

Rawls' Public Political Justice

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The present paper attempts to examine the idea of justice as propounded by John Rawls as either comprehensive or non-comprehensive. It also studies Rawls' terming justice as political and not otherwise. Further, it highlights Rawls' pragmatic programme that uses Kantian rational intuitionism, and yet coming out with two-fold division of rationality vis-à-vis reasoning. Finally, the paper explores the role of 'consensus' in the formulation of (public) justice, the basis to show his conception as exclusively political.

The principal concern of Rawls' liberalism rests on the ideas of 'public political conception of justice,' 'reasonable agreement' and 'overlapping consensus'. The foremost question that associates with these ideas would be—how the principles of justice as fairness, as conceptualized in *A Theory of Justice*,¹ work at the level of political conception of justice? Secondly, how the reasonable nature of individuals establishes the practical institutional procedures? In fact, Rawls derives the scheme from the distribution of basic liberties based on the chosen principles of 'justice as fairness' where the latter directs individuals in mutually reconciling to the fact

that certain inequalities are bound to remain in society. This is theoretically *unavoidable* in the liberal paradigm. Thirdly, how individuals proceed with the belief that whatever one accepts; others too would accept the same. In other words, parties to the original position and citizens of the well-ordered society proceed to make choices and decisions adhering to the principles of justice fully guided by the rational assumption of mutual reciprocity. The choices of individuals are in accordance with the fairness principle under the conditions of 'original position' and 'veil of ignorance.' This is explained by Rawls in *A Theory of Justice* and *Political Liberalism*. The discussions that follow shall take up the above-mentioned issues within the paradigm of political justice and public reason.

For Rawls, political justice is guided by the same principles of justice, which also guide our public political culture. It is conceived as a freestanding view independent of all comprehensive doctrines that citizens hold.² Further, political justice is also based on the judgments of individuals, by reasonable and rational citizens extending fair terms of social co-operation. In other words, it is the outcome of certain

deliberately made decisions. To arrive at such a decision, two conditions have to be fulfilled: one, they visualize a common conception of justice reflecting the universal general principles; and two, they have to have consent (agreement) on the types of political institutions and procedures compatible with the idea of justice as fairness.

It is through the principles of 'justice as fairness' [*Political Liberalism*] that Rawls derives the conditions for justice as part of public political culture. Public political culture enables the principles of justice to be the foundation for individual actions and institutional procedures. Besides, it represents the political nature of justice thus manifested. The question is: 'Do the ideas of Rawls really prove sufficient to defend his conception of the political?' Three central issues that substantially deal with the goal of political liberalism and also Rawls' presumptions of a *politically* well-ordered society are as follows: First, the view that principle of political justice is not a comprehensive doctrine and thus free from all sorts of metaphysical idealizations ['Justice: Political not Metaphysical'] reflects the aspect of reasonable pluralism.³ Secondly, the priority is

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on reasonable and rational character of individual citizens for a mutual consensus in a democratic society.⁴ Thirdly, the principle of justice as fairness will result in overlapping consensus for (a strict) political conception of justice.

JUSTICE: POLITICAL NOT METAPHYSICAL

Rawls' clarifying notice on justice is that it is political and not metaphysical. For him, political justice is not determined by metaphysical doctrines; rather it is independent of them. Political justice is seen as a freestanding view not determined by abstract considerations. Non-political doctrines are considered as comprehensive doctrines whose distinctness is almost taken for granted. In other words, it is assumed that comprehensive doctrines (metaphysical, ethical, religious etc.) are embedded with differences and conflicting standpoints. Exclusive character of different standpoints within metaphysical discourse is *a priori* in nature. Political conception of justice, on the other hand, is the guiding principle for the realization of a well-ordered society. By 'Justice: Political and not Metaphysical,' Rawls claims that the challenge is to obtain public political justice, which does not depend upon any metaphysical doctrines or epistemological system.⁵ Ironically, Rawls presumes, without explicitly mentioning, the political conception of justice as non-problematic.

One of the reasons behind Rawls' highlighting justice as political could be to invoke neutrality of the connotations of justice. Rawls attempts to bring in an impartial conception of justice, where the extended notions do not impede the possibility of

reasonable agreement. He makes it evident in the beginning of *Political Liberalism* itself stating the purpose of his project. For him, the notion of the 'political' explains the necessity of a most appropriate conception of justice signifying the conditions for the fair terms of social co-operation.⁶ This, however, does not show any convincing argument unless we go further. The doubt still remains that his idea of neutrality could be an agenda to support his conviction towards the discourse on politics.

Extending the argument further, neutrality of justice as fairness can be attributed only when individuals are viewed as perfectly equal. Referring to McPherson's argument of 'liberal possessive individualism',⁷ the quality of possessiveness defines human beings to be non-neutral though rational. Political conception of justice argues for rationality rather than for neutrality in the strict sense. The reason is that citizens represent their viewpoints, sometimes conflicting and unacceptable, in deliberative processes. The decisions that come up from individual choices are not supposed to possess any neutral quality since such decisions negate other decisions. In fact, decisions arriving out of comprehensive philosophical dispositions are mutually exclusive. It does not propagate equality either because the decisions taken will not be in such a situation that they do not affect anyone's position or status. Neutrality can be conceived when members to the contract for social union are still treated as perfectly independent, unrelated and equal. Neutral standpoint is not feasible in the sense that agreement does not affect everyone in the same manner. So, even the politically derived

version of justice, which is supposed to overcome the influences of comprehensive doctrines, cannot provide a neutral face as it proposes to claim.

