RAWLS' THEORY of JUSTICE II: RAWLS' POLITICAL TURN

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1. Introduction: Addressing the failure of justice as fairness as a moral theory

Communitarian criticisms have obviously had an immense impact on Rawls' theory, as on all liberal theories in general. Many liberals have felt a need to reinterpret their theories so as to withstand communitarian objections.

Since 1978, Rawls has been modifying his conception of justice as fairness. He has recently proclaimed that his theory is not a metaphysical or philosophical but is a political theory[1]. This is perhaps because he realised that the kind of stability required in a just democratic society marked by a pluralism of reasonable comprehensive moral doctrines was inconsistent with the account of stability given in *A Theory of Justice*. Therefore, as Ivison points out, Rawls revised his argument in a way that it now intends "to establish a more realistic account of a *well-ordered* society; that is, creating legitimate political stability amidst a plethora of conflicting yet reasonable conceptions of the good."[2]

In *A Theory of Justice*, Rawls presents a theory of justice as fairness consists of two principles of justice chosen by free, equal and rational individuals in an original position behind a 'veil of ignorance'. The aim of the theory of justice as fairness was to generalise and carry to a higher level of abstraction the traditional moral theories. Rawls considered the social contract tradition as a part of moral theory and accordingly introduced a universal moral

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[1]   See Rawls, J. (1985), "Justice as Fairness: Political not Metaphysical" in *Philosophy and Public Affairs*, Vol. 14, No. 3; Rawls, J. (1989), "The Domain of the Political and Overlapping Consensus", *New York University Law Review,* Vol. 64, No. 2; also see Powers, W. Jr. (1993), "Constructing Liberal Political Theory", *Texas Law Review*, Vol. 72, p. 445

[2]   Ivison, D. (1995), "The Art of Liberalism", *Canadian journal of Political Science*, Vol. 28, No.2, pp.203-226

theory as an alternative to other moral theories such as utilitarianism and rational intuitionism.[3]

The most notable failure of Theory was that it did not then distinguish between two different kinds of moral conceptions, that of a comprehensive moral theory that is more general in scope in addressing the problems of justice, and that of a strictly political conception of justice that is restricted in scope and is supposedly independent of any general comprehensive theory (whether moral religious, or philosophical)[4]

Therefore, "Rawls' attempt to present a universal moral theory led several logical inconsistencies. Justice as fairness was framed to accord with the idea of well-ordered society. A well-ordered society was supposed to be regulated by a public conception of justice"[5] In such a society, Rawls claimed, "citizens would eventually come to accept the principles of justice as the basis of social organisations,"[6] by supposing that "everyone accepts and knows that others accept the same principles of justice, and the basic social institutions satisfy and are known to satisfy these principles."[7] As Sarangi points out, such a society should be relatively homogeneous in its basic moral beliefs in that everyone believes, say, the same religion, or hold the same moral or philosophical view as true or, at least, there should be a broad agreement about what constitutes the good life. Since well-ordered society is supposed to remain over time, its conception of justice must be stable "i.e. when institutions as defined by the conception of justice, those taking part in these arrangements acquire the corresponding sense of justice and desire to do their part in maintaining them." "Such stability provided a basis for Rawls to argue that justice as fairness was a comprehensive philosophical doctrine.[8]

When conceived in this way, justice as fairness turned out to be simply another reasonable comprehensive doctrine that was opposed to and so

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[3]   Rawls, J. (1993), *Political Liberalism*, New York 1993), p. xv

[4]   Martin, R. (1994), "Rawls's New Theory of Justice," *Chicago-Kent Law Review*, Vol. 69, p. 738.

[5]   Sarangi, P. (1994), "From Metaphysical to Political: John Rawls' Revised Version of Liberalism", *Economic and Political Weekly*, Vol. 29, No. 23, p. 1396

[6]   Powers (1993), p. 451

[7]   Rawls, J. (1972), *A Theory of Justice*, Cambridge: Belknap Press of Harvard UP, p. 454

[8]   Sarangi (1994), p. 1396

incompatible with other reasonable doctrines, such as a religion, utilitarianism and Kantian moral theory. This meant that the well-ordered society of justice as fairness was not only an unrealistic ideal for a democratic society but also it was incompatible with the fact of reasonable pluralism.[9] As Powers points out, the acceptance of Rawls' principles of justice by citizens in a well-ordered society required them "to abandon their own comprehensive moral theories to the extent those theories conflicted with justice as fairness as a theory of the right." Thus, it is regarded that Rawls' earlier idea of a well-ordered society was too optimistic by looking at the fact of pluralism in our societies.[10]

