelin Schmid Noerr (Stanford: Stanford University Press, 2002), p. 95.

[5] Anthony J. Ferri, "Emergence of the Entertainment Age?," *Society* 47, no. 5 (September 2010): pp. 408-409.

[6] Since the basic structure plays a fundamental role, Rawls presumes it as "the first subject" of *Theory*: "the institutional form of society affects its members and determines in large part the kind of persons they want to be as well as the kind of persons they are. The social structure also limits peoples' ambitions and hopes in different ways; for they will with reason view themselves in part according to their position in it and take account of the means and opportunities they can realistically expect. So an economic regime, say, is not only an institutional scheme for satisfying existing desires and aspirations but a way of fashioning desires and aspirations in the future" (Rawls, "The Basic Structure," p. 55).

children coming from different social classes. One is an orphan child who is brought up and educated by the state. The other one comes from a wealthy family and educated in private schools. Since their opportunities are so different; most probably the advantaged child can develop his natural capacities whereas the disadvantaged child could not fully develop her natural capacities. Rawls underlines that "not only our final ends and hopes for ourselves but also our realized abilities and talents reflect, to a large degree, our personal history, opportunities, and social position."[1] Natural endowments of persons therefore are not isolated from society, they change depending on social circumstances.

Next, Rawls claims that justice as fairness allows socioeconomic inequalities deriving from social, natural, and fortuitous factors: "the basic structure most likely *permits* significant social and economic inequalities in the life-prospects of citizens depending on their social origins, their realized *natural endowments*, and the chance opportunities and accidents that have shaped their personal history."[2] Rawls thus affirms Nozick's assertion that persons are entitled to their natural endowments.[3] That is to say, Rawls does not expect a strictly egalitarian society: "socioeconomic stratification would exist even in the fully just society he envisions and because the difference principle, left unconstrained, might well justify them."[4] Since the removal of all inequalities would be similar to the procrustean bed, and socioeconomic inequalities are "necessary or highly advantageous in maintaining effective social cooperation;"[5] Rawls justifies social

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[1] Ibid., p. 56.

[2] Ibid; emphasis added.

[3] In *Restatement*, he confirms this interpretation: "[a] basic structure satisfying the difference principle rewards people, not for their place in that distribution, but for training and educating their endowments, and for putting them to work so as to contribute to others' good as well as their own. When people act in this way they are deserving, as the idea of legitimate expectations requires" (Rawls, *Restatement*, p. 57).

[4] Pogge, *John Rawls,* p. 124.

[5] Rawls, "The Basic Structure," p. 56.

and economic inequalities even in ideal theory. Yet, Rawls considers inequalities from a lifetime perspective. If the necessary background institutions are consolidated, then each person might hold positions of authority and responsibility for a while. So, they can access the positions in turn. Hence, when considered in life-prospects, persons have equal expectations.[1] Rawls concludes that "[w]hat the theory of justice must regulate is the inequalities in life-prospects between citizens that arise from social starting-positions, natural advantages and historical contingencies."[2] Natural and social distinctions therefore are not eliminated, but "the basic structure can be arranged so that these contingencies work for the good of the least fortunate."[3] Justice as fairness "assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system."[4] In other words, Rawls does not seek to equalize all. He just wants to provide equal opportunities to persons who have similar natural endowments and efforts. He seeks to remove class barriers so that everyone has a "fair chance"[5] to reach professional positions. Thomas Pogge also supports that Rawls's main focus is on "class-correlated inequalities of opportunity."[6] Rawls thus does not attempt to even out natural distinctions but regulate these inequalities for the benefit of the least fortunate.

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[1] Rawls cites a university example to explain life-prospects: "imagine a university in which there are three ranks of faculty and everyone stays in each rank the same length of time and receives the same salary. Then while there are inequalities of rank and salary at any given time, there is no inequality in life-prospects between faculty members" (ibid). For the lifetime index, see subsection 2.3.3.2.

[2] Rawls, "The Basic Structure," p. 56.

[3] Rawls, *Theory*, rev. ed., p. 87.

[4] Ibid., p. 63.

[5] Ibid.

[6] Pogge, *John Rawls,* p. 124.

To sum up, although Rawls holds that social conditions affect the realization of natural talents and abilities, he acknowledges Nozick to be right in arguing for persons' entitlements to their natural endowments. Rawls however justifies people's natural endowments and the fruits of their labor thanks to DP; whereas Nozick rejects it. So, the main subject of dispute between Rawls and Nozick is DP. Nozick considers it as a violation of private property rights, whereas Rawls holds DP as a necessary condition for social cooperation. As it is seen, the dissensus results from their distinct viewpoints and presuppositions. Rawls defends egalitarian liberalism, whereas Nozick endorses libertarianism. It appears that Rawls's position is more responsive and reasonable, because he considers the interests of the other, in particular the least advantaged. However, Nozick does not pay attention to the other, he just considers the rights of the individual (*homo economicus*). As George Mead says: "[t]he individual not only has rights, but he has duties; he is not only a citizen, a member of the community."[1] Thus, a theory of justice should consider others as well. Not only the rational man, but also the reasonable man should be taken into consideration. Rawls considers both and offers a theory of justice according to the most advantaged as well as the least advantaged; and he does not leave the assistance of the least advantaged to the mercy of the most advantaged. In Rawls's theory, the enhancement of the least fortunate is structured by the principles of justice. Major institutions are organized to maximize the advantage of the least fortunate. So that free and equal persons can cooperate efficiently and share resources fairly in a just scheme.

Concerning Nozick's second objection, Rawls holds that the right to migrate is not a challenge for his theory, because it is already excluded in the original position: "the alternatives are not opportunities to join other societies, but instead a list of conceptions of justice to regulate the basic structure of one's own society."[2] That

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[1] George Herbert Mead, *Mind, Self, and Society*, ed. Charles W. Morris (Chicago and London: The University of Chicago Press, [1934] 1972), p. 196.

[2] Rawls, "The Basic Structure," p. 61. Recall that at the outset, for practical reasons Rawls presupposes his theory "as a closed system isolated from other societies. The significance of this special case is obvious and needs no explanation. It is natural to conjecture that once we have a sound theory for this case, the remaining problems of justice will prove more tractable in the light of it. With suitable modifications such a theory should provide the key for some of these other

is, Nozick's objection is invalid from the beginning. Moreover, Rawls asserts that the original position is unlike a bargain between persons and associations: "[t]he notion of an individual's contribution to society viewed as an association (so that society is entitled to offer terms for joining derived from the aims of those already members of the association) has no place in a Kantian view."[1] Kantian contract is different from other agreements.[2] The representatives in the original position pick the first principles of justice from the given alternatives.[3] Rawls thus contends that "the calculations that typically influence agreements within society have no place in the original position;" it sets the scene for "rational deliberation."[4] Consequently, Rawls implies that the agreement is not a commercial treaty as Nozick thinks; and the persons does not choose by considering emigration.

In this criticism, Rawls is right because Nozick misses the scope of his theory. From the beginning Rawls restricts his theory to national boundaries. The representatives in the original position chooses the principles among alternative moral conceptions, not from abroad. It is a theoretical model based on Kantian contractarianism. The social contract is not a business deal between individuals or corporations as Nozick supposes. The original position is a choice situation which works for yielding the principles of justice for major institutions. Therefore, Nozick's way of reasoning is invalid. He ignores Rawls's presuppositions by suggesting migration; hence, Nozick's migration argument is off target.

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questions." (Rawls, *Theory*, rev. ed., p. 8); see also section 2.3. For that reason, the international case is examined in Rawls's last book: Rawls, *The Law of Peoples*.

[1] Rawls, "The Basic Structure," p. 60. Here Rawls points out Nozickean state as an "association" or "corporation," see ibid, pp. 51-52.

[2] For the Kantian contractarianism, see subsection 2.2.4.2.

[3] For the original position, see subsection 2.3.2.

[4] Rawls, "The Basic Structure," p. 61.

Last but not least, Rawls rejects Nozick's first and the most important criticism. Rawls claims that his theory does not infringe individual property rights, because it is individualistic and contractarian as well: "since it proceeds from a suitably individualistic basis (the original position is conceived as fair between free and equal moral persons), it is a moral conception that provides an appropriate place for social values without sacrificing the freedom and integrity of the person."[1] As it is explained above, in the beginning of *Theory* he assumes that the persons are represented as free and equal moral beings in the original position.[2] The representatives select the principles for basic institutions under equal conditions. For Rawls, since the choice situation is fair; the principles, which are accepted by the representatives, are just. Given that the representatives choose the principles by presupposing individuals as free and equal, the principles reflect the ideas of freedom and equality. Further, Rawls admits that citizens are entitled to their natural endowments and the advantages gained by their endowments. That is to say, Rawls rejects the socialist motto: "from each according to his ability, to each according to his needs."[3] Put another way, justice as fairness does not take the fruits of persons' labor and allocate them according to their needs. Because, the socialist principle of distribution contradicts with Rawls's basic rights which is covered by EBL: "the psychological and physical integrity of persons."[4] Citizens therefore own their natural assets and the advantages acquired by their assets in justice as fairness: "[i]t is not as if society owned individuals' endowments taken separately, looking at individuals one by one. To the contrary, the question of the ownership of our endowments does not arise; and should it arise, it is persons

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[1] Rawls, "The Basic Structure," p. 67.

[2] See subsection 2.3.1.

[3] Karl Marx, "Critique of the Gotha Programme," in *Karl Marx: Selected Writings,* 2nd ed., ed. David McLellan (Oxford: Oxford University Press, 2000), p. 615; see also Rawls, *Restatement*, pp. 157-158; and Michael A. Slote, "Desert, Consent, and Justice," *Philosophy & Public Affairs* 2, no. 4 (Summer 1973): pp. 339-341.

[4] Rawls, *Restatement*, p. 75. For EBL, see subsection 2.3.3.1.

themselves who own their endowments."[1] Rawls thus approves of the right of self-ownership which Nozick advocates. So, Rawls does not argue for equality at the cost of liberty: "even if an equal distribution of natural assets seemed more in keeping with the equality of free persons, the question of redistributing these assets (were this conceivable) does not arise, since it is incompatible with the integrity of the person."[2] Hence, Rawls's theory is not a theory of redistributive justice which collects all the social product and then distributes it according to a particular pattern. The only thing that Rawlsian property-owning democracy will take from the more advantaged is tax.[3] However, since citizens know the levying of tax from the very beginning, they agree with it as they join in Rawlsian society:

> [c]itizens understand that when they take part in social cooperation, their property and wealth, and their share of what they help to produce, are subject to the taxes, say, which background institutions are known to impose. Moreover, the difference principle (as well as the first principle and the first part of the second principle) respects legitimate expectations based on the publicly recognized rules and the entitlements earned by individuals.[4]

Rawls thus assumes that free and equal persons consent to taxation, when they participate in society. That is, taxation is not an appropriation; because they themselves choose the principles for major institutions which impose the taxation system. In this way, the principles of justice approve and justify persons' profits and entitlements, not seize their labors. Therefore, as mentioned previously, Rawlsian property-owning democracy neither resembles communism nor the welfare state.[5] Property-owning democracy, "with its system of (workably)

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[1] Rawls, *Restatement*, p. 75.

[2] Rawls, "The Basic Structure," p. 65.

[3] For the taxation system in Rawls, see Rawls, *Theory*, rev. ed., pp. 242-250; and Rawls, *Restatement*, pp. 157-158, 160-162.

[4] Ibid., p. 52.

[5] For the discussion of Rawlsian property-owning democracy against other political regimes, see the end of subsection 2.3.3.2.

competitive markets, tries to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy and indirectly political life itself."[1] So, property-owning democracy does not prevent the free market; but it seeks to eliminate monopolies, cartels, and trusts, and maximize the benefit of the worst-off.[2] Rawlsian property-owning democracy tries to forestall the domination of the wealthy few, "not by redistributing income to those with less at the end of each period, so to speak, but rather by ensuring the widespread ownership of productive assets and human capital (educated abilities and trained skills) at the beginning of each period."[3] Certainly, this requires the joint venture of the principles. Recall that EBL, FEO, and DP work in tandem.[4] So, from the beginning of the cooperation, justice as fairness ensures both self-ownership and "the widespread ownership of productive assets."[5] Rawls thus seeks to secure *equal initial state*, *equal circumstances, and equal opportunities* for all so that persons can compete fairly in a just basic structure (e.g. imagine a running race. If athletes start the race from different starting points, would it be a fair play?).[6] After equal starting points are secured and the tyranny of oligarchy is prevented, justice as fairness leaves the rest to competitive markets. Since Rawls is an egalitarian liberal and his theory endorses purely procedural approach, he respects the outcomes of the distribution of the market.[7] Justice as fairness does not correct the

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[1] Rawls, *Theory*, rev. ed., pp. xiv-xv.

[2] Rawls, *Restatement*, pp. 130-132.

[3] Rawls, *Theory*, rev. ed., p. xv.

[4] See subsection 2.3.3.2.

[5] Rawls does not explain clearly whether productive assets are to be individually or collectively owned. He relates the choice to the historical and social circumstances of the country in question; see Rawls, *Restatement*, pp. 114-115; Rawls, *Theory*, rev. ed., pp. xv-xvi; O'Neill and Williamson, *Property-Owning Democracy: Rawls and Beyond*.

[6] Rawls, *Restatement*, p. 53.

[7] Recall van Parijs's claim that Rawls is not an outcome egalitarian but opportunity egalitarian; see van Parijs's interpretation above in subsection 2.3.3.2.

result of the market process, rather it attempts to regulate social, historical, and chance contingencies before the competition takes place.[1]

Consequently, Nozick's criticism that DP either continually interferes with the result of the distribution in order to make it fit to *the pattern* or "forbid[s] capitalist acts between consenting adults"[2] is based on a misunderstanding; because Rawls's theory is a "pure procedural justice"[3] in the first place. It focuses on the procedure rather than the result of the distribution: "[t]he intuitive idea is to design the social system so that the outcome is just whatever it happens to be, at least so long as it is within a certain range."[4] Put another way, it frames basic institutions according to the principles (which are also chosen in a fair procedure). Then it leaves the rest to basic institutions. Persons compete and cooperate in the basic structure and earn their legitimate shares. Justice as fairness does not determine distributive shares according to a criterion or pattern. After the principles are put in application, distributive shares are specified in competitive markets.[5] Rawls's theory thus does not define shares of citizens beforehand: "if it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is more just than another, then there is simply no answer to the question."[6] If the principles apply to basic institutions rigidly and completely, Rawls assumes that "[a] fair distribution can be arrived at only by the actual

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[1] Rawls, "The Basic Structure," p. 56. See also Williamson and O'Neill, "Demands of Justice," p. 3.

[2] Nozick, *Anarchy, State, and Utopia,* p. 163.

[3] Rawls, *Theory*, rev. ed., p. 74. See also subsection 2.3.1.

[4] Rawls, *Theory*, rev. ed., p. 74

[5] Ibid., pp. 244-245. See also ibid., p. 478.

[6] Rawls, "The Basic Structure," p. 64. Recall that the principles are implemented to major institutions in "the four-stage sequence;" socioeconomic institutions are regulated in the third and fourth stages. That is, the principles do not define the distribution of primary goods directly. For the four-stage sequence, see subsection 2.3.3.1.

working of a fair social process over time in the course of which, in accordance with publicly announced rules, entitlements are earned and honored."[1] Pure procedural justice presupposes that if the procedure is just and applied fairly, "*within appropriate limits*, whatever distributive shares result are just."[2] At the end of the process, persons are entitled to their shares. Justice as fairness thus does not continually meddle in economic affairs. Furthermore, Rawls argues that "the two principles of justice do not insist that the actual distribution conform at any given time (or over time) to any observable pattern, say equality, or that the degree of inequality computed from the distribution fall within a certain range."[3] After background conditions are satisfied and the principles are implemented in order, "the public system of rules"[4] defines distributive shares. That is to say, DP does not determine distributive shares of persons. To clarify, Rawls states that

> [t]he difference principle holds, for example, for income and property taxation, for fiscal and economic policy. It applies to the announced system of public law and statutes and not to particular transactions or distributions, nor to the decisions of individuals and associations, but rather to the institutional background against which these transactions and decisions take place.[5]

DP therefore does not directly interfere with everyday economic transactions. It designs economic policies and principles of the background institutions parallel to the prior principles of justice (EBL and FEO). In this context, although DP does not set measures to the economic life, Rawls nevertheless talks about some limits above. What are the "appropriate limits" for the distribution? The only constraints in justice as fairness are:

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[1] Rawls, "The Basic Structure," p. 64

[2] Ibid; italics added.

[3] Ibid., p. 65.

[4] Ibid.

[5] Ibid.

the limits on the accumulation of property (especially if private property in productive assets exists) that derive from the requirements of the fair value of political liberty and fair equality of opportunity, and the limits based on considerations of stability and excusable envy, both of which are connected to the essential primary good of self-respect. We need such an ideal to guide the adjustments necessary to preserve background justice.[1]

In this passage, Rawls basically refers to two limitations. The first one forestalls "excessive accumulations of property and wealth;"[2] because if not, with private property in productive assets, the wealthy few controls the economy and hence rules and policies.[3] In addition to that the wealthy families might create privileged career and educational opportunities for themselves and their children alone.[4] So that the wealthy few might undermine EBL (with the fair value of the political liberties) and FEO.[5] Rawls however does not expresses clearly the "appropriate limits" of property and wealth. He leaves the specification of the constraints to political sociology (in particular the relation between economy and politics).[6] The second limitation is about social and ethical constraints on the more advantaged to eliminate the emergence of envy in the worst-off class. If the worst-off feel that they cannot improve their expectations without leveling down the well-off; they will break the rules of justice and harm the well-off. Then justice as fairness could not be stable. To prevent envy, Rawls mentions some limitations but again he postpones the specification to "the legislative stage where the parties have more

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[1] Ibid.

[2] Rawls, *Theory*, rev. ed., p. 63.

[3] Ibid., p. xv. See also Rawls, *Restatement*, p. 53.

[4] See democratic equality in subsection 2.3.3.2.

[5] Rawls, *Theory*, rev. ed., p. 246. For a detailed examination of the limitations in Rawls's property-owning democracy, see Williamson and O'Neill, "Demands of Justice," pp. 1-6.

[6] Rawls, *Theory*, rev. ed., p. 199.

information and the principle of political determination applies."[1] He just underlines the significance of self-esteem. For Rawls, a theory of justice should provide the social foundations of self-esteem for all citizens. Otherwise, the social scheme would not be stable.[2] Accordingly, Rawls's property-owning democracy, on the one hand, "put[s] limits on accumulation at the top;"[3] and on the other hand, via DP, it sets limits on socioeconomic inequalities to "provide an economic baseline to the 'least well off'."[4] In this way, Rawls seeks to restrict "overall inequality from both directions (top and bottom);"[5] so that the difference between the well-off and the worst-off would be reduced.

All things considered, about Nozick's objection that DP infringes private property rights, it is seen that when Rawls's theory tackled on its own terms, it is consistent. That is, justice as fairness does not violate individual property rights broadly understood. There is no violation of property rights because the representatives consent to the principles in the original position. Since free and equal citizens themselves decide on the principles, their rights are not violated. What is more, Rawls adopts purely procedural approach; so, his theory does not interfere with the daily agreements and transactions continually as Nozick supposes. The main point of controversy between Rawls and Nozick is their different conceptions of justice. Rawls defends an ideal-based conception of justice, whereas Nozick supports a rights-based conception of justice. For that reason, they could not decide on the same principles.[6] Rawls adopts a contractarian, social, and ideal-based perspective,

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[1] Ibid., p. 479. In fact, this is the problem of stability which bothers Rawls and paves the way for *Political Liberalism*; see Freeman, *The Cambridge Companion to Rawls,* pp. 3-37.

[2] For envy and the question of stability, see Rawls, *Theory*, rev. ed., pp. 468-479.

[3] Williamson and O'Neill, "Demands of Justice," p. 3.

[4] Ibid.

[5] Ibid.

[6] For example, see Rawls's account of private property at the end of subsection 2.3.3.2.

whereas Nozick adopts a libertarian, historical, and rights-based perspective. Therefore, their agreement is almost impossible. Nozick's entitlement theory sounds nice for the more advantaged (because they can protect their privileged positions), but what if we belong to the least advantaged class? What would we choose in such a situation, Rawls or Nozick's theory? Of course, we would prefer justice as fairness, because it strives to increase the advantages of the worst-off class. To be honest and impartial, we have to give priority to the worst-off rather than the well-off. The well-off already enjoys a comfortable life. The point is making the conditions of the worst socioeconomic position better as much as possible. In this respect, Rawls is right, considerate, and responsive to the concerns of the least fortunate. His theory does not abandon the development of the worst-off to their fate or to the mercy of individuals.

2.3.5.3 Cohen's critique

If we take Robert Nozick's critique from the right, we can count Gerald Allan Cohen's (also known as Jerry Cohen) critique from the left. Nozick condemns Rawls's theory because of including illiberal, socialist, and very egalitarian ideas; whereas Cohen criticizes Rawls because of not proposing a consistent and sufficient egalitarian theory of justice (which "is a *strongly egalitarian* conception in the sense that unless there is a distribution that makes both persons better off … an equal distribution is to be preferred."[1]). In chapters 8 and 9 of the book *If You're an Egalitarian, How Come You're So Rich?*, Cohen examines Rawls's theory of justice in detail. Philosopher Thomas Nagel, who is a former student of Rawls, observes that Cohen "presents, I believe, the most important contemporary challenge to the egalitarian form of liberalism found in the work of John Rawls and others."[2] As it is seen in the title of Cohen's book, he draws attention to the inconsistency between expressed institutional egalitarianism and inegalitarian behaviors of individuals in Rawls's theory. On the one hand, Rawls seeks to regulate socioeconomic inequalities for the maximum advantage of the worst-off

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[1] Rawls, *Theory*, rev. ed., pp. 65-66; emphasis added.

[2] Nagel, *Concealment and Exposure*, p. 107.

via basic institutions; on the other hand, self-interested individuals make their personal choices to maximize their own earnings in their everyday lives.[1] It is apparent that the private choices of self-seeking persons cannot render possible an egalitarian society. Influenced by the feminist critique, Cohen argues that

> [i]f, as I now believe, how selfish people are affects the prospects for equality and justice, then that is partly because, as I now also believe, justice cannot be a matter only of the state-legislated structure in which people act but is also a matter of the acts they choose within that structure, the personal choices of their daily lives. I have come to think, in the words of a recently familiar slogan, that *the personal is political*.[2]

According to Cohen, then, Rawls has to take into account persons' private choices as well; otherwise an egalitarian society is not possible. Designing basic institutions alone is not enough to achieve an egalitarian society.[3] That is to say, "that principles of distributive justice—principles, that is, about the just distribution of benefits and burdens in society—apply, wherever else they do, to people's legally unconstrained choices."[4] The private is not exempt from the principles of justice. Persons should lead their private lives according to the principles as well. "Because," Cohen continues, "I believe that the personal is political, in the specified sense, I reject Rawls's view that principles of justice apply only to what he calls the 'basic structure' of society."[5] In this way, he

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[1] For the attitudes of agents, see subsection 2.3.1.

[2] Cohen, *If You're an Egalitarian*, p. 122. Cohen takes the pattern of the feminist objection and gives a new content to it: "[t]he substance of the feminist critique is that standard liberal theory of justice, and the theory of Rawls in particular, unjustifiably ignore an unjust division of labor, and unjust power relations, within families (whose legal structure *may* show no sexism at all). That is the key point of the feminist critique, from a political point of view. But the (often merely implicit) form of the feminist critique, which we get when we abstract from its gender-centered content, is that choices not regulated by the law fall within the primary purview of justice, and that is the key lesson of the critique, from a theoretical point of view" (ibid., p. 123).

[3] Rawls's approach reminds the public/private distinction in liberal thought; see Nagel, *Concealment and Exposure*, p. 104, 107.

[4] Cohen, *If You're an Egalitarian,* p. 122.

[5] Ibid., p. 123.

believes, Rawls cannot achieve his project. To be precise, Cohen states that individual "choices within the economic structure cannot be placed outside the primary purview of justice *on the ground* that the only thing (quite generally) which is within its primary purview is [the basic] structure."[1] So, according to Cohen, the principles of justice should also govern individual behavior; institutional regulations are not enough for a theory of justice. Rawls cannot realize his ideal in this manner.[2]

In particular, Cohen criticizes Rawls's application of DP in his Tanner Lectures, "Incentives, Inequality, and Community."[3] Recall that DP justifies socioeconomic inequalities that are required to enhance the socioeconomic well-being of the least fortunate.[4] So that greater gains of the well-off contributes to the condition of the most disadvantaged. Since these inequalities enhances the prospects of both (with respect to equal distribution), they are permissible.[5] It is presumed that if these inequalities are allowed, the well-off, especially "talented people will produce more than they otherwise would if, and only if, they are paid more than an ordinary wage, and some of the extra which they will then produce can be recruited on behalf of the worst off."[6] Higher salaries will induce talented persons,

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[1] Ibid., p. 142.

[2] Thomas Nagel explains Cohen's objection as follows: Rawls's egalitarian liberalism is not the right theory for Cohen (who is a former Marxist), "because it evaluates the justice of a society only by its institutional arrangements and does not extend the same egalitarian values to individual conduct. It therefore accepts some class stratification as the inevitable result of blameless partiality by individuals, however just their institutions may be. Cohen now believes, contrary to both Marxism and liberalism, that the equality that justice requires cannot be produced by transformed institutions alone but requires a revolution in the human soul" (Nagel, *Concealment and Exposure*, p. 110).

