

AN EXEGESIS OF RAWLS' IDEA OF JUSTICE

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“Any conception of justice that cannot well order
a constitutional democracy is inadequate
as a democratic conception.”

Introduction

The essay focuses on the concepts and principles operating in Rawls' theory of justice. Justice as fairness should be seen as a political conception of justice given certain fundamental ideas latent in public political culture in a democratic society, that is, the public political culture of democratic society contains basic ideas working up such political conception of justice suitable for a constitutional regime. It speaks of the value and politicisation of justice. These concepts are the fact of reasonable pluralism vis-à-vis the notion of comprehensive doctrines, the idea of well-ordered society composed of the political conception of human person and the idea of society as a fair system of social cooperation, the original position with the veil of ignorance and the idea of reflective equilibrium, the public principles of justice, the social primary goods, the basic structure as the primary subject, and the idea of public justification which includes the idea of overlapping consensus and the idea of public reason. They are presented for the purpose of validating the claims in Rawls' political liberalism. This essay aims to *clarify* these conceptions and *substantiate* them in relation to justice as fairness. Such clarification would *give reason for the idea of public reason*, that is, the fundamental ideas latent in public political culture would *justify* the nature and crucial role of the idea of public reason to the possibility of well-ordered society. To do this, there is a need to *recognize* and *affirm* the given social context in contemporary political philosophy, the so-called modern condition, as primarily characterized by the fact of reasonable pluralism (I); such fact of reasonable pluralism *demand*s a political conception of justice that is constructivist and objectivist (II); a liberal political constructivist conception of justice *confirms* society as a fair system of social cooperation that which *rests* on the political conception of the human person as free and equal, rational and reasonable (III); such society of fair system of social cooperation is *based on a social contract* through the idea of original position (IV); public political principles of justice *must be articulated* from the original position (V); such political conception is viable only through reflective equilibrium, overlapping consensus, and public reason (VI); and the idea of public reason serves as the political efficacy of the political conception of justice (VII).

I. The Fact of Reasonable Pluralism

The starting point of Rawls' political theory of justice is his view that there is a fact of reasonable pluralism in modern constitutional democracy.¹ Rawls puts emphasis on incompatible yet reasonable comprehensive doctrines as the basic character in a liberal democratic society and recognizes them as the normal result of the exercise of human reason in a democratic regime. A liberal democratic society is made up of individuals and groups who differ in many ways for what

¹ The idea of the fact of reasonable pluralism is distinct from the idea of the fact of pluralism. The latter recognizes that there are many unreasonable views in a democracy. By the former, we mean only those which satisfy the three main features. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993, 1996), 63-64; John Rawls, *Collected Papers* (Cambridge: Harvard University Press, 1999), 425.

their conception of the good life is and the way they view what a just society is about. In such modern democratic society, citizens affirm different, and indeed *incommensurable* and *irreconcilable*, though *reasonable*, comprehensive doctrines in the light of which they understand their conceptions of the good.² Such pluralism must not be seen as an unfortunate condition or ill-fated event in collective human life.³ A diversity of conflicting and incommensurable but reasonable comprehensive views persists given democratic culture and becomes an enduring condition in a democratic society. No one and no system can deny this truth of the modern condition. As a matter of fact, citizens are attached to these various comprehensive doctrines. These doctrines (i.e. such diversity of reasonable comprehensive doctrines) are a *permanent* feature of democratic public culture,⁴ *a long-run outcome of the work of human reason under free institutions* (that is, a historical fact and a synthesis of human reasons over time in a liberal democratic framework).⁵ Comprehensive doctrines (that is, the fact of reasonable pluralism) have three main features.⁶ First, ‘a reasonable doctrine is an exercise of theoretical reason.’ Comprehensive doctrines cover the multi-faceted philosophical perspectives, religious views, and moral ideas of human life in a more or less coherent framework. These doctrines are formed and developed through time by way of people who engage in various argumentations and articulate arguments and conceptions they see logical and reasonable for them to adopt in human life, both in the individual and collective levels, in a more or less methodical and efficient structural construction. They characterize and organize recognized valuations so that they are compatible with one another creating a web of social values and beliefs expressing an intelligible view of the world. Second, ‘A reasonable comprehensive doctrine is also an exercise of practical reason.’ Comprehensive doctrines become reasonable when they are gauged and evaluated by comparison, critique, and analysis and are able to become better ideas and conceptions. Hence, they single out which values are significant and how these values can be balanced when they are challenged and in conflict with all other values. And third, ‘it normally belongs to, or draws upon, a tradition of thought and doctrine.’ Comprehensive doctrines are not just doctrines for a short time; these subscribe to or are anchored on a systematized network of ideas already proven themselves as relatively stable and that they also tend to evolve as real conditions would allow for such kind of progression and development. Given these features, all comprehensive doctrines belong to the ‘background culture’ of civic society.⁷ ‘This is the culture of the social, not of the political.’⁸ It is the culture of daily life, which includes church organizations, academic institutions, professional associations, social clubs, etcetera. In other words, comprehensive doctrines are the belief-systems and value-structures each citizen has as part and member of a democratic society. The fact of reasonable pluralism must not prevent citizens from striving to establish greater political justice and liberty that will enable them to enjoy a decent and worthy life even in the midst of incompatible and incommensurable comprehensive doctrines. It must not hinder citizens from developing a better and more promising just society. Such fact, as an actual political sociology in our democratic society, would hopefully lead us to reconcile ourselves in part given such condition, that is, to show us the reason and the value of it as we try and continue to view the development of human society as rational and therefore we can arrive at resolutions given divisive political differences as we articulate our sense of the whole of our political and social institutions. Such fact of reasonable pluralism calls for a reconstruction of justice.

² John Rawls, *Justice as Fairness* (Cambridge: Belknap Press, 2001), 84.

³ *Political Liberalism*, 37, 144.

⁴ *Ibid.*, 36, 136; *Justice as Fairness*, 34, 36, 40; *Collected Papers*, 442, 573.

⁵ *Political Liberalism*, 55, 129, 136-137, 144.

⁶ *Ibid.*, 59.

⁷ *Ibid.*, 14, 215, 220.

⁸ *Ibid.*, 14.

The fact of reasonable pluralism leads us to affirm some arguments. First, ‘no comprehensive doctrine in reasonable pluralism is appropriate as a political conception for a constitutional regime.’⁹ Since every comprehensive doctrine believes that it follows a doctrine of moral truth, that is, it has the conception that its ideas are true and correct as justified by its own tradition and reason, it cannot be the standard and measure of justice for society will only be led to oppression and totalitarianism. All other comprehensive doctrines will not allow, honor, and tolerate a conflicting comprehensive doctrine to become the ideal and rule of truth and justice. Every comprehensive doctrine will assert itself as the most appropriate conception of justice. In effect, every comprehensive conception of justice will become and will be taken as unjust. The fact of reasonable pluralism already rules out any comprehensive doctrine as basis for a conception of justice in a modern constitutional regime. If adherence and dominance of one comprehensive doctrine prevails and is maintained in society, the fact of oppression shall be established. This shall be done by oppressive use of state power. It shall allow for the corruption of religion, science, and philosophy. Second, ‘once we accept the fact that reasonable pluralism is a permanent condition of public culture under free institutions, the idea of the reasonable is more suitable as part of the basis of public justification for a constitutional regime than the idea of moral truth.’¹⁰ The only way to attain social justice in the midst of the incommensurable comprehensive doctrines given the fact of reasonable pluralism is through the appeal of the idea of the reasonable. It is only when all comprehensive doctrines recognize and understand a freestanding independent public political basis and grounds of justification for a conception of justice in a democratic society that a political justice can be met and realized. Third, ‘in framing a political conception of justice so it can gain an overlapping consensus, we are not bending it to existing unreason, but to the fact of reasonable pluralism, itself the outcome of the free exercise of free human reason under conditions of liberty.’¹¹ Given the fact of reasonable pluralism, we can only gain an overlapping consensus if we appeal to a political conception and not a comprehensive conception of justice. Such consensus must be backed up by widely different and incommensurable doctrines and willingly supported and freely endorsed by a substantial majority of its citizens in order to secure democratic regime. Fourth, ‘reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others, and so they endorse some form of liberty of conscience and freedom of thought. It is unreasonable for us to use political power, should we possess it, or share it with others, to repress comprehensive views that are not unreasonable.’¹² To articulate a political conception of justice, each comprehensive doctrine must share on the burdens of judgment provided such sharing does not contradict to its own set of doctrines, i.e. liberty of conscience and freedom of thought.¹³ And fifth, ‘our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.’¹⁴ We uphold a constitution, where *constitutional essentials*¹⁵ and *matters of basic justice*¹⁶ are articulated, endorsed, and

⁹ *Political Liberalism*, 135; *Collected Papers*, 390; *Justice as Fairness*, 34.

¹⁰ *Political Liberalism*, 129.

¹¹ *Ibid.*, 144.

¹² *Ibid.*, 61.

¹³ Even in the so-called well-ordered society, such diversity of reasonable comprehensive doctrines persists due to the burdens of judgment. It is a fact that citizens taken as rational and reasonable cannot agree on principles set forth by comprehensive doctrines. We should acknowledge then such reasonable pluralism as a permanent feature and a long-run outcome of human reason (provided they are and remain reasonable).

¹⁴ *Political Liberalism*, 137.

¹⁵ Mainly the basic liberties and their priority and the democratic political institutions needed for making, applying, and administering laws.

recognized, which secures citizens as free and equal, reasonable and rational, as members of a democratic society, who are reasonably expected to endorse, given the fact of reasonable pluralism vis-à-vis their various comprehensive doctrines.

II. Liberal *Political Constructivist* Conception of Justice as Fairness

The fact of reasonable pluralism calls for a reconstruction of justice. Constructing justice must be a political construction. The reason for the need for political construction is obvious from the considered philosophies advocating different views and approaches in the problem of justice. Since these philosophical views are theories operating under a set of philosophical principles and truths, they become systems of thought. They assume universality and validity and hence are adopted by, subscribed to, and believed in by the members of a democratic society. The tendency then is to inflict, enforce, and require the application of these theories to the basic structure of society. Social and political conflicts arise from it. One way to avoid the scenario or to solve the conflict situation is to redirect our approach in defining justice, that is, seeing it as political in such a way that such justice constructed (from a constructivist approach) is a freestanding view independent from the seemingly conflicting theories found in a pluralistic society. It also seems that not only the philosophical interpretations are the result of social conflict but also of the different conceptions of the good adhered to by different persons and groups and not to mention the various religious convictions prevailing in the whole democratic society. Hence, a political construction of justice is a social and political necessity. This political construction selects the principles of justice to regulate the basic structure of society. This political constructivism develops the principles of justice from public and shared ideas of society as a fair system of cooperation and of citizens as free and equal by using the principles of their common practical reason.¹⁷ “The full significance of a constructivist political conception lies in its connection with the fact of reasonable pluralism and the need for a democratic society to secure the possibility of an overlapping consensus on its fundamental political values.”¹⁸ Rawls posits a theory of justice, that is, a liberal political constructivist conception of justice as fairness.¹⁹ He gives us features for such political constructivism. These features assure us of a political conception of justice. First, ‘the principles of political justice (content) may be represented as the outcome of a procedure of construction (structure).’²⁰ The free and equal persons perceived as reasonable and rational select these principles of political justice that would regulate the basic political, social, and economic institutions of a democratic society. These persons through a veil of ignorance²¹ elucidate the just principles that warrant just outcomes from just procedures.