Rawls also realised that the idea of well-ordered society as it appeared in *A Theory of Justice* was unrealistic. He admits that "the fact of plurality of reasonable but incompatible comprehensive doctrines −the fact of reasonable pluralism− shows that ... the idea of well ordered society of justice as fairness was unrealistic. This is because it is inconsistent with realizing its own principles under the best of foreseeable conditions."[11]

Citizens in a well-ordered society were supposed to "endorse this conception on the basis of ... a comprehensive philosophical doctrine." That is, in a well ordered society associated with justice as fairness the two principles of justice were to be affirmed by citizens as a part of a comprehensive moral doctrine as similar to that of utilitarianism.[12] In other words, to express justice as fairness as a comprehensive moral theory meant to undermine the rival comprehensive religious, philosophical and moral conceptions of justice affirmed by citizens of a democratic society. Rawls now argues that political philosophy should play an important role in contributing to stable democratic societies.[13]

I think that, therefore, in his recent writings, Rawls has made a clear distinction between two kinds of moral conceptions and shifted from a general

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[9]   Sarangi (1994), p. 1396

[10] Powers (1993), p. 451

[11] Rawls (1993), p. xvii

[12] Rawls (1993), p. xvi

[13] Klosko, G. (1993), "Rawls's "Political" Philosophy and American Democracy", *American Political Science Review*, Vol. 87, No. 2, p. 348

comprehensive moral conception to a more restricted political conception of justice.

2. Political conception as distinct from a comprehensive moral theory

Rawls says that "the distinction between political conceptions of justice and other moral conceptions is a matter of scope." According to him, a moral theory becomes comprehensive when: (i) it applies to a wide range of subjects. This is also what makes it general; and (ii) "it includes conceptions of what is of value in human life, as well as ideals of personal virtue and character, that are to inform much of our nonpolitical conduct"[14]

A political conception, on the other hand, differs from a general comprehensive moral theory because; (i) "it is a moral conception worked out for a specific subject, namely the basic structure of a constitutional democratic regime."; (ii) accepting a political conception does not presuppose accepting any other deeper comprehensive moral theory or doctrine; and (iii).a political conception is not formulated in terms of any comprehensive doctrine, but its roots is found in certain fundamental ideas "latent in the public political culture of a democratic society."[15]

Taken together, these three features of a political conception of justice provide the basis for Rawls to argue that his conception of justice is now more feasible since it has its basis in the ideas that are "latent in the public political culture," and thus it is also noncontroversial in nature.

Therefore, he now emphasises that justice as fairness is a political theory, not a metaphysical, or moral comprehensive theory.[16] This means that we can now hope that citizens in a well-ordered society would come to accept common political principles of justice without abandoning their own more general comprehensive religious, philosophical or moral doctrines. In that sense, it is supposed that Rawls' two principles of justice, now political, "can accommodate not only competing theories of the good, but also competing comprehensive moral doctrines."[17]

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[14] Rawls (1993), p. 175

[15] Rawls, (1993), p. 175; also see Rawls, J. 1988), "The Priority of Rights and Ideas of the Good", *Philosophy and Public Affairs*, Vol. 17, No. 4, pp. 252-253

[16] See Rawls (1985, 1987, 1989) ; also see Powers(1993), p. 445

[17] Powers (1993), p. 451; and see Rawls (1993), p. 15

3. Rawls' Political Conception of Justice

3.1. The fundamental questions

Rawlsian political liberalism addresses two fundamental questions of political conception of justice for a democratic society. The first question is: what would be the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal and fully cooperating members of society over a complete life, from one generation to the next?[18] And the second question is: "what are the grounds of toleration understood in a general way, given the fact of reasonable pluralism as the inevitable result of the powers of human reason within enduring free institutions?"[19]

Taken together these questions make up the subject of political liberalism, that is, the problem set up by Rawls to be resolved throughout the *PL*:

how is it possible that there may exist over time a just and stable society of free and equal citizens, profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines? Put another way: How is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime. What is the structure and content of a political conception that can gain the support of such an overlapping consensus.?[20]

The answer to this complicated question is simple, that is: "the basic structure of such a society is *effectively* (stress is added) regulated by a political conception of justice that is the focus of an overlapping consensus of at least the reasonable comprehensive doctrine affirmed by its citizens."[21] The whole book concentrates to justify this claim, although unconvincingly. Here I want to take attention to the term "effectively". He does not say "rightly", or "justly", as he used to say in *A Theory of Justice*. I think he realised that designing a unique basic structure would be more effective rather than it would be more just.