[3] For the full critique, see Cohen, "Incentives, Inequality, and Community," pp. 263-329.

[4] Rawls, *Theory*, rev. ed., p. 68.

[5] See DP in subsection 2.3.3.2.

[6] Cohen, *If You're an Egalitarian,* p. 124.

and their productivity will increase; hence the social product will grow and their shares will be bigger as well. On the contrary, "in a fully equal society people will lack incentives to work hard, take risks, etc."[1] Why a talented professional should toil everyday if she will take an equal share anyway? Talented persons demand a special incentive to strive hard. Accordingly, "their high levels of income cause unusually productive people to produce more than they otherwise would; and, as a result of the incentives enjoyed by those at the top, the people who end up near the bottom are better off than they would be in a more equal society."[2] This is *the incentives argument* implicit in DP that Cohen questions. He observes that the incentives argument is "more problematic than Rawlsians suppose:"

> at least when the incentive consideration is isolated from all reference to desert or entitlement, it generates an argument for inequality that requires a model of society in breach of an elementary condition of community. The difference principle can be used to justify paying incentives that induce inequalities only when the attitude of talented people runs counter to the spirit of the difference principle itself: they would not need special incentives if they were themselves unambivalently committed to the principle. Accordingly, they must be thought of as outside the community upholding the principle when it is used to justify incentive payments to them.[3]

That is, DP applies to basic institutions which include talented persons who do not act parallel to the spirit of the principle. If they behave as DP prescribes, they would not demand "special incentives." If they do not behave as DP prescribes, they would lead their lives according to their own interests. So, DP applies to basic institutions alone, and self-interested talented persons try to increase their own profits. Such a society "is not just in the appropriate Rawlsian sense, for a society is just, according to Rawls, only if its members themselves affirm and uphold the

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[1] Liam Murphy, "Institutions and the Demands of Justice," *Philosophy & Public Affairs* 27, no. 4 (Fall 1999): p. 264.

[2] Cohen, "Incentives, Inequality, and Community," p. 265. Nagel reveals the hidden premise of the incentives argument as follows: "the poor cannot be best provided for unless others are permitted to be rich" (Nagel, *Concealment and Exposure*, p. 111).

[3] Ibid., pp. 268-269.

correct principles of justice."[1] On the other hand, if the talented persons approve and support DP, "why, in the light of their own belief in the principle, they require more pay than the untalented get, for work which may indeed demand special talent but which is not specially unpleasant[?]"[2] In that case, the additional rewards for the talented, and hence inequalities, are *not* required for improving the expectations of the worst-off.[3] If the talented persons were equally industrious without inducements, "there would be no need to depart from equality."[4] Consequently, "the difference principle can justify inequality only in a society where not everyone accepts that very principle. It therefore cannot justify inequality in the appropriate Rawlsian way."[5] That is, DP can give grounds for the inequalities only in an inegalitarian society that includes self-seeking talented people which is against the spirit of the principle.[6] The talented make *as if* they approve DP but they do not embrace an egalitarian attitude in fact. Inequality is thus not justified in the Rawlsian way. This is to say, Cohen adds, "the justice of a society is not exclusively a function of its legislative structure, of its legally imperative rules, but is also a function of the choices people make within those rules."[1] Cohen's remark suggests the distinction between law and ethics. Ethics

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[1] Cohen, *If You're an Egalitarian,* p. 126.

[2] Ibid.

[3] Ibid., p. 127. According to Cohen, the talented persons themselves "*make* those rewards necessary, through their own unwillingness to work for ordinary rewards as productively as they do for exceptionally high ones, an unwillingness which ensures that the untalented get less than they otherwise would. High rewards are, therefore, necessary only because the choices of talented people are not appropriately informed by the difference principle" (Ibid); see also the analogy between the kidnapper and the talented in Cohen, "Incentives, Inequality, and Community," pp. 276-279.

[4] Murphy, "Institutions and the Demands of Justice," p. 265.

[5] Cohen, *If You're an Egalitarian,* p. 127.

[6] Cohen observes that in Rawls's theory "an anti-egalitarian selfishness must be attributed to the more productive, as part of the explanation for why inequality is necessary, to the extent that it is indeed necessary" (ibid., p. 120). Sandel had shown the contradiction in justice as fairness in a different way, see Michael J. Sandel, "The Procedural Republic and the Unencumbered Self," *Political Theory* 12, no. 1 (February 1984): pp. 89-91.

fills the normative gap left by law. Talented self-seekers can obey legal rules and at the same time be zillionaires. So, after they contributed to the condition of the worst-off, they can do whatever they want. At that point, "[a] society that is just within the terms of the difference principle," Cohen concludes, "requires not simply just coercive *rules*, but also an *ethos* of justice that informs individual choices."[2] Without an ethos of justice, "a social *ethos* which inspires uncoerced equality-supporting choice,"[3] DP cannot be fulfilled according to Cohen. "In the absence of such an ethos, inequalities will obtain that are not necessary to enhance the condition of the worst off: the required ethos promotes a distribution more just than what the rules of the economic game by themselves can secure."[4] Otherwise, socioeconomic inequalities will persist and even be reproduced. From Cohen's perspective, to realize Rawls's theory an *egalitarian ethos* is necessary, rather than special incentives for the talented.[5]

Cohen's critique aims to indicate that DP not only tolerates large inequalities but also requires "unequal structures and/or inequality-endorsing attitudes."[6] As shown

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[1] Ibid., p. 127.

[2] Ibid., p. 128. Recall that "ethics" comes from the Greek word "*ēthos*" which means "character;" see Anthony Preus, *Historical Dictionary of Ancient Greek Philosophy*, 2nd ed. (Lanham, MD: Rowman & Littlefield, 2015), s.v. "ēthos." Zeno the Stoic states that "Ēthos is the spring of life from which actions individually flow" (*Stoicorum Veterum Fragmenta*, ed. Hans Friedrich von Arnim, vol. 1 [Stuttgart: Teubner, 1903], p. 50; trans. in Preus, *Ancient Greek Philosophy,* p. 155). Moreover, Cohen defines the *social ethos* as follows: "the ethos of a society is the set of sentiments and attitudes in virtue of which its normal practices, and informal pressures, are what they are" (Cohen, *If You're an Egalitarian*, p. 145).

[3] Ibid., p. 131.

[4] Ibid., p. 128.

[5] Cohen draws attention to "the informal structure of society," such as *social conventions,* that should be considered in a theory of justice in addition to *major institutions*, *choices of persons*, and *social ethos*; so "[i]f we care about social justice, we have to look at four things: the coercive structure, other [informal] structures, the social ethos, and the choices of individuals; and judgment on the last of those must be informed by awareness of the power of the others" (Cohen, *If You're an Egalitarian*, p. 143).

[6] Cohen, "Incentives, Inequality, and Community," p. 270.

above, in Rawls's theory of justice, "[e]quality appears, at first, to be a premise. It is then rejected, *as* a premise, when the ream for wanting equality is clarified: it is rejected in favor of the difference principle."[1] That is to say, rather than removing inequality, justice as fairness actually institutionalizes and perpetuates inequality; because, "[i]nequality is (not only justified but) just, for Rawls."[2] Cohen however rejects Rawls's justification and license for inequality in the name of justice.

Although Rawls did not reply to Cohen in his published work, he made an unpublished memo in reply to Cohen's Tanner Lectures mentioned above. So, we will start the examination of Cohen's critique with Rawls and fill in the blanks with Rawlsian responses. Hence, we will examine the replies of Rawls and two Rawlsians in turn.

In his memo, Rawls underlines the prior principles of justice: EBL and FEO. He points out the lexical ordering of the principles. EBL precedes FEO; and FEO comes before DP. So, EBL and FEO should be fulfilled before DP. To Rawls, thus, Cohen misses the general framework of his theory, and focuses on DP alone. However,

> justice as fairness does not justify economic and social inequalities, even when they do contribute somewhat to the well-being of the least advantaged, given how things now are. I emphasized that inequalities are not [just] unless the prior principles to which the difference principle is subordinate are also satisfied.[3]

That is, DP actually permits the inequalities which the lexically prior principles had allowed. First, EBL eliminates the political influence of the wealthy; because

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[1] Ibid.

[2] Cohen, *If You're an Egalitarian,* p. 120.

[3] John Rawls, "Comments on Cohen on the Compatibility of Incentives" (unpublished manuscript, March 14, 1994), available in the archive collection of Pusey Library, Harvard University, Accession No. 14990, Box 9, File labeled "PL Lects. 171.1994 Handouts," p. 2; quoted in Mark R. Reiff, "The Difference Principle, Rising Inequality, and Supply-Side Economics: How Rawls Got Hijacked by the Right," *Revue de philosophie économique* 13, no. 2 (2012): p. 134.

EBL ensures the fair value of the political rights and liberties. Thus, the wealthy, who have a disproportionate economic power relative to the worst-off, cannot affect the design of basic institutions for their own advantage. In addition to that, FEO removes class barriers and offers real educational and professional opportunities to all, regardless of social class. Hence the socially disadvantaged develops their talents and abilities, and has equal chance to achieve social positions of responsibility. After the prior principles are satisfied, DP allows socioeconomic inequalities which make the least fortunate better off relative to equal distribution. If the inequalities do not make the least advantaged better off, they are not permissible. Therefore, when DP is considered together with the other principles, the inequalities are reduced from both ends as explained above.[1] However, there is still a range of permissible inequalities quite large. Rawls allows these inequalities, not only for the motivation of the talented; but also for the "better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on."[2] At the same time, the inequalities are tolerated "to put resources in the hands of those who can make the best social use of them;"[3] so that everyone benefits from these inequalities. For instance, Nagel makes us think of a world without profit incentives: "I suspect we would still be producing multiple drafts on typewriters and eating only root vegetables in the winter. There are worse fates, and maybe a true egalitarian wouldn't mind, but it's a real question how we are to imagine this world working and whether the poor would be better off in it."[4] It is evident that the existing level of development would not occur without the profit motive; the talented would not make an effort for equal payments; and even elementary works would not be done because of the inadequacy of incentives. Of course, the worst-off would be worse off in that case.

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[1] See subsections 2.3.3.1, 2.3.3.2, and 2.3.5.2.

[2] Rawls, *Theory*, rev. ed., p. 68.

[3] Rawls, "A Kantian Conception of Equality," p. 257.

[4] Nagel, *Concealment and Exposure*, p. 111.

Maybe people would not even meet their basic needs in such an egalitarian society (due to the increasing needs of a rising population against finite resources).[1]

About Cohen's objection, that Rawls's theory concentrates on basic institutions alone and ignores private choices of persons in daily economic lives, Jon Mandle reminds the passages about the principles for individuals in *Theory*. Rawls admits that "a complete theory of right includes principles for individuals as well."[2] Depending on this idea, in response to Cohen, Mandle puts forward that

> [i]f individuals are motivated to pursue their narrow self-interest to the exclusion of others, we can properly call them selfish and greedy. And if individuals trick or otherwise take advantage of others, by exploiting their ignorance, for example, we can properly say that they are unjust even if they do so within the limits of the law and the rules of a just basic structure.[3]

Rawls thus does not approve of unjust acts of persons definitely. "The question," according to Mandle, "is whether the same principles that apply to the basic structure must also apply to individual conduct."[4] Justice as fairness tackles the principles for major institutions, and "rightness as fairness" addresses the "principles for individuals;" but Rawls gives priority to justice as fairness.[5] So, Rawls does not ignore the principles for individuals but postpones it until determining the principles for basic institutions.

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[1] Recall Malthus's population theory, see Thomas Robert Malthus, *An Essay on the Principle of Population as it Affects the Future Improvement of Society, with Remarks on the Speculations of Mr. Godwin, M. Condorcet, and Other Writers* (Facsimile reprint), (London: Macmillan, [1798] 1966), pp. 12-17.

[2] Rawls, *Theory*, rev. ed., p. 93.

[3] Mandle, *Rawls's Theory,* p. 195.

[4] Ibid.

[5] Rawls, *Theory*, rev. ed., pp. 93-95. Although Rawls underlines the significance of rightness as fairness, he did not elaborate it like justice as fairness. For rightness as fairness, see ibid., p. 15, 95-96; and as a comprehensive doctrine see Rawls, *Political Liberalism*, p. xlii. For the principles for individuals, see Rawls, *Theory*, rev. ed, sects. 18, 19, 51, 52.

Finally, regarding Jerry Cohen's basic structure objection, Joshua Cohen evokes two reasons for the emphasis on basic institutions: "the pervasive influence of institutions on political-economic outcomes and on culture and identity."[1] First, basic institutions "play a large role in shaping economic and political outcomes" via EBL and FEO as stated above ("social investment in human capital, wide dispersion of capital"[2] in property-owning democracy). Secondly, relying on Rawls, Joshua Cohen argues that basic social "institutions play a large role in shaping a society's culture and the identity of members."[3] Rawls supports this idea as follows: "the character and interests of individuals … are not fixed or given. A theory of justice must take into account how the aims and aspirations of people are formed; and doing this belong to the wider framework of thought in the light of which a conception of justice is to be explained."[4] In addition to identity, the basic structure affects culture as well. According to Rawls, for instance,

> an economic regime … is not only an institutional scheme for satisfying existing desires and aspirations but a way of fashioning desires and aspirations in the future. More generally, the basic structure shapes the way the social system produces and reproduces over time a certain form of culture shared by persons with certain conceptions of their good.[5]

Social and economic institutions thus influence society's culture and character. Hence, to Joshua Cohen, Rawls believes that "institutions make a large difference to ethos,"[6] which directs individual behavior in society. Justice as fairness

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[1] Joshua Cohen, "Taking People as They Are?," *Philosophy and Public Affairs* 30, no. 4 (Autumn, 2001): p. 364.

[2] Ibid., p. 381.

[3] Ibid.

[4] Rawls, "The Basic Structure," p. 55.

[5] Ibid.

[6] Cohen, "Taking People as They Are?," p. 376.

therefore does not need to lay special emphasis on the ethos: "the social ethos is important but so pervasively shaped by institutions and the political culture that it does not require independent treatment by principles of justice."[1] The basic structure already shapes the social ethos and hence individual conduct, according to Joshua Cohen.

First of all, Rawls and Rawlsians could not refute Jerry Cohen's main criticism but misrepresent it and then seek to refute the misrepresented criticism, similar to the straw man fallacy. In fact, Cohen objects to Rawls's justification of inequality. However, Rawlsians represent his criticism as if justice as fairness permits "too much inequality;" and then they seek to show that it does not allow much inequality. Thus, Rawls and Rawlsians actually commit the straw man fallacy rather than representing Cohen's main criticism fairly and then examining it. His main objection to Rawls is "a certain justification for inequality, a certain representation of the conditions under which it is just. I reject that justification regardless of how *much* inequality it would actually justify, or might be thought by Rawls to justify."[2] Cohen is essentially against Rawlsian incentives justification of inequality. The amount or range of inequality is not the main point for Cohen. He categorically rejects Rawlsian justification of inequality. In response to Rawls, he states that

> [t]he claim that the prior principles have an equalizing tendency does not touch the philosophically crucial distinction, which is not between large and small inequalities but between inequalities (however small) that are not unconditionally required to improve the condition of the badly off and inequalities (however large) that are so required. Philosophy is interested in grounds, not ranges, of inequality.[3]

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[1] Ibid., p. 384.

[2] Cohen, *Rescuing Justice and Equality*, p. 382.

[3] Ibid., pp. 382-383. Although Cohen replies Rawls's response, he possibly wasn't aware of Rawls's memo. Anyway, Rawlsians raise the same objection to Cohen, see ibid.

So, Cohen claims that he adopts a philosophical attitude against Rawls's justification of inequality, whereas Rawls takes a pragmatic-political approach to the issue of inequality. Cohen is against the justification of the inequalities that ameliorate the situation of the least fortunate; as if the inequalities are essential, which are not in effect. However, Rawls approves of the inequalities which enhances the condition of the worst-off. Thus, Rawls's *lexically prior principles claim* is not actually an objection to Cohen's critique; because, for Rawls, "people's opportunities to hold office and exercise political influence are substantially independent of their socioeconomic position" does not demand "substantially equal material holdings."[1] That is to say, EBL and FEO can be satisfied in a stratified society as well. Even, as it is explained above, a Rawlsian society requires social stratification to sustain itself. Rawls's principles do not create a more egalitarian society than would DP unconstrained by the prior principles. The prior principles claim therefore could not answer Cohen's objection.

Cohen however fails to notice other factors related to *efficiency* and *innovation* which justify socioeconomic inequalities for the advantage of the least fortunate. He develops his argument against Rawls's theory depending on the *incentives* which induce the talented to work more productively; but the incentives argument for the talented is one of the factors that justify Rawlsian socioeconomic inequalities. Not only the talented but also *efficient use of resources*, *enabling innovation*, and *technological development* demand special incentives. But Cohen does not see these factors and focuses only on the talented; hence he constructs his argument relying on just one reason of inequality. So that although Cohen's argument is sound enough, the critique is based on one pillar alone. Since he neglects other pillars, the basis of the critique remains weak.

Concerning Mandle's reminder of the principles for individuals in *Theory*, Cohen remarks that they are "*additional* to those that apply to the basic structure. I have argued, instead, that there is no good reason why the *very* principles that govern

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[1] Ibid., p. 385.

the basic structure should not extend to individual choice within that structure."[1] In response to Cohen's objection, we have to recall unique characteristics of individuals and institutions. Rawls's principles are designed for major institutions (not even for a family, church, or a university).[2] He emphasizes in *Theory* that the principles are not implemented directly to everyday lives of persons. They are applied in the four-stage sequence.[3] Rawls underlines,

> the distinct purposes and roles of the parts of the social structure, and how they fit together, that explains there being different principles for distinct kinds of subjects. Indeed, it seems natural to suppose that the distinctive character and autonomy of the various elements of society requires that, within some sphere, they act from their own principles designed to fit their peculiar nature.[4]

For that reason, the principles for institutions does not apply to individuals. Persons cannot pursue immediately Rawlsian principles in their everyday lives. Private choices of individuals correspond to the private sphere, hence, requires distinct principles of justice.[5] The principles for institutions correspond to the public sphere; so that they differ from the principles for individuals. In this manner, Rawls replies to Cohen from a methodological perspective.

Regarding the contention that the basic structure has considerable influence on the social ethos, Jeffrey Cohen asserts that the opposite is also true: "[w]hile it is undoubtedly true that the structure profoundly affects the ethos, it is also true that

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[1] Ibid., p. 359.

[2] Rawls, "The Basic Structure," pp. 49-50.

[3] Rawls, *Theory*, rev. ed., pp. 171-176.

[4] Rawls, "The Basic Structure," p. 50. Rawls thus confirms Walzer's *Spheres of Justice*, see subsection 2.3.5.1.

[5] For instance, we may even leave the principles of justice in our family. In general, we act with compassion and love in our family, not with justice. Or one may act with the principle of beneficence in her daily life.

the social ethos profoundly affects the character of the basic structure."[1] He cites Britain's transformation after World War II as an example, "[i]t was not the character of Britain's basic structure in 1945 that caused it to be transformed in a socialistic direction after 1945, but a powerful democratic ethos that was formed in the experience of war."[2] So, for Cohen, the effect of the social ethos on the basic structure cannot be ignored or underestimated. For this reason, "[i]f the basic structure is said to be *the* site of justice because of its influence on the ethos, then, by the same argument, the ethos is *the* site of justice. Neither the structural 'variable' not the ethos 'variable' is 'independent' of the other."[3] It appears that the problem considered here derives from their distinct viewpoints. Rawls adopts Platonic approach, whereas Cohen asserts the contrary. Rawls tries to apply the principles from top to bottom; this is why it is applied through basic institutions.[4] Cohen's focus however is on the social ethos, even on *the choices of individuals*. Hence, Cohen imagines an egalitarian society which rises from the bottom-up.[5] Rawls focuses on basic institutions accordingly, whereas Cohen concentrates on individuals.[6] So it seems like their agreement is impossible. Their approaches are fundamentally different, because they look at the problem of distributive justice from opposite perspectives. In addition to that their conceptions of justice are very distinct. Rawls approves of just inequalities according to DP. To be precise, he

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[1] Cohen, *Rescuing Justice and Equality*, p. 378.

[2] Ibid.

[3] Ibid.

[4] See Walzer's critique above subsection 2.3.5.1.

[5] Cohen endorses that: "both the Marxist and the Rawlsian conceptions are misguided, since equality requires not mere history and the abundance to which it leads, or mere politics, but a moral revolution, a revolution in the human soul" (Cohen, *If You're an Egalitarian,* p. 2).

[6] Vrousalis claims that "Cohen seems to have endorsed the meta-sociological claims of methodological individualism" (Nicholas Vrousalis, "G. A. Cohen's Vision of Socialism," *The Journal of Ethics* 14, no. 3/4 [September/December 2010]: p. 187).

defends *opportunity egalitarianism,* as van Parijs explains.[1] Cohen however supports *luck egalitarianism,* and roughly he contends that "an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, *pro tanto,* unjust,"[2] so it should be compensated.[3] But Rawls does not hold luck egalitarianism. In *Theory,* he rejects the principle of redress, which luck egalitarians apply to.[4] For Rawls, the inequalities resulting from chance contingencies cannot be redressed but can be regulated for the benefit of the least fortunate in tandem with the prior principles.[5] Then all the persons gain their distributive shares via social cooperation consistent with pure procedural justice. Rawls thus does not have a predetermined particular pattern in his mind to specify distributive shares; whereas Cohen has a particular pattern of distribution in advance:

> the distribution of benefits and burdens across individual persons is fair, and bringing about and sustaining the just distribution are the responsibilities of the individual members of society not merely the standard for choice of basic structural institutions. In Cohen's idea of a just society individuals make their choices in daily life, within the limits of an appropriate personal prerogative

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[1] See subsection 2.3.3.2.

[2] Cohen, *Rescuing Justice and Equality*, p. 7.

[3] Cohen's "root belief is that there is injustice in distribution when inequality of goods reflects not such things as differences in the arduousness of different people's labors, or people's different preferences and choices with respect to income and leisure, but myriad forms of lucky and unlucky circumstance" (Cohen, *If You're an Egalitarian,* p. 130); see also Anderson, "What is the Point of Equality?," pp. 287-302, and G. A. Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, ed. Michael Otsuka (Princeton: Princeton University Press, 2011), pp. 5-123.

[4] The principle of redress requires that "undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for. Thus the principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions. The idea is to redress the bias of contingencies in the direction of equality.… Now the difference principle is not of course the principle of redress" (Rawls, *Theory*, rev. ed., p. 86).

[5] See subsection 2.3.3.2.

that each of us has to pursue her own projects and aims, with a view to contributing to the good of others and to bringing about a just distribution, which Cohen supposes to be roughly an equal distribution.[1]

For Cohen, therefore, the pattern of distribution should be *equality-based*, unless persons choose deliberately other options such as not to work hard or leisure etc. If they are responsible for their unequal rewards, that is not unjust; but if they are not responsible for their unequal rewards (because of fortuitous circumstances), that is unjust. So, Cohen defends a stronger version of egalitarianism. Although Rawls's theory has a "tendency to equality,"[2] "[t]he theory does not favor reduction of inequality as an end in itself but only as a means to benefit the worst off."[3] Justice as fairness thus does not have a genuine egalitarian character.

All things considered, the positive aspects of Cohen's understanding of distributive justice are its genuine egalitarian character, comprehensive outlook, bottom-up approach, and consistency; however, he does not present a complete theory like Rawls.[4] Moreover, Cohen founds his critique of the incentives argument on the talented alone; he does not take into account other factors such as efficient use of resources, technological development and innovation. So, Cohen has to reply to these questions: How an egalitarian society can induce technological development

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[1] Richard J. Arneson, "Justice is not Equality," *Ratio* 21, no. 4 (December 2008): p. 372. For Cohen's understanding of equality, see Cohen, "Incentives, Inequality, and Community," pp. 263-329; Cohen, *If You're an Egalitarian,* pp. 117-130; Cohen, *Rescuing Justice and Equality*; Cohen, *On the Currency of Egalitarian Justice,* pp. 4-106; G. A. Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009); David Estlund, "Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls," *Journal of Political Philosophy* 6, no. 1 (1998): pp. 101-107; Vrousalis, "G. A. Cohen's Vision of Socialism," pp. 185-216; Jonathan Quong, "Left-Libertarianism: Rawlsian Not Luck Egalitarian," *Journal of Political Philosophy* 19, no. 1 (2011): pp. 75-77; Nagel, *Concealment and Exposure*, pp. 107-11; and Arneson, "Justice is not Equality," pp. 371-391.

[2] Rawls, *Theory*, rev. ed., p. 86.

[3] Nagel, *Concealment and Exposure*, pp. 107-108. In this work, Thomas Nagel attempts to answer Cohen's objections to Rawls, however he himself did not satisfied even with the reply: "I have to admit that, although I am an adherent of the liberal conception, I don't have an answer to Cohen's charge of moral incoherence. It is hard to render consistent the exemption of private choice from the motives that support redistributive public policies" (ibid., p. 112).