Search for an appropriate conception of justice calls for a debate among different particular interests and social goals. Rawls sees that political representation of particular interests (of an individual, group or association) is induced with comprehensive doctrines. This is normally what happens in our actual day-to-day state of affair where ethical or metaphysical convictions influence our perception of certain social goals. An example of the former would be of someone seeing the idea of moral righteousness as inalienable and non-negotiable value. An example of the latter could be of someone who explains the origin of caste through certain Hindu worldview and justifies caste distinction as necessary for bringing social order. Under such circumstances, conceiving an agreement acceptable to everyone is, in one sense, asking for compliance to *a priori* rule. The abstract principles of justice (for example, the two principles of justice)⁸ do not fully answer the confusions that arise from such complicated issues. Every issue that deals with justice cannot be addressed through the general principles of justice. Once we take resort to comprehensive doctrines, consensus decision on what ought to be the 'right form of justice' cannot be agreed upon. The reason is that the positions taken through comprehensive doctrines are bound to be exclusive and non-compromising. Perhaps this is the reason behind Rawls' trying to denounce any form of comprehensive doctrine.

Where an agreement between the

contending parties cannot be arrived at, the expected behaviour depends on the concerned parties and the manner in which each bargains for its respective interests. It cannot be presupposed that the contending members ought to act as per prior manifested principles of justice. The general principles of justice remain as principles of knowledge directing individuals to have enlightened self-interest. Who has to trade-off, and to what extent, becomes the real practical challenge before the individuals. It is under such a circumstance that the question of individuals being really free and equal comes under test. The individual capacity of making choices and decisions comes under acts of bargaining. Rawls thinks that comprehensive viewpoints could put hindrance to such a bargain. So, the political conception of justice has been highlighted to resolve this dilemma. It is here that Rawls brings in the idea of 'self-preservation' and 'self-seeking' nature of individuals (citizens), which is characteristically political. It is assumed that only by highlighting this self-seeking character of citizen, the ideal of (distributive) justice as fairness can be achieved. The separation of the comprehensive from the non-comprehensive doctrines is not a natural division but a presumed, *desired*, division.

In 'Justice as Fairness,' Rawls defines human beings as a *moral being* possessed with mutual reciprocity and higher-order interests. The concept 'moral' serves as the basis for mutual reciprocity. Higher order interest means the capacity of a person to mutually reconcile with the idea that principles of justice ought to be accepted and agreed. As the political conception of justice claims

to highlight itself as a freestanding view, human beings count their moral conceptions and higher-order interest as a background condition for making choices. As a freestanding view, political justice seems to be non-foundational in nature.⁹ Nevertheless, individual interests are at times exclusive; it will not be overlapping all the time in all the conditions, and at the same time will not be completely distinct from one another. This can apply to both the comprehensive and non-comprehensive doctrines alike. In most of the cases, interests of the same individual may be mutually opposing. Yet this does not suggest that the individual lives in a perennial state of conflict. One has to, in such a state of conflict, either make preference of one over another or make adjustment to decide on the choice one has to make. Kant focuses the highlight of this problem with the question: 'why should we be compelled to make choices between the opposing parties?'¹⁰ To this, Rawls conveys his commitment for political justice.¹¹ It is not merely for political commitment that we look out for a consensus, but for the very reason that we cannot hold conflicting standpoints *ad infinitum*.

Highlighting political conception of justice Rawls tries to elaborate a reasonable conception of the basic structure of justice that is free from, as far as possible, any wider commitment to any other doctrine(s). It is a 'reasonable' assumption that the basic political institutions ought to be fixed in the principles of fair justice. The question that immediately follows is: 'what is the scope of the *political*?' Rawls seems to differentiate political and moral doctrines on the grounds of their scope. A conception,

according to him, is fully comprehensive if it covers all recognized values and virtues within a rather precisely articulated system.¹² The question is whether these values vary depending upon the nature of the state. The political conception of justice, on the other hand, pertains only to the public political culture and the basic institutions, which facilitates the basic liberties. This aforesaid culture as Rawls argued comprises a just constitutional regime and the public tradition of their interpretation in the historical texts and documents that are common knowledge.¹³ A well-ordered society is thus constituted with publicly recognized values.

For Rawls, the domain of the political does not deal with the problems of truth in subjectivity or objectivity. Rather, it recasts the ideas from the tradition of social contract to achieve a practicable conception of objectivity and justification founded on public agreement.¹⁴ In one way this is a strong argument that attempts not to justify or objectify any morally comprehensive view. But when Rawls argues that public political conception pertains to the basic structures, he maintains that citizens have to reach a *commonly* reasonable agreement. He presumes that every citizen objectively meets with the same basic liberties. The argument on why individuals have to endorse only to the political views remains unclear even in the case of basic liberties. The comprehensive doctrines are even embedded in the domain of the political. Whatever comprehensive doctrines propagate or set up as a worldview, the same is understood to carry politically justified meanings. Similar to the traditional social contractualists whose contracting acts are based on

the primordial focus of individuals' (citizens') natural rights as *free* individuals, Rawls' theory, too, endorses the moral doctrine of justice and equality where fairness principle of empowering the *most under-privileged* stands as morally comprehensive point of view.