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[18] Rawls (1993), pp. 3, 20, 47

[19] Rawls (1993), p. 47, also see p. 4

[20] Rawls (1993), p. xviii, also see pp. 4, 47

[21] Rawls (1993), p. 48

3.2. An historical argument

In order to make his account of well-ordered society regulated by the principles of political justice more realistic Rawls introduces a historical argument. He thinks that citizens in a democratic society will now come to acknowledge his political conception of justice because it is based on the ideas that have already been recognised by them in their background public culture of democratic society. He believes that the political conception of justice will extend and complete the movement of ideas that began three centuries ago with the gradual acceptance of the principle of religious toleration. As has already been mentioned he specifically underlines three historical developments[22] and adds that among them, the Reformation had enormous consequences like the modern understanding of liberty of conscience and freedom of thought. He argues that "pluralism made religious liberty possible. .... Of course, other controversies are also of crucial importance, such as those over limiting the powers of absolute monarchs by appropriate principles of constitutional design protecting basic rights and liberties." However, despite the significant importance of these latter issues, the fact of religious division remains. Therefore,

> political liberalism assumes the fact of reasonable pluralism as a pluralism of comprehensive doctrines, including both religious and non religious doctrines. This pluralism is not seen as a disaster but rather as the natural outcome of the activities of human reason under enduring free institutions. To see reasonable pluralism as a disaster is to see the exercise of reason under the conditions of freedom itself as a disaster. Indeed, the success of liberal constitutionalism came as a discovery of new social possibility: the possibility of reasonably harmonious and stable pluralist society[23].

As Sarangi rightly points out, the contemporary problems of public culture do not simply consist of the issue of religious toleration but include some other diverse issues, such as ethnicity, gender and race. This calls a different set of principles of justice that Rawls did not discuss in *A Theory of Justice.* It seems that Rawls is now aware of this. As we have discussed, the earlier version of justice as fairness was based on abstract conceptions, and "it employed an unworkable distinction between the public and the private that rendered it unable to deal with problems and gender and family. ... He [now] seems to argue

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[22]   Rawls(1993), p.xxiv

[23]   Rawls(1993), p. xxiv-xxv

that it is possible to delineate the fair terms of co-operation between citizens characterized as free and equal yet divided by profound doctrinal conflicts."[24]

Rawls claims that "we are the beneficiaries of three centuries of democratic thought and developing constitutional practice" and thus, "we can presume not only some public understanding of, but also some allegiance to, democratic ideals and values as realized in existing political institutions." For example:

> religion toleration is now accepted, and arguments for prosecution are no longer openly professed; similarly slavery is rejected as inherently unjust, and however much the aftermath of slavery may persist in social practices and unwound attitudes, no one is willing to defend it. We collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent conception of justice.[25]

Rawls also believes that these political values have sufficient weight to override all other values that may come in conflict with them[26].

3.3. The characteristic features of political conception of justice

Rawls, reviews four general facts about modern democratic societies: (i) The diversity of comprehensive doctrines found in democratic societies is a permanent feature of the common culture of democracy. (ii) General affirmation of one religious, philosophical, or moral doctrine could be brought about only through the oppressive use of state power. (iii) "an enduring and secure democratic regime, one not divided into contending doctrinal confessions and hostile social classes, must be willingly and freely supported by at least a substantial majority of its politically active citizens" (iv) The political culture of a reasonably stable democratic society normally a number of certain intuitive ideas from which it should be possible to work up "a political conception of justice suitable for a constitutional regime."[27] Klosko thinks that there is a fifth,

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[24] Sarangi (1994), p. 1396

[25] Rawls (1985), p. 8

[26] Rawls (1993) PL, p. 138

[27] For these four feature see Rawls (1989), pp. 234-235, also see Klosko (1993), pp. 348-349

(v) "For various reasons, it is unlikely that rational arguments alone could bring about agreement throughout society on important moral, religious, and philosophical questions. Rawls refers to this as "the burdens of the reason". It is because of this that such agreement could be secured only through the oppressive use of state power."[28]