[4] Vrousalis, "G. A. Cohen's Vision of Socialism," p. 187.

and innovation? How is efficient and effective use of resources possible in an egalitarian society? Furthermore, is there a (set of) principle(s) which is applicable across all spheres of life? At that point, Rawls is right that the principles for institutions do not hold for individuals, because their spheres are different. Since each sphere has a distinct aim and character, every single sphere should have its proper principles of justice. The last negative aspect of Cohen is his imposition of the pattern of equal distribution without any justification. He presumes equality as the only truth; even he perceives "justice as equality." However, as Richard Arneson reminds, "Justice is not Equality:" "[e]ven if you thought equality were a big component of justice, why think it's everything?"[1] Therefore, Cohen should first justify and elaborate his conception of equality and desideratum (whether it is political equality, moral equality, or economic equality, and so on).

Rawls however puts forward a well-developed theory of social justice focused on basic institutions with a purely procedural approach. Pure procedural justice provides an area of freedom, so that persons can pursue their own goals by making their own choices. Justice as fairness does not dictate any particular substantive aim or doctrine to individuals; it just draws the lines and leaves the rest to free and equal moral persons' initiative. This area of freedom permits just inequalities, hence induces productivity, technological development and innovation that benefits the better-off as well as the worst-off. "Justice as fairness" assures fair conditions of collaboration so that each person can compete fairly and support herself: "[t]he idea is not simply to assist those who lose out through accident or misfortune (although this must be done), but instead to put all citizens in a position to manage their own affairs and to take part in social cooperation on a footing of mutual respect under appropriately equal conditions."[2] Although socioeconomic inequalities are regulated for the maximum benefit of the least fortunate, it does not provide equal shares for all. Each person has to make an effort to earn her fair share in a just scheme of cooperation. Justice therefore requires *fairness* not equality, for Rawls.

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[1] Arneson, "Justice is not Equality," p. 374.

[2] Rawls, *Theory*, rev. ed., p. xv.

Nevertheless, he runs into a moral contradiction, as Cohen observes. Basic institutions are regulated for the maximum wealth of the least fortunate, but private choices of individuals are exempt from this egalitarian tendency. This might be the result of the public/private distinction implicit in Rawls's egalitarian liberalism. The idea of equality is emphasized in the public realm, but the idea of equality is *not* desired in the private realm; which is a moral incoherence (so the private sphere is dominated by the idea of liberty). As Cohen questions, why do the persons not seek to increase the expectations of the least advantaged in their private choices as well rather than acting to maximize their personal gains? The public/private distinction in justice as fairness thus leads to the mentioned inconsistency, such a hypocrisy is also detrimental to egalitarian values. The liberal distinction between the public and private realms implicit in Rawls's theory causes this internal contradiction. In this manner, the emergence of an egalitarian society is not be possible.

As a result, when we consider the objections of Walzer, Nozick, Cohen on justice as fairness, it is seen that although Rawls can respond to Nozick's criticisms to some extent, he could not save the consistency and validity of *Theory* against the criticisms of Walzer and Cohen. Cohen's critique demonstrates that justice as fairness is neither morally consistent nor sufficient. In addition, Walzer's critique shows that since Rawls's set of primary goods and principles are abstract and context-insensitive, they cannot attract all societies. It appeals to Rawlsian society alone and cannot be used as a blueprint for all societies. If we assume Rawlsian society as American society, it is not applicable too. Because neither all American philosophers nor American society approves of Rawls's project. Even most of the harsh critics of Rawls are American philosophers: Nozick, Walzer, Sandel, Barber,[1] Hampton,[1] Harsanyi,[2] Wolff, Schaefer,[3] and so on. Justice as fairness is

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[1] For the criticism, see Benjamin R. Barber, "Justifying Justice: Problems of Psychology, Measurement, and Politics in Rawls," *American Political Science Review* 69, no. 2 (June 1975): pp. 663-674.

not accepted in advance by American society. To be precise, Rawls and his ideas have been adopted only by some academics, students (especially his own students), and lawyers; he did not have any direct influence on society.[4] Justice as fairness is Rawls's own ideal, hence it is applicable to abstract Rawlsian society alone which exists in his mind.

So, what a Rawlsian society would be like? Recall that Rawls defines his ideal with the "well-ordered society" in *Theory* as follows: "it is a society in which everyone accepts and knows that the others accept the same principles of justice, and the basic social institutions satisfy and are known to satisfy these principles."[5] Free, equal, and rational citizens thus approve of the same understanding of justice; and the principles are implemented by major institutions in Rawls's well-ordered society, and these are "publicly known, or with good reason believed, to satisfy those principles of justice."[6] In the well-ordered society, thirdly, "citizens

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[1] For the criticism, see Jean Hampton, "Contracts and Choices: Does Rawls have a Social Contract Theory?," *The Journal of Philosophy* 77, no. 6 (June 1980): 315-338; and Hampton, "Should Political Philosophy," pp. 791-814.

[2] For the criticism, see John C. Harsanyi, "Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory," *American Political Science Review* 69, no. 2 (June 1975): pp. 594-606. Other critics are already cited in the dissertation.

[3] For the criticism, see David Lewis Schaefer, *Justice or Tyranny? A Critique of John Rawls's 'A Theory of Justice,'* (Port Washington, NY: Kennikat Press, 1979); and David Lewis Schaefer, *Illiberal Justice: John Rawls vs. the American Political Tradition* (Columbia and London: University of Missouri Press, 2007).

[4] Frank Lovett expresses the lack of influence of *Theory* on society: "[w]hat about its broader influence on society as a whole? Here we find a rather different picture. Unfortunately for Rawls, his work has had almost no effect on the direction of American or other societies" (Lovett, *Rawls's 'Theory',* p. 154). Moreover, Thomas Pogge admits that "many affluent citizens in the United States today would reject the difference principle and would block the institutional reforms needed to satisfy it" (Pogge, *John Rawls*, p. 136). See also Freeman, *Rawls*, p. 457; Pogge, *John Rawls*, pp. 24-25, 141-142; Richard B. Parker, "The Jurisprudential Uses of John Rawls," *Nomos* 20 (1979): pp. 269-295; and Brooks and Freyenhagen, *The Legacy of John Rawls,* pp. 12-14.

[5] Rawls, *Theory*, rev. ed., p. 397. For the preliminary ideas on Rawls's well-ordered society see subsection 2.2.3 and 2.2.4.2.

[6] Rawls, *Restatement*, p. 9.

have a normally *effective sense of justice*, that is, one that enables them to understand and apply the publicly recognized principles of justice, and for the most part to act accordingly as their position in society, with its duties and obligations, requires."[1] Rawlsian society therefore shares the same "public conception of justice" that "provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another."[2] In this society, "[e]veryone has a similar sense of justice and in this respect a well-ordered society is homogeneous. Political argument appeals to this moral consensus."[3] At that point, the problem is as follows: on the one hand citizens have diverse, "conflicting and incommensurable conceptions of the good"[4] in a well-ordered society; on the other hand, they unanimously agree on a *particular* understanding of justice and set of principles. This is almost impossible in real life. It appears that Rawls's well-ordered society is very much idealistic and liberal, hence highly unlikely. For that reason, Rawls's well-ordered society cannot offer any guidance to contemporary societies despite his intention: "[e]xisting institutions are to be judged in the light of this conception [of the well-ordered society] and held to be unjust to the extent that they depart from it without sufficient reason."[5] However, since Rawlsian society is too idealist and imaginary, it cannot constitute a reasonable and realistic model to evaluate actual societies' institutions. Unfortunately, Rawls's well-ordered society remains as an unrealistic utopia, hence it is impossible.

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[1] Ibid; italics added.

[2] Ibid. See also Rawls, *Theory*, rev. ed., p. 233 where Rawls likens the perspective in the *original position* to the perspective of Hume and Smith's *impartial spectator*.

[3] Rawls, *Theory*, rev. ed., p. 232.

[4] Rawls, "Social Unity and Primary Goods," p. 164.

[5] Ibid., p. 216.

Later in *Political Liberalism*, Rawls himself too admits that the well-ordered society is "unrealistic," and when it is related to justice as fairness, it becomes a comprehensive ideology:

> the serious problem I have in mind concerns the unrealistic idea of a well-ordered society as it appears in *Theory*. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive philosophical doctrine. They accept, as rooted in this doctrine, its two principles of justice.[1]

Rawls thus acknowledges that the theory of justice as formulated in *Theory* is a "comprehensive philosophical doctrine." Mostly for this reason, he puts forward *Political Liberalism* and revises *Theory*.[2] In his later work, he attempts to justify justice as fairness as a *political* theory, not as an extensive doctrine; so all *reasonable* comprehensive conceptions may accept.[3] But Rawls's new project does not mean that Rawls gave up his moral point of view; he duly prunes extreme parts of *Theory* and adapts it to suit the political framework of *Political Liberalism*. As he stresses at the end of *The Law of Peoples*:

> [i]f a reasonably just Society of Peoples [and well-ordered society] whose members subordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on the earth.[4]

Rawls therefore keeps on his quest for a just scheme of cooperation in any case. If we will live on the earth, we have to find an objective ground regardless of our subjective understandings, ends, and worldviews. As a consequence, although

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[1] Rawls, *Political Liberalism,* p. xviii.

[2] Other important reason of the revision is the problem of stability which is also concerned with the notion of a well-ordered society, see ibid., pp. xvii-xx.

[3] Ibid., p. xxi. This issue is examined in the following section.

[4] Rawls, *The Law of Peoples*, p. 128.

critics reject Rawls's project, Rawlsians go on to refine justice as fairness to present a "realistic Utopia"[1] for all.

2.4 Metaphysics

Having set out and examine Rawls's theory and its criticisms, now we can turn to his approach to metaphysics and the metaphysical presuppositions of justice as fairness. In *Theory*, Rawls offers a theory for all persons, irrespective of their ethnic origin, gender, worldview, socioeconomic position, welfare, and intelligence.[2] Rawls proclaims that the principles of justice are general;[3] however, it is suggested that Rawls's theory implicitly presumes a particular *metaphysical* and *moral* doctrine. Michael Sandel argues that Rawlsian theory of justice constitutes grounds for contemporary liberalism, and the "liberal ethic," that is defended by Rawls, presupposes "the unencumbered self"[4] which is independent of particular ends, personal attributes, community, and history. Nonetheless, this "liberal self"[5] is encumbered by DP. For this reason, Sandel rightly contends that constructing an individualistic person and demanding this person to be responsible for her fellow citizens is contradictory. Michael Walzer also observes that "much of liberal political theory from Locke to Rawls, is an effort to fix and stabilize the doctrine in order to end the endlessness of liberal liberation."[6] So Walzer locates Rawls in the liberal tradition as well, but Walzer makes a different criticism than Sandel's. In the article called "Philosophy and Democracy," Walzer implies that

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[1] Ibid., p. 6.

[2] Rawls, *Theory*, p. 137.

[3] Ibid., pp. 131-2.

[4] Sandel, "the Unencumbered Self," p. 83.

[5] Ibid., p. 90.

[6] Michael Walzer, "The Communitarian Critique of Liberalism," *Political Theory* 18, no. 1 (February 1990): p. 14.

Rawlsian attitude is actually "authoritative" and "undemocratic"[1]; because he designs, similar to Plato, an "ideal commonwealth"[2] which is a philosophical project. "The philosopher king" *only* knows "the truth" and citizens should obey it; and the city should be restructured according to the philosophical blueprint. Walzer asserts that the Rawlsian approach presents his own idea of truth as "universal and eternal."[3] After these objections, Rawls replies to them in an article entitled "Justice as Fairness: Political not Metaphysical" (1985).[4] Rawls here holds that his theory is not metaphysical, but *political*. To maintain his theory, Rawls puts forward a new method: "the method of avoidance."[5] To Rawls, we should avoid philosophical, metaphysical, moral, and religious contentions: "briefly, the idea is that in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines."[6] Rawls thinks that justice as fairness should be taken as a political theory, not as a comprehensive doctrine. What is more, Rawls refuses criticisms of Walzer and Sandel: "I should like to avoid, for example, claims to universal truth, or claims about the essential nature and identity of persons."[7] By stating *political* character of justice as fairness, Rawls tries to evade metaphysical controversies. After this article, Jean Hampton raised objections to Rawls with his famous article

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[1] Michael Walzer, "Philosophy and Democracy," *Political Theory* 9, no. 3 (August 1981): p. 392.

[2] Ibid., p. 389.

[3] Ibid., p. 388.

[4] Rawls, "Political not Metaphysical," pp. 223-251.

[5] Ibid., p. 231.

[6] Ibid., p. 223; in this citation and the others it is understood that by "the metaphysical" Rawls refers to philosophical and religious doctrines' ideas about "the nature of the self" (Ibid., p. 231), "nature and identity of persons," and "universal truth" (Ibid., p. 223); namely he mentions the problems of the self, personal identity, and truth.

[7] Ibid., p. 223.

entitled: "Should Political Philosophy be Done without Metaphysics?"[1] In this paper, Hampton rejects Rawls's defense of *the political* rather than the metaphysical; and emphasizes the role of the "Socratic philosophizing."[2] Hampton advocates that "metaphysical political philosophy"[3] is not detrimental, and even necessary in public discussions. She argues that philosophical argumentation is not threatening if debaters "respect" each other's ideas and allow to decide oneself without restrictions.[4] Jürgen Habermas however makes a complaint about the privileged position that is given by Rawls to philosophers as "experts" in public discussion. Rather, Habermas supports that philosophers should join in public discussion as "intellectuals."[5] Additionally, Habermas observes that although Rawls attempts to eschew metaphysical controversies in *the political*, he could not achieve this aim. According to Habermas, Rawls's "method of avoidance" could not "avoid" the metaphysical problems related to the notions of the *person*, *rationality*, and *truth* in his theory. For Habermas, because of the *subject*, the question of *justice* crosses the line against Rawls's will and this may actually be productive.[6] In "Reply to Habermas," however, Rawls rejects Habermas's critique and still claims that his account of the political is just *political*.[7] Although Rawls admits that his theory stands in the liberal tradition, he nevertheless denies the metaphysical elements of his *Political Liberalism*: "political philosophy, as understood in political liberalism, consists largely of different political conceptions

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[1] Hampton, "Should Political Philosophy," pp. 791-814.

[2] Ibid., p. 810.

[3] Ibid., p. 810.

[4] Ibid., p. 813.

[5] Habermas, "Remarks on John Rawls," p. 131.

[6] Ibid., p. 131.

[7] John Rawls, "Political Liberalism: Reply to Habermas," *The Journal of Philosophy* 92, no. 3 (March 1995): p. 132.

of right and justice viewed as *freestanding*."[1] According to Rawls, thus, his political liberalism is not a *comprehensive* ideology and even open to all "*reasonable* comprehensive doctrines."[2] At this time Rawls throws out another contentious concept, i.e. "the reasonable."[3]

Insofar as Rawls tries to escape metaphysical and philosophical controversies; he sticks to new metaphysical problems. After metaphysical criticisms raised against his theory, Rawls claimed that justice as fairness is political not metaphysical;[4] but then he is criticized again because of sacrificing "universally binding practical reason"[5] and "moral point of view."[6] Rawls argued afterwards that *Political Liberalism* is not a comprehensive ideology, and furthermore all "reasonable" comprehensive doctrines may survive in his ideal constitutional democracy. Rawls attempts to solve the problems in his theory, but he falls into new difficulties. He could not avoid the metaphysical problems in the *Political Liberalism* as well. Therefore, Rawlsian method of avoidance fails. Rawlsian attempt to eschew metaphysics reached an impasse. Although Rawls rejects the hierarchical relationship between the parts of philosophy,[7] the conclusion ironically recalls the ancient understanding of philosophy. According to Aristotle, politics is an

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[1] Ibid., p. 133.

[2] Ibid., p. 133.

[3] For Rawls's use of "reasonable," see Shaun P. Young, "Rawlsian Reasonableness: A Problematic Presumption?," *Canadian Journal of Political Science / Revue canadienne de science politique* 39, no. 1 (March 2006): pp. 159-180.

[4] Rawls, "Political not Metaphysical," p. 223.

[5] Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory* (Cambridge, MA: The MIT Press, 1998), p. 83.

[6] Ibid., p. 82.

[7] John Rawls, "The Independence of Moral Theory," *Proceedings and Addresses of the American Philosophical Association* 48 (1974 - 1975): pp. 5–7.

inseparable part of ethics; and both ethics and politics are founded on metaphysics.[1] Thus trying to construct a political philosophy without moral and metaphysical foundations is a vain attempt. Rawls could not escape from the metaphysical and philosophical issues in his theory.

In the following section, first, I want to tackle Rawls's metaphysical presuppositions in his critical works *chronologically* to understand the issue of metaphysics in his theory. In this way, validity of aforementioned criticisms would be investigated; and the relation between metaphysics, ethics, politics, and theory of justice would be demonstrated in Rawls's thought. Depending on this inquiry, I want to argue that although Rawls aspires to escape from the metaphysical throughout his works, he could not avoid the metaphysical and moral questions in his theory of justice. Thus, the metaphysical and moral presumptions are either implicitly or explicitly present in *Theory* and in *Political Liberalism* and they are the notions of *freedom*, *equality*, *political stability*, and *social unity*.

2.4.1 The Place of Metaphysics in the Work of Rawls

Almost all scholars claim that Rawls departed from his metaphysical and moral beliefs with the so-called "political turn:" Rawls had recourse to the *metaphysical* and *moral* ideas in *Theory*, but after that he turned back to the *political* realm.[2] In contrast, I will argue that Rawls did not changed his attitude towards metaphysics. In *Theory,* Rawls avoids metaphysical controversies too. Hence, I will show that the principle of avoidance is implicit in *Theory* as well, Rawls eschews metaphysics from the beginning of his work. In this interpretation, my point of departure is Richard Rorty's remark on Rawls's work. In the article entitled "The Priority of Democracy to Philosophy," Rorty defends that most of the scholars misunderstood Rawls and supposed that Rawls had recourse to Kantian morality to

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[1] For a well written discussion of the relationship between ethics and metaphysics in Aristotle, see Marian Kuna, "MacIntyre's Search for a Defensible Aristotelian Ethics and the Role of Metaphysics," *Analyse & Kritik* 30, no. 1 (June 2008): pp. 113-117.

[2] Some scholars initiate the "political turn" with the *Dewey Lectures* (1980), some with the "Political not Metaphysical" (1985), and others with *Political Liberalism* (1993). I hold that the *Dewey Lectures* is the distinctive text.

ground liberalism. Rawlsian approach thus presupposes a liberal conception of self, ethics and rationality.[1] Rorty objects to this Kantian interpretation and points out the influence of Hegel and Dewey on Rawls:

> [m]any people, including myself, initially took Rawls's *A Theory of Justice* to be such an attempt. We read it as a continuation of the Enlightenment attempt to ground our moral intuitions on a conception of human nature (and, more specifically, as a neo-Kantian attempt to ground them on the notion of "rationality"). However, Rawls's writings subsequent to *A Theory of Justice* have helped us realize that we were misinterpreting his book, that we had overemphasized the Kantian and underemphasized the Hegelian and Deweyan elements.[2]

Hence, to understand Rawls's thought appropriately we need to review his work retrospectively. In other words, we should consider Rawls's early work from the lens of the later work. This reading will show that there is a *continuity* and *unity* in Rawls's writings, no rupture or turn in Rawls's thought.[3] His approach to metaphysics, ethics, and politics preserves its main tenets; and this reading will reveal the correct reading of Rawls's theory. Rorty maintains that the early work of Rawls should be read *again* according to the later work: "[w]hen reread in the light of such passages, *A Theory of Justice* no longer seems committed to a philosophical account of the human self, but only to a historico-sociological

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[1] In particular, Rorty examines Michael Sandel's understanding of Rawls. Sandel takes *Rawls*'s theory as a combination of *Kantian morality* and *Humean circumstances of justice*. For the detailed critique of justice as fairness see Sandel, *Liberalism and the Limits of Justice*; in addition to that for a detailed *critique* of Sandel's critique, see Rainer Forst, *Contexts of Justice: Political Philosophy beyond Liberalism and Communitarianism*, trans. John M. M. Farrell (Berkeley: University of California Press, 2002), pp. 7-29.

[2] Richard Rorty, "The Priority of Democracy to Philosophy," in *The Virginia Statute of Religious Freedom*, eds. Merrill Peterson and Robert Vaughan (Cambridge: Cambridge University Press, 1988), pp. 257—88. This article is reprinted in *Objectivity, Relativism, and Truth: Philosophical Papers*, vol. 1 (New York: Cambridge University Press, 1991), pp. 184-185. I quote from the latter one.

[3] Unity in Rawls's work is first explicitly argued by Leif Wenar, but his line of attack is unlike mine. He goes along Rawls's books: *Theory*, *Political Liberalism*, and *The Law of Peoples*. He strives to show consistency of Rawls's major works through the concepts of justice and legitimacy. For a sound and successful defense of Rawls's thought see Leif Wenar, "The Unity of Rawls's Work," *Journal of Moral Philosophy* 1, no.3 (2004): 265-275. This article is reprinted in *The Legacy of John Rawls*, pp. 22-33.

description of the way we live now."[1] To Rorty thus philosophical interpretations of Rawls is misleading. "But reading *A Theory of Justice* as political rather than metaphysical"[2] makes us understand Rawls's contribution rightly. Rawls strives to build a "middle ground between relativism and a 'theory of the moral subject'"[3] to realize a society which is "a fair system of cooperation between free and equal persons:"[4]

> liberty of conscience and freedom of thought should not be founded on philosophical or ethical skepticism, nor on indifference to religious and moral interests. *The principles of justice define an appropriate path between dogmatism and intolerance on the one side, and a reductionism which regards religion and morality as mere preferences on the other.* And since the theory of justice relies upon weak and widely held presumptions, it may win quite general acceptance. Surely our liberties are most firmly based when they are derived from principles that persons fairly situated with respect to one another can agree to if they can agree to anything at all.[5]

Rawls thus avoids metaphysical foundations so that "a just society can in due course be achieved;"[6] otherwise people cannot agree on the principles. This is the main concern: constructing a just basic structure for the quest of persons' own understandings of the good. In *Theory*, Rawls describes his ideal as follows:

> we are to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society. Just as each person must decide

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[1] Rorty, "The Priority of Democracy to Philosophy," p. 185.

[2] Ibid., p. 185.

[3] Ibid., p. 186.

[4] Rawls, "Political not Metaphysical," p. 231.

[5] Rawls, *Theory*, pp. 243-4; emphasis added.

[6] Ibid., p. 245.

by rational reflection what constitutes his good, that is, *the system of ends* which it is rational for him to pursue, so a group of persons must decide once and for all what is to count among them as just and unjust. *The choice which rational men* would make in this hypothetical situation of equal liberty, assuming for the present that this choice problem has a solution, determines the principles of justice.[1]

Rawls thinks that metaphysical controversies and presuppositions should be abandoned while persons are choosing the principles of justice; else we cannot attain "the middle ground." The principles of justice should be a convenient for an atheist, theist, deist, agnostic, rich, poor, powerful, weak man and woman because "no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like."[2] Since the principles are determined in "the original position of equality,"[3] behind a "veil of ignorance,"[4] "no one is able to design principles to favor his particular condition."[5] Since the representatives do not have the knowledge of socioeconomic status of the persons they represent, no one can give someone preferential treatment. The principles of justice thus should be fair and impartial. For this reason, to Rawls, metaphysical and moral viewpoints should be discarded in the deliberation of the principles; so, the choice can be appropriate for each person in society.

To that end, Rawls makes use of Kant's ethics by leaving its metaphysical foundations aside. Since Kant's ethics is idealistic and abstract, Rawls seeks to

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[1] Ibid., pp. 11-2; italics were added to draw attention to Kantian connotations of "the kingdom of ends" and "the categorical imperative," in the citation; and for a just interpretation of Kantian legacy in Rawls's philosophy see Nicholas Tampio, "Rawls and the Kantian Ethos," *Polity* 39/1 (January 2007): pp. 79–102.

[2] Rawls, *Theory*, p. 12.

[3] Ibid., p. 12.

[4] Ibid., p. 12.

[5] Ibid., p. 12.

remove metaphysical elements of it in order to have a stronger and realistic theory. To Rawls thus Kant's doctrine should be rescued from the metaphysical elements to bring about a feasible and reasonable theory of justice:

> the theory of justice in turn tries to present a natural procedural rendering of Kant's conception of the kingdom of ends, and of the notions of autonomy and the categorical imperative. *In this way the underlying structure of Kant's doctrine is detached from its metaphysical surroundings so that it can be seen more clearly and presented relatively free from objection*.[1]

Rawls thinks that Kantian ethics can be safe from objections when the metaphysical elements are removed. For this reason, Rawls strives for "a reconstruction of Kant's moral philosophy"[2] to have a clear and sound ethical theory that is convenient for his theory. Furthermore, Rawls brings Kantian morality *down to earth*. In other words, Rawls puts Kantian morality down to *the empirical* realm. This new Kantian ethics, that is freed from metaphysics, is now ready for an empirical theory of justice. In the article entitled "John Rawls and the new Kantian moral theory," Ana Marta Gonzalez explains this change with respect to the work of Kant:

> … the new Kantian moral theory, what this theory suggests is a revision of the role played by the empirical in Kant's own moral theory. Such a revision is intended to make sense of the otherwise "too dry" pure moral theory, developed by Kant in the *Groundwork* and the *Second Critique*. By contrast, the so far somewhat neglected text of the *Metaphysics of Morals* is receiving increasing attention. The idea is not so much to blur Kant's distinction between the pure and the empirical in ethics, but to show how both aspects interact in practice while maintaining what we could call a "Kantian framework."[3]

To Rawls, *metaphysical idealism* should be replaced by *reasonable empiricism*. In this fashion, "no longer are these notions [the categorical imperative, the kingdom

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[1] Ibid., p. 264; emphasis mine.