¹⁶ Mainly matters relating to social and economic inequalities, and concern measures bearing upon equal opportunities, economic justice, and setting the social minimum.

¹⁷ Practical reason(ing), for Rawls, is simply reasoning about what institutions and policies are reasonable and why they are reasonable.

¹⁸ *Political Liberalism*, 90.

¹⁹ Justice as fairness, out of political constructivism, is a political conception of justice, taken as the most appropriate and best considered judgment of justice, directly applicable to liberal constitutional democratic regime.

²⁰ *Political Liberalism*, 93.

²¹ The parties are not allowed to know the social positions or the particular comprehensive doctrines of the persons they represent, their race and ethnic group, sex, or various native endowments such as strength and intelligence, all within the normal range. *Justice as Fairness*, 15; the veil of ignorance deprives the contracting parties of information regarding the conceptions of the good and their special psychological propensities and therefore nullifies the effects of specific contingencies which put men at odds and tempt them to exploit social and rational circumstances to their own disadvantage *Political Liberalism*, 22-28; *Justice as Fairness*, 15; *Collected Papers*, 178, 226.

Second, ‘the procedure of construction is based essentially on practical reason and not on (but with the help of) theoretical reason.’²² The reasonable and rational persons, as agents of construction, use practical reason to arrive at definitive conceptions such as a well-ordered democratic society through political cooperation as basis of those principles of justice. The theoretical reason shapes the beliefs and knowledge of these rational persons as they use their reasoning, inference, and judgment in constructing those principles. Third, ‘it uses a rather complex conception of person and society to give form and structure to its construction.’²³ The political conceptions of the person (especially the two moral powers, which are ‘the capacity for a sense of justice to understand, apply, and act on and for the sake of principles of justice’ and ‘the capacity for a conception of the good to form, revise, and rationally to pursue a rational plan of life’) and society (with the idea of social cooperation as the fundamental organizing idea of a political conception of justice) are crucial to justice as fairness. Fourth, ‘it specifies an idea of the reasonable and applies this idea to various subjects such as conceptions and principles, judgments and grounds, and persons and institutions.’²⁴ The idea of the reasonable²⁵ sets the stage for the possibility to reach a point of overlapping consensus²⁶ in the level of theory building, apprehension of criteria, and act of tolerance. These four features as guides in constructing justice require concepts and principles that would be preconditions for justice as fairness. Political constructivism ‘**aims to work out a political conception of justice that citizens as reasonable and rational can endorse on due reflection, and thus reach free and informed agreement on questions of constitutional essentials and basic matters of justice. With that done, the political conception is a reasonable basis of public reason, and that suffices.**’²⁷ In a capsule, Rawls says,

‘Political constructivism is a view about the structure and content of a political conception. It says that once, if ever, reflective equilibrium is attained, the principles of political justice (content) may be represented as the outcome of a certain procedure of construction (structure)...This procedure [the original position], we conjecture, embodies all the relevant requirements of practical reason and shows how the principles of justice follow from the principles of practical reason in union with conceptions of society and person, themselves ideas of practical reason.’²⁸

Based on political constructivism, we articulate a political conception of justice that is liberal, constructivist, and public; that is, such conception of justice is based on the idea of reasonable and on practical reason, grounded on the idea of well-ordered society taken as a society of fair terms of social cooperation of human persons as free and equal, reasonable and rational. Hence, such resulting political conception is ‘a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions.’²⁹ The primary subject of such political conception is the basic structure of society. Out of political constructivism, the principles of justice are articulated for the basic structure. The initial focus of

²² *Political Liberalism*, 93.

²³ *Ibid.*, 93.

²⁴ *Ibid.*, 94.

²⁵ The idea of the reasonable is the ability of citizens coming from different backgrounds to work with each other politically and to tolerate each other’s cultures. *Collected Papers*, 316, 503.

²⁶ Overlapping consensus bridges the gap between cultures to allow for a diverse field of government regulation and lawmaking. *Political Liberalism*, 133-172.

²⁷ *Ibid.*, 128.

²⁸ *Ibid.*, 89-90.

²⁹ *Ibid.*, 11.

the political conception is the ‘framework of basic institutions and the principles, standards, and precepts that apply to it, as well as how those norms are to be expressed in the character and attitudes of the members of society who realize its ideals.’³⁰ Constitutional essentials and matters of basic justice are to be identified and realized as part of and in accordance with the principles of justice that would define and organize the various levels and structures of the social, political, and economic institutions seeking reasonable and substantial support of the individuals of comprehensive doctrines now as citizens of a constitutional democratic regime seen as free and equal, reasonable and rational. **Such political conception ultimately depends on the public political culture in a democratic society.** A distinguishing feature of a political conception is that ‘it is presented as freestanding and expounded apart from, or without reference to, any such wider background.’³¹ Taken now as freestanding, independent, but not separate and conflicting with the comprehensive doctrines as found in reasonable pluralism, the political conception of justice is now taken as reasonable. The content of such political conception is expressed in terms of ‘certain fundamental ideas seen as implicit in public political culture of a democratic society.’³² **The fundamental ideas such as the idea of well-ordered society, the idea of the overlapping consensus, and the idea of public reason now totally depend on the character and attitudes of the members of society who realize its ideals, that is, in the political efficacy of the citizens in a liberal democratic regime.**

The efficiency and effectiveness of political conception of justice depends primarily on the quality and weight given in political constructivism; the principles and standards, grounds and logic as observed in the entire procedure of construction. When correctly formulated, the citizens with their corresponding comprehensive doctrines would recognize such political conception as compatible with their tradition and doctrine and hence the possibility and plausibility of an overlapping consensus opens itself; an overlapping consensus on the framework of basic institutions and the principles, standards, and precepts that apply to such political conception. ‘If the procedure can be correctly formulated, citizens should be able to accept its principles and conceptions along with their reasonable comprehensive doctrine. The political conception of justice can then serve as the focus of an overlapping consensus.’³³ A political constructivism and not a comprehensive doctrine can lead us to common human reason and principles. ‘It is only by affirming a constructivist conception—one which is political and not metaphysical—that citizens generally can expect to find principles that all can accept.’³⁴ It is only in the political conception that citizens of reasonable pluralism can arrive at an overlapping consensus on certain political questions vis-à-vis constitutional essentials and matters of basic justice. This demands (higher) public political culture and with it (higher) political values. ‘The appeal is rather to the political value of a public life conducted on terms that all reasonable citizens can accept as fair. This leads to the ideal of democratic citizens settling their fundamental differences in accordance with an ideal of public reason.’³⁵ **Political constructivism is a requirement of public reason.**

The political constructivism of justice as fairness has a conception of objectivity. A political conception of justice is objective only if it establishes a framework of thought, reasoning, and judgment that answers to the essentials of its being objective. Such framework justifies the nature of political constructivism. It serves as the ground and criteria for positing such a conception of justice as liberal, political, and constructivist. The idea of objectivity then merits the value and politicisation of justice as fairness. The goal of the idea of objectivity in

³⁰ Ibid., 11-12.

³¹ Ibid., 12.

³² Ibid., 13.

³³ Ibid., 97, 126.

³⁴ Ibid., 97.

³⁵ Ibid., 98.

political constructivism is the conception that there are objective reasons given the recognized criteria in the light of the concepts of judgment and inference, ground and evidence, and principles and standards that provide us the idea that we can establish and secure just or fair, honorable or decent, human relations regardless of persons' differences and are then able to reach agreement in judgment. Hence, for Rawls, a conception of objectivity must,³⁶

1. establish a public framework of thought sufficient for the concept of judgment to apply and for conclusions to be reached on the basis of reasons and evidence after discussion and due reflection;
2. specify a concept of a correct judgment from its point of view, and hence subject to its norms;
3. specify an order of reasons as given by its principles and criteria, and it must assign these reasons to agents, whether individual or corporate, as reasons they are to weigh and be guided by in certain circumstances;
4. distinguish the objective point of view from the point of view of any particular agent, individual or corporate, or of any particular group of agents, at any particular time; and
5. have an account of agreement in judgment among reasonable agents; and
6. be able to explain disagreement in an appropriate way, consistent with its criteria.

The notion of objectivity is vital in political constructivism.³⁷ The resulting conception of justice has to be worked out towards an overlapping consensus and therefore the framework of thought, judgment, and reasoning given the fundamental ideas are to be framed in such a way that it allows for and leads to a reasonable political conception of justice. Such framework opens itself as public basis of justification for citizens as free and equal, reasonable and rational. This would lead citizens to share common ground on public reflection and discussion and hence sharing a reasonable political conception of justice. The rational and reasonable persons under a fair situation should be able to test and evaluate reasons and evidence in such a way that the best and fairest reasons are constructed and produced. This can only be done if public reason is exercised that rational and reasonable persons have their voice in the objective deliberation and process of public reflection. **Public reason secures the autonomy of citizens in the public sphere.**³⁸ When all reasons are expressed, arguments and judgments are weighed according to the objectives and goals of the political conception, they will be able to create a framework of thought that will become the basis of all suppositions and judicious reasoning based on their normative deliberation. This suggests the idea of the reasonable, which anchors itself on objective reason specified by the principles of justice justified by procedural fairness founded on the conception of the person and society. Since a certain framework of thought is now constructed, the rational and reasonable persons are to follow this objective reason because the principles that are formulated assume a general application to all persons despite their personal points of view. This is because the agreed principles that are properly weighed and evaluated after due public reflection are already objective and are to be considered therefore as primary in forming decisions. Such objectivity has an account of agreement among reasonable persons. **The objectivity of justice (as fairness) is conferred to the procedure, granted to the original position.**

³⁶ Rawls sets forth 'five essential elements' for a conception of objectivity presented in *Political Liberalism*, 110-112 adding later a sixth element in *Political Liberalism*, 121.

³⁷ *Ibid.*, 115, 116; *Collected Papers*, 356.