To be appropriate to these general facts of a modern democratic society, Rawls assigns three characteristic features to his political conception of justice The first is that it is a moral conception worked out for a specific kind of subject, that is, the political, social and economic institutions (in short, the basic structure) of society not for whole way of life. A political conception of justice focuses first and foremost on "the framework of basic institutions and the principles, standards, and precepts that apply to it, as well as how these norms are to be expressed in the character and attitudes of the members of society who realize its ideals."[29]

The second feature which complements the first is that a political conception is not to be understood as a part of a general and comprehensive moral conception that applies to the political order, as if this order was only another subject, another kind of case, falling under that conception. Thus, a political conception of justice is different from many familiar moral doctrines, for these doctrines are widely understood as general and comprehensive views. This feature of the political conception of justice rather relates to its mode of presentation. Rawls claims that a political conception is a free-standing view. It is neither presented as, nor as derived from a comprehensive moral doctrine.[30] To formulate such an independent conception of justice, he offers to apply the principle of toleration to philosophy itself: In this sense, according to him, in a constitutional democracy, the public conception of justice must be political as independent of controversial philosophical and religious doctrines and not metaphysical[31]. He presumes that it is possible for persons with conflicting, but reasonable comprehensive views to agree that political conception should be the account of justice that is most compatible with their own views. As such the

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28   Klosko (1993), p. 349

29   Rawls (1993) pp.11-12

30   Rawls presumes that "basis structure is that of a closed society: that is, we are to regard it self-contained and as having no relations with other societies. Its members enter it only by birth and leave it only by death." Rawls (1993), p .12

31   Rawls (1985), p. 4

political conception would then be the object of an overlapping consensus about (*political* conception of) justice.[32]

The third feature of the political conception of justice is that its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society.[33] According to Rawls, there are three such fundamental ideas of public political culture in a democratic society. The 'central organizing idea', in his view, is that of "society as a fair system of cooperation over time, from one generation to the next."[34] This fundamental idea is associated with two others. One is the Rawlsian political conception of person. He presumes that the citizens of a democratic society are free and equal persons. The other is that of "a well-ordered society as a society effectively regulated by a political conception of justice."[35] To these three fundamental ideas Rawls adds the idea that political conception of justice specifically applies to the basic structure of a society. Finally, by re-introducing the idea of the original position, he completes the set of fundamental ideas of political liberalism. However, this latter idea clearly differs from the others in this cluster of fundamental ideas in the sense that it is not necessarily latent in the public political culture. Rather it is regarded as necessary as a mediating model that integrates the other fundamental ideas into a coherent scheme of justice.[36]

4. Resulting Changes from Theory of Justice

What has changed in Rawls' theory? Rawls claims, there is no fundamental change in the basic idea of justice as fairness. Undoubtedly, it is

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[32] Rawls (1993), p. 15

[33] Public political culture of a society is composed of "the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary) as well as historic text and documents that are common knowledge." However, all comprehensive doctrines belong to what Rawls calls the "background culture" of civil society. He claims that this not the culture of political, but of the social. It is the culture of daily life, and of its associations such as churches and universities, learned and scientific societies, clubs and teams and other private associations. Rawls (1993), pp. 13-14

[34] Rawls (1993), p 14, explained pp.15-22

[35] Rawls (1993), p. 14

[36] Rawls (1993), pp. 11, 14, 22, 29

still the same conception (liberal principles) of justice for the same subject, the public institutions of a democratic society. As I shall indicate shortly, the principles of justice, except a small modification in the first principle, remained the same. Rawls still thinks that the principles chosen resulting from an abstract reasoning process would best regulate the basic social, political and economic institutions of a democratic society. However he now tries to justify it from a different view point that is not philosophical and ontological but political he hopes that these principles based on a long tradition of a liberal culture. So they are applicable to a liberal democratic society with a long tradition. This is one limit, he now puts, the second is that even in such societies, he acknowledges, ther may be ubreasonable doctrines that may not support his principles. This is the second limit. The third is the principles do not apply to whole social life, but to the political domain of a society that means that all reasonable doctrines must accept a strong distinction between public and non-public aspects of social life. And another and may be most important weakness of his theory is that it is constructed on many presumptions that if it can be shown that one of these assumptions is wrong the whole theory come into question. For example, it assumes that individuals are free, equal, reasonable and rational. Or assumes that there are enough such individual that would support his principles, it assumes that in a liberal democratic society there are reasonable doctrines more than unreasonable .