[2] Ana Marta Gonzalez, "John Rawls and the new Kantian moral theory," in *The Legacy of John Rawls*, p. 158.

[3] Gonzalez, "John Rawls," p. 160.

of ends, and the autonomy of the will] purely transcendent and lacking explicable connections with human conduct, for the procedural conception of the original position allows us to make these ties."[1] Rawls thus freely interprets Kantian ideas for his own project, to achieve an empirical and reasonable theory of justice. The gap which is revealed from the rejection of Kantian metaphysics is filled with David Hume's circumstances of justice.[2] Sandel calls this synthesis as a "deontology with a Humean face."[3] Sandel argues that Rawls takes Kantian deontological ethics without its metaphysical foundations and associates it with Hume's circumstances of justice, but this mission cannot be completed.[4] Rawls however maintains that his interpretation of Kantian ethics makes it more perfect and strong, because Kantian dichotomies will be eliminated in this manner. What is more, in the revised edition of *Theory*, Rawls elucidates his understanding of Kant as follows:

> *the Kantian interpretation is not intended as an interpretation of Kant's actual doctrine but rather of justice as fairness.* Kant's view is marked by a number of deep dualisms, in particular, the dualism between the necessary and the contingent, form and content, reason and desire, and noumena and phenomena. To abandon these dualisms as he understood them is, for many, to abandon what is distinctive in his theory. I believe otherwise. *His moral conception has a characteristic structure that is more clearly discernible when these dualisms are not taken in the sense he gave them but recast and their moral force reformulated within the scope of an empirical theory*. What I have called the Kantian interpretation indicates how this can be done.[5]

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[1] Rawls, *Theory*, p. 256.

[2] Ibid., pp. 126-7-8; Hume, *An Enquiry Concerning the Principles of Morals*, sec. III, part I; here Hume demonstrates conditions of justice with negative arguments; and Rawls appropriates these conclusions.

[3] Sandel, *Liberalism and the Limits of Justice*, p. 13; justification of this idea and other criticisms of Sandel on Rawls can be found throughout the book.

[4] Ibid., p. 14.

[5] John Rawls, *Theory*, rev. ed., pp. 226-7; italics added; similar statements are present in the following work of Rawls: "Kant's view is marked by a number of dualisms, in particular, the dualisms between the necessary and the contingent, form and content, reason and desire, and noumena and phenomena. To abandon these dualisms as he meant them is for many, to abandon what is distinctive in his theory. I believe otherwise. His moral conception has a characteristic structure that is more clearly discernible when these dualisms are not taken in the sense he gave

As it is seen in the quotation, Rawls attempts to reconstruct Kant's account of morality to bring about "an empirical theory" of justice. Rawls departs from Kant's idealistic metaphysics of morals on behalf of Humean realistic conditions of justice. So, Kantian morality is restructured to be suitable for an empirical scheme. Accordingly, Rawls's theory cannot be equated with Kant alone. Rawls was influenced by various philosophers, such as Locke, Rousseau, Kant,[1] Dewey,[2] Sidgwick, Marx,[3] Hegel,[4] Hume,[5] Smith,[6] Berlin, Hart,[7] Jefferson,[8] Mill,[9] Hobbes, Bentham, Aristotle,[1] and Wittgenstein.[2] Rawls takes various ideas from these

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them but reinterpreted and their moral force reformulated within the scope of an empirical theory. *One of the aims of Theory was to indicate how this might be done.*" Rawls, *Collected Papers*, p. 264; emphasis added. See also Rawls, "The Basic Structure," pp. 66-67.

[1] Rawls, *Theory*, p. viii; Nicholas Tampio, *Kantian Courage: Advancing the Enlightenment in Contemporary Political Theory* (New York: Fordham University Press, 2012), p. 19, 23.

[2] John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77, no. 9 (September 1980): p. 516.

[3] Fleischacker, *History of Distributive Justice*, pp. 111-112; Daniel Brudney, "The Young Marx and the Middle-Aged Rawls," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy (Malden, MA: Wiley-Blackwell, 2014), pp. 450-471.

[4] Jeffrey Bercuson, *John Rawls and the History of Political Thought: The Rousseauvian and Hegelian Heritage of Justice as Fairness* (New York and London: Routledge, 2014); Sibyl A. Schwarzenbach, "Rawls, Hegel, and Communitarianism," *Political Theory* 19, no. 4 (November 1991): pp. 539–571.

[5] Ibid., pp. 184-190.

[6] Ibid., pp. 50-1; see also Michael L. Frazer, "John Rawls: Between Two Enlightenments," *Political Theory* 35, no. 6 (December 2007): pp. 756-80.

[7] Pogge, *John Rawls*, p. 16.

[8] Rorty, "The Priority of Democracy to Philosophy," pp. 179-189.

[9] Alan Reynolds, "Reconsidering the Connection between John Stuart Mill and John Rawls," *Minerva - An Internet Journal of Philosophy* 17 (November 2013): pp. 1-30.

philosophers in his theory of justice. Kantian influence on Rawls is an indisputable fact,[3] but there are lots of philosophers who inspired and contributed to the work of Rawls. Thus, just one philosopher cannot be articulated in Rawls's thought.[4] All the philosophers have an impact on Rawls in some way. For instance, Rawls's approach to metaphysics is in line with Wittgenstein: Rawls's principle of avoidance is possibly shaped by the student of Wittgenstein, Norman Malcolm.[5] Henry Richardson gives this clue: "Rawls continued for his Ph.D. studies at Princeton and came under the influence of the first of a series of Wittgensteinean friends and mentors, Norman Malcolm. From them, he learned to avoid entanglement in metaphysical controversies when possible."[6] The principle of avoidance is thus present in the work of Rawls from the beginning. He understood from these Wittgensteineans that metaphysical polemics cannot be solved. Seeking an agreement in metaphysical issues is a vain attempt, especially in the political realm. Another point which shows Rawls's stance towards metaphysics can be seen in section 34 of *Theory*. Rawls there argues that "arguments for liberty of conscience" should be founded on a commonsensical understanding of justice not on a *particular* metaphysics:

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[1] Pogge, *John Rawls,* pp. 188-189.

[2] Leif Wenar, "John Rawls," accessed May 4, 2016 in *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), edited by Edward N. Zalta, Stanford University, article first published March 25, 2008; substantive revision September 24, 2012, http://plato.stanford.edu/archives/win2013/entries/rawls/.

[3] "Justice as fairness is not, plainly, Kant's view, strictly speaking; it departs from his text at many points. But the adjective *'Kantian' expresses analogy and not identity*; it means roughly that a doctrine sufficiently resembles Kant's in enough fundamental respects so that it is far closer to his view than to the other traditional moral conceptions that are appropriate for use as benchmarks of comparison." Rawls, "Kantian Constructivism," p. 517; emphasis added. For Kant and others' influence on Rawls see Freeman, *Rawls*, pp. 12-28.

[4] Nevertheless, we might highlight Kant and Locke; see subsection 2.2.4.

[5] Wenar, "John Rawls."

[6] Henry S. Richardson, "John Rawls (1921-2002)," in *The Internet Encyclopedia of Philosophy*, accessed May 19, 2016, http://www.iep.utm.edu/rawls/.

the argument does not rely on any special *metaphysical* or *philosophical doctrine*. It does not presuppose that all truths can be established by ways of thought recognized by common sense; nor does it hold that everything is, in some definable sense, a logical construction out of what can be observed or evidenced by rational scientific inquiry. The appeal is indeed to *common sense*, to generally shared ways of reasoning and plain facts accessible to all, but it is framed in such a way as *to avoid these larger presumptions*.[1]

To Rawls, liberty of conscience can be possible by abstaining from metaphysical doctrines; otherwise living together cannot be realized. Freedoms such as expression, conscience, and religion can be maintained with the strategy of avoidance. Common sense holds society together, whereas metaphysics splits society. To Rawls therefore we should eschew metaphysical controversies in the public realm as far as possible. As it is shown, this idea is already present in *Theory*; it is nothing new. Rawls upholds the method of avoidance throughout his work. In the political context, he is consistent in his approach to metaphysics and philosophy. Rawls did not change his fundamental views after *Theory*. In the preface for the revised edition of *Theory*, Rawls insists that

despite many criticisms of the original work, I still accept its main outlines and defend its central doctrines. Of course, I wish, as one might expect, that I had done certain things differently, and I would now make a number of important revisions. But if I were writing *A Theory of Justice* over again, I would not write, as authors sometimes say, a completely different book.[2]

Both Rawls's writings and his statement demonstrates that his approach is not replaced by a new one. Rawls sticks to his basic attitude towards justice, ethics, politics, and metaphysics. Thus, dividing Rawls's thought into two parts might be misleading. There is a continuity rather than discontinuity in the work of Rawls. Revisions do not change the main structure. The fundamental components of the Rawlsian theory remain the same.

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[1] Rawls, *Theory*, p. 214; emphasis mine.

[2] Rawls, *Theory*, rev. ed., p. xi.

Rawls's Presidential Address to the American Philosophical Association, "The Independence of Moral Theory" (1974) gives important clues about his approach to metaphysics. In this speech, Rawls rejects the traditional hierarchy between the parts of philosophy: politics should be based on ethics and ethics on metaphysics. He supports the independence of moral theory against metaphysics and other parts of philosophy. Relating moral theory to metaphysics hierarchically makes moral theory secondary and metaphysics primary. In this fashion, moral theory can cope with moral problems after metaphysical problems were settled. Rawls objects to this understanding of philosophy: "[w]hatever the merits of such a hierarchical conception for other parts of philosophy, I do not believe that it holds for moral philosophy."[1] Then, starting with "Justice as Fairness: Political not Metaphysical" through *Political Liberalism*, he carries this idea further, and declares the independence of political philosophy as well.[2] Rawls in fact challenges subordination of practical reason to theoretical reason.[3] To Rawls, practical reason should be independent of theoretical reason. In this sense, Rawls objects to metaphysics. He does not reject metaphysics altogether. He just refuses the primacy of metaphysics over moral and political theory. Rawls argues that moral and political philosophy can deal with their problems regardless of other parts of philosophy. They do not have to wait metaphysics to discuss moral and political problems. Ethics and political philosophy are autonomous fields of philosophy.

Thus, it is seen that Rawls is not against metaphysics, but he is against metaphysical intervention. In a sense, we can conceive Rawls's understanding of philosophy parallel to Walzer's *Spheres of Justice*.[4] The autonomy of the spheres

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[1] Rawls, "The Independence of Moral Theory," p. 6.

[2] Freeman, *Rawls*, p. 284.

[3] David A. Reidy, "From Philosophical Theology to Democratic Theory: Early Postcards from an Intellectual Journey," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy (Malden, MA: Wiley-Blackwell, 2014), p. 25.

[4] Walzer, *Spheres of Justice*, p. 20.

is established when one sphere does not invade another (e.g. a rich man violates this rule when he buys a political position). Like so, in Rawls's understanding of philosophy, a metaphysical theory should not interfere in a political theory. All spheres are autonomous. Some spheres should not violate the autonomy of the other spheres. Metaphysics, ethics, politics, and the rest are autonomous disciplines. So, we should apply to their own reasoning. Moral reasoning is appropriate in ethics. Political reasoning is appropriate in politics. Metaphysical reasoning is appropriate in metaphysics. The autonomy of the spheres would be secured in this way. To do justice to the spheres we should recognize their autonomy.

Hence, for Rawls, the problem is resorting to metaphysics in order to justify moral or political conceptions. He argues against the appeal to metaphysical foundations in order to justify political conceptions.[1] If they remain faithful to their respective fields, there is no problem. Idil Boran explicates Rawls's approach as follows: "when justifying the principles of justice, we are to refrain from engaging in controversial metaphysical discussions about the nature of the self, or the nature of agency or persons, and other similar concepts as guiding moral truths."[2] In this sense, Rawls avoids metaphysical and philosophical discussions in the justification of political understandings. Political argument should not depend on metaphysical and philosophical ideas.

From the beginning, Rawls avoids metaphysical and philosophical controversies in the public sphere/political to find a common ground. According to Rawls, metaphysical and epistemological approaches to justify the concept of justice are a waste of time. A theory of justice can best be justified *pragmatically*. Rather than metaphysics and epistemology, each society should look to its own history and

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[1] Hampton, "Should Political Philosophy," p. 794.

[2] Idil Boran, "Rawls and Carnap on Doing Philosophy without Metaphysics," *Pacific Philosophical Quarterly*, 86/4 (2005): p. 460; she argues that Rawls's method of avoidance is in line with Rudolf Carnap's "higher order standpoint of neutrality," (Ibid., p. 459).

tradition. The pragmatism of Rawls expresses itself in the *Dewey Lectures*.[1] Here Rawls contends that there is no need to justify the idea of justice metaphysically or epistemologically: "we should like to achieve among ourselves a *practicable* and *working* understanding on *first principles of justice*."[2] The point is whether the principles of justice work or not. If we decide on an understanding of justice which works satisfactorily, it is enough. There is no need to search for an abstract philosophical justification. In the *Dewey Lectures* entitled "Kantian Constructivism in Moral Theory," Rawls underlines this pragmatic point of view as follows:

> I should emphasize that what I have called the "real task" of justifying a conception of justice is not primarily an epistemological problem. The search for reasonable grounds for reaching agreement rooted in our conception of ourselves and in our relation to society replaces the search for moral truth interpreted as fixed by a prior and independent order of objects and relations, whether natural or divine, an order apart and distinct from how we conceive of ourselves. *The task is to articulate a public conception of justice that all can live with who regard their person and their relation to society in a certain way.* And though doing this may involve settling theoretical difficulties, the *practical social task is primary*. What justifies a conception of justice is not its being true to an order antecedent to and given to us, but *its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us*.[3]

To Rawls, since the principal mission of a theory of justice is establishing fair circumstances and basics of social cooperation, a society should turn to its own history and traditions in order to construct its theory of justice. An understanding of justice can only be justified in this way. A priori and absolute principles derived from metaphysical doctrines are useless. To Rawls thus metaphysical and

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[1] Rawls, "Kantian Constructivism," pp. 515-572; but Rawls's pragmatic approach is already present in his writings: "the method used by Rawls in his work was broadly, though tacitly rather than explicitly, *pragmatist* in character." Fred D'Agostino, "The Legacies of John Rawls," in *The Legacy of John Rawls*, p. 195; for the pragmatism of *Theory*, see ibid., pp. 205-8.

[2] Rawls, "Kantian Constructivism," p. 518; emphasis added.

[3] Ibid., pp. 518-9; italics mine. With "us" Rawls refers to Anglo-American tradition: "we look to ourselves and to our future, and reflect upon our disputes since, let's say, the Declaration of Independence" (Ibid., p. 518).

epistemological discussions should be abandoned. To find foundations of the social consensus, the shared social understandings and practices have to be examined critically. Rawls's interpretation of Kantian constructivism offers that "conditions for justifying a conception of justice hold only when a basis is established for political reasoning and understanding within a public culture."[1] Rawls does not leave aside public reasoning though. He is aware of Kantian distinction of autonomy and heteronomy. Rawls does not abandon reason, while emphasizing culture, history, and tradition. These shared understandings are taken as raw materials of public reason. Public reasoning composes "first principles of justice" via "a procedure of construction."[2] However, this is unlike logical reasoning. Rawls explains this public reasoning along these lines:

> to justify a Kantian conception within a democratic society is not merely to reason correctly from given premises, or even from publicly shared and mutually recognized premises. The real task is to discover and formulate the deeper bases of agreement which one hopes are embedded in common sense, or even to originate and fashion starting points for common understanding by expressing in a new form the convictions found in the historical tradition by connecting them with a wide range of people's considered convictions: those which stand up to critical reflection.[3]

Hence, Rawlsian constructivism critically inspects society's political culture and historical traditions to find foundations of the consensus. He finds and enhances these commonalities to attain "a public conception of justice."[4] In this fashion, to Rawls, since the principles are derived from the values of historical traditions, each person will agree on the conception of justice; and a just society will be possible. The point is therefore to find and provide foundations of the agreement by recourse to "common sense," not metaphysics or epistemology.

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[1] Ibid., p. 517.

[2] Ibid., p. 516.

[3] Ibid., p. 518.

[4] Ibid., p. 519.

Rawls reveals his *pragmatic* attitude in the *Dewey Lectures*. Additionally, in the article called "Justice as Fairness: Political not Metaphysical," he stresses the *political* character of his theory with the negation of metaphysics. Rawls concerns about misinterpretations; so, he starts the article by correcting some misunderstandings about *Theory* and the *Dewey Lectures*. Rawls first claims that justice as fairness should be assumed as a *political philosophy* not as a metaphysical theory. Later he briefly summarizes "Kantian Constructivism in Moral Theory" in the footnote and revises the title as "Kantian Constructivism in Political Philosophy."[1] Because he reinterprets Kantian constructivism in the discipline of political theory to justify political justice; so, the real title is deceptive. Then again Rawls emphasizes that his approach is political and practical rather than metaphysical or epistemological. He also defends that *Theory* does not imply a moral vision. Rawls explains this idea as follows:

> one thing I failed to say in *A Theory of Justice*, or failed to stress sufficiently, is that justice as fairness is intended as a political conception of justice. While a political conception of justice is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions.[2]

In other words, Rawls's theory is a weak conception.[3] It does not presuppose a specific worldview. Justice as fairness is just a political philosophy that brings about "one unified system of social cooperation."[4] Thus, everyone may pursue her understanding of the good freely. Hence, to Rawls, justice as fairness is simply a *political* understanding. Neither moral nor metaphysical conceptions can make agreement possible in the public realm. Rawls draws attention to practice again: "as a practical political matter no general moral conception can provide a publicly

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[1] Rawls, "Political not Metaphysical," p. 224.

[2] Ibid., p. 224.

[3] Rawls, *Theory*, p. 129.

[4] Rawls, "Political not Metaphysical," p. 225.

recognized basis for a conception of justice in a modern democratic state."[1] Since there are countless worldviews in the modern societies, persons' agreement on a particular moral understanding is impossible. To Rawls, modern history and society shows that there is no "one rational good."[2] Each community, culture, and tradition has its own understanding of the good. Following "the fact of reasonable pluralism," Rawls observes that

> the social and historical conditions of such a state have their origins in the Wars of Religion following the Reformation and the subsequent development of the principle of toleration, and in the growth of constitutional government and the institutions of large industrial market economies. These conditions profoundly affect the requirements of a *workable conception of political justice*: such a conception must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies.[3]

The idea of toleration, derived from the wars of religion, shows that constitutional government should be open to all kinds of reasonable worldviews. So, a practical theory of justice should recognize and endorse all democratic understandings of the good. To achieve this goal, justice as fairness should be neither moral nor metaphysical, but *political*. For Rawls, a theory of justice "tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation."[4] In fact, these "basic intuitive ideas" rely on the values of *freedom* and *equality*. At bottom, Rawls's main interest is organizing major institutions according to these fundamental values of equality and freedom.[5] He seeks to arrange these ideas in such a way that all the parties can follow their understanding of the good. To that

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[1] Ibid., p. 225.

[2] Ibid., p. 248.

[3] Ibid., p. 225; italics mine.

[4] Ibid., p. 225.

[5] Ibid., p. 227.

end, Rawls considers that his theory can appeal to each party regardless of its worldview; however, he is doubtful about its achievement. Because justice as fairness stems from a *particular* political culture:

> justice as fairness is a political conception *in part* because it starts from within a *certain* political tradition. We hope that this political conception of justice may at least be supported by what we may call an "overlapping consensus," that is, by a consensus that includes all the opposing philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society.[1]

Thus, acceptance of justice as fairness by each party is questionable; because Rawls's theory eventually depends on liberal political philosophy, i.e. American version of liberalism.[2] Justice as fairness aims to reorganize socioeconomic and political institutions consistent with the ideas of equality and freedom. Consequently, Rawlsian theory of justice takes for granted these ideas. So, as Rawls expresses, the inclusion of "all the opposing philosophical and religious doctrines" by means of a *particular* theory is susceptible. Nevertheless, Rawls defends himself by putting *Political Liberalism* forward. He suggests that political liberalism "aims for a *political* conception of justice as a freestanding view. It offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself."[3] That is, *political* liberalism is unlike classical liberalism which is a philosophical doctrine. Political liberalism is a "freestanding view" which does not presume a comprehensive ideology; but is it possible? Can political liberalism be free from certain metaphysical and moral presumptions? It is argued that political liberalism provides opportunity to all reasonable comprehensive doctrines and it is unrelated to a moral and metaphysical doctrine; is it possible? On the one hand, political liberalism offers a political structure that is convenient for all comprehensive doctrines, and on the other hand, it does not

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[1] Ibid., pp. 225-6; emphasis added.

[2] Rorty, "The Priority of Democracy to Philosophy," p. 189.

[3] Rawls, *Political Liberalism*, p. 10; emphasis added.

imply a comprehensive doctrine; is it possible? Where can we know that it is such that? Is it likely that a freestanding political doctrine can be and survive? If political liberalism is not actually a comprehensive doctrine, is it sustainable? Or it should support liberal moral and metaphysical ideas to maintain itself? This problematic of political liberalism attracted many critics; but here major figures will be examined: Jean Hampton, Jürgen Habermas, and Joseph Raz.

2.4.2 Hampton's Critique

Jean Hampton condemns Rawls because of his inability to solve the paradox of liberalism. American poet Robert Frost suggests the paradox of liberalism. In his poem named "The Lesson for Today," he satirically tells that a liberal cannot take her own side in an argument.

> *I'm liberal. You, you aristocrat*
> *Won't know exactly what I mean by that.*
> *I mean so altruistically moral*
> *I never take my own side in a quarrel.*[1]

Since liberalism defends tolerance and impartiality, it should consent to all kinds of viewpoints. However, liberalism does not give permission to illiberal ideas, but in fact it should consent to all kinds of doctrines.[2] For instance think about a group of people who publishes a magazine that prints articles about disadvantages and evils of free speech; and they assert that free speech should be abrogated, and both internet and print pieces should be censored. How a liberal state ought to respond to this group? If it tolerates this group, they would be supporting illiberal ideas which are harmful to liberalism. If the liberal state does not permit and ban this magazine; it would be against the freedom of speech and autonomy of the civil society. This is the paradox of liberalism: a liberal cannot take her own side in an

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[1] Robert Frost, *The Poems of Robert Frost* (New York: The Modern Library, 1946), p. 407; emphasis added.

[2] Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy & Public Affairs* 16, no. 3 (Summer 1987): pp. 215-40.

argument. Hampton questions Rawls's response to the paradox of liberalism. As in our example, she describes a marginal group who obey the principles of justice because of not being strong enough. When they are capable of state power, they violate the rules and act according to their comprehensive doctrines. That is, the existing state is a mere *modus vivendi*. What is Rawlsian solution to this problem? Hampton thinks that Rawls would not attempt to change the ideas of the marginal group because of the method of avoidance. So, he would not persuade the marginal group on behalf of the idea of toleration to avoid metaphysical discussions. Rawls thus falls into the paradox of liberalism and cannot go beyond *modus vivendi*. To overcome the difficulty, Hampton proposes that Rawls should allow doing metaphysics and arguing with the marginal groups to persuade them for the idea of toleration as such.[1] Otherwise Rawls cannot maintain the stability of the society. Political liberalism therefore cannot ensure the stability of its institutions. To maintain its stability, Rawls should surpass political liberalism and defend comprehensive liberalism as a philosophical doctrine. Indeed, this is what happens in practice. Liberal states exceed the limits of political liberalism and uphold liberalism as a comprehensive philosophical ideology when they face with real problems.[2] It appears that liberalism is a comprehensive doctrine as well. To Hampton, thus, unless Rawls does not let doing political philosophy with metaphysics (*philosophical liberalism*), his *Political Liberalism* cannot be realized.[3]

2.4.3 Habermas's Critique

Jürgen Habermas draws attention to the necessary connection between the *political* and the *metaphysical* in political liberalism. To Habermas, although Rawls aims to distinguish the domains of the political and the metaphysical, he could not be successful; because the relationship between the political and the metaphysical is

[1] Hampton, "Should Political Philosophy," pp. 803-4.

[2] Nagel "Moral Conflict," p. 216; Sandel also objects to the difficulty of "bracketing grave moral questions" in political liberalism; see Sandel, *Liberalism and the Limits of Justice*, pp. 196-202.

[3] Hampton, "Should Political Philosophy," p. 805.

"complementary."[1] That is, without the backup of the metaphysical (i.e. comprehensive doctrines), political justice cannot be justified in Rawlsian liberalism.[2] Hence, insofar as Rawls seeks to avoid comprehensive doctrines in the political, he is caught by them. Habermas observes that Rawls makes "a division of labor between the political and the metaphysical"[3] which is consistent with the liberal distinction between the *private* and the *public* realm. Thereafter *truth* claims are pushed into the private realm (comprehensive doctrines), and the public realm is reserved for the reasonable political doctrines. In *Political Liberalism*, public-political reasons of agreement result from comprehensive doctrines which are in the private sphere.[4] To be precise, the justification of political agreement arises from comprehensive doctrines. At that point, Habermas rightly questions the lack of a public "moral point of view" in the overlapping consensus:

> reasonable citizens cannot be expected to develop an overlapping consensus so long as they are prevented from jointly adopting a moral point of view independent of, and prior to, the various perspectives they individually adopt from within each of their comprehensive doctrines. The notion of reasonableness is either so etiolated that it is too weak to characterize the mode of validity of an intersubjectively recognized conception of political justice, or it is defined in sufficiently strong terms, in which case what is practically reasonable is indistinguishable from what is morally right.[5]

As Habermas points out, Rawls's idea of the "reasonable" is highly problematical. Rawls attempts to refrain from truth claims of comprehensive doctrines, but he is attached to new controversial concepts. For Habermas, the concept reasonable is too weak to validate an "intersubjectively recognized conception of political justice." He criticizes Rawls because of doing injustice to practical reason with his

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[1] Habermas, *The Inclusion of the Other*, p. 84.