³⁸ *Political Liberalism*, 212-254; John Rawls, *Law of Peoples* (Cambridge, Belknap Press: 1971, 1999), 129-180.

Political convictions are objective if the citizens perceived as reasonable and rational persons will eventually endorse those convictions. It is only when they are able to endorse that those convictions become objective because they have seen their value and merits and that they do not contradict their deep-seated beliefs. These convictions are evaluated and are endorsed primarily because of their being reasonable and rational. They, as reasonable and rational, and free and equal, would exercise their powers of practical reason. They, as reasonable that they would narrow down and bracket up their differences, and, as rational, that they would exhibit correct judgments and reasoning. Thus, the conception of objectivity would depend largely on the capacity of persons perceived to be as free and equal, reasonable and rational, to recognize their role and duty in the liberal political constructivist conception of justice as fairness.

III. The Idea of Society as a Fair System of Social Cooperation

The most fundamental idea among familiar ideas that organize and structure justice as fairness as a political conception of justice for a democratic regime is the idea of society as a fair system of social cooperation over time from one generation to the next.³⁹ Such idea of society as a fair system of social cooperation is deeply embedded in public political culture. Such central organizing idea is worked out with two companion ideas: the idea of the political conception of the human person as free and equal citizens and the idea of well-ordered society effectively regulated by a public political conception of justice. Rawls poses a fundamental question: ‘what is the most acceptable political conception of justice for specifying the fair terms of cooperation between citizens regarded as free and equal and as both reasonable and rational, and as normal and fully cooperating members of society over a complete life, from one generation to the next?’⁴⁰ To answer the question, there is a need first to articulate the political conception of the human person and the political conception of society. Once articulated, justice as fairness shall be the most appropriate political conception of justice where the principles of a democratic conception of justice specify fair terms of social cooperation between and among citizens as free and equal, reasonable and rational.

The Idea of the Human Person as Political

The idea of the human person is crucial in Rawls’ political conception of justice. A political conception of the human person is the basis of justice as fairness as a political conception of justice since a person seen as free and equal, reasonable and rational, manifests the capacity to enter into social cooperation for reciprocal advantage and to build a well-ordered society in the midst of conflicting comprehensive doctrines. Overlapping consensus can only be sought if human person’s selfhood and behavior are conducive to it. How persons actually conceive of themselves as citizens constitutes their capacities to enter into and participate in the so-called social cooperation.

Rawls develops a conception of justice from the perspective that persons are free and equal. To present a conception of the human person as political, citizens should be considered as free. Citizens are free in three respects. First, ‘citizens are free in that they conceive of themselves and of one another as having the moral power to have a conception of the good.’⁴¹ Second, ‘they regard themselves as self-authenticating sources of valid claims. That is, they regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good.’⁴² And third, ‘they are viewed as capable of taking responsibility for their ends and this affects how their various claims are assessed.’⁴³ Given these features, the human person is free

³⁹ John Rawls, *A Theory of Justice* (Cambridge: Belknap, 1971, 1999), 4; *Justice as Fairness*, 5.

⁴⁰ *Justice as Fairness*, 7-8.

⁴¹ *Political Liberalism*, 30.

⁴² *Ibid.*, 32.

⁴³ *Ibid.*, 33.

because of his moral powers (i.e. capacity for a conception of the good and a capacity for a conception of justice) and the powers of his reason (i.e. judgment, inference). Such political conception of the human person qualifies every human person to become a fully cooperating member in a society.⁴⁴

Freedom is a liberal value. It is out of freedom that man is able to follow the rules and principles he has formulated to himself in order to attain his personal goals. It becomes a moral obligation on his part to observe these rules as they lead him to the attainment of his end. This is self-determination. The person has the moral duty to make and unmake moral principles that would lead him to good life. At the same time, this suggests self-distantiation. He is able to distance himself from the society as he reflects and discerns on what principles and maxims are best that would bring him to good life. Citizens as free are able to pursue their conceptions of the good given their moral powers. Their freedom consists in their possession of the two moral powers, which define their sense of (full) autonomy (and to occupy the role of citizen hence become ‘reasonable’), but at the same time are conditions for open and communal principles.⁴⁵ Insofar as they have these to the degree necessary to be fully cooperating members of society, they are equal. They are equal in virtue of being free for they can become fully cooperating members. ‘A conception of the good includes a conception of what is valuable in human life. Normally it consists of a more or less determinate scheme of final ends, that is, ends (goals) that we want to realize for their own sake, as well as attachments to other persons and loyalties to various groups and associations.’⁴⁶ Rawls says, ‘we also connect such a conception with a view of our relation to the world...by reference to which the value and significance of our ends and attachments are understood.’⁴⁷ The rules that are formulated and followed, though personal in nature, could not be that totally far, separate, and different from the social values. Man, though autonomous, since he is as free and therefore is able to make laws for himself, is social in a sense that he is always in a given social sphere. This gives the idea that the rules he has formulated could parallel or cohere to the communal principles. It is because man and society are interconnected and interrelated. The two moral powers bring man to society. It is they, the moral powers, that bridge the gap between the personal rules and social principles. They make the autonomous self a cooperating member of society. They define his autonomy and at the same time his public life. The autonomous individual in society cooperates for reason of mutual advantage. Everyone sees the significance of cooperation in realizing and promoting each sense of the good. This suggests that every moral person is able and willing to conform his pursuit of the good to public principles. This leads him to participate in the social deliberations for public principles of justice. He adjusts his aims and aspirations in the light of what he can reasonably expect to provide for. He also restricts his claims in matters of justice to the kinds of things the principles of justice allow. His sense of justice as ‘...the capacity to understand, to apply, and to act from the public conception of justice...expresses a willingness...to act in relation to others on terms that they also can publicly endorse.’⁴⁸ His conceptions of the good then must be rational in order to relate those conceptions to the concerns of the social sphere. Rational conception of the good translates itself to become objective and logical. Such rational conception of the good categorically makes connection with the way he stipulates and articulates his sense of justice. It becomes now his desire to conform his pursuit of the good his moral expectations from others to the public social principles of justice. In this way, his sense of justice and conception of the good correlate. This brings in (again) the capacity to cooperate for mutual benefits.

⁴⁴ Ibid., 19.

⁴⁵ Ibid.

⁴⁶ Ibid., 19.

⁴⁷ Ibid., 20.

⁴⁸ Ibid., 19.

Another important idea in the political conception of person is the notion of basic liberties. These liberties are regarded as ‘basic’ because without them, he would not be able to exercise his moral capacities. He must be assured to have these basic liberties to secure the development and exercise of his moral powers. There are two methods to establish a list of such liberties, one being historical (i.e. we survey constitutions and democratic regimes and make a list of basic rights and liberties), and the other relying on the demands of a given philosophical anthropology (i.e. we reflect on what liberties provide the socio-political conditions necessary for the development and exercise of moral powers).⁴⁹ Such liberties must not only be conceived but also must always be asserted and promoted in the public life. Included in the list of basic liberties are political liberty, freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person (which includes freedom from psychological oppression and physical assault and dismemberment), and the right to hold personal property and freedom from arbitrary arrest and seizure (as defined by the concept of the rule of law). It is when the public political culture recognizes and considers these basic liberties as primary consideration that these two moral powers will set the expansion of moral persons to social cooperation. It is only when moral persons are guaranteed with basic liberties that social cooperation is possible.

The political conception of human person also views the individual as reasonable and rational. ‘In justice as fairness the reasonable and the rational are taken as two distinct and independent basic ideas.’⁵⁰ The rational, to make it distinct with the reasonable, refers and applies to a human person with the powers of judgment and reasoning to seek, strategize, realize, and prioritize his own interests and ends given the means, choices, and alternatives around him.⁵¹ He is rational for he bases his ideas on logic and valid argumentation. In other words, he is rational because he will pursue his ends intelligently. The reasonable, on the other hand, pertains to the capacity of the human person to reason in common and to propose principles and standards as fair terms of cooperation with other citizens.⁵² Reasonable persons value reciprocity given their being rational as they now seek, strategize, realize, and prioritize mutual benefits.⁵³ They are willing to propose fair terms of social cooperation that others as free and equal also may endorse, and to act on those terms, provided others do, even contrary to their interest. The idea of the reasonable is also associated ‘with the willingness to recognize the burdens of judgment and to accept their consequences.’⁵⁴ They recognize the burdens of judgment and acceptance of their consequences for one’s attitude including toleration toward the other comprehensive doctrines. Human persons as citizens are said to be reasonable when they enter into the social sphere as equals and therefore are ready to propose and/or to accept fair terms of cooperation, that is, to work out the framework for the public social world, a framework it is reasonable to expect everyone to endorse and act on, provided others can be relied on to do the same.⁵⁵ ‘The disposition to be reasonable is neither derived from nor opposed to the rational but it is incompatible with egoism, as it is related to the disposition to act morally.’⁵⁶ Hence, the reasonable and the rational are complementary given the idea of fair cooperation. ‘As complementary ideas, neither the reasonable nor the rational can stand without the other. Merely reasonable agents would have no ends of their own they wanted to advance by fair cooperation; merely rational agents lack a sense of justice and fail to recognize the independent validity of the

⁴⁹ *Justice as Fairness*, 45.

⁵⁰ *Political Liberalism*, 51.

⁵¹ *Ibid.*, 50.

⁵² *Ibid.*, 49.

⁵³ *Ibid.*, 50.

⁵⁴ *Ibid.*, 49.

⁵⁵ *Ibid.*, 53, 54.

⁵⁶ *Ibid.*, 49.

claims of others.⁵⁷ Seeing human persons as political, which means, as free and equal, reasonable and rational, constructing principles of justice is now possible. The process of construction of such principles of justice starts from a hypothetical conception of the original position.