4.1. Original position

Rawls modified his idea of original position in the sense that it has now a more restricted role than it had in *A Theory of Justice*. Rawls, by using the idea of original position in *A Theory of Justice*, wanted not only to justify his two principles of justice for basic structure, but also to specify the basic political setting, constitutional essentials, that would give rise to the democratic institutions.[37] Now, the task of the original position is more modest, that is to show that only a particular set of principles chosen in the original position is compatible with the fundamental ideas implicit in a democratic society marked by the fact of reasonable pluralism.[38] Once the original position is viewed as a device of representation, Rawls claims, the parties in it donated with the knowledge of the five general fact of democratic society mentioned would choose the principles of justice that reflects these fundamental ideas.

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[37] Martin (1994), pp. 749-50

[38] Rawls (1993), pp. 22-28

However, this is still not sufficient in resolving the problem stability raised above. Rawls felt a further need to supplement the justification of his political conception of justice and, so, introduced the idea of *overlapping consensus*.

4.2. Need for a new justification : the idea of an overlapping consensus and political stability

By introducing the concept of overlapping consensus Rawls wants to show that his political conception would be preferred by reasonable persons over any other political or moral conception. In setting up the problems with which political liberalism is concerned Rawls asks the question:

> how is it possible that there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical and moral doctrines?[39].

By this, he aims to find an acceptable and unifying basis of agreement for a political conception of justice that would regulate the basic institutions of a democratic society characterised not simply by a pluralism of comprehensive doctrines, but by a pluralism of incompatible yet reasonable comprehensive doctrines. He argues that no single comprehensive religious, philosophical or moral doctrine is appropriate for fulfilling this task or for providing the stability over generations, because no one of them is affirmed by citizens generally and no hope that any or some of them would ever be affirmed by all citizens or nearly all citizens of a democratic society.[40] "In such a society, a reasonable comprehensive doctrine cannot secure the basis of social unity, nor can it provide the content of public reason on fundamental political questions." Therefore, to see how a well ordered society is unified and stable Rawls introduces another basic idea namely the idea of *overlapping consensus*.[41]

> a consensus in which it is affirmed by the opposing religious, philosophical and moral doctrines likely to thrive over generations in

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[39] Rawls (1993), p. 133

[40] Rawls (1993), p. xvi

[41] Rawls (1993), p. 134

more or less just constitutional democracy, where the criterion of justice is that political conception itself[42].

He believes that "in such a consensus, the reasonable doctrines endorse the political conception, each from its own point of view"[43] He claims that social unity is based on a consensus on the political conception of justice. In regard to stability he argues that

> stability is possible when the doctrines making up the consensus are affirmed by society's politically active citizens and the requirements of justice are not too much in conflict with citizens' essential interests as formed and encouraged by their social arrangements.[44]

In short, Rawls tries to specify a free-standing-political conception of justice which will be supported by an overlapping consensus and presumes that this political conception of justice cannot only provide a shared public basis for the justification of political and social institutions but also helps ensure stability from one generation to the next[45]. In his words

> The idea of an overlapping consensus enables us to understand how a constitutional regime characterized by the fact of pluralism might ... achieve stability and social unity by the public recognition of a reasonable political conception of justice[46].

In this sense, it seems that Rawls has removed the controversy that communitarians claimed to be in *A Theory of Justice*. Because, seemingly Rawls' political conception has now its basis in the fundamental ideas of a democratic society that supposedly shared by all citizens, and thus it should be acceptable to the wide variety of reasonable comprehensive doctrines. The other reason is that the political conception makes no controversial claim about any reasonable comprehensive view. Rawls states that "we try, so far as we can, neither to assert nor to deny any particular religious, philosophical or moral view, or its associated theory of truth and the status of values. Since we assume each citizen to affirm some such view, we hope to make it possible for all to

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42 Rawls, (1987), "The Idea of An Overlapping Consensus" *Oxford Journal of Legal Studies*, Vol. 7, No. 1, p. 1

43 Rawls (1993), p. 134

44 Rawls (1993), p. 134

45 Rawls (1987), p. 1

46 Rawls (1987), p. 2

accept the political conception as true or reasonable from the standpoint of their own comprehensive view, whatever it may be."[47] Thus, political conception is neither skeptical nor indifferent to the claims made by these views. Instead it seeks to provide a basis for citizens to determine what issues can be removed from the political agenda and those that cannot.[48] Given these considerations, Rawls claims that his principles of justice would then be the object of an overlapping consensus by those persons holding reasonable, but incompatible comprehensive views.