[2] Ibid., p. 76.

[3] Ibid., p. 77.

[4] Rawls, *Political Liberalism,* p. 12

[5] Habermas, *The Inclusion of the Other*, p. 77.

loose notion of reasonableness: "Rawls cannot ultimately avoid giving full weight to requirements of practical reason that constrain rational comprehensive doctrines rather than merely reflect their felicitous overlapping."[1] To Habermas, without a public moral point of view and a strong practical reason, the overlapping consensus depends on the luck of the draw. Leaving the justification of political agreement at the mercy of comprehensive doctrines is a daring venture and a vain hope; because the overlapping consensus is expected from countless comprehensive doctrines. Since all the comprehensive doctrines justify the principles of justice from their own perspectives, the agreement of the parties on a set of principles is highly unlikely. To Habermas, given that Rawls avoids the metaphysical and does not construct a moral point of view, public justification becomes impossible; hence Rawlsian project fails. Rawls thus leaves the justification of the overlapping consensus at the mercy of comprehensive doctrines, which can create a mere *modus vivendi* at best.[2]

2.4.4 Raz's Critique

In addition to these criticisms, Joseph Raz propounds that Rawls's theory is indeed *philosophical* since it requires a "complex moral doctrine of justice."[3] Raz argues that Rawls's theory is not just a political theory; it also has moral presumptions of "social unity and stability based on a consensus." Rawls believes that the role of political philosophy should be practical rather than theoretical. According to Raz, Rawls presupposes that "[t]he only reason for philosophy to establish the possibility of stability is, presumably, that that is the only way philosophy can contribute towards achieving noncoerced social unity and stability."[4] In this manner, he defines the task of political philosophy. Rawls appreciates some

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[1] Ibid., p. 78.

[2] Ibid., p. 86.

[3] Raz, "Facing Diversity," p. 14.

[4] Ibid., p. 14.

practical assignments for philosophy and depreciates some other ones. For Raz, Rawls has some implicit presumptions which delineate his theory of justice:

> it would appear that while the goal of political philosophy is purely practical—while it is not concerned to establish any evaluative truths—it accepts some such truths as the presuppositions which make its enterprise intelligible. It recognizes that social unity and stability based on a consensus—that is, achieved without excessive resort to force—are valuable goals of sufficient importance to make them and them alone the foundations of a theory of justice for our societies. Without this assumption it would be unwarranted to regard the theory as a theory of *justice*, rather than a theory of social stability.[1]

Raz thus shows that Rawlsian theory of justice has moral presuppositions which make it a moral doctrine. Furthermore, Raz contends that Rawls's theory has epistemic commitments; because by considering a theory of justice as realistic and reasonable, Rawls asserts that it is valid and true. That is, *A Theory of Justice* is in fact *The Theory of Justice* of Rawls. Raz holds that

> to recommend one as a theory of justice for our societies is to recommend it as a just theory of justice, that is, as a true, or reasonable, or valid theory of justice. If it is argued that what makes it *the* theory of justice for us is that it is built on an overlapping consensus and therefore secures stability and unity, then consensus-based stability and unity are the values that a theory of justice, for our society, is assumed to depend on. Their achievement—that is, the fact that endorsing the theory leads to their achievement—makes the theory true, sound, valid, and so forth. This at least is what such a theory is committed to. There can be no justice without truth.[2]

So, as Raz points out, Rawls's theory appeals to a truth claim and a moral ideal, which are associated with the liberal tradition.[3] Rawls explicitly states that he seeks to reconcile "liberty" and "equality,"[4] and implicitly assumes that a theory of

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[1] Ibid., p. 14.

[2] Ibid., p. 15.

[3] Ibid., p. 26.

[4] Rawls, "Political not Metaphysical," p. 227.

justice should depend on "consensus-based stability"[1] and "social unity."[2] Political liberalism is not merely political, but also comprises moral, epistemological, and metaphysical presuppositions. Rawls's theory is therefore "a special part of a comprehensive conception of the good."[3] So Raz concludes that even though Rawls sought to avoid epistemic questions in the political agreement, he is unsuccessful in doing so. Rawls's "failure suggests that the underlying idea may be at bottom unstable and incoherent. There may be no middle way between actual (including implied) agreement and rational justification."[4] Political philosophy cannot be detached from its philosophical and traditional roots. Political as well as philosophical argument is inevitable. Rawls's pragmatical and political approach sticks again to moral and philosophical controversies.

Consequently, Rawlsian approach to metaphysics is consistent: from the beginning of his writings he tries to avoid metaphysical controversies in his theory. However, he is in the wrong side of the road; because metaphysical and "epistemic abstinence"[5] in a theory of justice is impossible. In any case, political philosophy is related to ethics and metaphysics. The philosopher cannot escape from metaphysical, moral, and epistemic issues in the political realm. Even though Rawls aims at a political philosophy without metaphysics, he could not eschew philosophical, metaphysical, and moral issues. Stability, justification, and rationality problems show that the philosopher cannot abstain from the metaphysical, ethical, and philosophical. Justice is bound up with these controversial issues somehow. Though Rawls strives to focus on practice, he cannot avoid theoretical controversies. Therefore, he fails in his method of

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[1] Raz, "Facing Diversity," p. 15.

[2] Ibid., p. 14.

[3] Ibid., p. 28.

[4] Ibid., p. 46.

[5] Ibid., p. 4.

avoidance. To accomplish a reasonable and workable theory of justice, he should include metaphysical and philosophical considerations as well. Fortunately, Rawls discusses metaethical questions in his writings. To set out his theory of justice fully, let us examine his approach to metaethics.

2.5 Metaethics

Rawls sketches out his approach to metaethical controversies in his first published article: "Outline of a Decision Procedure for Ethics" (1951).[1] In this piece, Rawls lays the foundations of *Theory* (1971). In "Outline," Rawls seeks to construct a method that can justify moral judgments through reasonable principles: "the aim of the present inquiry, namely, to describe a decision procedure whereby principles, by means of which we may justify specific moral decisions, may themselves be shown to be justifiable."[2] With this procedure, Rawls aspires to go beyond metaethical discussions about "the objectivity or the subjectivity of moral knowledge."[3] According to Rawls, the real question is whether a "reasonable decision procedure" might be possible or not:

> [d]oes there exist a reasonable decision procedure which is sufficiently strong, at least in some cases, to determine the manner in which competing interests should be adjudicated, and, in instances of conflict, one interest given preference over another; and, further, can the existence of this procedure, as well as its reasonableness, be established by rational methods of inquiry?[4]

Rawls thinks that there is a method of moral reasoning and attempts to create this reasonable procedure throughout his works. From the beginning, it is evident that

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[1] This article "was based on his dissertation and came out the following year" (Jon Mandle, "The Choice from the Original Position," in *A Companion to Rawls*, eds. J. Mandle and D. A. Reidy [Malden, MA: Wiley-Blackwell, 2014], p. 131). The title of Rawls's dissertation is "A Study in the Grounds of Ethical Knowledge: Considered with Reference to Judgments of the Moral Worth of Character," (unpublished PhD Dissertation, Princeton University, 1950).

[2] John Rawls, "Outline of a Decision Procedure for Ethics," *The Philosophical Review* 60, no. 2 (April 1951), p. 183.

[3] Ibid., p. 177.

[4] Ibid., p. 177.

the method he attempts to construct would be reasonable and rational. Additionally, in the following lines, he reiterates the question with a supplement: "does there exist *a reasonable method for validating* and *invalidating* given or proposed moral rules and those decisions made on the basis of them?"[1] In other words, Rawls asks for a reasonable method of confirmation for justifying moral principles. He consolidates this interpretation as follows:

> [f]or to say of scientific knowledge that it is objective is to say that the propositions expressed there in may be evidenced to be true by a reasonable and reliable method, that is, by the rules and procedures of what we may call "inductive logic"; and, similarly, to establish the objectivity of moral rules, and the decisions based upon them, we must exhibit the decision procedure, which can be shown to be both reasonable and reliable, at least in some cases, for deciding between moral rules and lines of conduct consequent to them.[2]

Rawls here draws an analogy between inductive logic and ethics. He presupposes that just as scientists' achieving objectivity in science, he can reach objectivity in ethics.[3] To that end, he seeks to create a decision procedure to validate moral rules and principles objectively. Akin to inductive reasoning, Rawls expects and tries to achieve objectivity in moral reasoning. So, it is evident that Rawls "believes in the objectivity of moral judgments and in their capacity to be more or less reasonable. He also believes in moral judgments' capacity for correctness, including truth or falsity."[4] But this does not mean that moral facts are *out there* independent of moral reasoning:

> the objectivity or subjectivity of moral judgments depends not on their causes … but solely on whether a reasonable decision procedure exists which is

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[1] Ibid., p. 177; my italics.

[2] Ibid., p. 177.

[3] "It is worthwhile to note that the present method of evidencing the reasonableness of ethical principles is analogous to the method used to establish the reasonableness of the criteria of inductive logic." Ibid., p. 189.

[4] Freeman, *Rawls*, pp. 29-30;

sufficiently strong to decide, at least in some cases, whether a given decision, and the conduct consequent there to, is reasonable.[1]

As it is seen, here key concept is the "reasonable decision procedure." If it can be shown that a reasonable decision procedure exists, then moral objectivity would be yielded. According to Rawls thus the point is to construct a "reasonable decision procedure" for ethics.

2.5.1 Reflective Equilibrium

The decision procedure is flourished and named as "reflective equilibrium"[2] in *Theory.* In "Outline" he acknowledges that inductive logic inspired the decision procedure largely. In *Theory*, he points out Nelson Goodman's *Fact, Fiction, and Forecast*[3] for the existence of a similar justification method in confirmation theory. Although Goodman did not call his confirmation theory as reflective equilibrium,[4] he introduces the underlying idea of reflective equilibrium in the section entitled "The Constructive Task of Confirmation Theory" as follows:

> [t]he task of formulating rules that define the difference between valid and invalid inductive inferences is much like the task of defining any term with an established usage. If we set out to define the term "tree", we try to compose out of already understood words an expression that will apply to the familiar objects that standard usage calls trees, and that will not apply to objects that standard usage refuses to call trees. A proposal that plainly

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[1] Rawls, "Outline of a Decision Procedure," p. 185.

[2] Rawls, *Theory*, p. 20.

[3] Nelson Goodman, *Fact, Fiction, and Forecast* (Cambridge, Mass.: Harvard University Press, 1955), pp. 65-68.

[4] Frazer declares openly that "Rawls is inspired by Nelson Goodman's discussion of reflective equilibrium in Goodman's justification of the principles of deductive and inductive inference." Frazer, "John Rawls," p. 780, n. 37; and Daniel Cohnitz and Marcus Rossberg state that "[t]he term "reflective equilibrium" was introduced by John Rawls (1971) for Goodman's technique. Daniel Cohnitz and Marcus Rossberg, "Nelson Goodman," accessed May 4, 2017, The Stanford Encyclopedia of Philosophy (Winter 2016 Edition), Edward N. Zalta (ed.), URL = https://plato.stanford.edu/archives/win2016/entries/goodman/; Freeman argues that reflective equilibrium is Rawls's original theory of moral justification; see Freeman, *Rawls*, p. 31. Anyway, reflective equilibrium is Rawls's contribution to moral theory, because it was a new perspective in ethics.

violates either condition is rejected; while a definition that meets these tests may be adopted and used to decide cases that are not already settled by actual usage. Thus the interplay we observed between rules of induction and particular inductive inferences is simply an instance of this characteristic dual adjustment between definition and usage, whereby the usage informs the definition, which in turn guides extension of the usage.[1]

In *Theory* Rawls explains reflective equilibrium in this fashion:

> [i]n searching for the most favored description of this situation [original position] we work from both ends. We begin by describing it so that it represents generally shared and preferably weak conditions. We then see if these conditions are strong enough to yield a significant set of principles. If not, we look for further premises equally reasonable. But if so, and these principles match our considered convictions of justice, then so far well and good. But presumably there will be discrepancies. In this case we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium.[2]

As previously stated, Rawls draws an analogy between inductive logic and ethics. From these quotations, it is understood that the terms "definition" and "usage" in Goodman's account of confirmation correspond to "the description of the initial situation" and "considered judgments" in Rawls's reflective equilibrium. In Rawls's *reflective equilibrium*, the conditions of the original position and the principles of justice would be acquired. In Goodman's reflective equilibrium, the definition and rules of induction would be gained. In this way Goodman confirms inductive inferences, and Rawls justifies moral principles. Consequently, thanks to the reflective equilibrium, Goodman proposes a justification for inductive reasoning and Rawls offers a justification for moral reasoning.

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[1] Goodman, *Fact, Fiction, and Forecast,* p. 66.

[2] Rawls, *Theory*, p. 20.

Since "[t]he idea of reflective equilibrium is one of several key ideas about justification in Rawls's theory of justice,"[1] we have to examine it deeply. There are some readings of reflective equilibrium. The first and conventional interpretation understands reflective equilibrium as a *method of justification*.[2] The second one, that is a provocative interpretation, understands reflective equilibrium as Rawls's *metaethics*.[3] So, I shall examine these interpretations respectively and argue that reflective equilibrium is a method of justification that seeks to transcend metaethical debates, but unfortunately it fails the task. The method could not reply satisfactorily to the charges of intuitionism and relativism. As a result, it will be shown that the method is not strong enough to justify moral principles and judgments.

2.5.1.1 Scanlon's interpretation of reflective equilibrium

The conventional reading of reflective equilibrium understands it as a method of moral justification. The best defender of this reading is Thomas Scanlon, so his interpretation of reflective equilibrium will be explained first. According to Scanlon's reading, initially, a person defines her considered judgments that appear fairly correct (e.g. "partisanship is unjust," "getting a position by way of bribery is unjust" etc.). Secondly, the inquirer makes abstractions to formulate some basic principles which match these judgments (e.g., "equality of opportunity should be provided for all citizens"). However, it is almost impossible to find the best principles on the first try. Thus, next, the inquirer will *refine* the principles and judgments going back and forth to find the best set of principles that fit considered judgments appropriately. This double-sided process keeps on "until one reaches a set of principles and a set of judgments between which there is no conflict. This state is what Rawls calls reflective equilibrium."[4] Although reflective equilibrium

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[1] Freeman, *Rawls*, p. 29.

[2] Thomas Scanlon, "Rawls on Justification," in Samuel Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), pp. 139-167.

[3] Laden, "Constructivism as Rhetoric," pp. 59-72.

[4] Scanlon, "Rawls on Justification," p. 141.

gives the impression of an end-point, it is "rather an ideal"[1] that we strive to reach; because "[m]oral philosophy is Socratic: we may want to change our present considered judgments once their regulative principles are brought to light. And we may want to do this even though these principles are a perfect fit;"[2] because principles will force persons to revisit existing judgments; and considered judgments will force persons to reevaluate moral principles. Reflective equilibrium is thus an ongoing process. Nonetheless, Rawls presumes that after a while adjustments will come to an end; that is, moral principles will correspond to considered judgments.[3] At the end of this process, moral principles and judgments are assumed to be justified.

Moreover, for Scanlon, reflective equilibrium is a way of objective reasoning that suggests persons "what to do"[4] in moral matters; not description but *deliberation* is "primary"[5] in reflective equilibrium. Because, when a principle and a judgment are at odds, the deliberation decides quantitatively which principle(s) or judgment(s) will be left out. Scanlon offers this decision procedure as follows: "[i]f we can find a principle that accounts for more considered judgments than the one at hand, then we should adopt that principle instead. If we cannot, then we should keep the principle and abandon the considered judgments that do not fit it."[6] Moral conflicts between principles and judgments resolved in this way, to Scanlon. The method of reflective equilibrium thus provides a perpetual refinement and justification of moral principles and judgments.

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[1] Ibid., p. 141.

[2] Rawls, *Theory*, p. 49.

[3] Ibid., p. 20.

[4] Scanlon, "Rawls on Justification," p. 146.

[5] Ibid., p. 147.

[6] Ibid., p. 148.

2.5.1.2 Laden's interpretation of reflective equilibrium

The second interpretation is developed by Anthony Laden. He contends that reflective equilibrium is "beyond a mere methodology;"[1] rather it is Rawls's metaethics, but not in the usual sense. Laden maintains that reflective equilibrium is a metaethical approach if it is conceived as a kind of moral justification.[2] This interpretation, to Laden, will decipher so-called "Rawls's political turn" and remedy misunderstandings about constructivism. "Constructivism as rhetoric" understands Rawlsian "constructivism as his method for theory construction and reflective equilibrium as his metaethics."[3] So Laden argues against interpreters who read constructivism as Rawls's metaethics and reflective equilibrium as his method for theory building. In this way, for Laden, we can do justice to reflective equilibrium.[4]

Laden first emphasizes Rawls's important speech entitled "The Independence of Moral Theory" in 1974. Here Rawls separates "moral theory" from "moral philosophy."[5] He takes moral theory as a subset of moral philosophy: "[m]oral theory is the study of substantive moral conceptions, that is, the study of how the basic notions of the right, the good, and moral worth may be arranged to form different moral structures."[6] *Ethical theory* examines ethical conceptions (e.g. utilitarianism, constructivism, contractarianism etc.) and structures. On the other hand, *moral philosophy* deals with "moral concepts, the existence of objective

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[1] Laden, "Constructivism as Rhetoric," p. 62.

[2] Ibid., p. 61.

[3] Ibid., p. 60.

[4] Ibid., p. 59.

[5] Rawls, "The Independence of Moral Theory," p. 5.

[6] Ibid., p. 5.

moral truths, and the nature of persons and personal identity."[1] To Rawls, Laden underlines, "[m]etaethics, as it has come to be called, is thus clearly a part of moral philosophy outside of moral theory."[2] Rawls then offers concentrating on moral theory rather than metaethics:

> I suggest that for the time being we put aside the idea of constructing a correct theory of right and wrong, that is, a systematic account of what we regard as objective moral truths. Since the history of moral philosophy shows that the notion of moral truth is problematical, we can suspend consideration of it until we have a deeper understanding of moral conceptions. But one thing is certain: people profess and appear to be influenced by moral conceptions. These conceptions themselves can be made a focus of study; so provisionally *we may bracket the problem of moral truth and turn to moral theory:* we investigate the substantive moral conceptions that people hold, or would hold, under suitably defined conditions.[3]

So, Rawls recommends focusing on moral theory rather than metaethics or moral philosophy. Since it is more progressive and fruitful, he gives precedence to the study of moral conceptions and structures (moral theory). Now one can rightly ask how Laden holds reflective equilibrium as Rawls's metaethics while Rawls was treating moral philosophy (including metaethics) secondary with respect to moral theory? Laden counters this question by Rawls's own words about metaphysics: "[t]o deny certain metaphysical doctrines is to assert another such doctrine."[4] In this fashion, to deny certain metaethical theories is to assert another such doctrine that lays emphasis on the justification of moral judgments.[5] That is, Rawls

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[1] Ibid., p. 6.

[2] Laden, "Constructivism as Rhetoric," p. 60.

[3] Rawls, "The Independence of Moral Theory," p. 7; emphasis added.

[4] Rawls, "Reply to Habermas," p. 137, n. 8.

[5] Laden, "Constructivism as Rhetoric," p. 61.

prioritize moral theory to metaethics; Laden continues: "[i]t is in this sense that I will suggest that reflective equilibrium is central to Rawls's metaethics."[1]

To that end, Laden differentiates his reading of reflective equilibrium. He holds that justification in reflective equilibrium is not for itself, rather it is for the sake of *others*.[2] That is, in reflective equilibrium persons seek to justify moral principles and judgments in order to persuade and agree with other persons. Laden argues that "for Rawls, justification is a matter not of following a constructive procedure but of securing agreement, and so the importance of the idea of reflective equilibrium must lie here."[3] Therefore, according to Laden, Rawls's purpose in the reflective equilibrium is to have and maintain the agreement: "[t]he aim of justifying one's position is reconciliation with others, finding common ground, not establishing warrant for one's position."[4] In other words, Rawls has *a practical goal* in reflective equilibrium, not a theoretical one; but not in the Machiavellian sense. For Laden, reflective equilibrium has also moral aspects, because in this process one should respect and be open to all reasonable criticisms. "Genuinely offering such justifications is not a matter of merely laying out the contents of one's own thoughts, but being open to other people's reasonable rejection of what you say."[5] To Laden's interpretation, reflective equilibrium also provides a moral perspective consistent with moral values of "recognition and respect."[6] Hence, for Laden, reflective equilibrium offers an ethics and a metaethics. On the one hand, reflective equilibrium suggests an ethics of respect; on the other hand, it puts

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[1] Ibid., p. 61.

[2] Ibid., p. 62.

[3] Ibid., p. 62-63.

[4] Ibid., p. 64.

[5] Ibid., p. 64.

[6] Ibid., p. 64.

forward a metaethics that justify its principles and judgments with regards to fellow citizens (i.e. *not* foundationalist).[1]

At first sight both Scanlon and Laden appear as if right in their interpretations; however, Scanlon reads Rawlsian reflective equilibrium in a more literal and faithful sense whereas Laden understands reflective equilibrium more freely but appropriately. Laden understands Rawls's aim in employing reflective equilibrium correctly: reaching and maintaining the agreement. So, reflective equilibrium justifies moral principles and judgments in this *pragmatic sense*. As Rawls states in "The Independence of Moral Theory," the priority should be given to moral theory not to moral philosophy. In this significant article, he "discussed the method of reflective equilibrium and suggested that the question as to the existence of objective moral truths seems to depend on the kind and extent of the agreement that would obtain among rational persons who have achieved, or sufficiently approached, wide reflective equilibrium."[2] Agreement is thus the key goal in reflective equilibrium. So, after coming to the agreement other metaethical discussions will be redundant (whether objective moral truths exist). In this sense, reflective equilibrium attempts to justify moral conceptions, and go beyond metaethical controversies. But it nevertheless yields a metaethics depending on the moral perspective of reflective equilibrium. That is justifying and deliberating moral questions on an equal footing; and giving reasons to other fellow citizens in order to reach an agreement. Reflective equilibrium is a method of moral reasoning in this manner. In addition to that it generates a moral and metaethical approach depending on equal respect and recognition.

Although Rawls seeks to avoid metaethical and theoretical controversies, his reflective equilibrium is exposed to serious criticisms. Two of them are fundamental and well-known: *the charge of intuitionism* and *relativism*.

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[1] Ibid., p. 64.

[2] Rawls, "The Independence of Moral Theory," p. 21.

Examination of these charges will make us understand and question reflective equilibrium properly. Let us take each of these in turn.

2.5.1.3 The charge of intuitionism

The charge of intuitionism is articulated by Richard Mervyn Hare.[1] He argues that at bottom Rawls's justification of principles relies on moral intuitions; Rawls applies to moral intuitions both in the determination of the initial conditions and the principles of justice. Since the aim of reflective equilibrium is reasonable agreement with beliefs of persons, and these beliefs depend on persons' moral intuitions; the procedure is in fact decided by moral intuitions (prime movers are intuitions). Moreover, to Hare, this moral intuitionism is "nearly always a form of disguised subjectivism;"[2] because moral judgments and principles are subject to intuitions of the people. Rawls's methodology hinges on "a kind of subjectivism"[3] that undermines its justificatory force. Therefore, reflective equilibrium does not actually provide a reliable foundation for moral principles.[4]

To support the method against this criticism, Norman Daniels explicates wide and narrow reflective equilibria that are present in Rawls's work.[5] He holds that the charge of intuitionism may be valid only for narrow reflective equilibrium. *Wide reflective equilibrium* is exempt from the objection because it revises moral

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[1] R. M. Hare, "Rawls' Theory of Justice," in Daniels, *Reading Rawls*, pp. 81-107; a similar argument against reflective equilibrium is advocated by Richard B. Brandt, *A Theory of the Good and the Right* (Oxford: Clarendon Press, 1979).

[2] Hare, "Rawls' Theory of Justice," p. 83.

[3] Ibid., p. 82.

[4] Ibid., p. 84.

[5] Norman Daniels, "Wide Reflective Equilibrium and Theory Acceptance in Ethics," *The Journal of Philosophy* 76, no. 5 (May 1979): pp. 256-282; Daniels also complains of critics (Hare and Singer) who could not distinguish narrow and wide reflective equilibria, and charge Rawls with intuitionism; see ibid., p. 267, n. 17.

intuitions and judgments according to "competing moral conceptions"[1] (e.g. utilitarianism, Kantianism, consequentialism). *Narrow reflective equilibrium* just weighs moral judgments and principles of *a person*.[2] But wide reflective equilibrium examines alternative "sets of beliefs" that are: "(a) a set of considered moral judgments, (b) a set of moral principles, and (c) a set of relevant background theories."[3] In wide reflective equilibrium, these alternative sets are evaluated to achieve coherence between these sets of opinions. To that end, "we advance philosophical arguments intended to bring out the relative strengths and weaknesses of the alternative sets of principles (or competing moral conceptions)."[4] Until reaching reflective equilibrium, we think through and revise sets of judgments and principles to create a coherent set of considered convictions, ethical principles, and a background theory which is "more acceptable than the others."[5] For Daniels thus at the end of this process, *initial* moral intuitions are changed by *considered* moral judgments and principles because of "*theory-based revisions*"[6] in wide reflective equilibrium. Furthermore, Daniels's specific argument against the charge of intuitionism is roughly as follows: "[i]ntuitionist theories have generally been foundationalist;"[7] but wide reflective equilibrium is

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[1] Ibid., p. 258.