Strictly speaking, political conception of justice does not undermine the position of the communitarians. For the communitarians, culture and community are the vital aspects that determine a person's choice and action. If individual is a part of society, she is identified with a group or an association, viz. caste, class, race, religion, etc. However, it is not the case with the social contract liberals. Before making a claim that Rawls neglects the primacy of identity, we have to see whether his choice theory fits into the framework of identity assertion and power politics. Choices (used for decisions in matters of interests, desires, and preferences) may be seen as of two kinds; firstly, that of an individual choice where a choice is made by a single individual without the influence of an external factor, and secondly, collective choice where the decision of a group or association is presented in the public deliberation for justification and also for bargaining spaces. For the social contract liberals, identity of an individual is seen in terms of projecting oneself as an autonomous being, as an individual and a part of a collective. In the context of political justice, veil of ignorance operates in such a way that identities are treated as comprehensive and indecisive.

Following the liberal contractarian tradition, Rawls conceives of individuals as free and equal, so much so that the social condition where individuals exercise their

freedoms are perfect for bargaining. Accordingly, social contract can be explained as a condition or basis for public political justice. It is featured in such a way that the citizens give priority to fair and reasonable agreement. The idea of a fair agreement grounded on the intuitive principles takes into consideration the public reflection and self-clarification in the original position itself. Rawls draws a major argument here: taking the original positions as a device of representation—persons are not treated as parties holding metaphysical notions. The veil of ignorance provides an equal representation confining the metaphysical notions as background conditions. So, metaphysical 'biases' are somewhat bracketed (if one takes the phenomenologist vocabulary). The fundamental flaw in his formulation is the assumption that the institutions are genuinely impartial in nature, which in reality is not the case. It undermines the practical reality of Hobbesian human being for power, glory and fame. In a contract, agreement is inevitable in some form or the other. What matters is how the process of agreement is constructed. It defends the distinction of comprehensive notions from the political. In such a condition, everyone is ignorant of the other's basic dispositions and extended notions they carry into the public deliberations. This is a position that Rawls deliberately makes, a step away from the traditional contractualists who at least accepts the position of natural rights as a comprehensive doctrine. In the case of traditional social contractualists, the notion of natural rights only figures out.

Rawls argues that 'individuals are free and equal, possessing a sense of

good, at the same time bound by a particular conception of the good.'¹⁵ This condition makes the notion of political justice possible. It is worth questioning the nature of the 'bound of good.' A readily available conception of good can be only moral and not otherwise. Rawls contends that justice as fairness makes the basis for social co-operation. He also perceives that the principles of justice become rigid if tied up to the comprehensive notions of the individuals. Co-operation becomes problematic if every individual holds a particular conception of good, and views the same from the perspective of a regulative comprehensive doctrine. The problem in the regulative notions of justice is that they gradually take shape as fixed rules eventually becoming hindrance to human free endeavours. But it does not imply that all the individuals shall (or should) pursue their 'rational' plans of life directed by a single political conception of the good. That would be unfair either to presume or expect to happen. The very idea of bargain suggests that there cannot be a single political conception of justice. What is bargained is either out of varying political conceptions or conflicting moral principles/doctrines.

Political conception, for Rawls, seems to provide a scope for change and revise the principle of good on rational and *reasonable* grounds. Agreement of Rawlsian kind will not be objective and perfectly legitimate if legitimacy is defined through uniformity or on reaching to one similar opinion. For this reason, Rawls takes recourse to the idea of *reasonable pluralism*. Through such a form of pluralism, it is expected that it would be possible to meaningfully

address to the complexity of justice as fairness. Then we should also be able to claim that the singularity that is reached by reasonable agreement, between reasonable and rational agents, represents the idea of plurality. If we argue on the contrary, then we defend the claim that individuals and institutions are free and equal, rationally just all the time, irrespective of the situational variations.

Another aspect of justice (political) is that of public recognition. One of the principal components of public political conception of justice is that it is complemented by public justification. A well-ordered society is governed by an effective public conception of justice.¹⁶ The 'public conception' argument is taken from Kant's philosophy. It regards that in assessing moral conceptions we take into account the concept of their being publicly recognized.¹⁷ What are the political values that set condition for public conception and offer public knowledge? The 'public conception' has to take care of every citizen in the well-ordered society. The fear is whether the publicity condition satisfies the principles of individuals placed as free and equal. The problem is that citizens are tied up to a particular conception of good, defended by rational and reasonable arguments. Under such a condition, those who cannot be part of an objectively *constructed* reasonable agreement are placed as unacceptable losers.

The difficulty with Rawls lies in his making an exclusive distinction between comprehensive and non-comprehensive doctrines. His indication towards an *objective single* conception of political justice that guides a just democratic con-

stitutional regime falls into the same faith of exclusivism as propounded by the so-called comprehensive doctrines. Why should citizens view comprehensive doctrines and political conceptions distinctively? It seems that Rawls has fallen into a dilemma of using moral good in politics yet not diluted the very essence of ethical principle. The ontology of politics gathers its basis on the conception of bargain and compromise. Any politics without ethical considerations, at least of a fragment, cannot bring the conception of fairness principle. But it also means that making political choices cannot avoid bargain and consensus. It is a dilemma of synchronizing what is morally just with a practical political bargain.