The Idea of Social Cooperation

The various reasonable comprehensive doctrines cannot be taken as basis of democratic society because they are incompatible and conflicting with each other. Every reasonable doctrine insists on and adheres to a particular conception of the good. The diverse nature of the moral, religious, and philosophical doctrines disqualifies them to become the basis of social cooperation. Different forms of conflict and threats of violence and wars prove the seeming irreconcilability of these doctrines. Imposing a favored ideology to be embraced by a democratic institution is a categorical form of domination and tyranny. There are no comprehensive doctrines appropriate to be a political conception for a constitutional regime.⁵⁸ But this does not mean that such reasonable pluralism must be seen as a negative character of the evolution of political societies. Rawls asserts, 'this reasonable plurality of conflicting and incommensurable doctrines is seen as the characteristic work of practical reason over time under enduring free institutions.'⁵⁹ Hence, in conceptualizing a political conception of justice, this fact of reasonable pluralism must be at first considered. This kind of pluralism must not prevent citizens from striving for political justice and basic liberties for them to enjoy human flourishing. It must not prevent them to construct a political society. Rawls posits and develops the idea of society as a fair system of social cooperation as a fundamental organizing idea for a political conception of justice for a democratic regime such as justice as fairness. Society as a fair system of cooperation is the necessary consequence of democracy. The idea of social cooperation has to be viewed together with the conception of person as free and equal, reasonable and rational, and the idea of a well-ordered society. He arrives at a conception of the human person as free and equal, reasonable and rational, given the moral powers and the capacities to engage into social cooperation. In this case, every citizen as free and equal regards all others as free and equal. This political conception of the human person is an empirical fact, that is, something everyone shares as members of a democratic society. The human person then is a citizen who can be a normal and fully cooperating member of society over a complete life. Every citizen can be a full participant in a fair system of social cooperation given his moral powers. The idea of well-ordered society, as a society effectively regulated by political conception of justice, aims at establishing a kind of social cooperation embracing the pluralism of philosophical, religious, and moral doctrines. It intends to develop a fair social cooperation among the supporters and followers of these comprehensive doctrines. **When citizens are ready to cooperate as free and equal, they become truly reasonable.** Reasonable citizens result to reasonable system of cooperation which requires fair rules and norms of cooperation recognizable and applicable by all. They see the rationality of others' views with such clarity that should the situation is reversed, they would still agree to the decision as formulated before the reversal takes place. Reasonable, hence, means reciprocity. Reasonable citizens pursue their conceptions of the good in terms of the principles of justice. The two moral powers make reasonable citizens provide others with fair opportunity to realize their conceptions of the good. Such social atmosphere speaks of a society as a fair system of cooperation. Social cooperation as the central organizing idea has at least three distinct features.⁶⁰ First, 'cooperation operates under the guidance of rules and regulations publicly recognized and accepted by all participants involved.' Second, 'it includes fair terms of cooperation specifying an idea of reciprocity.' And third, 'it encompasses the idea of each

⁵⁷ Ibid., 52.

⁵⁸ *Collected Papers*, 390.

⁵⁹ *Political Liberalism*, 135.

⁶⁰ Ibid., 16; *Collected Papers*, 396-397.

participant's rational advantage or good.' All participants work for the good as specified by the central authority. Rawls reiterates,

'Our focus is on persons as capable of being normal and fully cooperating members of society over a complete life. The capacity for a social cooperation is taken as fundamental, since the basic structure of society is adopted as the first subject of justice. The fair terms of social cooperation for this case specify the content of a political and social conception of justice. But if persons are viewed in this way, we are attributing to them two powers of moral personality. The two powers are the capacity for a sense of right and justice (the capacity to honor fair terms of cooperation and thus to be reasonable), and the capacity for a conception of the good (and thus to be rational).'⁶¹

A democratic regime is regulated by the principles of justice. Citizens of such regime regardless of their comprehensive doctrines must be ready to honor and follow political regulations to secure everyone's rights and liberties. As free and equal, reasonable and rational, they, the citizens, must be able and willing to adopt a shared conception of justice that makes possible the political society as a well-ordered society. A democratic society must be a well-ordered society. A well-ordered society is a social world where all citizens accept and normally satisfy the basic principles of justice given the idea of public justice and effective regulation. Such well-ordered society has three features.⁶² First, 'it is effectively regulated by a public conception of justice.' Second, 'guided by the capacity for a sense of justice and for a conception of the good, and under the regulation of their basic social structure, citizens have an equal opportunity to participate in social cooperation and to benefit from it.' And third, 'realizing that social structures support their moral powers, citizens of a well-ordered society will be willing to comply with the principles of justice.' A well-ordered society is a society where everyone accepts, and knows that everyone else accepts, the very same principles of justice. The basic structure is publicly known to satisfy these principles. In that sense, a well-ordered society must be doctrinally autonomous (i.e. as constructed on the basis of democratic ideas and political values) given that the citizens in such society are politically autonomous (i.e. citizens, assured by their integrity as free and equal, rational and reasonable, share equally in the exercise of political power). The citizens have a normally effective sense of justice and so they generally comply with society's basic institutions, which they regard as just. In such a (well-ordered) society, the publicly recognized conception of justice establishes a shared point of view from which citizens' claims on society can be adjudicated. The idea of well-ordered society is an ideal of a society of citizens, free and equal, reasonable and rational, who are responsible for their ends the way they define and structure their ends and goals towards their more or less coherent plan of life and reasonably cooperate with one another on the grounds of reciprocity and mutual respect. 'The social union is no longer founded on a conception of the good as given by a common religious faith or philosophical doctrine, but on a shared public conception of justice appropriate to the conception of citizens in a democratic state as free and equal persons.'⁶³ Such well-ordered society exemplifies a social contractalist ideal of a liberal democratic society where everyone freely accepts fair terms of social cooperation and the regulative principles of justice. This would answer the question whether how well principles of justice are publicly recognized and substantially acknowledged as a conception of justice when society is conceived as a system of cooperation between and among free and equal citizens given the idea of well-ordered society.

⁶¹ *Political Liberalism*, 301-302.

⁶² *Ibid.*, 35; *Justice as Fairness*, 8-9.

⁶³ *Political Liberalism*, 304.

The discussion so far gives us the reason for the reasonable to enter into social cooperation. First, citizens as reasonable and rational, given the fact of reasonable pluralism, need to associate with one another for mutual advantage and reciprocity. Second, they as rational and reasonable, must enter into cooperation to regulate and restrict human affairs. Citizens as free and equal must also be secured with rights and liberties regardless of the comprehensive doctrines they deeply hold and familial associations and organizations they belong to. These liberties are what they must have together with their exercise of their moral powers in order to secure and protect free and worthy life. Third, citizens come together for human flourishing. Human nature commands to actualize the infinite possibilities of men to attain their excellence. This life-project cannot be done in self-isolation. There is a need for them to recognize the presence of ‘others’ in their lives. They need to involve themselves in a social dynamism practically founded on socio-ethical, religious-philosophical, and politico-economic thoughts and principles that condition and shape them. It is in actualizing human excellences that human civilization will flourish. And Fourth, social cooperation is needed to have political stability. Otherwise, citizens will engage themselves into violence and conflicts due to irreconcilable differences.

Rawls remarks that social cooperation is always for mutual benefit. It implies both the reasonable and the rational. The reasonable is a shared notion of fair terms of cooperation that which articulates the idea of reciprocity and mutuality. The rational refers to each participant’s rational advantage. The citizens share the fair terms of cooperation as reasonable given the fact of various conceptions of what they want rationally to advance. The unity of social cooperation rests on citizens as reasonable.⁶⁴

The Idea of the Basic Structure

In justice as fairness as a political conception of justice, the basic structure is the first subject of justice.⁶⁵ It is the main subject, the focus, of a political conception.⁶⁶ By basic structure, assumed to be a closed society,⁶⁷ we mean the ‘society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next.’⁶⁸ The basic structure is,

‘the interconnected system of rules and practices that define the political constitution, legal procedures and the system of trials, the institution of property, the laws and conventions which regulate markets and economic production and exchange, and the institution of the family.’⁶⁹

In other words, it means that the major institutions in society fit together into one system as a social cooperation where rights and duties are assigned.⁷⁰ It provides the framework for a self-sufficient scheme of cooperation.⁷¹ Its coordinate roles lie on the principles covering the basic freedoms (i.e. structures that specify and secure citizens’ equal basic rights and liberties and institute just political procedures) and the principles covering the social and economic

⁶⁴ Ibid., 300-301.

⁶⁵ *Justice as Fairness*, 10-12, 39-40, 52, 182-183; *Political Liberalism*, 16, 257.

⁶⁶ “The Idea of an Overlapping Consensus,” in *Collected Papers*, 423); *Political Liberalism*, 11.

⁶⁷ *Political Liberalism*, 12.

⁶⁸ Ibid., 11, 35.

⁶⁹ Samuel Freeman, “Introduction: John Rawls – An Overview,” in *The Cambridge Companion to Rawls*, edited by Samuel Freeman (New York: Cambridge University Press, 2003), 3.

⁷⁰ *Political Liberalism*, 258.

⁷¹ Ibid., 301.

inequalities (i.e. the background institutions of social and economic justice appropriate to citizens as free and equal).⁷² The principles' role concerns how political power is acquired and the limits of its exercise. "The basic structure of society is arranged so that it maximizes the primary goods available to the least advantaged to make use of the equal basic liberties enjoyed by everyone. This defines one of the central aims of political and social justice."⁷³ Justice as fairness must articulate the most appropriate conception of justice for the basic structure. The basic structure must be just and stable society of free and equal persons who are fully cooperating citizens at the same time.

The basic structure as the embodiment of all institutions constituting a wide and unified system of social cooperation secures and guarantees principles to preserve background justice over time for all persons as free and equal and principles that directly apply to transactions between and among individuals and associations. The basic structure is regulated as 'one unified scheme of institutions so that a fair, efficient, and productive system of social cooperation can be maintained from one generation to the next.'⁷⁴ In effect, the distribution within the social system is taken as enforcing background procedural justice. The results of the distribution are taken as just when every citizen follows the publicly recognized fair terms of cooperation. Hence, the public principles of political justice specify background justice.

IV. The Idea of the Original Position

Rawls honors the conception of the social contract from the tradition of Hobbes, Locke, Rousseau, and Kant. His version of such hypothetical agreement is the original position. The original position as a social contract is designed to show the most reasonable, hence, fair terms of cooperation among democratic citizens as rational and reasonable persons who are regarded as free and equal given the fact of reasonable pluralism. Fully autonomous human persons as citizens who are free and equal, reasonable and rational, are able to transform themselves as fully cooperating members of society, and as such are able to articulate fair terms of cooperation among themselves. As citizens, they are able to enter into an agreement between and among themselves, and not on any moral authority. Such fair terms of cooperation are conceived and understood as an agreement among free and equal, reasonable and rational citizens given their moral powers and powers of reason. Such agreement must be entered into under certain and appropriate conditions (that is, a valid and reliable 'fair' agreement based on the viewpoint of political justice). Such conditions are said to be appropriate when free and equal persons are situated fairly in the entire process and must not allow any other situations that would allow some persons to have greater bargaining advantages than all others.⁷⁵ "We must find some point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between persons regarded as free and equal can be reached."⁷⁶ The original position, with the "the veil of ignorance," is such point of view. As a point of view, it guarantees justice as fairness.