[2] Rawls, *Theory*, p. 49.

[3] Daniels, "Wide Reflective Equilibrium," p. 258.

[4] Ibid., p. 258; this explanation of wide reflective equilibrium is also employed to reply to the charge of conservatism in reflective equilibrium. Critics contend that reflective equilibrium is conservative because it depends on existing intuitions and beliefs of the inquirer (which are shaped by existing culture, society, and tradition etc.). However, Rawls and his followers think that wide reflective equilibrium enables revision of conservative beliefs in the "clash of views" (Rawls, *Theory*, p. 580). For Rawls's reply to the charge of conservatism see Rawls, "The Independence of Moral Theory," pp. 7-8-9. For the critics of conservatism in reflective equilibrium see Peter Singer, "Sidgwick and Reflective Equilibrium," *The Monist* 58, no. 3 (July 1974): pp. 490–517. For a clear summary of the critique and reply see Scanlon, "Rawls on Justification," pp. 150-151.

[5] Daniels, "Wide Reflective Equilibrium," p. 258.

[6] Ibid., p. 266.

[7] Ibid., p. 264.

not foundationalist. Therefore, wide reflective equilibrium is not intuitionist.[1] Since *wide* reflective equilibrium approves *wide* adjustments of moral judgments, the inquirer's considered judgments do not remain as intuitions; and these judgments do not have any "special epistemological priority"[2] for a foundationalist approach.

Although Daniels's argument appears sound enough, Michael DePaul considers that Daniels confuses epistemological matters with methodological matters.[3] DePaul claims that *reflective equilibrium* is above all a *method*: "[i]t is a heuristic device for organizing our moral beliefs, a manner of conducing our moral inquiries. Foundationalism, on the other hand, is primarily a type of account of the epistemic status of our beliefs."[4] For this reason, he argues that these different issues have to be distinguished first. DePaul then shows that there is not a necessary connection between reflective equilibrium and foundationalism. Wide reflective equilibrium can be foundationalist in a particular sense and in agreement with the method. Narrow reflective equilibrium cannot be foundationalist and consistent with the method. By virtue of the demonstration, DePaul comes to an end: "there is not a necessary connection between following the method of reflective equilibrium and whether one's moral beliefs have a foundational structure."[5] Therefore, two distinct subjects should be separated and understood in itself; because there is not just one version of foundationalism and reflective equilibrium. Different combinations of these versions are also possible.

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[1] Ibid., p. 265.

[2] Ibid., p. 265.

[3] Michael R. DePaul, "Reflective Equilibrium and Foundationalism," *American Philosophical Quarterly* 23, no. 1 (January 1986): p. 60.

[4] Ibid., p. 68.

[5] Ibid., p. 60.

In a later article entitled, "Intuitions in Moral Inquiry," DePaul defends that reflective equilibrium does *not* correspond to *intuitionism* but goes along with *intuitions*. He approves of intuitions in moral inquiry but departs from intuitionism as a philosophical doctrine. DePaul maintains that "reflective equilibrium grants intuitions a leading role in moral inquiry;"[1] because moral inquiry starts, keeps on, and ends by intuitions. Since the inquirer reflects *intuitively* in reflective equilibrium, the decision procedure is guided by intuitions almost in each step. "According to reflective equilibrium, intuitive judgments play a crucial role in the development and justification of these epistemic principles."[2] At bottom we decide by intuitions in moral inquiry. This leading role of intuitions in moral inquiry is not a weakness for DePaul, because including scientific inquiry "there really isn't any sensible alternative to going along with the intuitions we have after full reflection."[3] To DePaul, the best we can do is thinking by intuitions in reflective equilibrium.

In this work, DePaul seeks to refute criticisms against reflective equilibrium and defends it by appealing to how moral inquiry is employed. He just tries to repudiate alternatives and give details of moral inquiry in reflective equilibrium; however, a defense of reflective equilibrium by intuition needs more. Constructing negative arguments is not enough to prove the method of reflective equilibrium. DePaul's defense could not justify intuitionistic elements in moral inquiry. Is intuition enough for moral inquiry in reflective equilibrium? Is moral justification by intuition a firm basis? What about epistemic foundations of reflective equilibrium? Are they justified satisfactorily?[4] What is the epistemic and ethical

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[1] Michael R. DePaul, "Intuitions in Moral Inquiry," in David Copp (ed.), *The Oxford Handbook of Ethical Theory* (Oxford: Oxford University Press, 2006), p. 597.

[2] Ibid., p. 616.

[3] Ibid., p. 618.

[4] Kappel examines meta-justification attempts of reflective equilibrium (Best Explanation, Coherentist, Intuitive), however none of them justifies the method of reflective equilibrium satisfactorily, see Klemens Kappel, "The Meta-Justification of Reflective Equilibrium," *Ethical Theory and Moral Practice* 9, no. 2 (April 2006): pp. 131–147.

value of intuitions? These questions should be responded satisfactorily by the supporters of reflective equilibrium. However, in the current works on reflective equilibrium, there is not a satisfactory reply to the charge of reliability of intuitions.[1] Peter Singer also advocates that since moral intuitions are molded by culture, society, and evolutionary history; normative force of intuitions is weak. A normative ethical theory should trump common moral intuitions. Formulating ordinary moral judgments and intuitions is not sufficient for a normative ethical theory. A normative ethical theory should not just explain conventional morality; it should inform what we ought to do? Since Rawls's reflective equilibrium relies on "common moral intuitions" (*what is*), it cannot answer the question of *what we ought to do*.[2] Yet as it is mentioned above, Scanlon's account of reflective equilibrium supports that the method provides "a systematic way of reasoning about *what to do*."[3] Scanlon appeals to the deliberative interpretation of reflective equilibrium. In view of the deliberative interpretation, the inquirer alone decides what to do. As we know, there are two basic sets in reflective equilibrium: (a) a set of considered moral judgments, (b) a set of moral principles. When there is a contradiction between these sets, the inquirer rejects contradictory elements of (a) or (b). The decision of rejection is given by the majority. That is, if a great majority of moral judgments contradict with a principle, the principle is rejected. Otherwise, the contradictory judgment is abandoned, and principles are held. To Scanlon, the deliberative interpretation of reflective equilibrium decides what to do

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[1] For the reliability of considered judgments in reflective equilibrium see Stefan Sencerz, "Moral Intuitions and Justification in Ethics," *Philosophical Studies* 50, no. 1 (July 1986): pp. 77-95.

[2] Peter Singer, "Ethics and Intuitions," *The Journal of Ethics* 9, no. 3-4 (October 2005): p. 345; Singer's point of departure in his critique of moral intuitions is recent research in neuroscience and evolutionary theory, see ibid., pp. 331-352. Beforehand there was another scientific and philosophical debate on human rationality, intuitions, and reflective equilibrium. The debate is triggered by L. Jonathan Cohen, "Can Human Irrationality be Experimentally Demonstrated?," *Behavioral and Brain Sciences* 4, no. 3 (September 1981): pp. 317-370. Cf. Stephen Stich, "Reflective Equilibrium, Analytic Epistemology and the Problem of Cognitive Diversity," *Synthese* 74, no. 3 (March 1988): pp. 391–413; also see exchange between Stein and Cohen: Edward Stein, "Rationality and Reflective Equilibrium," *Synthese* 99, no. 2 (May 1994): pp. 137-172; L. Jonathan Cohen, "A Reply to Stein," *Synthese* 99, no. 2 (May 1994): pp. 173-176; and Edward Stein, "Cordoning Competence: A Reply to Cohen," *Synthese* 99, no. 2 (May 1994): pp. 177-179.

[3] Scanlon, "Rawls on Justification," p. 147; italics are added.

in this quantitative way of reasoning.[1] However, Singer may object to Scanlon again; because, moral judgments and principles are determined intuitively. Ultimately ethical judgments and principles depend on the inquirer's intuitions, which lack normative and justificatory force. When all is said and done, it appears that the charge of intuitionism cannot be defeated easily. Hare and Singer's insights on reflective equilibrium looks like true.

2.5.1.4 The charge of relativism

A second crucial critique is that reflective equilibrium is *relative to* the considered judgments of *the inquirer*. Since the method of reflective equilibrium relies on considered judgments and since they rely on moral presumptions of the inquirer, two different people can equally justify their own sets of principles depending on their considered judgments in accordance with the method. They start from different sets of considered judgments and so they arrive at different sets of principles that are equally justified in reflective equilibrium. Thus, the method of reflective equilibrium is *relative to* the inquirer's convictions. Actually, it is not a method of "justification," but a "a technique for systematizing and organizing one's antecedent moral convictions."[2] Because it could not provide objective grounds for preferring one set of principles over the other. As a matter of fact, there is no rational choice in reflective equilibrium because the choice depends on the inquirer's presumptions. The method of reflective equilibrium thus cannot offer an objective basis or criterion for evaluating ethical theories stemming from different sets of considered judgments. This deficiency makes reflective equilibrium highly relativistic, because "the correct moral theory depends upon the background beliefs with which one begins, and these may differ in important ways from one community to another."[3]

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[1] Ibid., p. 148.

[2] Daniel Little, "Reflective Equilibrium and Justification," *Southern Journal of Philosophy* 22, no. 3 (Fall 1984): p. 373.

[3] Ibid., p. 384. For the other criticisms including relativist objections to reflective equilibrium, see D. W. Haslett, "What is Wrong with Reflective Equilibria?," *Philosophical Quarterly* 37, no. 148 (July 1987): pp. 305–311; and Mark Timmons, "Foundationalism and the Structure of Ethical Justification," *Ethics* 97, no. 3 (April 1987): pp. 595-609.

Scanlon attempts to reply to the charge of relativism by three points. First, he reminds that considered convictions are not "fixed inputs but are open to constant modification."[1] That is, the inquirer may change her starting points in the process. Secondly, Scanlon underlines wide reflective equilibrium in which the inquirer inspects alternative moral conceptions and philosophical arguments related to the matter. Thirdly, Scanlon recommends checking the procedure whether it is exercised in line with the method in every single step. After these points are controlled and confirmed (if the inquirer is well informed and conscientiously followed the method), Scanlon admits the possibility of two divergent sets of principles. But he rejects this possibility as an objection to reflective equilibrium: "[t]he fact that the method of reflective equilibrium could lead to a result that called into question the objectivity of our moral beliefs is not an objection to that method."[2] Rather Scanlon deems that this possibility points out that skepticism is not covered up in advance in reflective equilibrium.[3] Thus to Scanlon we have to follow the method properly and observe the results of the process. However, the relativism of different sets of principles looks like a manifest inadequacy of the method, because it does not recommend the inquirer to select between two rival moral conceptions. A decision procedure for ethics should suggest a choice between different sets of moral principles, but reflective equilibrium cannot provide a rational choice between equally justified moral theories. The method cannot offer a decision procedure for ethics, because it is open to relativistic implications and suspicions. Therefore, it is evident that the method cannot

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[1] Scanlon, "Rawls on Justification," p. 152.

[2] Ibid., p. 153.

[3] Nielsen also seeks to reply to the charge of relativism depending on wide reflective equilibrium, see Kai Nielsen, "Relativism and Wide Reflective Equilibrium," *Monist* 76, no. 3 (July 1993): pp. 316-332; on the other hand Kelly and McGrath argue that different inquirers each of whom employed the method faultlessly cannot attain same reflective equilibrium which makes the method of reflective equilibrium insufficient; for a critical discussion of reflective equilibrium see Thomas Kelly and Sarah McGrath, "Is Reflective Equilibrium Enough?" *Philosophical Perspectives* 24, no. 1 (December 2010): pp. 325-359.

distinguish and determine between rival ethical theories, but just polishes the prejudices of the inquirer.[1]

Consequently, it is evident that the method is too fragile with respect to the charges of relativism and intuitionism. Rawls and Rawlsians could not respond to these criticisms satisfactorily. The method of reflective equilibrium could not justify and decide moral principles adequately. Rather than a method of moral justification, reflective equilibrium seems like a systematization of moral judgments and principles depending on one's existing intuitions. So, anybody can organize her ideas in this procedure. A libertarian, Marxist, and even a fascist can use the method to "justify" her moral account. Convergence of ethical judgments and principles is not possible in reflective equilibrium. Therefore, the agreement of persons is highly unlikely in reflective equilibrium. In the beginning, Rawls had sought to eschew metaethical controversies by means of reflective equilibrium; however, he stuck into new epistemological and methodological discussions. He had imagined transcending the controversies about moral objectivity with the method of reflective equilibrium, but he neither went beyond these disagreements nor achieved objective moral knowledge nor he secured agreement of persons. Rawls had attempted to avoid theoretical discussions with a practical goal, however he got caught by methodological and epistemological problems again. After all, Rawls sought again for a sound basis to deal with these criticisms. So, he started to emphasize Kantian constructivism in his later work; but since the goal of this dissertation is constrained by his early work, Kantian constructivism will not be discussed here.[2]

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[1] Raz also criticizes the method of reflective equilibrium because of being unable to give reasons for the choice of considered judgments and rival moral views, see Joseph Raz, "The Claims of Reflective Equilibrium," *Inquiry* 25, no. 3 (1982): pp. 307-330; Sem de Maagt examines theses of the defenders of the method who seek to reply to the charges of relativism and intuitionism. He concludes that proponents of reflective equilibrium could not be successful in their replies and secure moral objectivity. What is more, he argues that the method is not the only method of justification in ethics. For the replies and recent developments in meta-ethics, see Sem de Maagt, "Reflective Equilibrium and Moral Objectivity," *Inquiry* 60, no. 5 (2017): pp. 443-465.

[2] Kantian constructivism is mostly concerned with his later project: *Political Liberalism*. For Rawls's Kantian constructivism, see Rawls, *Political Liberalism,* pp. 89-129; Freeman, *Rawls*, pp. 284-323; Thomas E. Hill, Jr., "Kantian Constructivism in Ethics," *Ethics* 99, no. 4 (July 1989): pp. 752–770; and Larry Krasnoff, "How Kantian is Constructivism?," *Kant-Studien* 90, no. 4 (1999): pp. 385-409.

CHAPTER 3

CONCLUSION

The main objective of this dissertation is to explain the eminent American philosopher John Rawls's theory of justice accurately, locate his exact position within the historical and philosophical context, and critically examine its main arguments and methodology. Using evidence available to us from close assessment of Rawls's theory, it is grasped that he attempts to reconcile the notions of *liberty* and *equality* to procure a third way between capitalism and communism. *A Theory of Justice* (1971) is written in a period of intense conflicts and wars, such as the Second World War, Vietnam War, Cold War, and Civil Rights Movement. In this era of social, economic, political, and military conflicts Rawls indicated that free, equal, and rational individuals can decide on the principles of justice which are beneficial to all. To that end, he develops a form of *egalitarian liberalism* to create a just scheme of social collaboration that regulates the distribution of liberties, opportunities, and resources to the maximum profit of the most disadvantaged. However, our critical investigation shows that Rawls's theory is not very egalitarian indeed. Although it sets limits from top and bottom, it does not eliminate social and economic inequalities completely; but it adjusts the inequalities for the benefit of the least fortunate via basic institutions. Since social and economic inequalities increase efficiency, effective use of resources, and creativity; justice as fairness permits and even perpetuates the inequalities. Rawls therefore deems an affluent society with inequality preferable to an equal but poor society.

To realize his project, Rawls relies on the contractarian tradition, in particular Locke and Kant. Rawls however does not merely take their concepts and insert into his theory but reformulates them to be consistent with his empirical and pragmatic approach. In this sense, Rawls as a philosopher appropriates his

predecessor's ideas and builds his own theory. He tries to build a modern theory of social justice which is parallel to human nature and condition. That is to say, Rawls's theory is not a theory for saints; it takes persons as free, equal, and rational human beings. But at the same time, it forces these persons to think of themselves as in the original position and select the first principles of justice. Rawls assumes that since they are symmetrically positioned and nobody can predict his actual socioeconomic status, the agreed principles are the consequence of a just social contract. Given that the choice process is *fair*, the consequence of the process would be *just*. This is the fundamental idea behind justice as fairness: *pure procedural justice*. If the fair procedure is carried out correctly, it will lead to a just outcome. Owing to the choice procedure, the principles of justice would be obtained and their implementation to major institutions would produce just outcomes, i.e. distributive shares.

In the original position, Rawls holds that the two (actually three) principles of justice would be selected: EBL, FEO and DP. EBL designs (roughly the political) structure of society to provide "a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all;"[1] so that each individual can enjoy equal basic liberties. These are mostly political rights and civil liberties which ensures necessary institutional conditions for the satisfactory flourishing and fulfillment of their ethical capacities (the capacity for a sense of fairness and the capacity for an understanding of the good). FEO aims to guarantee all persons' equal opportunity to be able to achieve positions and offices. DP demands that socioeconomic inequalities are to be regulated so that they are to the maximum profit of the most disadvantaged. Rawls attaches absolute priority to EBL, and lexical priority to FEO over the DP. Accordingly, they work in this hierarchical order. As it is seen, Rawls seeks to prevent the sacrifice of citizens' equal basic liberties for more socioeconomic benefits (which is possible in the utilitarian calculus). Therefore, Rawls suggests that socioeconomic structure should be organized to be maximum advantage of the least fortunate under these constraints. He believes that when these principles applied to basic institutions

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[1] Rawls, "The Basic Liberties," p. 5.

properly, *democratic equality* would be achieved. So that citizens will enjoy their civil rights and political liberties equally, have an equal chance to reach professional positions and public offices, and take their fair shares.

EBL frames the distribution of the basic liberties, as stated in subsection 2.3.3.1. FEO sets up the distribution of opportunities; and DP sets up the distribution of powers of offices, socioeconomic advantages, and resources, as explained in subsection 2.3.3.2. Then the application of all principles secures the social foundations of self-esteem. *The set of primary social goods* therefore consists of the basic liberties, opportunities, resources, and the social foundations of self-esteem, according to Rawls. They are necessary for the flourishing and realization of citizens' two ethical capacities. So, it is assumed that each citizen wants to get more of primary goods to follow their understandings of the good. In Rawls's theory, they are called for specifying the worst-off group and making interpersonal comparisons in alternative basic structures via the index of primary goods.

However, the critical assessment of Rawls's theory reveals that the set of primary social goods as well as the principles of justice does not appeal to all societies; because the meanings of social goods vary across societies and cultures. So, Rawls's set of primary goods and principles of justice are not valid for all societies at all times. It can be applied to a Rawlsian society alone. In addition to that it is shown that Rawls has a top-down and philosophical approach which makes his theory context-insensitive, uniformist, and undemocratic. Furthermore, Rawls focuses on the basic structure with an egalitarian tendency but leaves the choices of individuals to the mercy of anti-egalitarian selfish desires. On the one hand, Rawls seeks to maximize advantages of the least fortunate group through public institutions; on the other hand, individuals try to maximize their personal gains in their private choices. Therefore, there is an apparent incoherence between public institutions and private preferences in justice as fairness which makes it unsuccessful. In this way, Rawls cannot bring about an egalitarian society.

As it is seen, internal contradictions of justice as fairness derive from its *liberal* character, especially the public/private distinction. Rawls concentrates on the

public realm/institutions and let citizens act as self-seeking agents in the private realm. However, a theory of justice cannot ignore the private realm. As feminists claim that "the personal is political." The private realm thus should be ruled by the principles of justice as well. The principles for the private realm may be different; but definitely there should be some principles of justice for the private realm, too. Otherwise, the emergence of a just society is not possible. Moreover, Rawls's political liberalism ascribes comprehensive doctrines to the private sphere, and the political conception of justice to the public sphere. However, as it is set out in section 2.4, if Rawls wants to override *modus vivendi*, he has to endorse philosophical liberalism; but if he endorses *philosophical* liberalism in the political, he would contradict with his idea of *political* liberalism (it involves the political, not the metaphysical). The liberal thus could not take his own side in an argument (*the paradox of liberalism*). Hence, Rawls could not maintain political stability in justice as fairness.

Although Rawls seeks to refrain from metaphysical, epistemological, and metaethical controversies in justice as fairness, he sticks to them anyway. It may be because of the nature of justice. Justice cannot be examined without its metaphysical, metaethical, and ethical foundations. Any theory of justice is founded on some metaphysical, metaethical, and ethical presuppositions. Put another way, *political theory* cannot be tackled without metaphysics, metaethics, and particularly *ethics*. We may find a common ground of agreement on the fundamental normative principles of justice in this manner. Otherwise, we cannot get out of the "state of war" such as the world we live in now.

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APPENDICES

A. CURRICULUM VITAE

PERSONAL INFORMATION

Surname, Name: Eryılmaz, Enes

Nationality: Turkish (TC)

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EDUCATION

Degree	Institution	Year of Graduation
PhD	METU Philosophy, Ankara	2019

Dissertation: "A Critical Assessment of John Rawls's Theory of Justice as Fairness."

Supervisor: Professor Ahmet İNAM

MA	METU Philosophy, Ankara	2011

Thesis: "Politics, Law, and Morality: David Hume on Justice."

Supervisor: Professor Ş. Halil TURAN

BS	Beykent University, Istanbul	2007
	Mathematics & Computing	

ACADEMIC EXPERIENCE

Year	Place	Enrollment
2011-Present	Kırklareli University	Research Assistant
2010-2011	Artvin Çoruh University	Research Assistant

RESEARCH INTERESTS

Theories of Justice, Political Philosophy, Ethics, Logic, Philosophy of Science

FOREIGN LANGUAGES

Advanced English

PUBLICATIONS – REFEREED JOURNAL ARTICLES

1. "David Hume's Account of Justice." *İnsan & Toplum* 9(1), (2019): pp. 1-27.

2. "Major Interpretations of Platonic Justice." *Trakya Üniversitesi Sosyal Bilimler Dergisi* 20(1), (Haziran 2018): pp. 55-80.

PUBLICATIONS - BOOK REVIEWS

1. "Uygulamalı Etik: Seküler ve Faydacı Yaklaşım." *İş Ahlakı Dergisi* 9(1), (Bahar 2016): pp. 5-7.

2. "Ağ Toplumu Sosyal Sermaye Değeri Üretebilir mi?" *İş Ahlakı Dergisi* 8(2), (Güz 2015): pp. 137-139.

3. "Amartya Sen, The Idea of Justice." *Dîvân Disiplinlerarası Çalışmalar Dergisi* 18(34), (2013): pp. 166-176.

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B. TURKISH SUMMARY / TÜRKÇE ÖZET

JOHN RAWLS'UN İNSAF OLARAK ADALET TEORİSİ'NİN ELEŞTİREL BİR DEĞERLENDİRMESİ

Kapital'in Marksistler için olan anlamı *Bir Adalet Teorisi*'nin eşitlikçi liberaller için olan anlamına eşdeğerdir. *Teori*, *Kapital* kadar gerçek dünyayı etkilemese de liberallerin entelektüel dünyasını derinden etkilemiştir. Hatta fazlası da vardır. John Rawls'un adalet teorisinin ne kadar önemli hale geldiği Robert Nozick'in şu sözlerinden anlaşılmaktadır: "Bundan böyle siyaset felsefecileri ya Rawls'un teorisi içerisinde çalışmalı ya da niye çalışmayacağını açıklamalıdır."[1] Dolayısıyla onun etkisi liberallerle sınırlı değildir. 1971'den sonra adalet üzerine çalışan herhangi bir düşünür Rawls'un teorisi ile yüzleşmelidir. Bu nedenle biz, "insaf olarak adalet"i eleştirel bir şekilde inceleyip, çalışılabilir olup olmadığına karar vereceğiz.[2]

Çalışmamız Rawls'un erken dönem eserleriyle sınırlandırılmıştır; çünkü *dağıtıcı* adalet kuramını *Teori* (1971)'de ortaya koymuştur. Sonra *siyasal* adalet anlayışını *Siyasal Liberalizm* (1993)'de açıklamıştır. Son olarak, *Halkların Yasası* (1999)'nda *uluslararası* adalet anlayışını geliştirmiştir. Bu, son dönem eserlerindeki sorun ve metodolojilerin erken dönem eserlerinden farklı olduğu anlamına gelmektedir. Dağıtıcı adalet sorunu *Teori*'de tartışıldığı için ve *Teori* tartışmanın başlangıcı olduğu için, Rawls'un erken dönem eserlerine öncelik verilmiştir. Böylece, Rawls'un *dağıtıcı* adalet kuramının kendi içinde tutarlı olup olmadığı görülecektir.

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[1] Nozick, *Anarchy, State, and Utopia*, s. 183.

[2] Rawls, *Teori*'de ortaya koyduğu dağıtıcı adalet kuramına "insaf olarak adalet" (*justice as fairness*) adını vermiştir. Dolayısıyla insaf olarak adalet dediğimizde Rawls'un dağıtıcı adalet kuramını kastediyoruz; bkz. Rawls, *Theory,* ss. 3-11.