4.3. Overlapping consensus versus modus vivendi

Given that the idea of original position has a more modest role in Rawls theory, one may object that his theory now appears to be a consensus based on a self-interest rather than on the principles of justice. To response this objection Rawls contrast his idea of overlapping consensus with another way of reaching agreement, namely a modus vivendi, on a political conception. He claims that "overlapping consensus is quite different from a modus vivendi."[49] Because, a social consensus based upon a modus vivendi occurs when the various parties find it to be in their own self-interests to abide by the conditions of a contract or treaty. However such a way of agreement, according to Rawls lacks any principled basis. The parties to such agreement many abandon the agreement if their interest require them to do so. In contrast, overlapping consensus differs from modus vivendi in two aspects: The first is that the objet of consensus is the political conception of justice which is itself moral. And second, overlapping consensus is affirmed on moral grounds. "It includes conception of society and of citizens as persons as well as principles of justice, and an account of the political virtues through which these principles are embodied in human character and expressed in public life."

> An overlapping consensus, therefore, is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests. All those who affirm the political conception start from within their own

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[47] Rawls (1993), p. 150

[48] Rawls (1993), pp. 151-152

[49] Rawls (1993), p.147

comprehensive view and draw on the religious, philosophical, and moral grounds it provides. [50]

4.4. Changes in the two principles of justice

In *PL,* Rawls also modifies his two principles (conception) of justice. Their new statements are as follows.

First Principle

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal basic liberties, and only those liberties, are to be guaranteed their fair value.

Second Principle

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.[51] (PL 5-6)

If we look at the second principle first, we see no changes in its formulation. And it is also remarkable that in *PL* there is virtually no specific discussion on this principle. However, the first principle is significantly reformulated in *PL.* As we have seen, (see n.[39]) in *A Theory of Justice* Rawls had stated the first principle as follows: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." In Political Liberalism Rawls modifies the beginning of the first principle by replacing the phrase "each person has an equal right" to "each person has an equal claim." He also replaces the phrase "most extensive total system of equal basic liberties" with the phrase "a fully adequate scheme of equal basic rights and liberties."

However, he never satisfactorily explains why these changes has taken place and what affects they make in the overall idea of the theory of justice as fairness. Obviously, *having an equal right* is different from *having an equal claim*. But Rawls fails to explain what this difference is. Also, "the most extensive total system" is not the same with "a fully adequate scheme". For example, he does not answer whether he now acknowledges that there may be certain rights and liberties that are more fundamental than others as he claims

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[50]   Rawls (1993), p. 147

[51]   Rawls (1993), pp. 5-6

that the only political liberties are to be given their fair value. Therefore, it is not clear in *PL* that how political liberties take precedence over the other rights and liberties.[52]

5. Problems with the political conception of justice

One thing is obvious in Rawls' later writings. He does not prescribe a fully comprehensive account of justice embracing the principles for whole social life. His conception of justice is now political, not metaphysical or philosophical, but not *social* either. It is, as he strongly stresses, a conception of justice for a special domain of social life, that is, *the domain of the political*, not the whole of social life. Rawls' conception relies on a strong distinction between the public (or political) and non-public aspects of social life. However, Rawls acknowledges that not every moral, philosophical or religious doctrine makes such a sharp distinction between the different aspects of social life. They impose values and principles to regulate the whole way of life; public and non-public. On the contrary, a political conception, in his words, "views the political as a special domain, with distinctive features that call for the articulation within the conception of the characteristic values that apply to that domain.," and it is a free-standing moral view that neither it is a part of fully or partly comprehensive doctrine nor is it derive from any of them.