We imagine persons as representatives of the citizens in a liberal democratic regime in an original position who are free and rational (that is, the original position emphasizes and highlights citizens' freedom and moral powers to (re-)form, (re-)define, and (re-)design their ends and goals) and who are concerned to further the interests of those they represent choosing among themselves in one joint act a conception of justice which will assign basic rights and duties and determine the distribution of social benefits in the democratic society. "The idea of the

⁷² Ibid., 229; *Justice as Fairness*, 48.

⁷³ *Political Liberalism*, 326.

⁷⁴ *Justice as Fairness*, 50-52.

⁷⁵ *Political Liberalism*, 23; *Collected Papers*, 402. Threats of force and coercion, deception and fraud, must be ruled out.

⁷⁶ *Political Liberalism*, 23; *Collected Papers*, 400.

original position is to devise a choice situation where *rational decision is subject to reasonable (moral) constraints* imposed by the conditions on choice in the original position.⁷⁷ The agreement establishes social justice, that is, the parties in this original position decide upon the first principles of justice which will condition the basic structure, i.e. all other aspects of social life and democratic society (i.e. guaranteeing equality of basic rights and liberties and encouraging plurality of conceptions of the good and comprehensive doctrines). The main point here is to take the idea of the original position as that which connects the idea of the human person as free and equal and its accompanying conception of society as a fair system of social cooperation with the specific public principles of justice for the basic structure. Such connection is established as follows: ‘the parties in this position are described as rationally autonomous representatives of citizens in society. As such representatives, the parties are to do the best they can for those they represent subject to the restrictions of the original position.’⁷⁸ Out of the principle of fairness, a major part of the parties’ role is to make themselves agree on certain and definite principles of justice based on a short list of alternatives provided by the tradition of moral and political philosophy.⁷⁹ The original position, as an agreement and contract, exemplifies the commitment of the parties to certain principles of justice in perpetuity; meaning, once the principles are already stipulated in the basic structure, no party or persons can depart from the terms of commitment and understanding. This means that there is no going back in the original position, that is, no one can recoup the situation and reconvene the original position if and when one violates such terms of the contract. Everything that happens in the original position is done in *good faith*. Given the legal obligations and social pressures the parties face with the requirements of justice as embraced by the basic structure, with the assurance that the principles of justice as articulated and formulated in the original position are indeed certain principles of justice for the basic structure, Rawls assumes a willing compliance with the principles of justice. The hypothetical agreement speaks of the acceptability and feasibility of the principles of justice among the citizens. This is Rawls’ idea of stability. The citizens act with full autonomy (given deliberative rationality) when they affirm, observe, and act on the principles of justice formulated and endorsed by rationally autonomous parties in the original position.⁸⁰ The principles of justice are only agreed upon by the parties in the original position if they will only be generally recognized and accepted and become reliably stable under the conditions of a well-ordered society.

For Rawls, the rational representatives in the original position are rationally autonomous. In their argumentations and deliberations they are not required to apply or to be guided by any previous or background principles of right and justice. Such principles must solely be founded on rationally autonomous reasons and deliberations of the parties as long as they are allowed by the limits set forth in the original position to select from given alternatives the fair terms of cooperation between and among the persons they represent.⁸¹ The moral motivation of the parties is based on a desire to act according to and for the sake of justice, which constitutes the

⁷⁷ Samuel Freeman, “Introduction: John Rawls – An Overview,” 14.

⁷⁸ *Political Liberalism*, 304-305.

⁷⁹ *Ibid.*, 305.

⁸⁰ According to Rawls, ‘The parties (in the original position) as rationally autonomous representatives of persons in society represent only the rational: the parties agree to those principles which they believe are best for those they represent as seen from these persons’ conception of the good and their capacity to form, revise, and rationally to pursue such a conception, so far as the parties can know these things. The reasonable, or persons’ capacity for a sense of justice, which here is their capacity to honor fair terms of social cooperation, is represented by the various restrictions to which the parties are subject in the original position and by the conditions imposed on their agreement.’ *Ibid.*, 305-306.

⁸¹ *Political Liberalism*, 306-307; *Collected Papers*, 311, 312.

parties' capacity for an effective sense of justice. To avoid self- and group- interest motivations and all other forms of prejudices of all parties, and to ensure that what emerges from such original position is the result of a fair agreement, Rawls employs a device called veil of ignorance and a method called reflective equilibrium.

The veil of ignorance⁸² 'means that the parties do not know the social position, or the conception of the good (its particular aims and commitments), or the realized abilities and psychological propensities, and much else, of the persons they represent.'⁸³ It deprives the contracting parties in the original position of information regarding their conceptions of the good and their special psychological propensities and therefore nullifies the effects of specific contingencies which put them at odds and tempt them to exploit social and natural circumstances to their own advantage. The veil rules out information that is not morally relevant in articulating and deciding on the principles of justice. 'No one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like.'⁸⁴ With this veil, the rational agents of construction will not consider their backgrounds and circumstances that will only lead them to undue advantage. Contingent historical advantages, social backgrounds and tendencies, and accidental influences, such as *de facto* political power, wealth, and native endowments, are not the basis and can never be a basis of political justice in general and the agreement on principles of justice that are to regulate the basic structure.⁸⁵ Decision on the principles of justice is nonhistorical (or ahistorical). They are to begin in the notion of autonomy seen as a social point of view where there are no longer self-interested biases that can affect social agreements to be made. **Because of the conception of the original position, we call justice as justice as fairness; and justice as reciprocity.**

What they only have in mind as their motivation is a thin theory of the good. The contracting parties know what the primary social goods are (i.e. rights, liberties, opportunities, income, wealth, self-respect, and all other goods which normally have a use whatever a person's rational plan of life) and they assume that they normally prefer more primary goods rather than less to be assured of greater success in advancing their ends whatever these ends may be. Rawls says,

'Thus even though the parties are deprived of information about their particular ends, they have enough knowledge to rank the alternatives. They know that in general they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever these are. Guided by the theory of the good...their deliberations are no longer guesswork. They can make a rational decision in the ordinary sense.'⁸⁶

Rawls includes two other motivational assumptions in the original position: the parties are not motivated by envy and that they are presumed to have a sense of justice. As such, this

⁸² Rawls' veil of ignorance is a 'thick' veil (to contrast it with the 'thin' veil as proposed by utilitarians) to ensure that the formulated principles of justice are designed not because of a given particular socio-political context and in order not to favor any particular conception of the good or comprehensive doctrine. Through the veil, the parties are not allowed to know the social positions and comprehensive views of the citizens they represent and they do not know citizens' race and ethnic group, sex, natural endowments; everything is within the normal range.

⁸³ *Political Liberalism*, 305.

⁸⁴ *Ibid.*, 11.

⁸⁵ *Justice as Fairness*, 16.

⁸⁶ *Political Liberalism*, 123.

device or mechanism of original position exemplifies objectivity based on a transpersonal environment and on a social sphere.

In a capsule, Rawls posits that the parties are symmetrically situated because they are seen as representatives of free and equal citizens. These parties as representatives are to reach an agreement under fair conditions. **Given that we occupy a social position and that we affirm a particular comprehensive doctrine disqualify us to propose, or to expect others to accept, a conception of justice. To model this point, the parties are behind a veil of ignorance. So, the original position is simply a device of representation.**⁸⁷

The parties in the original position as symmetrically situated, as free and equal, and reasonable and rational, stipulate the fair terms of social cooperation based on some common agreements reached by them. These common agreements are the results after some deep reflections and evaluations. The criteria taken and adopted are objective to assure that the best conception of justice and the best considered judgments are weighed and discussed. The evaluation depends on the weight of the arguments of those judgments, convictions, and principles. The aim of the original position is to ascertain the relation between the human person and a well-ordered society. The connection between them transcends individual autonomy to social cooperation. The idea of original position with veil of ignorance models freedom and equality.

The other criterion employed by the original position aside from the veil of ignorance is the principle of reflective equilibrium (in view of the maximin rule). Best reasons are sought and therefore the claims for justice are wide, deep, and broad. The original position then as a device of representation⁸⁸ is fairly situated because the fair conditions specify the fair terms of social cooperation in the basic structure of society; society is conceived as a scheme of cooperation between free and equal persons. This reflective equilibrium as a process is a reflective deliberation.⁸⁹ As a reflective deliberation, the parties test the various parts of the various systems of beliefs with other beliefs they hold, looking for ways in which some of these beliefs support others, seeking coherence among the widest sets of beliefs, and revising and refining them at all levels when challenges to some arise from others. They are expected to revise their beliefs at all levels as they work back and forth among them and subject them to various criticisms. It involves giving some initial justificatory weight to them at all. The chosen principles and convictions must match their respective considered judgments about justice in reflective equilibrium. If they do not, then they are to revise the constraints on choice in the contract situation until they arrive at a contract that yields principles that are in reflective equilibrium with their considered judgments about justice. In effect, the device of the contract must itself be in reflective equilibrium with the rest of their beliefs about justice. The contract then helps them to determine what principles they should choose from among competing views, but the justification for using it and designing it so that it serves that purpose must itself derive from the reflective equilibrium that it helps them to achieve.

The idea of the original position as a device of representation is a means of public reflection and self-clarification. This is the point of significance of the idea of the original position. As a device of representation, it suitably models our convictions about 'fair conditions of agreement between citizens as free and equal' (the parties are symmetrically situated pointing out that citizens are equal in all relevant aspects) and about 'appropriate restrictions on reasons'

⁸⁷ Ibid., 25.

⁸⁸ The original position as a device of representation models what we regard here and now as fair conditions for the terms of social cooperation to be agreed to reflected in the symmetry of the parties' situation and at the same time also models what we regard here and now as reasonable restrictions on reasons that may be used in arguing for principles of justice to regulate the basic structure. See *Justice as Fairness*, 85.

⁸⁹ *Justice as Fairness*, 31.

(considering our backgrounds and positionality as basis for a conception of justice is not a good reason for us to accept and expect others to accept any agreement made in effect). Hence, the idea of original position models and forms reasonable considerations to ground and justify principles of justice of a political conception of justice. It becomes a mediating idea where all our considered judgments and convictions can be brought to bear on one another. This enables us to establish more coherence in all our judgments and therefore wider agreement among one another.⁹⁰ The original position exemplifies objectivity through the capacity of moral persons to dissociate and distance themselves from a given social sphere to think for themselves, assess their thoughts and feelings, and posit therefore general traits that express a certain level of objectivity. The idea of the reasonable exemplifies objectivity since it is the normative deliberations and social exchanges that social authoritative perspective is created in constructing public principles of justice. Objectivity arises therefore from the original position through the procedure of construction. It is in the model conception of original position that justice as fairness is a fair procedure where citizens as free and equal, reasonable and rational, find a fair common ground upon which the basic structure of society can be assessed and justified and therefore principles of justice are readily formulated. There seems no better way to elaborate justice as fairness as political conception of justice other than through the idea of original position with veil of ignorance.