Rawls'un neden bu kadar önemli olduğunu sorulabilir. Cevabı basit: Rawls, çağdaş akademik çevrelerde sosyal adalet tartışmasını açan ve onu güncel bir konu yapan filozoftur. Rawls *Teori*'de, mevcut teorilere alternatif bir adalet kuramı önermiştir. Rawls'un *Teori*'sinden sonra sayısız filozof sosyal ya da dağıtıcı adalet üzerine yazmıştır. Bazıları *Teori*'yi reddetmiş, bazıları benimsemiş ve diğerleri de ondan etkilenerek alternatif adalet kuramları geliştirmiştir. Ancak, Rawls tartışmayı açtığı ve tartışmanın devam etmesini sağladığı için aslan payını hak etmiştir. Zaten diğer filozoflar tarafından da takdir edilmiştir.

Rawls'un şâheseri adalet tartışmasını ilk olarak analitik felsefede başlatmış, ardından kıta Avrupası felsefesine yayılmıştır. Bazı filozoflar Rawls'u eleştirmiş, bazıları da Rawlscu teoriyi benimsemiş ve geliştirmişlerdir. Rawls'un kendisi de bazı eleştirilere cevap vermiştir. Nihâî olarak, bu adalet tartışmasından çok zengin bir literatür doğmuştur. Bu geniş literatürü ve adalet üzerine yapılan sıcak tartışmaları Rawls'a borçluyuz. Filozof tartışmanın öncüsü, hızlandırıcısı ve geliştiricisi olduğu için şöhretini hak etmektedir. Bu nedenle bilginler, çağdaş analitik siyaset felsefesini Rawls'un *Teori* (1971)'si ile başlatırlar.

İlaveten, bu geniş literatüre dayanarak bu çalışma gereksiz görülebilir. Oysa bu çalışmayı gerekli kılan iki önemli neden vardır. Birincisi, *Teori*'nin yayımlanmasından sonra, eleştirmenlerin çoğu Rawls'un niyetini ve kuramını yanlış anlamıştır. İkinci olarak, o soldan sağa kadar çeşitli yerlerde konumlandırılmıştır. Ancak Rawls eleştirilere cevap verdikten sonra, kendisinin gerçek niyeti ve konumu belli olmuştur. Dolayısıyla, Rawls'un adalet kuramını doğru bir şekilde anlayabilmek için *Teori* (1971)'den *İnsaf olarak Adalet: Yeni bir İfade* (2001)'ye kadar olan eserlerini dikkatli bir şekilde incelememiz gerekmektedir.

Dolayısıyla iki taraflı bir sorun var: Birincisi, Rawls'un tam konumunu belirlemek; ikincisi, onun amacını ve adalet teorisini anlamak. Bu yüzden "insaf olarak adalet"in ana hatlarını çıkarıp, onun başlıca argümanlarını ve metodolojisini eleştirel bir şekilde inceleyeceğiz. Araştırmanın sonunda insaf olarak adaletin

mümkün olup olmadığını görülecektir. Neticede, Rawls'un teorisinde üstesinden gelinemeyecek zorluklar ve iç çelişkiler bulunduğu tespit edilmiştir. Dahası, Rawls'un birincil kıymetler (*primary goods*) kümesi ve adalet ilkeleri, tüm zamanlar ve bütün toplumlar için uygun değildir. Onlar yalnızca Rawlscu bir topluma uygulanabilir. Rawls ve Rawlscular, yine de eleştirilere cevap vermeye çalışmışlardır. Bundan dolayı, her iki tarafın argümanlarının sırayla eleştirel analizini yaparak insaf olarak adaletin sürdürülebilirliğini inceleyip değerlendireceğiz.

Bu tezde yazar tarafından, Rawls'un bir tür *eşitlikçi liberalizmi* savunduğu iddia edilmiştir. İnsaf olarak adaletin doğru tarifi eşitlikçi liberalizmdir; çünkü bu ifadede vurgu eşitlikçilikten ziyade liberalizm üzerinedir. Rawls'un teorisindeki *özgürlüğün önceliği* hesaba katıldığında bu yakıştırma anlamlı hale gelir. Eşitlikçi liberalizmin Rawls'un insaf olarak adalet idealini doğru şekilde yansıttığı görülür. Rawls klasik bir liberal olmasa da yine de liberal gelenek içerisindedir. Fakat, Rawls'un eşitlikçiliği onun liberal karakteri kadar baskın değildir. Bununla beraber, insaf olarak adaletin eşitlikçi bir eğilimi vardır. Bir diğer deyişle Rawls, özgürlüğe özel bir vurgu yaparak, özgürlük ve eşitliği bir araya getiren bir adalet teorisi kurmaya çalışmaktadır.

Bu doktora tezi, Rawls'un dağıtıcı adalet teorisinin eleştirel bir değerlendirmesidir. Bu yüzden öncelikle *Teori* metnine yoğunlaşıyoruz. Metin belirli bir bağlamda yazıldığı için, ilk olarak metnin bağlamını anlamamız gerekmektedir. Bu nedenle soruşturmaya, Rawls'un kendi hayat tecrübesiyle paralel bir şekilde *Teori*'yi tarihî ve felsefi bağlamına oturtarak başlayacağız. *Teori*'yi etkileyen sosyal koşullar ve siyasal çatışmalar 2. bölümün birinci kısmında açıklanmıştır. İnsaf olarak adaletin rakipleri (faydacılık ve sezgicilik) 2.2. kısımda kısaca özetlenmiştir. Sonra, Rawls'un doğru konumu ve dayandığı gelenek (sosyal sözleşme) incelenmiş; böylece onun teorisi kolaylıkla anlaşılmış ve eleştirel bir şekilde değerlendirilmiştir.

2.3. kısımda, insaf olarak adaleti ayrıntılı olarak ele alıyoruz. Rawls'un ana sorusu şudur: Adil bir sosyal iş birliği düzeni nasıl inşa edilebilir ve sürdürülebilir?

Teori'nin temel fikri açıklığa kavuşturulur: *saf usûlî adalet*. Bu amaçla, "başlangıç durumu" fikrini ortaya atar. Burada seçim usûlünün koşulları ve kısıtlamalarıyla birlikte bu fikir açıklanmıştır. Bu usûl sayesinde adil dağıtımın kriteri elde edilmiştir. Akabinde, Rawls'un adalet ilkeleri teker teker ele alınmıştır. Son olarak insaf olarak adaletin, dağıtımını şekillendirdiği birincil kıymetler gözden geçirilmiştir.

2.3.5. numaralı alt kısımda Michael Walzer, Robert Nozick ve G. A. Cohen'in eleştirileri incelenmiş, Rawls'un onlara tatmin edici bir şekilde cevap verip veremediği karara bağlanmıştır. Farklı bakış açılarına sahip olmalarına rağmen, hepsi de Rawls'a içeriden eleştiriler yöneltmiştir. Böyle bir soruşturma ilk olarak Rawls'un duruşunu ve amacını doğru anlamamızı sağlamaktadır. İkincisi, *Teori*'nin kırılgan yapısını ortaya koymaktadır. Bu farklı bakış açıları insaf olarak adaletin farklı yönlerini aydınlatmaktadır. Rawls, *Teori*'nin kuramsal çerçevesine dayanarak Nozick'in itirazlarına cevap verse de Walzer ve Cohen'in ortaya çıkardığı sorunların üstesinden gelememiştir. Liberteryen bakış açısına sahip olan Nozick, Rawlscu devletin geniş anlamda bireysel mülkiyet haklarını (yani *kendinin-sahibi olma hakkını*) ihlâl ettiğini savunmaktadır. Yaşam, özgürlük ve mülkiyet gibi doğal haklar devredilemez ve dağıtımcı bir kalıba dökülmüş adalet ilkesi tarafından çiğnenemezler. Çoğulcu ve cemaatçi (*communitarian*) bir bakış açısına sahip olan Walzer, Rawls'un *soyut* birincil kıymetler kümesinin ve adalet ilkelerinin bütün toplumlara hitap etmediğini iddia etmektedir; çünkü sosyal kıymetlerin anlamları ve dolayısıyla adalet ilkeleri toplumdan topluma değişmektedir. Eşitlikçi bakış açısına sahip olan Cohen ise, Rawls'un teorisinde bir taraftan insanların günlük yaşamlarında kişisel tercihlerini *bencilce* yaptıklarını, diğer taraftan temel sosyoekonomik kurumların *eşitlikçi* adalet ilkelerine göre düzenlendiğini ve bunun ahlaki bir tutarsızlık oluşturduğunu iddia etmektedir. Eşitlikçi bir topluma ulaşmak için hem özel seçimler hem de kamusal alan/kurumlar eşitlikçi tutumlarla yönetilmelidir; aksi takdirde Rawlscu proje başarısız olacaktır.

2.4. kısımda Rawls'un metafiziğe olan yaklaşımı incelenmekte ve insaf olarak adaletin metafizik varsayımları ortaya konmaktadır. Rawls metafizik

tartışmalardan başından beri uzak durmaya çalışsa da onlardan kaçamamıştır. Bu muhtemelen mevzunun hususiyetinden kaynaklanmaktadır: Metafizik kabuller olmadan adalet meselesi ele alınamaz. En azından Rawls, insaf olarak adaletin eşitlik ve özgürlük fikirlerini uzlaştırması, sosyal uzlaşma ve birliğe dayanması gerektiğini varsaymıştır. Dolayısıyla, herhangi bir adalet teorisi bazı metafizik iddialar içermelidir. Siyaset felsefesi yaparken, kimse metafizikten kaçamaz.

Son kısımda, metaetik tartışmaları aşmaya çalışan bir etik akıl yürütme yöntemi olarak Rawls'un "düşünümsel denge"sini tartışıyoruz. Yine de o metaetik ve metodolojik tartışmalarda uzak kalamamıştır. Özellikle bu yöntem, sezgicilik ve görelilikle suçlanmıştır. Düşünümsel denge temelde *ahlaki sezgilere* dayandığından ahlaki ilkeler için sağlam bir temel sunamadığı iddia edilmiştir. Ayrıca, diğerleri düşünümsel dengenin kişilerin düşünülmüş görüşlerine bağlı (*göreli*) olduğunu öne sürmüştür. Düşünümsel denge yöntemi kişilerin düşünülmüş yargılarına dayandığı için, iki farklı kişi düşünümsel dengede aynı şekilde kendi ahlaki ilkelerini haklı gösterebilir. Bu yüzden Rawls'un yöntemi sezgiciliğe ve göreliliğe çare bulamamıştır.

Rawls'a ve dolayısıyla *Teori*'nin yazımına etki eden dört büyük tarihi olay vardır: 2. Dünya Savaşı (1939–1945), Vietnam Savaşı (1955–1975), Soğuk Savaş (1945–1991) ve Sivil Haklar Hareketi (1955–1965). *Teori* 20. Yüzyılda gerçekleşen bu siyasal ve sosyal çatışmalar esnasında yazılmıştır (Rawls 1950'den itibaren *Teori*'yi yazmak için notlar almaya başlamış ve 1971'de kitabını yayımlamıştır). Rawls, 2. Dünya Savaşı'na bilfiil katılarak savaşın yol açtığı acımasız zulümlere ve felaketlere şahit olmuştur. Hiroşima'ya atom bombası atıldıktan hemen sonra gitmiş ve yıkımı kendi gözleriyle müşahede etmiştir. Amerika Birleşik Devletleri Vietnam Savaşı'na dahil olduğunda (1965) Rawls, Harvard Üniversitesi'nde görev yapmaktadır. Zorunlu askerlik hizmetine rağmen gençler Vietnam'a gitmek istemez. Bundan dolayı Amerikan Savunma Bakanlığı başarılı öğrencileri zorunlu askerlikten muaf tutar. Bu durumda, öğrencilerin kaderi öğretmenlerin eline geçer ve başarısız bir not öğrencilerin Vietnam'a gitmesine neden olmaktadır. Rawls bu uygulamaya karşı çıkar, çünkü zengin ve nüfuzlu aileler öğretmenlere kendi çocuklarına iyi not vermeleri için baskı kuracaktır. Bu apaçık bir haksızlıktır.

Zengin ailelerin çocukları eğitimlerine devam ederken, fakir ailelerin çocukları Vietnam'a gidip savaşmak zorunda kalacaktır. Rawls'a göre her hâlükârda zorunlu askerlik olacaksa da eşit bir seçim usûlü belirlenmelidir. *Teori*'nin yazımına etki eden bir diğer faktör ise Soğuk Savaş'tır. Soğuk Savaş bilindiği üzere iki blok arasında gerçekleşmiştir: ABD önderliğindeki "kapitalist" blok ve SSCB önderliğindeki "komünist" blok. Dolayısıyla asıl savaş ideolojiler arasında geçmiştir. Her bir taraf kendi ideolojisini dünyaya hâkim kılmaya çalışmıştır. İşte kapitalizm ve Marksizm arasında geçen bu Soğuk Savaş döneminde Rawls üçüncü yolun imkanını aramış ve hâlâ "rasyonel bir teori inşa etmek için imkân olduğunu büyük bir ölçekte göstermiştir."[1] Son olarak, ABD'de kölelik her ne kadar 1865 yılında kaldırılsa da etnik ayrımcılık farklı biçimlerde 1960'ların sonuna kadar devam etmiştir. "Ayrı ama eşit" doktrini altında beyazlar ayrıcalıklarını Sivil Haklar Hareketi'ne kadar sürdürmüşlerdir. Okullar, hastaneler, restoranlar, otobüslerdeki yerler bile ayrılmıştır. Örneğin otobüslerde ön koltuklar "beyazlara" arka koltuklar "zencilere" ayrılmıştır. "Jim Crow" adıyla bilinen yasalara göre eğer ön koltuklar dolduysa ve bir beyaz ayakta kaldıysa bir zenci ona yerini vermelidir. Ancak 1 Aralık 1955'de zenci bir kadın olan Rosa Parks yerini beyaz bir vatandaşa vermeyi reddetmiş ve yerinden kalkmamıştır. Bunun üzerine Parks tutuklanmış ve bu olay ABD geneline yayılacak olan olayları tetiklemiştir. Ardından, Martin Luther King, Jr., Stokely Carmichael ve Malcolm X gibi aktörlerin de harekete dahil olmasıyla ABD siyahların sivil ve siyasal haklarını vermek zorunda kalmıştır. Nihayet 1960'ların sonunda, okullarda, otellerde, otobüslerde, restoranlarda vb. kamusal alanlarda etnik ayrımcılık yasaklanmış ve kaldırılmıştır.

Bu dört büyük olayın Rawls ve adalet teorisi üzerinde çok ciddî etkisi olmuştur. Bu olaylardaki haksızlıklar, zulümler ve eşitsizlikler Rawls'u derinden etkilemiştir. Şu hâlde, 20. Yüzyılın ortalarında gerçek hayatta çözüm bekleyen acil, pratik sorunlar ve haksız uygulamalar olmasına rağmen, akademide bu sorunların bir karşılığı neredeyse yoktu. Bu sırada Amerikan felsefeciler metaetik, ahlak dilinin ikinci düzey analizi, dilbilimsel analiz gibi teorik meselelerle uğraşmaktaydılar. Sokakta bir dizi yakıcı sorun olmasına rağmen akademisyenler

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[1] Raz, "Facing Diversity," s. 5.

etik ve siyaset felsefesi gibi alanları bilimsellikten uzak yaklaşımlar olarak görmekteydiler. Tam da bu noktada, Rawls'un *Teori*'si bu boşluğu doldurmuş ve Jürgen Habermas'ın deyişiyle, "uzun zamandır bastırılmış olan ahlaki sorunları yeniden önemli felsefi soruşturma konusu düzeyine taşımış ve çağdaş pratik felsefe tarihinde bir dönüm noktası olmuştur."[1] Böylece, normatif soruşturma yeniden akademik felsefe çevreleri tarafından ciddiye alınmıştır.

Teori'nin yazıldığı dönemde İngilizce konuşan dünyada cârî olan ahlak teorileri ise faydacılık (*utilitarianism*) ve sezgiciliktir (*intuitionism*). Her ne kadar bu teoriler eleştirilse de yerine bir alternatif koyulamadığından hakimiyetlerini devam ettirmekteydiler. İşte Rawls bu alternatifsizliği ortadan kaldırmak için *Teori*'yi yazmıştır. Özel olarak da faydacılığa karşı yazmıştır; çünkü faydacılık 19. Yüzyıldan 20. Yüzyılın ortalarına kadar İngilizce konuşan dünyada ahlak ve siyaset felsefesinde başat rolü oynamıştır. Ancak Rawls'a göre faydacılık, anayasal demokrasi için sağlam bir temel sağlayamamıştır. Faydacılar toplumu bir birey gibi düşünüp, fayda-maliyet analizi yaparak değerlendirme yapar. Bireyler maksimum kazancı verecek olan eylemleri tercih eder. Tıpkı bunun gibi faydacı toplum da toplam kazancını maksimize edecek şekilde hareket eder. Bu yaklaşımda, kamu yararı için bazılarının hakları ve özgürlükleri fedâ edilebilir, çünkü önemli olan "toplam fayda"dır. Eğer toplam faydayı maksimize etmek için bazılarının (Ör. zenciler, işçiler vb. alt grupların) haklarını fedâ etmek gerekiyorsa, fayda-maliyet analizi yapıldıktan sonra toplam getiri götürüden fazla çıkıyorsa bu düzenlemeyi yapmak rasyoneldir. Görüldüğü üzere faydacı yaklaşımda bireylerin hakları ve özgürlükleri toplam fayda için gözden çıkarılabilir. İşte Rawls bu mantığı reddetmektedir. Rawls'a göre bu yaklaşım demokratik kurumların zeminine koyulamaz. Bütün insanlar özgür ve eşittir, dolayısıyla bazı insanların temel hakları ve özgürlükleri toplam fayda için fedâ edilemez. Rawls'un karşı çıktığı sezgicilik ise bir tür çoğulcu sezgiciliktir. Çoğulcu sezgicilikte bir sürü "ilk ilke" vardır, ancak bu ilkeler çatıştığında başvurulacak belirli bir yöntem ya da öncelik kuralı yoktur. Şu hâlde ilkeler çatıştığında sezgisel olarak karar verilir. Bu da son derece öznel ve keyfî bir yöntemdir. Bundan dolayı, Rawls'a göre bir ahlak

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[1] Habermas, "Remarks on John Rawls," p. 109.

teorisi sezgilere olabildiğince az başvurmalıdır. Çünkü herkes kendi sezgisine göre hareket edecek olursa ortak bir anlaşma zemini bulmak çok zor olacaktır (Ya da nüfuz sahibi olanlar kuralları ve ilkeleri kendi çıkarlarına göre düzenleyecektir). Bu yüzden bir adalet teorisi, makul ahlaki kıstaslara ve ilkeler arasındaki çatışmaları engelleyecek öncelik kurallarına dayanmalıdır. Sezgiciliğin öncelik kuralı yoktur, faydacılık ise bir tek ilkeye (toplam fayda) göre hareket etmektedir. Şu hâlde, Rawls'a göre ne sezgicilik ne de faydacılık anayasal demokrasi için sağlam bir zemin ortaya koyabilmiştir.

Rawls'a göre gerekli olan bu sağlam zemini sağlayacak olan John Locke'dan Immanuel Kant'a kadar olan sosyal sözleşme geleneğidir. Rawls, Locke'dan liberal düşünceleri, Kant'dan ise eşitlikçi idealleri temellük ederek kendi adalet teorisini bu sözleşmeci geleneğin üzerine inşa etmiştir. Dolayısıyla, Rawls'un eşitlikçi liberal adalet teorisinin *liberal* ayağını Locke, *eşitlikçi* ayağını da Kant oluşturmuştur. Ancak bu motamot bir aktarım değildir. Rawls, Locke ve Kant'dan aldığı sözleşmeci düşünceleri *analitik felsefe*de eriterek kendine mâletmiştir. Mesela, Locke'un "doğa hali" fikri Rawls'un "başlangıç durumu" kavramına ilham vermiştir; ya da Kant'ın "özerklik" düşüncesi Rawls'un "bilgisizlik peçesi" nosyonunu doğurmuştur. Ancak, *Teori*'de Rawls en çok Kant'a borçludur. Kendisinin de itiraf ettiği gibi, "özerklik," "koşulsuz buyruk," "amaçlar krallığı," "kamusallık" ve daha pek çok fikri Rawls, Kant'dan alarak adalet teorisini kurmuştur. Bu anlamda *Teori* Kantçıdır, ancak Kant'ın doğrudan kopyası değildir. Rawls, *Teori*'nin temellerini Kant ve Locke'dan alsa da sayısız ahlak ve siyaset felsefecisinden istifade etmiş, bir duvarcı ustası gibi onlardan aldığı fikirleri teorisinin münâsip yerlerine kendi potasında eriterek yerleştirmiştir. Şu hâlde *Teori* Rawls'un ellerinde şekillendiği için her şeyden önce onun kendi eseridir. Hâsılı, Amerikalı filozof diğer filozofların kavramlarını *kendi potasında eriterek* özgün adalet teorisini oluşturmuştur.

Rawls, *Teori*'nin problemini ortaya koyarken önce toplum kavramını tanımlar. Ona göre toplum, "karşılıklı çıkar için iş birliği yapan bir teşebbüstür" (*a*

cooperative venture for mutual advantage).[1] Böylece insanlar, yaşam için gerekli olan her nesneyi kendileri üretmek zorunda kalmaz. Bununla beraber, sosyal iş birliği neticesinde istenilen miktardan çok daha fazlası üretilir. İşte sorun tam da bu noktada ortaya çıkar: "İş birliği neticesinde üretilen bu fazla menfaatler nasıl dağıtılacaktır?"[2] Hangi ilke(ler)e göre dağıtım yapılırsa adil bir dağıtım olur? Rawls'a göre adil dağıtım tek bir ilkeyle gerçekleştirilemez. Menfaatlerin paylaşımı için bir ilkeler kümesi gerekmektedir. Bu ilkeler kümesi bize menfaatlerin paylaşımını belirleyecek olan sosyal düzenlemeleri seçme kriterini verecektir. Yani Rawls doğrudan bir paylaşım ve dağıtımdan ziyade, "toplumun temel kurumları" (kısaca *temel yapı* diyelim) üzerinden gerçekleştirilecek olan bir dağıtım öngörmektedir. Toplumun temel kurumları bu ilkeler kümesine göre belirlenecek ve bu kurumlar da sosyal iş birliğinden doğacak olan menfaat ve sorumlulukları (dolayısıyla insanların alacakları payları) belirleyecektir. Şu hâlde, Rawls'a göre dağıtımcı adaletin asıl sorusu şudur: "Nesilden nesle devam edecek adil, verimli ve üretken bir sosyal iş birliği sisteminin temel yapısının kurumları, birleşik bir yapı oluşturacak şekilde, nasıl düzenlenmelidir?"[3] Bundan dolayı Rawls, toplumun temel yapısını tanzim edecek adalet ilkelerini aramaktadır. Nitekim, adalet ilkeleri ile Rawls'un kastettiği temel yapının değerlendirilmesini sağlayan ahlaki kriterdir. Bu kritere göre toplumun temel yapısı yargılanacak ve adil olup olmadığına karar verilecektir. Bu nedenle, Rawls'a göre adalet ilkeleri aslında mihenk taşıdır. Bir toplumun temel yapısının adil olup olmadığını bu ilkelere göre anlayabiliriz. Rawls'a göre bir toplumun temel yapısı bu ilkeleri sağladığı ölçüde adildir.

Yukarıda anlatıldığı gibi, Rawls toplumun temel yapısına odaklanmaktadır. Peki toplumun temel yapısıyla Rawls'un tam olarak işaret ettiği şey nedir? Toplumun temel yapısı (*the basic structure of society*), "bir kişinin hak ve özgürlüklerini

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[1] Rawls, *Theory,* s. 4.

[2] Age.

[3] Rawls, *Restatement*, s. 50*.*

belirleyen, yaşam boyu beklentilerini, ne olabileceğini ve ne kadar iyi olabileceğini etkileyen anayasa ve başlıca ekonomik ve sosyal kurumları içerir."[1] Rawls işte bu yapı üzerine odaklanır; çünkü bu yapı değişince toplumun yukarıdan aşağıya tümünün etkileneceğini ve böylece eşit şartlar altında iş birliği yapan adil bir toplum oluşturulabileceğini varsaymaktadır. İlaveten, Rawls hiçbirimizin mevcut konumumuzu aslında hak etmediğimizi; zira hiçbirimizin doğum yerimizi, etnik kökenimizi, fiziksel ve zihinsel özelliklerimizi, doğal yeteneklerimizi, ailemizi ve sosyoekonomik durumumuzu seçmediğimizi düşünmektedir. Gayet tabiî bu özelliklerin hiçbirini biz seçmiş değiliz ve bunları değiştirebilmemiz mümkün de değildir. Dolayısıyla, Rawls'a göre: "Doğal dağıtım ne adildir ne de adil değildir; ne de insanların belirli pozisyonlarda dünyaya gelmeleri adaletsizliktir. Bunlar sadece doğal gerçeklerdir. Adil ya da adil olmayan, bu kurumların bu gerçekleri ele alma şeklidir."[2] Şu hâlde, doğal dağıtımı değiştiremeyiz ancak toplumun temel kurumlarını değiştirebiliriz. Bu sayede insanların beklentilerini de değiştirebiliriz. İşte bu yüzden Rawls, toplumu etkileyen bu temel yapıya odaklanmaktadır. Bu yapıyı, yarışa geriden başlayanların da eşit koşullar altında iş birliği yapabileceği şekilde düzenlemenin yollarını aramaktadır.