Although Rawls, in his later writings, himself clearly admits that the idea of well-ordered society as it appeared in *A Theory of Justice* was unrealistic, he still believes that his two principles, with a small modification on the first principle mentioned, best define the terms of fair co-operation. Therefore, he hopes that an overlapping consensus of reasonable doctrines on his political conception of justice is possible despite the existence of deeply opposed views in almost all modern democratic societies. His aim is to show that his conception of justice is now appropriate "to secure the stability of a constitutional regime and relatively to achieve free and willing agreement on a political conception of justice that establishes at least the constitutional essentials."[53]

However, Rawls fails to show that such an agreement exists even in liberal societies. Rawls' method of justification, the project of deriving from a contractarian reasoning principles, appears to have been relinquished in favour of a methodology which avowedly relies upon traditions and judgements

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[52] Martin (1994), pp. 745-747

[53] Rawls (1987), p. 5

characteristic of a constitutional democracy. Gray argues that Rawls has relativized the contractarian methodology to deploy the intuitions of representative citizens of such regimes; it is silent in other contexts. Moreover, "in the later Rawls, the agenda of fixity and unique determinacy he sets for the principles of the theory of justice is even more problematic. It is more than questionable whether an 'overlapping consensus' ... of institutions and judgements exists in Western constitutional democracies, ... it is highly doubtful if such a consensus exists even in the United States, on which Rawls's model of constitutional democracy is chiefly, if not exclusively, based."[54]

Before going on to discuss whether an overlapping consensus would ever been achieved *on* Rawlsian political conception of justice, I want to raise a more fundamental question. Rawls claims that "a political conception ... views the political as a special domain with distinctive features that call for the articulation within the conception of the characteristic values that apply to that domain."[55]

Klosko, who criticises Rawls' political conception of justice from the empirical point of view, shows that, "Rawls' political defence of the two principles fails on empirical ground. A strong conception of rights does not appear to lie at the heart of the liberal culture"[56]

In order to establish a stable political conception of justice, Rawls still avoids disputed philosophical, moral and religious questions that contradict his conception of right or justice and tries to find basis of agreement than that of a general and comprehensive doctrine. This is simply because, for Rawls' there is no other alternative exists: no transcendental a priory argument would ever satisfy the political conception of justice. However, as he avoids disputed moral, philosophical and religious questions, he does not think that they are unimportant, on the contrary, he takes them seriously and sees "too important" but, the problem for him is that "there is no way to resolve them politically." In his words

> there is no better way to elaborate a political conception of justice for the basic structure from the fundamental intuitive idea of society as a fair system of cooperation between citizens as free an equal persons[57].

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[54] Gray (1995) *Liberalism*, Second Edition, Buchingham: Open University Press, p. 89

[55] Rawls (1989), p. 233

[56] Klosko (1993), p. 355

[57] Rawls (1985), p. 18

Thus, as an alternative basis of agreement, he proposes a political conception of justice that is limited in scope, and that is possible by applying the principle of toleration. It is also an alternative to the autocratic use of state power although it reserves the use of this power for itself to impose a set of institutions regulated by the two principles of justice that override all other arrangements that may come into conflict with it. Rawls hopes that such a political conception of justice might be supported by an overlapping consensus[58] despite the existence of people holding what he calls *unreasonable* doctrines.

In this sense, Ivison questions to what extent Rawls' theory is open to the deep diversity of late-modern political communities. He thinks that Rawls tries to persuade people to comply with liberal norms despite themselves. According to Ivison the drive for transparency here-through seeking out agreement on first principles of justice obscures the ''arts'' of political liberalism and prevents us from thinking about the diversity of political communities in other ways.[59]

One of the main questions that Rawls fails to answer in *PL* is what reasons one would have to accept the political conception of justice as formulated by Rawls, other than merely pragmatic ones. Associated with this, another problem is that it is not clear in *PL* whether Rawls' conception of justice as fairness would in fact achieves an overlapping consensus of even reasonable comprehensive doctrines in an actual democratic society. For example, could a utilitarian, or other moral philosopher ever affirms Rawls' priority of right over the good, in other words the priority of the first principle over the second?[60] The answer is, as has been said above, obviously in doubt.

Another problem relates to one of the key conception, specifically emphasised in *PL*, "reasonableness". Rawls, in his earlier writings, proposed that we should view citizens, as *free, equal, rational* and *reasonable* individuals. He argues that a fair political system is one to which *reasonable* and *rational*, *free* and *equal* individuals can agree.[61] And, in his later writings, he always

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[58] Rawls (1987), p. 5

[59] Ivison, D. (1995), "The At of Liberalism", *Canadian Journal of Political Science*, Vol. 28, No. 2, p. 203

[60] See Martin (1994), pp. 757-760

[61] See Caney, S. (1995), "Anti-perfectionism and Rawlsian Liberalism", *Political Studies*, Vol. XLIII, p. 252