Rawls clarifies the three points of view in looking at justice as fairness as a political conception of justice.⁹¹ The first point of view is based on the point of view of the parties in the original position. The second point of view is from the lens of the citizens in a well-ordered society. The third point of view comes from the perspective of ourselves –you and me– who extrapolate on political conception of justice. The original position is set up by “you and me” to work out justice as fairness. The parties are just part of the mechanism as the artificial agents in the device of representation.⁹² The third point of view is the ultimate measure or criterion for assessing a liberal political constructivist conception of justice such as justice as fairness. ‘How well the view as a whole articulates our more firm considered convictions of political justice, at all levels of generality, after due examination, once all judgments and revisions that seem compelling have been made. A conception of justice that meets this criterion is the conception that, so far as we can now ascertain, is the one most reasonable for us.’⁹³

To summarize, the original position is a point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between persons regarded as free and equal can be reached. As a device of representation, it models two things: to model both freedom and equality and restrictions on reason; hence, the original position becomes a means of public reflection and self-clarification; in effect, to establish greater coherence among all our judgments and with this deeper self-understanding we can attain wider agreement among one another. There seems no better way to elaborate a political conception of justice for the basic structure from the fundamental idea of society as an ongoing and fair system of cooperation between citizens regarded as free and equal as seen in the original position.

V. The Basic Principles of Justice

Rawls says that the rationally autonomous parties representing the reasonable persons as free and equal and its accompanying conception of society as a fair system of cooperation would formulate and endorse the first public principles of justice. ‘The parties can draw up a list of basic liberties first through a survey of the constitutions of democratic states and put together a

⁹⁰ *Political Liberalism*, 26.

⁹¹ *Ibid.*, 28.

⁹² *Ibid.*

⁹³ *Ibid.*

list of liberties normally protected and examine the role of these liberties and second through a consideration of liberties which are essential social conditions for the adequate development and full exercise of the two powers of moral personality over a complete life.⁹⁴ We are to view the idea of original position as a means of selecting principles of justice from alternatives presented to us. A democratic society is said to be well-ordered by such principles of justice. The role of the two principles of justice, the liberty principle and the principle of justice over efficiency and welfare, is to specify the fair terms of social cooperation between and among citizens in the basic structure of democratic society. Alternatively, when we view democratic society as a society of fair terms of social cooperation between and among citizens as free and equal, the two principles of justice as articulated in the original position are regarded as the most appropriate principles for such democratic society.

The first principle is the liberty principle.⁹⁵ It states that ‘each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;⁹⁶ and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value. Its primary concern is the social system that defines and secures basic liberties. This principle stipulates that every person is equally entitled to a system of equal basic liberties and that the liberty conferred by this system is to be as extensive as possible. This means that defined basic liberties are equally distributed among all persons and cannot be sacrificed at the expense of greater social and economic benefits. Basic liberties are to be treated and valued as inalienable. Examples of such forms are freedom of thought and liberty of conscience, freedoms specified by the liberty and integrity of the person, political liberties and freedom of association, freedom of speech and assembly, the right to hold personal property, freedom from arbitrary arrest and seizure, rights and liberties covered by the rule of law, and all other forms which compose basic justice.⁹⁷ These basic liberties are *inalienable*. The first principle guarantees the possibility for citizens to deliberate and relate with one another as free and equal, reasonable and rational persons. This also opens up the possibility that they would arrive at decisions and agreements that concern social organization. This principle defines social cooperation. This secures that whatever agreements made are based on fair conditions. The first principle of justice maintains and sustains equal freedom and respect for every human person as a citizen in a liberal democratic framework.

The second principle consists of two principles. It states that ‘social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions 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.⁹⁸ The first part is known as the equal opportunity principle and the second part is known as the difference principle. Both apply

⁹⁴ Ibid., 292-293.

⁹⁵ There is a principle prior to the first principle, that is, that basic human needs must be first met insofar as meeting such needs is a necessary condition for citizens to understand and exercise their moral powers and basic rights and liberties and therefore they can take part in social and political life. See *Political Liberalism*, 7 & 166; *Justice as Fairness*, 44n.

⁹⁶ In *Political Liberalism*, liberty principle is stated as, ‘each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all (p. 291).’ In *Theory of Justice*, it is presented as, ‘each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others (p. 53).’ The change in the formulation of the principle from TJ to PL to *Justice as Fairness* is simply to give focus and highlight on achieving certain specific rights and liberties and specific constitutional guarantees such as bills of rights and declarations of the rights of man. *Justice as Fairness*, 42.

⁹⁷ *Political Liberalism*, 291.

⁹⁸ Ibid.

to the socio-economic aspect of the social system. The equal opportunity principle tells us that the offices and positions, which may generate economic and social advantages, be open to all. It is concerned with the arrangement of social and economic inequalities. It demands that political institutions take positive steps to ensure that persons with similar skills and motivation enjoy similar opportunities and have opportunity to enjoy a decent life. The idea of fair equality of opportunity needs explication. The idea requires that public offices and social positions be open to all in such a way that everyone has a fair chance to attain them; hence, not merely open in the formal sense. Fair equality of opportunity then means liberal equality.⁹⁹ The difference principle requires government intervention within the social and economic order. It requires that inequalities be eliminated except in cases where they are to the benefit of those worst off in society.¹⁰⁰ Difference principle is the principle that an inequality is unjust except insofar as it is necessary means to improve the position of the worst off members of society. It regulates differences or inequalities in primary social goods. It seems that justice does not require equality; there may be inequalities as long as they can be justified. It should explain that a certain degree of inequality is necessary to achieve a higher level of welfare for the worst-off. Allowing certain degree of inequalities is actually meant to satisfy the principle of fair equality. Such inequality is permitted to *maximally* promote the efficient and effective exercise of the equal basic rights and liberties by the worst-off class. Such principle makes the worst-off class better off, that is, the worst-off are as favorable as they can be. Obversely, the gains of the better-off are achieved not at the expense of the worst-off. The difference principle then defines the ideal of reciprocity.¹⁰¹ To make it explicit, we make appeal to reciprocity to argue for the difference principle. Since citizens equally share the two moral powers, they deserve equal treatment and opportunity to enjoy a decent life. Justice as fairness stresses those social arrangements (i.e. promoting property-owning democracy or liberal socialism, and not capitalist welfare state) must be evaluated on the basis of the worst-off position.

These two principles are arranged in a lexical order. The first principle, the liberty principle, is prior to the second principle, principle of justice over efficiency and welfare. In the principle of justice over efficiency and welfare, the principle of fair equality of opportunity is prior to the difference principle. Such priority only means that a certain principle can only be applied when the prior principles are fully satisfied first. The first principle specifies citizens' basic liberties and establishes a just constitutional regime. The second principle provides an institutional background to regulate inequalities in the socio-economic dimensions and to allow citizens to fairly benefit from the social cooperation they have established. The combination of fair equality of opportunity and difference principle becomes the best way to guarantee fairness in the regulation of inequalities. This is so because it allows the better-off to benefit more than the others provided that the worse-off benefit also. The allowance of inequalities satisfies fair equality.

⁹⁹ *Justice as Fairness*, 44.

¹⁰⁰ By worst off we do not mean the (welfarist) unhappiest or (Sen's) the most physically or mentally disabled; it refers to the poorest in society in terms of the 'social primary goods' specifically income and wealth. A conception of justice must gear towards realizing every citizen's capacities for rational, free, and responsible agency. The worst off must be provided adequate resources for them to recognize and appreciate themselves as acting freely and responsibly for their ends, that is, the way they define and structure their (more or less coherent) plan of life.

¹⁰¹ For Rawls, economic rights of property and contract are institutional (part of social rules and practices), natural (certain rights are moral and apply to persons regardless of social backgrounds), not conventional (social rules and practices are not valid only if they are effective and enforced), and not presocial (not preinstitutional state of nature).

The first principle of justice taken as a priority of liberty assumes a special status for it assigns basic liberties that fit into a coherent scheme of such liberties and do not give more weight to reasons of public good and of the so-called perfectionist values even though a basic liberty can be limited or denied solely for the sake of one or more other basic liberties.¹⁰² **The priority of liberty requires the regulation of public use of reason to preserve intact the central range of application of each basic liberty.**¹⁰³ Rawls makes a point that the priority of liberty is required under ‘reasonably favorable conditions,’¹⁰⁴ meaning, there should be social conditions that permit the full exercise of basic rights and liberties such as society’s political culture, traditions, governance and management skills, and level of economic development that is not necessarily especially high.¹⁰⁵ Rawls also reminds us that the scheme of such liberties is not specified in full detail in the original position. It is left to be further specified to the constitutional, legislative, and judicial stages. He stresses though that the general form and content (i.e. the special role and central range of application) of these liberties be sufficiently clear to guide the later stages.¹⁰⁶

The two principles of justice embody the political conception of justice as fairness and serve as the guiding principles for the structure of social institutions. These principles specify, assign a special priority, and articulate measures for rights, liberties, and opportunities, that is, these principles of justice require certain basic rights and liberties and fair opportunities provided equally for all citizens and such rights, liberties, and opportunities assume priority over the aggregate and cumulative social welfare and perfectionist values. It also demands that the discrepancies in income and wealth and the differentiations in social positions and public offices are structured in such a way that they favor the worse-off in society in the maximal and optimal level. Such principles of justice provide a ‘social minimum’ which is a fundamental social entitlement to enable resources that guarantee the worth of basic rights and liberties.¹⁰⁷ The principles of justice then involve the idea of reciprocity between and among citizens who are free and equal and as cooperating members of society over a complete life. With the principles of justice, every citizen has the rights and resources he needs, regardless of his position or background in society, to enable him to exercise and optimize his rational capacities and necessary freedoms, resources and opportunities, to pursue a diversity of comprehensive doctrines and realize a wide range of conceptions of the good. In other words, they secure citizens’ basic rights and liberties, which actually and also include socio-economic interests. As such, they substantially influence the basic structure in society. Social and economic inequalities in the basic structure are properly addressed given and in terms of the appropriate principles of justice.

The principles of justice are adopted and applied in a four-stage sequence; in the first stage, the parties select and adopt the principles of justice behind a veil of ignorance; second, the stage of the constitutional convention where we, conceiving ourselves as delegates, are to articulate, write, and put together principles and rules of a constitution given the principles of justice (i.e. the first principle applies at this level); third, the legislative stage in which, conceiving ourselves as legislators, laws are enacted as the constitution allows and as the principles of justice require and permit (i.e. the second principle applies at this level); and the final stage in which the rules are applied by administrators and followed by citizens generally and the constitution and laws are interpreted by members of the judiciary (i.e. every citizen has full access to all the

¹⁰² *Political Liberalism*, 294, 295.