RATIONALITY AND REASON

Rawls deals with the above dilemma by formulating the concepts of rationality and reason, the former indicating the Kantian rational intuitionism and latter to the act of bargain. The latter finds its sources in Dewey. By prioritizing the two concepts, Rawls inclines towards Kant than the traditional social contractualists. David Gauthier explicitly discusses this inclination. He avers:

Kantian supposes that all men, as rational, are directly related to one another as members of a Kingdom of Ends in which each must treat his fellows not as means but as ends in themselves.¹⁸

If we take formulation of the Kantian 'kingdom of ends,' there is very little that Rawls' non-comprehensive doctrine thesis can critique Kant of indulging in 'exclusivity'. It is in formulation of fairness principle of justice empowering the most under-

privileged that Rawls highlights the Kantian doctrine of 'treating others as ends' in his own philosophy. Treating the other as an end can come to its perfection, in implementation, when the theory addresses to the well being of the least privileged. The rationality that guides public reasoning propagating emancipation of the 'least privileged' is the paradigm of Rawlsian philosophy. It highlights Rawls' adherence to Kantian 'kingdom of ends,' though Kant may not like to make a distinction between the privileged and the under-privileged when the idea of 'treating others as end' is already projected as a dictum. Kantian kingdom of ends, instead of being all exclusive, is all inclusive, because each conceives the other as an end and there cannot be anything otherwise. Kingdom of ends falls well within the comprehensive doctrine. It is all inclusive when the principle norm is seen well within the paradigm set up by the doctrine. It does not allow any alternative doctrine to exist if seen from within the doctrine. But if seen from outside, there could be several such doctrines trying to exclude each other, thereby, ruling out any other norm/principle than the one propagated by each. The second point follows from the first in case it is accepted to be true—that non-comprehensive doctrine, theoretically, cannot be distinct and different from the comprehensive. If Kantian 'kingdom of ends,' as morally guided, highlights each individual treating the other as an end, political negotiation to root out differences will not arise. This, of course, is from within the framework of Kantian doctrine.

Not to fall into the trap, Rawls distinguishes between rationality and

reason. Through the distinction he not only puts forth the role of reason in conceptualizing the idea of public political justice, but also draws the basis for distinguishing the non-comprehensive from the comprehensive doctrines. Justice as fairness, political not metaphysical, suggests towards the deontological status of separating the political from the non-political comprehensive doctrines. The knowledge about this is derived from the capacity of an individual to be rational and reasonable. To begin with, it would be meaningful to raise the question, 'what it means to be reasonable and rational?' It is a form of ends-means relationship, which explains the kind of rationality an individual is to possess. At a general level, Hobbesian notion makes a good deal of sense; it cannot be denied that effective means to secure desired ends is a rational way of acting.¹⁹ For the Kantians, rationality is associated with reasoning in a world populated by rational agents, who carry equal worth, and have a sense of reciprocation in them.²⁰ Rawlsian argument comes closer to this; every human being assumes that the other is possessed with the capacity to reason out for fair shares in the deliberations.

The idea of reciprocity aids the moral aspect of human actions. Unless there is moral pre-conception of actions, arriving at mutually agreeable solution treating other as end cannot be visualized. This is what is necessarily present in the arguments of Rawls and Scanlon. The latter argues with motivational conception of reason and morality, acting as background conditions for human reasons. In the case of Rawls, the motivation to act *reasonably* serves as the basis for others to act on similar grounds. For Scanlon, an act

is right if it is justified to others. He further writes,

According to contractualism, when we address our minds to the questions of right and wrong, what we are trying to decide is, first and foremost, whatever principles are *Ö* no one, if suitably motivated, could reasonably reject.²¹

The significance of reasonable agreement lies here. It explains how one's own standpoints can be compatible with another's within a social set up. For Rawls, too, the principles of justice as fairness are grounded in moral principles, where he visualizes the parties to the contract as moral beings. For contractualism and contractarianism, rationality is all important as they believe in acceptable rules and principles as an outcome of a contract.²² How does it explain the political connotations of justice attributed by Rawls? The question is quite relevant because Scanlon presents contractualism as a 'unified account' of morality. It analyzes the standards of various values of human life, sometimes independent of one another, bringing out the best account of morality (may be metaphored as reason here) that in turn sets a 'sole standard' for judging right and wrong. It is rather that the principles of right and that of justice cannot be accounted for without appeal to irreducible moral notions.²³ Drawing argument from the fixed principles of morality does not resolve the challenges from outside. Decisions and actions fall under the non-reducible moral reasons. Even in the matters of justice, one cannot act, at every instance, with unified account of general morality in mind. One cannot give preference to the *end* called 'justice' at the loss of something substantial. Reasonable-

ness and irrationality have to be judged in different ways. It ought to depend upon the anticipation of an individual facing unusual instance in the social life at large.

It seems that Rawls, while taking the basis of public reasoning (bargain) to moral reasoning, did not want to highlight this basis (background) for fear of falling into *exclusivity* of theorizing. If political bargain as a form of reasoning (one may call public reason) is perfectly all right under the constituent conditions of choice and consensus, it is not necessary that the same act will deny the moral basis. Still it needs to be seen if application of moral doctrines into the domain of public bargain will contradict or dilute the moral principles themselves. Or it could be that political bargain fails to become *genuine* bargain corrupted by moral doctrines.

It is here that distinction between public justification and public recognition needs proper highlight. What is thought to be rational and mutually consensus may turn out to be something like 'consensus in disguise'. It could still be hegemony of a kind operating in the name of democracy and agreement (consensus). We all live in political society, as part of family or associations. And each of our social *conduct* is guided by *some* reasons. Whether these reasons, which guide us towards public agreement and justified as reasonable, are in reality justification of self-interest or public good, is something worth exploring. It is apt to mention Gauthier's argument here:

assuming individuals as a natural being and highly self-centered [drawing from Hobbes], reason is interpreted purely in agent-centered terms, as individual utility maximisation.²⁴

Gauthier's argument of projecting liberal philosophy through extension of Hobbesian paradigm of the self-centred individual leads towards a position that will somehow take us towards an act of reconciliation, not out of reasonableness, but out of, say, pragmatic consideration. If one tries to equate reasonableness with compromise, perhaps the idea of 'public good' falls out of our discourse. It is to see how one refutes the utilitarian argument, and yet at the same time highlight the doctrine of 'reconciliation' in political liberalism. Reconciliation, if there is one or any, is for the realization of public political conception of justice. The difficulty with Rawls is that whatever form of public justification and mutual reconciliation get projected, each seems to contain, even if in a remote way, certain extent of intuitive knowledge.