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talks, not simply about the fact of pluralism, but about the fact of pluralism of *reasonable* comprehensive doctrines and states that "overlapping consensus required only among reasonable religious, philosophical and moral doctrines"[62] But, what about "*unreasonable* persons or doctrines"? He does not deny the existence of unreasonable comprehensive doctrines. "He does not so much discount their existence as imply that, were they to gain widespread currency, democratic society could be neither stable nor fair. A secure and just regime requires the support of a 'substantial majority of its politically active citizens'. We need not all be reasonable, but enough of us must be."[63] By any chance if there is not "enough of us" in a democratic society as Rawls characterised "*us*" his theory absolutely remains silent. We need to know which comprehensive doctrines are unreasonable and why? Rawls explains that

> such a doctrine is unreasonable: it proposes to use the public's political power –a power in which citizens have an equal share– to enforce a view bearing on constitutional essentials about which citizens as reasonable persons are bound to differ uncompromisingly. When there is a plurality of reasonable doctrines, it is unreasonable or worse to want to use the sanctions of state power to correct, or to punish, those who disagree with us[64].

In the first sight, it is quite reasonable what Rawls says here, but when we imagine a society in that existing (reasonable or unreasonable) comprehensive doctrines, incompatible with each other, do not want to use coercive political power to impose their ideas to others, but still do not agree on Rawlsian conception of justice, Rawls has nothing to offer to solve even the problems of reasonable pluralism in such societies.

For example, there may be reasonable comprehensive doctrines that do not want to use political power to enforce others to accept their ideals yet think that the basic institutions of society, at least partially, should be organised according to their conception of good, for they assume that, on some grounds (even if not on all aspects of human life) the good is prior to right.

As another possibility there may arise some comprehensive doctrines that may hold a different package of basic rights and liberties than those of Rawls',

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[62] Waldron, J. (1993), "Justice Revisited: Rawls turns towards political philosophy", *The Times Literary Supplement*, No 4707, p. 5

[63] Archard, D. (1994), "Fair Enough", *Radical Philosophy*, Vol:66, p. 48

[64] Rawls (1993), p. 138

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and thus simply think that basic institutions are not rightly or therefore justly ordered by Rawls' political conception of justice.

Moreover, Rawls' political conception of justice for public life may contradict to their sense of justice, and since they do not make any such distinction between private and public spheres, it would be impossible for them to accept Rawls' principles of justice without abandoning their own view.

Rawls does not consider such possibilities for he simply takes for granted that all reasonable doctrines that do not want to use coercive state power will employ his principles of justice as the principles of right from their own moral point of view. However there is no convincing argument (historical, empirical or otherwise) in Rawls' writings to support this claim. On the contrary, as has been stated, the recent empirical works show that there is no such consensus even in United States. When seen from the other way around, this means that Rawls considers only those doctrines as reasonable that support his political conception of justice. In other words, he only allows to use coercive state power for those comprehensive doctrines that agree with his principles of justice. Let us imagine again that there are moral doctrines that are fully comprehensive and perfectly reasonable but for some reasons (for example they maintain that abortion should be banned, or polygamy should be allowed −at least for their members) they do not agree what Rawls political conception of justice offers in organising the basic institutions; social, political, and economic structure of society. Although they may be fully comprehensive and 'intelligible'[65] views, and supported by large number of people in a pluralist society, for they do not endorse what Rawls political liberalism offers to them, they are labelled by Rawls as being unreasonable and thus Rawls' liberalism has nothing to offer them in a modern constitutional democracy. I think that, as Gray rightly points out,

> Rawls' liberalism has nothing to say to our contemporaries in Ankara, in Delhi, in St. Petersburg or in Shanghai. It is silent on the difficulties confronting those peoples , the majority of mankind, after all, who do not enjoy the blessings of our institutions[66]

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[65] According to Waldron, intelligible refers 'reasonable' in some sense. In that sense, he thinks it is "indisputable that modern feminism , militant Islamic advocacy of shari'a, and the type of Christian fundamentalism that espouses "family values" are all views about God, politics and society which are intelligible in the light of the burdens of modern reason.

[66] Gray, J. (1993), "Can We Agree to Disagree?" *The New York Times Book Review*, May 16, p. 35

I believe that all political theories, including Rawlsian political liberalism, imply limits to what extend pluralism can be tolerated. Especially those based on some substantive moral principles of justice whether fully comprehensive or political are unattainable even as a political conception of justice in a pluralist democratic society.