¹⁰³ *Ibid.*, 296.

¹⁰⁴ *Justice as Fairness*, 47.

¹⁰⁵ *Political Liberalism*, 297.

¹⁰⁶ *Ibid.*, 298.

¹⁰⁷ The so-called social minimum then is defined in terms of the difference principle.

facts).¹⁰⁸ After the stage of original position, the first stage, the veil of ignorance is gradually relaxed (in the next three stages). The principles and rules agreed to in a former stage hold back, limit, and hinder what is rational to choose. ‘This four-stage sequence describes neither an actual political process, nor a purely theoretical one.’¹⁰⁹ **It is a framework of thought that citizens as free and equal in a democratic society are to use in applying the concepts and principles of justice as fairness as a political conception of justice. Subjecting institutions to reflective considered judgments over time once such framework is used by political offices and civil society, such institutions become the work of generations eventually and in due course.**

The principles of justice are stipulated to govern the distribution of primary goods. Primary social goods are the goods that are to be distributed based on and guided by the agreed principles of justice and serve as the basis of comparison and measure of the level of well-being of citizens for purposes of the questions of justice. These primary goods are what human persons as free and equal need as citizens in order for them to adequately develop and fully exercise their moral powers and pursue their determinate conceptions of the good. Without these goods, they become the least advantaged members in the society. The main function of primary social goods is to enable persons to pursue their conceptions of the good and to develop and exercise their moral powers. The idea of primary goods is a metric based on an index of what goods would be necessary for the full exercise of the two moral powers. The primary goods are the basic rights and liberties, freedom of movement and free choice of occupation against a background of diverse opportunities, powers and prerogatives of offices and positions of responsibility, income and wealth, and the social bases of self-respect.¹¹⁰ The relationship between the idea of primary goods and moral powers lead to an idea of social unity. Social unity is based on how the different conceptions of the good are upheld and secured given the exercise of moral powers and fair terms of cooperation, and primary goods are necessary social conditions to enable citizens to pursue such conceptions of the good and to develop those moral powers.

To guarantee fair opportunity to all citizens, justice as fairness requires that the right be treated as prior to the good. Maximizing socio-economic gains at the expense of basic rights and liberties must be rejected absolutely. This priority must be recognized because this is the only acceptable way of dealing with both the fact of reasonable pluralism and the need for stability for the right reasons. There must be no comprehensive view that would be the common framework for social cooperation. Otherwise, this would threaten social unity in a pluralistic political society and postpone citizens to enter into cooperation. Choosing a definite conception of right is a precondition enabling citizens to choose between different conceptions of the good life provided by the comprehensive doctrines. The right sets constraint in the acceptable conceptions of the good life.

To sum, the parties in the original position under the veil of ignorance together with reflective equilibrium come together on the basis of social cooperation guided by the general conception of justice, to define, identify, and distribute primary social goods in consideration of moral powers. The original position seen as objective becomes a metaethical discourse. Given these arrangements, citizens can advance their conceptions of the good in ways that can best be explained and justified by reasons which everyone can and do accept as free and equal,

¹⁰⁸ *Justice as Fairness*, 48; *Political Liberalism*, 397-398; *A Theory of Justice*, 172-176.

¹⁰⁹ *Political Liberalism*, 397.

¹¹⁰ *Justice as Fairness*, 58-59; *Collected Papers*, 362-363. Note: for Rawls, self-respect is ‘perhaps the most important primary good.’ Self-respect is ‘a psychological attitude grounded in the sense of one’s own value and conviction that one’s conception of the good, or rational plan of life, is worth pursuing, and confidence that one has the abilities to successfully fulfill one’s intentions.’ Through self-respect, there is equal citizenship.

reasonable and rational persons. In effect, just institutions persist due to well-defined ways of life.

Justice as fairness seeks to establish social unity and to specify the basic terms of social cooperation. This is possible if the reasonable citizens, after engaging themselves in the agreements of fair terms of cooperation, must aspire for the consensus of reasonable comprehensive doctrines. Overlapping consensus is the principle that will regulate and guarantee stability after each citizen reads justice as fairness in his comprehensive doctrine. The idea of overlapping consensus is the assurance that political stability in the midst of reasonable pluralism is achieved.

VI. The Viability of Justice as Fairness as Political Conception of Justice:

Overlapping Consensus and Public Reason

The viability of justice as fairness as a political conception depends ultimately on the idea of public justification. The idea of public justification specifies justification appropriate for a political conception of justice such as justice as fairness for a democratic society characterized by the fact of reasonable pluralism. A well-ordered society, as a democratic society, is to be effectively regulated by such public conception of justice. It provides the framework for the liberal principle of political legitimacy. A political conception of justice, as a moral conception, is worked out for the basic structure, does not endorse any particular comprehensive doctrine, and is only formulated in terms of fundamental ideas latent in public political culture. Such public conception of political justice is characterized essentially by citizens, as free and equal, reasonable and rational, cooperating politically and socially on terms everyone can endorse as fair and just. Such democratic social cooperation is based on mutual respect between and among citizens regarded as free and equal, reasonable and rational. When this is realized, we have an overlapping consensus of reasonable comprehensive doctrines where such political conception is affirmed in reflective equilibrium. Hence, **our political judgments are justified through public reason.** For the idea of public justification, we need the idea of overlapping consensus and the idea of public reason.

The Idea of Overlapping Consensus¹¹¹

One crucial question is, how may the well-ordered democratic society of justice as fairness establish and preserve unity and stability given the reasonable pluralism characteristic of it. 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. Rawls must go one step further and show that reasonable citizens would prefer his political conception to any other political conception. Rawls argues this point by introducing the idea of an overlapping consensus (where the reasonable doctrines endorse such political conception) together with the idea of political conception of justice (where social unity is based). It is contractalist, rests on the fundamental political notions of the human person as free and equal, reasonable and rational, and appeals to the idea of a well-ordered society. **Overlapping consensus is possible on the basis of citizens' moral sense of justice as grounded in their reasonable comprehensive doctrines. Such consensus serves as a reasonable agreement given the reasonable disagreement as posed by the various comprehensive views.** Overlapping consensus raises the question of stability, that is, whether political stability through social unity is possible when the doctrines making up the consensus are affirmed by society's politically active citizens and the

¹¹¹ *Collected Papers*, 390, 410, 421, 430, 473; *Law of Peoples*, 16, 32, 172-174; *Justice as Fairness*, 12, 32, 181, 183-184, 189; by virtue of the idea of the fact of reasonable pluralism, given public political culture, justice as fairness, as a political conception of justice, can be the focus of overlapping consensus *Political Liberalism*, 141; *Justice as Fairness*, 33.

requirements of justice are not too much in conflict with citizens' essential interests as formed and encouraged by their social arrangements.

The question of stability is the central problem of political liberalism: '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?'¹¹² A reasonable comprehensive doctrine cannot secure the basis of social unity and political stability and therefore cannot provide the content of public reason on fundamental political questions.

Rawls introduces the idea of overlapping consensus with these words,

'There can, in fact, be considerable differences in citizen's conceptions of justice provided that these conceptions lead to similar political judgments. And this is possible, since different premises can yield the same conclusion. In this case there exists what we may refer to as an overlapping rather than strict consensus. In general, the overlapping of professed conceptions of justice suffices for civil disobedience to be a reasonable and prudent form of political dissent. Of course, this overlapping need not be perfect; it is enough that a condition of reciprocity is satisfied. Both sides, must believe that however their conceptions of justice differ, their views support the same judgment in the same situation at hand and would do so even should their respective positions be interchanged.'¹¹³

The idea of overlapping consensus of reasonable comprehensive doctrines is conceived in order to realize a well-ordered society founded on a liberal political conception of justice as fairness. It means that the citizens in a well-ordered society will normally act in accordance with reasonably just laws and just institutions and will endorse a liberal political conception of justice such as justice as fairness given their various conceptions of the good and their comprehensive doctrines. Rawls defines it as such a consensus that 'consists of all of the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents in a more or less just constitutional regime, a regime in which the criterion of justice is the political conception itself.'¹¹⁴ There are three characteristics essential for the idea of overlapping consensus. **The public principles of justice in such consensus must be common, political, and are adopted at some point in time.** Overlapping consensus is an agreement that is supported by all of the conflicting and irreconcilable comprehensive doctrines that are likely to survive in a just and modern democratic society. In such a consensus, the reasonable doctrines endorse the political conception. A political conception of justice can generate the conditions needed to produce a just and stable political affairs, and thereby effectively resolve the problem of stability in modern constitutional democracy, by securing an agreement that can accommodate a wide diversity of competing and incommensurable religious, moral, and philosophical views. Such a consensus must be freestanding and not in conflict with the reasonable comprehensive doctrines. To achieve such a consensus of reasonable comprehensive doctrines and therefore independent, separate from, and endorsed by such doctrines, the idea of overlapping consensus must be taken as a module supported by those doctrines in the reasonable pluralism. The purpose is to create a publicly accepted pool of information and standards which can be used to adjudicate competing claims in a publicly accepted way. **This publicly accepted pool of information and standards is the overlapping consensus itself and the publicly accepted method of using that information is public reason.** Overlapping consensus then has three features. First, 'we look for a consensus of

¹¹² *Political Liberalism*, 133.

¹¹³ *A Theory of Justice*, 387-388.

¹¹⁴ *Political Liberalism*, 15, 133.

reasonable comprehensive doctrines.¹¹⁵ Second, it is ‘a freestanding view that expresses a political conception of justice.’¹¹⁶ And third, it is ‘a module, an essential constituent part, that in different ways fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it.’¹¹⁷ From the standpoint of reasonable comprehensive doctrines, there is no better conception of justice than a liberal political conception of justice such as justice as fairness.