The reasonable and rational knowledge is supposed to bear relationship with intuitive knowledge. The universalistic or encompassing notion of public reason converges all the differences, the pluralities, into one universal principle. Intuitions are considered as immediate knowledge, the first principle that bears no external mediation. Intuition, in the Kantian sense, provides us with the knowledge beyond the concerns of experience. But every individual needs to act in such a way as to complement the others' opinions. If the notion of intuitive knowledge is accepted, it necessarily follows that individual's intuitively guided rational knowledge also looks out towards certain commitment to the common ideals derived from the objective universal moral principles. It is questionable whether mutual reciprocity (to take the politically

non-comprehensive doctrine) or compromise (as utilitarians would focus) values the differences in respective beliefs over comprehensive doctrines. In other words, it is difficult to explain and relate, as mentioned earlier, the two standpoints; one, that comprehensive doctrines are exclusive and mutually non-reconcilable, and two, that intuitive knowledge carries universal appeal. The relationship can be better explained if we take comprehensive doctrines both as exclusive and inclusive.

If our reason is guided by the categorical imperative, then it necessarily follows that categorical imperative can serve as criterion for judging our actions as morally obligatory.²⁵ For Kant, the imperatives turn as 'ought principles'. We may term it as 'binding principle,' too. Perhaps, it is the nature of human beings to abide by the universal principles. In the context of Rawls, when individual reaches an agreement in the original position, they are entitled to be rational and reasonable citizens of a well-ordered society. This means citizens are self-authenticating beings holding certain moral positions exclusive to each other, reach a common agreement as associated beings. Here, being 'social' plays a dominant role than rationality and reason.

The shift from Kantian intuitionism to public reasoning is something that requires proper scrutiny. Could we take public conception of justice as commands of reason and rationality extended? The universal laws as moral principles are priorly defined asking for benevolent actions of citizens. How are these actions committed in a democratic society? If democracy is explained by the exercise of free

choice, then the pre-determined principles and goals do not reflect freedom in actions. The need is to see the shift from the intuitive rationality which is epistemologically and ethically comprehensive (Kant) to public reasoning which is supposed to be through consensus (modified form of social contract). The purpose of reasonable and rationally capable human beings is to impel appropriate conception of justice. But the reasonable individuals ought to be so rational that at least some of them have to understand the need for some sacrifices to attain *reflexive* equilibrium. The sacrificial component of human nature cannot be relegated despite the fact that justice and freedom are not entitled to just a few. It is also not grounded on the capacities to reason out and comprehend the natural differences existing between the individuals. This situation creates a crisis for the acquisition of fair liberties exposing vast disparities between citizens. But Rawls raises two pertinent questions:

- (i) What is the appropriate conception of justice for specifying the fair terms of social co-operation between citizens regarded as fair and equal?
- (ii) What are the grounds of toleration understood in a general way, given the fact of reasonable pluralism as the inevitable result of the process of human reason within enduring free institutions?²⁶

In justice as fairness, social co-operation is the part of individual's actions complemented by the rational agents. In other words, Rawls calls this as 'public reason'. The public use of reason enables individuals to surpass the self-

interests and personal preferences. Rational intuitionism enables individuals to transcend the same and act according to the principle of justice as fairness. While public reason is supposed to enable individuals differentiate self-interest from collective interest, this differentiation and transcendence is primarily moved by rational intuition. This implies that public reason is guided by rational intuition.

In the process of explicating justice as fairness, Rawls explains and distinguishes Kantian constructivism and political consensus. Explaining the rational intuitions as first principles, appropriated by theoretical reason, he adds that it does not require a fuller conception of the self and needs little more than the self as knower (identities).²⁷ This can be seen in his conception of veil of ignorance. Rawls' contention is that more information about each other's identity may take away the parties from the agreement. Or it could be that too much emphasis on individual identities (even collective) could jeopardize the process of consensus seeking. The partial knowledge of the self makes the rational choice possible. Importance and significance of the veil of ignorance operates in ignoring of the identities to enable consensus. The idea of first principle is left to perceptions and intuitions, and has no necessity of the complex conception of person and society. Political constructivism, on the other hand, is the product of practical reason and a complex conception of society and person. It gives less importance to individual identities and ideals. As stated earlier, the basic concern of Rawls on the public conception of justice is the objective agreement through rational actions

of the citizens. To achieve this goal, Rawls highlights the necessity of independence of moral values. Rational intuitionism directs individuals to act on the grounds of practical reason, which for Rawls makes them reach the objectivity in choices, decisions and judgments. In political liberalism much significance is laid upon arriving at a common agreement over those principles that govern the democratic society. The idea of public reason narrows the validity of comprehensive doctrines and thus retains them as mere background conditions. The point for highlight here is that the answers to the questions lie in the combination of principle of justice as fairness and the idea of public reason, which form the source of public justification. Amidst these seemingly contrasting positions, the major issue still remains: that of 'source' of public political justice between Kantian intuitionism and public political consensus.