Temel yapı, Rawls'un hem odak noktası hem de kısıtlamasıdır. Bu, *Teori*'nin hemen her alana uygulana*ma*yacağı anlamına gelmektedir. *Teori*, günlük hayata, iş dünyasına ya da uluslararası ilişkilere uygulanamaz. O sadece toplumun temel yapısı için tasarlanmış bir kuramdır. *Teori*'de toplum, "diğer toplumlardan tecrit edilmiş kapalı bir sistem gibi düşünülmüştür."[3] Rawls bu kısıtlamayı pratik gerekçelerle yapmıştır. Eğer ulusal sınırlar içerisinde makul ve çalışan bir teori ortaya koyulabilirse, ikinci adımda bu uluslararası düzeye taşınabilir. Rawls bunu *Halkların Yasası* (1999)'nda denemiştir, ancak *Teori*'yi olduğu gibi küreye

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[1] Rawls, "Distributive Justice," ss. 133-134.

[2] Rawls, *Theory,* s. 102.

[3] Age., s. 8.

uygulamamıştır. Neredeyse başka bir kuram ortaya atmıştır. O yüzden *Halkların Yasası* kendi içinde ele alınmalıdır. Son olarak Rawls, *Teori*'yi *ideal* kuramla sınırlandırmıştır. Yani, "herkesin adil bir şekilde davrandığı ve adil kurumları desteklemek için üzerine düşeni yaptığı farz edilmiştir."[1] Bu herkesin oyunu kurallarına göre oynadığı ve haksız kazanç elde etmediği anlamına gelmektedir. İdeal olmayan kuramda ise bazı insanlar haksız kazanç elde eder ve kuralları çiğnerler. Dolayısıyla ideal olmayan kuramda günlük hayatta karşılaşılan hırsızlık, rüşvet vb. ihlâller ele alınmaktadır. Rawls günlük hayattaki bu adaletsizlik ve ihlâllerin ideal kuram olmadan anlaşılamayacağını ve çözülemeyeceğini düşünmektedir. Bir diğer deyişle Rawls, mükemmel bir adalet teorisi ortaya koymadan kusurlu davranışları ya da uygulamaları yargılayamayacağımızı varsaymaktadır. Bu yüzden öncelikle "olması gereken"i ortaya koymaya çalışmaktadır. Ardından "olan," "olması gereken"e göre değerlendirilebilir ve düzeltilebilir.

Girizgâh kısmını bitirdikten sonra şimdi *Teori*'nin ana konusunu ele alabiliriz. İnsaf olarak adaletin temel varsayımı şudur: eğer özgür, eşit ve rasyonel bireyler adil bir usûlü takip ederek adalet ilkelerini seçerse, bu seçim adil bir seçim olacaktır. *Özgür, eşit ve rasyonel bireyler, adil bir usûl olan başlangıç durumunda adalet ilkelerini seçerler; dolayısıyla seçim adildir.* Görüldüğü üzere Rawls'un yaklaşımı usûlîdir. Sonuçtan ziyade seçim usûlüne odaklanır. Yani insaf olarak adalet, *saf usûlî bir adalet* (*pure procedural justice*) kuramıdır. Rawls, "anlaşmaya varılan ilkelerin adil olması için adil bir usûl kurmaya çalışmaktadır;"[2] çünkü *adil bir usûl* birincisi *adil bir sonuç* (dağıtım) verecek, ikincisi *adalet kriterini* verecektir. İşte bu nedenle Rawls adil bir usûl bulmak için çaba sarf etmektedir. Rawls'un bu yaklaşımı aslında şu bilgece hikâyedeki çözüme benzemektedir. İki kardeşe bir pasta düşmekte ancak kardeşler pastayı nasıl bölüşecekleri konusunda anlaşamamaktadır. Büyük kardeş daha büyük bir dilim istemekte, küçük kardeş de bu duruma razı olmamaktadır. Bunun üzerine kardeşler dedelerine gider ve adil bir

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[1] Age.

[2] Age., s. 136.

şekilde pastayı nasıl paylaşacaklarını sorarlar. Dedeleri de büyük kardeşe dönerek şöyle der: "Pastayı iki parça olacak şekilde nasıl istersen böl!" Küçük kardeşe de: "Ağabeyin pastayı böldükten sonra, sen istediğin dilimi alabilirsin!" der. İlk seçim hakkı küçük kardeşte olduğu için ağabeyi de eşit bir paylaşım yapmak zorunda kalır. Aksi takdirde ona küçük parça kalacaktır. İşte bu bilgece hikâyeden de anlaşıldığı üzere adil bir usûl hem adaletin kriterini hem de adil bir neticeyi doğuracaktır. İşte Rawls'un hareket noktası bu düşüncedir. Bu düşünceyi geliştirerek *Teori*'yi oluşturmuştur.

Tıpkı bu hikâyede olduğu gibi, *başlangıç durumundaki* temsilciler *bilgisizlik peçesi* arkasında oldukları için temsil ettikleri insanların sosyoekonomik konumunu, doğal yeteneklerini, kişisel özelliklerini, cinsiyetini, yaşını, etnik kökenini, sosyal sınıfını, eğitim durumunu, dünya görüşünü (vb. özel niteliklerini) bilmedikleri için en kötü durumda olana göre adalet ilkelerini seçmek zorunda kalırlar. Rawls, temsilcilerin kendi gurubunu kayıramayacağı bir durum tasarlar ve bu durumda toplumun temel yapısını düzenleyecek olan adalet ilkelerini seçmelerini ister. Böylece, sosyal, doğal ve şans faktörleri devre dışı kalır ve temsilciler tarafsız bir şekilde seçim yapmak zorunda kalır (çünkü kendi temsil ettiği gurubun özelliklerini bilmemektedir). Adalet tanrıçasının gözleri gibi temsilcilerin gözleri temsil ettikleri gurubun özelliklerine karşı kördür. Onlar yalnızca insan psikolojisinin, sosyolojinin, siyasetin, ekonominin ve adalet ilkelerinin seçimiyle ilgili bilimlerin ilkelerini ve genel gerçekleri bilmektedir. Yani bilgisizlik peçesi, temsilcilerin insan ve toplumla ilgili genel gerçekleri ve ilkeleri bilmesine izin verirken temsil ettikleri kişilerin özel niteliklerini bilmelerini engellemektedir. Temsilciler ayrıca adaletin şartlarını da bilmektedir. Adaletin şartlarını Rawls büyük ölçüde David Hume'dan devşirmiştir. Bunlar adaleti "mümkün ve gerekli kılan"[1] şartlardır. Rawls bunları öznel ve nesnel diye ikiye ayırmaktadır. Nesnel olanlar, kaynakların ortalama miktarda olması (çok değil), insanların fiziksel ve zihinsel denkliği vb. adaleti mümkün kılan şartlardır. Öznel şartlar ise vatandaşların farklı dünya görüşlerine ve hayat planlarına sahip olmasıdır. Vatandaşlar rasyonel ve sınırlı yardımseverlik düzeyine sahip oldukları

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[1] Age., s. 126.

ve farklı ve birbiriyle çatışan hedefler peşinde koştukları için çıkarları çatışır ve adalet erdemine ihtiyaç duyarlar. Rasyonel oldukları için kendi çıkarlarını maksimize etmeye çalışır ve "birincil kıymetler"ini sürekli artırmak isterler. Fakat sosyal ve ekonomik kaynaklar sınırlı olduğundan, amaçlarına ulaşmak için kamusal bir adalet anlayışı üzerinde anlaşmak zorunda kalırlar.

İşte bu şartlar altında Rawls, *eşit*, *özgür* ve *rasyonel* temsilcilerin, tarihsel adalet anlayışları arasından toplumun temel yapısına uygulanacak olan genel, evrensel, kamusal ve alenî, düzenleyici nihâî adalet ilkelerini seçmelerini istemektedir. Bu nihâî bir anlaşma olacak ve yukarıdan aşağıya toplumun tümüne etki edecektir. Rawls temsilcilerin şu ilkeleri seçeceğini düşünmektedir:

a. Herkesin tamamıyla yeterli eşit temel haklar ve özgürlükler düzenine ulaşmak konusunda eşit hakkı bulunmaktadır ve bu düzen herkes için aynıdır. Bu düzende, eşit siyasal özgürlüklerin, ama sadece bu özgürlüklerin değerleri eşit olarak sağlanır.

b. Toplumsal ve ekonomik eşitsizlikler şu iki şartı karşılamalıdır: Birincisi, eşitsizlikler herkese adil bir fırsat eşitliği altında açık olan konumlara ve makamlara bağlanmalıdır ve ikincisi, bu eşitsizlikler toplumun en az avantajlı üyelerinin en çok yararına olmalıdır.[1]

Birincisine kısaca, *eşit temel özgürlükler ilkesi* denilmektedir. Aslında bu ilke, tüm yurttaşların temel hak ve özgürlüklerini teminat altına almaktadır. Rawls, George Orwell'ın *Hayvan Çiftliği*'ndeki gibi bazılarının daha eşit (!) olduğu bir düzen değil, herkesin aynı eşitlikte temel hak ve özgürlüklerden istifade ettiği bir düzen tahayyül etmektedir. Ancak, *eşit temel özgürlükler ilkesinde* asıl vurgulanan temel özgürlüklerdir. Yani bu ilke tüm özgürlüklere değil yalnızca temel özgürlüklere herkesin sahip olması gerektiğini vurgulamaktadır. Bunlar genellikle *sivil* haklar ve *siyasal* özgürlüklerdir (Ör. ifade özgürlüğü, oy verme hakkı vb.). Dolayısıyla birinci ilkede, bu bağlamda herhangi bir eşitsizlikten söz etmek mümkün değildir.

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[1] Küçük değişikliklerle çeviri buradan alınmıştır: John Rawls, *Siyasal Liberalizm*, çev. Mehmet Fevzi Bilgin (İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2007), s. 51.

Lakin, ikinci ilkeye geldiğimizde bazı şartlar altında sosyal ve ekonomik eşitsizliklere izin verildiği görülmektedir. Peki nedir bu şartlar? Adil fırsat eşitliği ilkesi ve fark ilkesidir. Rawls, bu ilkelerin vazettiği şartlar sağlandıktan sonra sosyoekonomik eşitsizliklere, verimlilik, yenilik ve teşvik gerekçeleriyle, müsaade edilebileceğini söylemektedir. *Adil fırsat eşitliği ilkesi* adından da anlaşılacağı üzere sosyal konuma bakılmaksızın aynı yeteneğe ve motivasyona sahip olan kişilerin aynı beklentiye sahip olabilmesi için gerekli olan imkanların sunulmasını gerektirmektedir. Farklı yetenekte olan insanlar bu imkanları değerlendirerek farklı mevkilere gelecektir. İşte bu yüzden eşitsizliklerin olması normaldir. Yani eşitsizlikler insanların yetki ve sorumluluklarından kaynaklanmalıdır (keyfî nedenlerden değil). *Fark ilkesi* ise doğal olarak yetenekli olan ve bunun neticesinde daha iyi mevkilere gelenlerin en az avantajlı olanlara katkı sağladığı takdirde bu konumlarını devam ettirmelerini şart koşmaktadır. Doğal olarak yetenekli olanlar toplumun en az avantajlı olanlarının eğitim öğretim gibi masraflarına katkı sağladıkları takdirde bu sosyoekonomik menfaatlerini devam ettirebilirler; aksi takdirde bu sosyoekonomik eşitsizliklere izin verilmez. Şu hâlde sosyal ve ekonomik eşitsizlikler herkesin, özellikle de en az avantajlı olanların, yararına olduğu takdirde uygun görülmektedir. Toplumun temel yapısı bu şartları sağlayacak şekilde düzenlenirse adil bir düzenden söz edilebilir. Bu sayede toplumun tüm üyeleri sosyal iş birliği sistemine istekli olarak katılacaktır. Avantajlı olanlar bu konumlarını devam ettirecek, az avantajlı olanlar da daha iyi hâle gelecektir. Böylelikle herkesin yararına olan adil ve verimli bir sosyal iş birliği sistemi istikrara kavuşacaktır. Kısacası, *insaf olarak adalet* düzeninde sosyal ve ekonomik eşitsizlikler herkesin yararına olacak şekilde düzenlenecektir.

Görüldüğü gibi Rawls'un adalet ilkelerinin iki tane olduğu söylense de ikinci ilke iki ilkeden oluştuğu için aslında üç tanedir: eşit temel özgürlükler ilkesi, adil fırsat eşitliği ilkesi ve fark ilkesi. Peki bu ilkeler çatıştığında ne yapılacaktır? Ya da elimizde sınırlı bir kaynak olduğunu düşünelim, bu kaynağı nereye aktarmamız en doğrusu olacaktır? Rawls bu ilkeler arasında bir öncelik sıralaması da kurmuştur. Yukarıda verildiği sırayla eşit temel özgürlüklerin adil fırsat eşitliği ilkesine önceliği vardır; adil fırsat eşitliğinin de fark ilkesine karşı önceliği vardır. Dolayısıyla, ilkeler arasında bir çatışma meydana geldiğinde bu hiyerarşiye göre

karar verilecektir. Örneğin, elimizde kenar mahallede bir okul yaptıracak kadar bir fon olduğunu düşünelim. Görevliler okul yaptırmak için o kenar mahalleye gittiklerinde oradaki gençler okul yapımı için gereken miktarı nakit olarak kendilerine vermelerinin daha doğru olacağını, eğer böyle yaparlarsa iş kurabileceklerini söylerlerse ne yapılmalıdır? Rawls'un adalet ilkelerinde adil fırsat eşitliği ilkesi fark ilkesinden önce geldiği için bu fonla okul yapmak gerekmektedir. Bu ilke fonun nakit olarak dezavantajlı olanlara verilmesi yerine okul yapımında kullanılmasının daha doğru olacağını söylemektedir. Eşit temel özgürlükler ilkesinin diğerlerine olan önceliği de daha fazla fırsat ve menfaat için bireylerin hak ve özgürlüklerinin fedâ edilmesini engellemektedir (böylece faydacılık seçeneği elenmiş olur). Rawls'un teorisinde temel özgürlüklerin diğer ilkelere karşı mutlak üstünlüğü vardır. *Temel* özgürlükler daha fazla sosyal ya da ekonomik çıkar için gözden çıkarılamaz. Bu nedenle, insaf olarak adalet teorisinde temel özgürlükler her şeyden önce, fırsatlar da refahtan önce gelmektedir.

Bu tezin asıl amacı, ünlü Amerikan filozofu John Rawls'un adalet teorisini doğru bir şekilde açıklamak, tarihî ve felsefi bağlam içerisinde doğru konumunu bulmak ve temel argümanlarını ve metodolojisini eleştirel bir şekilde incelemektir. Rawls'un teorisi yakından değerlendirildiğinde kapitalizm ile komünizm arasında üçüncü bir yol temin etmek için özgürlük ve eşitlik kavramlarını uzlaştırmaya çalıştığı anlaşılmaktadır. *Bir Adalet Teorisi* (1971), İkinci Dünya Savaşı, Vietnam Savaşı, Soğuk Savaş ve Sivil Haklar Hareketi gibi yoğun çatışmalar ve savaşlar döneminde yazılmıştır. Bu sosyal, ekonomik, politik ve askerî çatışmalar döneminde Rawls, özgür, eşit ve rasyonel bireylerin, herkes için faydalı olacak adalet ilkeleri üzerinde anlaşabileceklerini göstermiştir. Bunun için özgürlüklerin, fırsatların ve kaynakların dağılımını en az avantajlı olanların en çok faydasına olacak şekilde düzenleyen adil bir sosyal iş birliği sistemi oluşturmak için bir tür *eşitlikçi liberalizm* geliştirmiştir. Bununla birlikte, eleştirel değerlendirmemiz Rawls'un teorisinin gerçekten eşitlikçi olmadığını göstermiştir. *Teori*, yukarıdan ve aşağıdan sınır koymasına rağmen, sosyal ve ekonomik eşitsizlikleri tamamen ortadan kaldırmıyor; ancak, temel yapı aracılığıyla en az şanslı olanların en çok yararına olacak şekilde eşitsizlikleri ayarlamaya çalışmaktadır. Sosyal ve ekonomik eşitsizlikler, verimliliği, kaynakların etkin kullanımını ve yaratıcılığı

arttırdığından, *insaf olarak adalet* eşitsizliklere izin verir ve hatta onları sürekli hâle getirmektedir. Bu nedenlerle Rawls, *eşitsizliğin olduğu zengin bir toplumu*, eşit fakat fakir bir topluma tercih etmektedir.

Projesini gerçekleştirmek için Rawls, sözleşmeci geleneğe, özellikle Locke ve Kant'a dayanmaktadır. Ancak Rawls basitçe filozofların kavramlarını alıp kendi teorisine dahil etmez, aynı zamanda deneysel ve pragmatik yaklaşıma uygun olacak şekilde onları yeniden düzenlemektedir. Bu anlamda, bir filozof olarak Rawls, seleflerinin fikirlerini temellük ederek kendi teorisini inşâ etmektedir. İnsan doğasıyla ve durumuyla uyumlu, modern bir sosyal adalet teorisi oluşturmaya çalışmıştır. Yani, *insaf olarak adalet* dervişler için oluşturulmuş bir teori değildir; insanları özgür, eşit ve rasyonel kişiler olarak kabul etmektedir. Fakat aynı zamanda bu kişileri, kendilerini *başlangıç durumu*nda ve *bilgisizlik peçesi*nin arkasındaymış gibi düşünmeye ve adaletin ilk ilkelerini seçmeye zorlamaktadır. Simetrik olarak konumlandıkları ve kimse kendi temsil ettiği grubun sosyoekonomik durumunu tahmin edemediği için Rawls, kabul edilen ilkelerin adil bir sosyal sözleşmenin ürünü olacağını varsaymaktadır. *Teori*'de, seçim usûlü adil olduğu için, sonucun da adil olacağı farz edilmektedir. Bu, insaf olarak adaletin arkasındaki ana fikirdir: *saf usûlî adalet*. Adil usûl doğru bir şekilde takip edildiğinde, adil bir sonuç ortaya çıkaracaktır. Adil seçim usûlü sayesinde, adalet ilkeleri elde edilecek ve bu ilkelerin temel yapıya uygulanması da adil sonuçları (yani dağıtılan payları) doğuracaktır.

Başlangıç durumunda Rawls, iki (yukarıda anlatıldığı gibi aslında üç) adalet ilkesinin seçileceğini savunmaktadır: eşit temel özgürlükler ilkesi, adil fırsat eşitliği ilkesi ve fark ilkesi. *Eşit temel özgürlükler ilkesi* toplumun, kabaca siyasal yapısını "herkesin aynı özgürlükler düzeniyle uyumlu olan tamamıyla yeterli eşit temel haklar ve özgürlükler düzenini"[1] temin edecek şekilde tasarlar; böylece her birey eşit temel özgürlüklerden yararlanabilecektir. Bunlar çoğunlukla, ahlaki yetilerin (*moral powers*: adalet duygusu ve iyi anlayışı için olan yetiler) tatmin edici bir şekilde gelişmesi ve yerine getirilmesi için gerekli olan kurumsal

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[1] Rawls, "The Basic Liberties," s. 5.

koşulları sağlayan sivil haklar ve siyasal özgürlüklerdir. *Adil fırsat eşitliği ilkesi*, insanlara yeteneklerine göre ilgili mevki, makamlara gelebilmeleri için gerekli olan fırsatları sağlamayı hedeflemektedir. *Fark ilkesi,* sosyoekonomik eşitsizliklerin en az avantajlı olanların azami yararına olacak şekilde düzenlenmesini gerektirmektedir. Rawls, eşit temel özgürlükler ilkesine *mutlak* öncelik, fark ilkesine karşı adil fırsat eşitliği ilkesine de *görece* öncelik vermiştir. Adalet ilkeleri bu hiyerarşi içerisinde çalışmaktadır. Görüldüğü üzere Rawls, faydacı adalet anlayışında mümkün olan, vatandaşların temel özgürlüklerinin daha fazla sosyal ve ekonomik menfaat için fedâ edilmesini önlemeyi amaçlamaktadır. Rawls, bu şartlar altında, sosyoekonomik yapının en az şanslı olanların en çok faydasına olacak şekilde organize edilmesi gerektiğini söylemektedir. Bu ilkeler toplumun temel yapısına uygulandığında Rawls, demokratik eşitlik anlayışının sağlanacağına inanmaktadır. Böylece vatandaşlar, sivil haklardan ve siyasal özgürlüklerden eşit bir şekilde faydalanacak, meslek ve mevki sahibi olabilecek ve sosyal iş birliği sisteminden yeteneklerine ve motivasyonlarına göre adil paylarını alabilecektir.

Eşit temel özgürlükler ilkesi, alt kısım 2.3.3.1'de belirtildiği gibi temel özgürlüklerin dağıtımını şekillendirmektedir. Alt kısım 2.3.3.2'de açıklandığı gibi *adil fırsat eşitliği ilkesi* fırsatların dağıtımını belirlemektedir; *fark ilkesi* de mevki, makamların yetkilerini, sosyoekonomik menfaatlerin ve kaynakların dağıtımını düzenlemektedir. Sonra bütün bu ilkelerin uygulanması da özsaygının sosyal temellerini teminat altına almaktadır. Dolayısıyla Rawls'a göre, birincil sosyal kıymetler kümesi temel özgürlükler, fırsatlar, kaynaklar ve özsaygının sosyal temellerinden oluşmaktadır. Bunlar insanların ahlaki yetilerini geliştirmesi ve gerçekleştirmesi için gereklidir. Bundan dolayı her vatandaşın kendi iyi anlayışını takip etmesi için daha fazla *birincil kıymetler* istediği kabul edilmiştir. Rawls'un teorisinde onlara, en kötü sosyoekonomik durumda olan grubu belirlemek ve birincil kıymetler endeksi aracılığıyla alternatif temel yapılar arasında kişilerarası karşılaştırmalar yapmak için gereksinim duyulmaktadır.

Lakin, Rawls'un teorisinin eleştirel değerlendirmesi hem birincil sosyal kıymetler kümesinin hem de adalet ilkelerinin bütün toplumlara hitap etmediğini ortaya

koymaktadır. Çünkü sosyal kıymetlerin anlamları toplumlara ve kültürlere göre değişmektedir. Bu nedenle, Rawls'un birincil kıymetler kümesi ve adalet ilkeleri tüm zamanlarda ve mekanlarda geçerli değildir. Onlar sadece Rawlscu bir topluma uygulanabilir. İlâveten Rawls, tepeden inmeci felsefi bir yaklaşıma sahip olduğu için teorisi bağlama karşı duyarsız, tekdüze ve antidemokratik bir karaktere bürünmüştür. Ayrıca, Rawls eşitlikçi bir eğilimle temel yapıya odaklanmakta, ancak bireylerin seçimlerini eşitlikçi olmayan bencil arzuların insafına bırakmaktadır. Rawls bir taraftan, en az şanslı grubun avantajlarını kamusal kurumlar aracılığıyla en üst düzeye çıkarmak isterken; diğer taraftan bireyler, kişisel seçimleriyle kendi kazançlarını en üst düzeye çıkarmak için çalışmaktadır. Bu nedenle, insaf olarak adaleti başarısız kılan, kamusal kurumlar ile özel tercihler arasındaki bu bâriz tutarsızlıktır. Bu şekilde, Rawls eşitlikçi bir toplum oluşturamaz.

Görüldüğü üzere insaf olarak adaletin dâhilî çelişkileri liberal karakterinden, özellikle kamusal/özel alan ayrımından, kaynaklanmaktadır. Rawls kamusal alana/kurumlara odaklanır ve özel alanda vatandaşların kendi çıkarının peşinde koşmalarına izin vermektedir. Lakin, bir adalet teorisi özel alanı görmezden gelemez. Feministlerin söylediği gibi "kişisel olan siyasaldır." Dolayısıyla, özel alan da adalet ilkeleriyle yönetilmelidir. Özel alanın ilkeleri farklı olabilir, ancak kesinlikle özel alan için de bazı adalet ilkeleri gerekmektedir. Aksi takdirde, adil bir toplumun ortaya çıkması mümkün değildir. Dahası, Rawls'un siyasal liberalizmi kapsamlı doktrinleri özel alana atfederken siyasal adalet anlayışını kamusal alana yüklemektedir. Bununla birlikte, 2.4. numaralı kısımda belirtildiği gibi, Rawls *modus vivendi*'yi aşmak istiyorsa felsefi liberalizmi benimsemeli; ancak siyasalda *felsefi* liberalizmi benimserse kendi *siyasal* liberalizm düşüncesiyle çelişecektir (çünkü o metafizik olanı değil siyasalı içermektedir). Böylece liberal, bir tartışmada kendi tarafını tutamayacaktır (*liberalizm paradoksu*). Bundan dolayı Rawls, insaf olarak adalet teorisinde siyasal istikrarı koruyamaz.

Her ne kadar Rawls, insaf olarak adalette metafizik, epistemolojik ve metaetik tartışmalardan uzak durmak istese de bu tartışmalardan kaçamaz. Bu adaletin

doğasından kaynaklanmaktadır. Adalet, metafizik, metaetik ve etik temeller olmadan incelenemez. Herhangi bir adalet teorisi, bazı metafizik, metaetik ve etik varsayımlar üzerine kuruludur. Başka bir deyişle, *siyaset teorisi* metafizik, metaetik ve de özellikle *etik* olmadan ele alınamaz. Ancak bu şekilde, adaletin temel normatif ilkeleri hakkında ortak bir anlaşma zeminini bulabiliriz. Aksi takdirde, şu an içinde yaşadığımız dünya gibi "savaş halinden" çıkamayız.

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