The conception of public reason differs from *A Theory of Justice* to *Political Liberalism*. In the former, the liberal reason is determined by the comprehensive doctrines. In the latter, public reason is a way of reasoning about political values shared by free and equal citizens that do not trespass on citizens' comprehensive doctrines as long as they do not contradict the democratic society [Idea of Public Reason Revisited, 807]. Horton interprets this distinction by arguing that the former is not public reason at all. For Rawls, public reason forms a reasonable balance between non-comprehensive political values and exclusive comprehensive doctrines. The question that emerges is—'Do these political values, which are the

publicly recognizable values chosen by the reasonable members of a well-ordered society, prioritizing the basic liberties and basic political values that could be manifested in the basic institutions of society, have due representation for the individual liberties?'

One point of concern is whether Rawls saw individuals' rational attitude and reasonable behaviour as one of the conditions for realization of basic liberties. This question need not be strictly confined in the Rawlsian paradigm alone, but can be extended even in a more specific sense to our average life world. Qualifying mutual reconciliation as the foundation of justice (as fairness) is highly pre-emptive in nature. It is too optimistic to conceive of individuals accepting principles on the basis of other person's endorsing the same. It may not even be truly justified to highlight individuals as, by definition, moral beings. Even Gerald Gaus' argument carries this limitation. He avers:

a good reason is not to be defined in terms of one's own reason or set of beliefs but also from the beliefs of others.²⁸

The question is whether individuals in the process of exercising rationality and reason live up to the essence of freedom. Will the claim of Gaus that good reason should also be determined by the 'belief of the other' be compatible with the idea of individual freedom? Rationality and reason not only constitute the objective agreement but also rationally pursue one's conception of the good, making self-authenticating claims, capable of being responsible to one's own ends.²⁹ Of course, what should include the constituents of authentic individual

reasoning is open to the individual's willingness either to include other's perceptions in one's scheme of reasoning. There cannot be a necessary condition of either to include or exclude the perception of the other in one's scheme of reasoning. Further, rational autonomy and political autonomy are differentiated. The former is a case for pure procedural justice where the original position is the basis for an outcome of appropriate conception of justice (individuals as equal and free citizens). The higher-order interests, which form the basis of mutual reconciliation, is driven by reasonable and rational actions. Human beings are conceived as moral, and the moral persons are expected to place themselves in the just situations.³⁰ It implies that a citizen needs to be fundamentally moral, exercising the autonomy of reason and good. This shows that individuals do not or cannot perceive about extreme unbounded liberty of actions. To be precise, necessity of a well-ordered society is that of moral consideration. So, justice as located in the public political culture is a desirable state of affair for a just society.

Political autonomy is modelled by the structural aspects of original position by which the parties are situated with respect to one another and by the limits on the interpretation to which their deliberations are subjected.³¹ Unlike the rational autonomy, the political aspect is the feature of full autonomy. Another strong presumption of Rawls is that the principles adopted in the original position are publicly recognized by citizens as just principles. These are considered as guidelines to direct their actions to the goals of well-ordered society. Let

us interpret that Rawls had implicitly taken for granted the particularity of these principles differing from society to society (even liberal societies with respective liberal foundations). Objectively conceived, true and just principles resulting out of the rational deliberations do not remain fundamentally valid. In a society, rational constructivism does not lead to objective principles of justice per se. In the process of political recognition of the reason, how can a class, or group, or an association decide that it is placed well or under represented? The constitutional essentials need not be the foundations for citizens' reasonable actions. In a democratic society, constructivism also constitutes coercion. The scepticism is present in the Rawlsian argument itself.

citizen's full autonomy is expressed by the acting from the public political conception of justice understood as specifying the fair terms of co-operation they would give to themselves, when they are fairly situated.³²

It is too optimistic to present a view that everyone will be fairly placed. Expectation of reasonable agreement is perfectly ideal in its own sense. The traditional social contract talks about the explicit and implicit consent or agreement. Individuals extend their consent by being part of the explicit contract. Those who do not express their consent explicitly are too taken under the rubric of tacit consent but not as 'disagreed' members. This seems to be a serious theoretical flaw of encompassing the alternative views in the larger fold of the dominant discourse, as form of political hegemony.

How is political autonomy executed? In simple terms, autonomy is

limited to the constructivist notion of agreement and public reason. Human freedoms cannot be unlimited in the social context, so is it in principles of social union. It is not to suggest that there has to be concrete artificially set limitations on human liberties. Highlighting the issue, Rawls brings the differentiation between his notion of autonomy and that of Kant and Mill.³³ To quote Rawls,

the full autonomy of political life must be distinguished from the ethical value of autonomy and individuality, which may apply to the whole of life, both individual and social, as expressed by the comprehensive liberalism of Kant and Mill.³⁴

Difference between political liberalism and comprehensive liberalism requires special highlight. Political liberalism suggests adherence to the chosen principle of justice (justice as fairness, mutually recognizing the values of it extending the fair terms of social co-operation, and establishing a just constitutional regime. The autonomy is within the limits of the just principles. Comprehensive liberalism, on the other hand, projects individual autonomy influenced by various spheres of life. It explains the freedom of an individual from external constraints. In the *Critique of Practical Reason*, Kant's freedom appears as the opposite of external constraints—in the freedom of will—of a self-governed rule/law. For Mill the significance of individual autonomy lies in not suffering from certain enforced authority from others, or from institutions. Liberalisms of Kant and Mill explain fulfilment of individuality in the social milieu. Rawls' is different from such a conception of autonomy because he attributes that the comprehensive

doctrines that determine autonomy may not be politically represented.

The public reason, expressed as non-foundational by Rawls, making justice as fairness a freestanding view, does not completely avoid the epistemic disagreements. The state of this disagreement itself is indicated as a condition where common reasonable agreement must be made. Nevertheless, Rawls' theory is not a perfect or ready-made solution to the existing differences and multiplicities. One objection against the Rawlsian theory is on how the intuitive knowledge balances the self-interest and common interests. Though Rawls tries to give a different answer, his answer has no substantial difference from the traditional social contractualists. The common reasonable agreement, which is the outcome of political constructivism, results in the overlapping consensus. Overlapping consensus is a consensus for the democratic constitutional regime derived from the fair terms of social co-operation.

OVERLAPPING CONSENSUS

The idea of overlapping consensus is to make justice as fairness possible. To explain the concept, Rawls writes:

... to see how a well-ordered society can be unified and stable, we introduce another idea of political liberalism to go with the idea of political conception of justice, the idea of a overlapping consensus. In such a consensus, the reasonable doctrines endorse the political conception, each from its own point of view.³⁵

Overlapping consensus is to be noted as reasonable agreement citizens reach over the independent status of political conceptions. Rawls relates this to *modus vivendi*³⁶ saying that 'justice as fairness' is a liberal

conception where the political institutions meet the requirements of a well-ordered society. This means that citizens really exhibit certain sense of toleration in reaching a consensus over accepting the general principles of justice. To quote from Rawls,

how is it possible that there can be a stable and just society where free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical and moral doctrines?³⁷

To answer, Rawls critically argues that understanding is possible only through the application of political meanings to these different values. The meanings do not go beyond what is implied by the political conception itself.³⁸ This accounts for toleration among citizens, where the other need not endorse legitimacy of the comprehensive doctrines. In other words, the idea of overlapping consensus is projected as an answer to the conflicting pluralities in a democratic society. Rawls also tries to answer the question: 'how is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of just constitutional regime?'³⁹

In the public political culture, indecisiveness is bound to emerge in the process of deliberations. Yet decisions are enforced through a mutual act of consensus. In the case of Rawls, the deliberations can lead to a common agreement as the citizens are induced with the tendency of mutual reconciliation with effective sense of public reason. Public reason means sorting out differences complying with the general 'stable' principles of justice, as the issues pertaining to the comprehensive doctrines are

politically difficult to settle. In general, the differences will not get effaced with mutual reconciliation as the major deciding factor. But what needs to be noted is that the beginning point for all the citizens for affirming to a political conception of justice is one's own philosophical comprehensive doctrines. All those who affirm political conception start from within their comprehensive views drawing from religious, philosophical and moral worldviews. Individuals ought to be reasonable that they do not put to conflict their respective comprehensive standpoints. In practice, similar kind of actions is expected from the citizens with diverse interests and preferences. Social co-operation is conceivable on this ground besides the public recognition of the justice as fairness. Three qualities support this political conception of justice: moral grounds, moral object and the stability.⁴⁰ The problem, however, is that if political conception of justice is widely reconciled by citizens' rational capabilities, the kind of political virtues embodied in human character should negate the instincts to dominate the other. For Rawls, it is to be guided by 'ought' principle. If this were so, then it implies that the *principles* binding the political principles are moral by nature.

Common consensus can be envisaged to occur as long as citizens are represented through the veil of ignorance. Sooner the citizens become components of a group or an association; the comprehensive doctrines slip in and thus lead to a situation of clash. Here lies the point of ignition to conflict. One has to seriously observe whether 'overlapping consensus' tries to answer this dilemma of conflict. Identity

highlights the representative character of a citizen, and in a democratic society each citizen/individual extends his/her interests to be shared with the other. Extending one's interest for share to the other shows how an individual asserts her/his representative character. In the process of social formations, adherence to the universal values (thus constructed) should duly accommodate every citizen in the larger social union, even though the idea seems to be ideal.

Rawls argues that the disagreements on various issues give rise to the 'burdens of reason.' To the question that why these are the burdens of reason and why overlapping consensus is such an important aspect, Rawls argues,

... since any system of social co-operation can admit only a limited scope of values, some selection must be made from the full range of moral and political values that might be realised ... because any system of institutions has a limited social space. In being forced to select among cherished values, we face great difficulties in setting priorities, and on the other hand decisions may seem to have no clear answer.⁴¹

The above argument of Rawls calls for further discussion. It cannot be doubted that there are varied interests and multiple comprehensive viewpoints that individuals separately hold at different levels over different issues. The limited space enjoyed by individual in society through accommodation of different and conflicting interests/values has to give due place to each and every claim. The representation of everyone's claim in the public sphere calls for proper public justification. Unfortunately, we cannot argue for perfect representation of all the

interest groups, for the argument holds that only the valid interests deserve representation. The contention that there needs to be a reasonable agreement does not seem to serve the ultimate purpose of a just society. The idea of a just society suggests strong moral underpinning, which demand the acceptance by everyone concerned. Yet, this is difficult to achieve particularly in the field of collective praxis. Reasonable agreement or overlapping consensus may not strongly support the prioritization process either. The social union, despite the differences in interests, desires and preferences, do not explain that a society has to be guided by strict common rules or principles. However, difficulty still remains.

Rawls poses a subtle question here: 'How far in practice does the allegiance to a political conception depend on its derivation from a comprehensive view?'⁴² If we relate this to our everyday life situation, we cannot easily determine the bases of our actions, the intentions behind those performed actions. But the bases cannot nevertheless be said to be unknowable. So, the explanation that individuals behave politically in the public sphere and keep comprehensive doctrines away from the public debate is highly doubtful to present as a sensible thesis. The categories of the 'comprehensive' and the 'political' overlap with one another. In democratic societies, including the western liberal democracies, consensus is derived or constructed on the basis of manifold comprehensive doctrines in the political sphere. The issues of comprehensive character shape themselves into political issues. Subsequently, taking the above thesis in line, *reasonable* argument becomes

ambiguous in nature.

The question of legitimacy also sets the intention behind the conceptualization of reasonable agreement, overlapping consensus, and public political justice. According to Habermas, the distinction between the questions of acceptance and that of acceptability is being made blur, and neutralized by the Rawlsian conception of justice, weakening the validity of the claims.⁴³ He further comments that Rawls offers a justification of those principles on which a modern society must be constituted if it is to ensure fair terms of social co-operation to its citizens as free and equal. It would be worthwhile to briefly cite the difference between Habermas and Rawls on the questions of justification and acceptance?⁴⁴ The apprehension expressed by Habermas can be interpreted in two ways; firstly, Rawls might be talking about neutrality overlooking the aspect of cognitive necessity. Secondly, he might be arguing for the justification of a priorly accepted principle (already accepted as reasonable).⁴⁵ In the practical situations, neutrality as a feature of different conflicting worldviews does not arise. Habermas rightly interprets Rawls in claiming that the latter enhances the discussion by asking justification of a prior accepted principle. Rawls commits that the justification for the political conception of justice commences with the presupposition that everyone proceeds with the pretext of agreement by the other. The ground is thus prepared for possible agreement among the conflicting parties. Habermas' argument is that what is reasonable can indeed be explicated in terms of such qualities of moral persons, who are guided by the conception of the

'good.' Such a conception presupposes the principles of practical reasons as well.⁴⁶ So, the principle of practical reason is supposed to be inherently moral. Interestingly, both Rawls and Habermas seem to agree to the prior existence of a 'possible state' where reconciliation could be worked out.

Reasonable comprehensive doctrines are ultimately distinguished by the recognition of the burden of proof, which enables groups with competing ideologies to accept for the time being a reasonable agreement as an ideal of peaceful coexistence. In one sense, Rawls might as well be claiming to propose a neutral conception of political conception of justice, as a freestanding view. If there are different comprehensive doctrines, those doctrines need not have different and exclusively distinct worldview. Over and above, practical reason looks out for a reasonable agreement among the contending parties making the end important. Whenever there is disagreement on various social issues, the resolution ought to be sorted out by the same procedures still authenticated to be just.

CONCLUSION

Practical reason sets suitable ground for having mutual dialogue possible. Readiness for a dialogue is prerequisite for any form of agreement through consensus. Emergence or non-emergence of an agreement is a different issue that may be left to the situation under bargain. What is attempted to argue here is of setting ground for *possibility* of a dialogue and henceforth a possible agreement. This process makes the *end* more significant and

obligatory. It is here that both Rawls and Habermas, in spite of other differences, agree on the prior presence of a possible 'good' to serve as platform for any possible dialogue. The conception of the 'good' enables the idea of a dialogue to emerge.

The arguments from the previous sections can be summed up as follows. If comprehensive doctrines are to be left to the status of 'burden of proof', it implies that the members of the well-ordered society have authenticated the independent status of political justice. In other words, it expects them to be rational enough to reach a consensus. The objectionable point, however, is whether the concept of 'burden of proof' indulges into disagreement. In addition, the concept seems to be imposed rather than having its own logical following.

All throughout his theoretical formulation Rawls has extensively used Kant on unavailability of moral consideration in conceptual theorizing on society. Justice as a concept so dear to him speaks more than we could voice out. The principle of fairness where Rawls goes beyond the idea of equal liberty to emancipation of the least privileged through the efforts of institutional mechanisms, takes him a step ahead of other moral philosophers. But by pushing the moral ideal to the periphery, terming those as comprehensive at the moment of political bargain through concepts like 'consensus,' Rawls has created discomfort to many. However, it is not to forget that Rawls still gives a place to the 'moral good' as an ideal for each contending party to address prior to a dialogue.

The Kantian 'kingdom of ends' that prescribes treating the others as

ends remains a desirable state at an atmosphere of conflict. Had each of our worldviews been guided by the 'kingdom of ends,' there would have been no conflict. This is not to belittle the formulation of Kant but to emphasize the point that Kantian formulation is a desirable principle. It is a moral construct not to be clubbed with metaphysical doctrine or worldview. As a desirable moral state of affair it has its own positive contributions to make in a situation of conflict. The wish is that Rawls lets this formulation exist with strong fervour in his conception of political justice. The bifurcation of comprehensive and non-comprehensive doctrines to separate political reasoning from all forms of non-political reasoning has to be done fairly. The division seems to be guided by sheer pragmatism. To highlight the point: division of non-comprehensive may be rationally inevitable, but the same being projected as exclusive categories seems unwise. The categories can co-exist, and comprehensive doctrine can guide the process of political bargain. This can as well be drawn from Rawls' philosophy, though he does not mention of the same. The role of identity and worldview cannot be downplayed in the process of political bargain. It is the compromise (through knowledge and wisdom of the same) and not ignorance or bracketing that will help in a meaningful (political) agreement. It is not in *avoiding* but in rational and intentional *recognition* of 'comprehensive' positions that will lead to a long lasting and fruitful consensus among the conflicting parties. The role of moral principles/norms as comprehensive doctrines in (i) providing a platform for a dialogue, and (ii) in guiding

procedure of negotiation, cannot be ignored. This Rawls has hinted, but not adequately addressed.

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