An overlapping consensus is a necessary prerequisite for a well-ordered society: only by securing an overlapping consensus can one hope to obtain the type of political stability¹¹⁸ required to establish and maintain a well-ordered society. The need for such is precipitated by the ‘fact of reasonable pluralism,’ the inevitable and ineliminable presence of a plurality of conflicting and irreconcilable reasonable comprehensive doctrines. Overlapping consensus accommodates such pluralism and in effect secures the basis for a well-ordered society. The necessity of an overlapping consensus arises because those with comprehensive moral views must seek some common ground for reaching consensus about principles of justice. The actual circumstances of living in a democratic society provide individuals with the motivation for accepting a political conception that is not in conflict with each other’s comprehensive views. It is possible for them to recognize such overlapping consensus intended for stable society because as rational they are able to categorize what is ‘just’ and ‘unjust’ which suggests rational and reasonable justification of certain moral actions. It rests on the premise that the citizens in such a well-ordered society acquire a normally sufficient sense of justice. The problem is whether the idea of overlapping consensus can be the focus of a political conception of justice. It can be the focus of such political conception because it is categorically based and rooted on the fundamental ideas within which justice as fairness operates such as political conception of human person and idea of social cooperation, original position and the primary social goods, the two principles of justice, and notions of reasonable and public reason. Such consensus should be able to absorb and understand the sets of values and principles of the liberal political conception of justice as fairness. Such consensus should be seen as practiced and applied in the social, economic, and political institutions of society as a whole. **It must be clear though that we do not frame a political conception that serves as balance between and among comprehensive doctrines that actually exist in democratic society for that would make political conception of justice political in the wrong way. The political conception does not presuppose any particular comprehensive doctrine rather the question is how to frame a political conception for a constitutional regime that can gain an enduring overlapping consensus of reasonable doctrines.**

Rawls argues that if we want to achieve the type of political stability needed to establish and sustain a just and stable democratic regime, then the public conception of justice must secure the right kind of stability, that is, it must promote “stability for the right reasons.” According to Rawls, ‘the problem of stability is not that of bringing others who reject a conception to share it, or to act in accordance with it, by workable sanctions, if necessary, as if the task were to find ways to impose that conception once we are convinced it is sound.’¹¹⁹ For Rawls, this means that citizens’ support for the conception of justice must be motivated by the desire to act justly. Acting justly requires citizens to accept and be willing to act in accordance with the demands of reasonable pluralism. ‘Stability is secured by sufficient motivation of the appropriate kind.’¹²⁰ Rawls claims that the desire and willingness to act in such a manner is

¹¹⁵ Ibid., 144.

¹¹⁶ Ibid.

¹¹⁷ Ibid., 12, 145.

¹¹⁸ Ibid., 140-144; *Justice as Fairness*, 184-188.

¹¹⁹ *Political Liberalism*, 143.

¹²⁰ Ibid., 142-143.

engendered 'by living under a just structure.'¹²¹ Individuals socialized under such a structure will normally acquire a sense of justice which recognizes the fact of reasonable pluralism, and subsequently promotes the establishment of overlapping consensus. They will realize that the type of stability needed to establish and maintain a well-ordered society can be obtained only by ensuring that the public conception of justice satisfies two criteria: first, 'it must be willingly and freely supported by at least a substantial majority';¹²² and second, citizens' support for it cannot waiver, regardless of changes in their personal circumstances or in the distribution of political power. Overlapping consensus can provide stability because the political values that constitute the public conception of justice are values that all reasonable citizens (given the majority of the citizens of a modern constitutional democracy as reasonable) can reasonably be expected to endorse. These reasonable citizens will voluntarily maintain their support for these values in order for them to pursue freely and realize their visions of the good life. **A liberal democratic well-ordered society is said to be 'stable for the right reasons' when there is a political conception of justice that is freestanding acceptable to reasonable free and equal citizens as endorsed by their reasonable comprehensive doctrines through an overlapping consensus that provides content to public reason concerning constitutional essentials and basic justice.**¹²³

Overlapping consensus is distinct from and superior to *modus vivendi* because it has a moral object and moral grounds; its moral object is the political conception of justice, and it rests on moral grounds, that is, the fundamental ideas (of political liberalism as justice as fairness) such as the account of two moral powers, the account of political virtues, and the account of the principles of justice. This manifests that such overlapping consensus is stable because it is firmly grounded on the political conception and on the various conceptions of justice as fairness. Justice as fairness embodies an overlapping consensus that does have a moral basis. Its members affirm the overlapping consensus morally. This fact ensures that regardless of any changes in their personal circumstances or in the distribution of political power, the level of support for such consensus and the degree of political stability, which it secures, will not diminish. As the overlapping consensus is concerned only with the political conception of justice and because the political conception of justice can address each citizen's reason from within the framework of his comprehensive doctrine, individuals are able to accept the demands of overlapping consensus as being in some manner morally compatible with their respective doctrines. "The fact that those who affirm the political conception start from within their comprehensive view, and hence organize their doctrine using different premises and grounds, does not make their affirming it any less religious, philosophical, or moral, as the case may be."¹²⁴ To put it another way, the

¹²¹ Ibid., 142.

¹²² Ibid., 38.

¹²³ Justice as fairness as a political conception of justice (or any political conception of justice for that matter) is practicable only if social and historical conditions (the seven facts so-called) constituting the political sociology of democratic society are realized: (1) the fact of pluralism; (2) the fact of the permanence of pluralism; (3) the fact that agreement on a single comprehensive doctrine presupposes the oppressive use of state power; (4) the fact that that an enduring and stable democratic regime must be willingly and freely supported by a substantial majority of at least its politically active citizens; (5) the fact that a comprehensive doctrine whenever shared in society tends to become oppressive and stifling; (6) the fact that reasonably favorable conditions which make democracy possible exist; and (7) the fact that the political culture of a society with a democratic tradition implicitly contains certain fundamental intuitive ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime. These seven facts are presented in "The Idea of an Overlapping Consensus," in *Collected Papers*, 425.

¹²⁴ *Justice as Fairness*, 195.

overlapping consensus is acceptable to the wide variety of comprehensive views because it has its basis in the fundamental ideas of a democratic society that all citizens share. Such political conception makes no controversial claims about any reasonable comprehensive doctrines. The presence of shared moral affirmation ensures the support for the overlapping consensus and will remain stable. It is the increased degree of stability secured by overlapping consensus that makes it superior to and different from *modus vivendi*.

Overlapping consensus is not formulated in terms of general and comprehensive philosophical, religious, and moral conceptions but in terms of certain fundamental intuitive ideas viewed as latent in the public political culture of a democratic society such as political conception of person and fair systems of cooperation. Overlapping consensus cannot be and is not a comprehensive and general conception because it only concerns itself with the political. Its task is to politicize the notion of justice. It will not involve itself with the religious beliefs, philosophical interpretations of the world, and moral conceptions of the good. These comprehensive doctrines always are biased with their corresponding presuppositions and claims since they are the moral foundations and deep-seated attitudes and values of their respective ideologies. The purely political character of the conception of justice allows participants in the overlapping consensus to disagree over controversial religious, moral, and philosophical issues and yet still maintain a constant level of moral support for the overlapping consensus. This flexibility generates an increased degree of stability by significantly eliminating the possibility of divisive conflict between members of overlapping consensus. The goal of the overlapping consensus is to find a common ground, wherein such point considers their views but is independent from them and acquires sense of objectivity and validity. If overlapping consensus becomes a comprehensive doctrine or even a part of a given comprehensive doctrine, just like all other reasonable views, it cannot gain allegiance and support since it would be treated as a component of reasonable pluralism. It ceases to be a freestanding view and therefore loses its primary aim of having political stability and legitimacy. Another point is, overlapping consensus involves a set of political values, and these political values are not necessarily contrary to the nonpolitical values found in the different comprehensive doctrines. This means that comprehensive doctrines may read overlapping consensus on the perspective of their own. But the political conception remains the common objective ground for reasonable pluralism. And the political values normally outweigh whatever are other values, whether they are in unity or in conflict, at least under the reasonably favorable conditions that make constitutional democracy possible. What makes an overlapping consensus is that people will be able to find reasons originating from within their comprehensive views to agree on a distinct political view. While the political is distinct and does not belong to any comprehensive view, the people are supposed to find reasons originating in their comprehensive doctrines to endorse such a political conception.

Political stability does not require that citizens affirm as true the public political conception of justice. An overlapping consensus can be secured and maintained as long as the citizens affirm the conception of justice as reasonable. To assert the political conception of justice, upon which the overlapping consensus is based, as true is not only necessary but also counter-productive; to demand that the conception of justice be affirmed as true would make it impossible to obtain an overlapping consensus. Justice as fairness seeks a common basis of public justification for the issues pertaining to justice. We do not affirm or negate any religious, philosophical, or moral doctrines. We try to work out for a political conception of justice that is neutral and independent of those conflicting and seemingly irreconcilable comprehensive doctrines. As such, citizens within their considered convictions and comprehensive doctrines regard the political conception of justice, justice as fairness, as true or reasonable whatever their views allow for it. Such political conception includes fundamental questions of comprehensive doctrines which undeniably become political questions and therefore form part of the political agenda. The discussions are made by avoiding appealing to the comprehensive doctrines doing away with the profound controversies found in these doctrines. Instead, fundamental questions

are raised and discussed positing neutral principles but relevant to all comprehensive doctrines. An example given is the principle of toleration. To apply the principles of toleration is to leave to citizens themselves to settle questions of religion, philosophy, and morals in keeping with their views.

Given that the citizens are seen as free and equal, reasonable and rational, they have the capacity to recognize the significance of having overlapping consensus viewed not in the context of wider doctrines and therefore not as a general and comprehensive moral conception that applies to the political order, but rather with the political conception of justice which is a moral conception worked out for the basic structure of society and formulated in terms of certain fundamental intuitive ideas latent in the public political culture of a democratic society. **Citizens as reasonable recognizing political conception of justice look for shared methods and common knowledge which is greatly seen in public reason. Overlapping consensus as a political conception together with the idea of the reasonable and free public reason specifies certain basic rights, liberties, and opportunities putting special priority to them and articulating measures to make effective use of them.**

Rawls mentioned two stages: the first stage ends with constitutional consensus which specifies certain liberal principles of political justice which includes establishing democratic electoral procedures and agreement on certain basic political rights and liberties, and the second stage ends with overlapping consensus consists of its depth, breadth, and specificity as a political conception of justice. The first stage aims at liberal principles effectively regulating basic political institutions. These liberal principles meet the urgent political requirement to fix the content of certain political basic rights and liberties assigning them special priority. **Such liberal principles apply public reason to follow guidelines of public inquiry and rules specified by forms of reasoning and argument available to citizens ensuring public reasoning publicly seen as correct and reliable.** The idea of prioritizing rights and liberties and the idea of publicity encourage cooperative virtues of political life such as reasonableness, fairness, compromise and readiness, which promote social cooperation in a well-ordered society. The second stage aims to describe the depth and breadth of overlapping consensus and how specific its content is. The depth requires that its political principles and ideals be founded on a political conception of justice that uses fundamental ideas of society and person as illustrated by justice as fairness. Its breadth goes beyond political principles instituting democratic procedures to include principles covering the basic structure as a whole; hence its principles also establish certain substantive rights such as liberty of conscience and freedom of thought, as well as fair equal opportunity and principles covering certain essential needs.¹²⁵ The specificity of overlapping consensus is focused on a political conception of justice as fairness. As for depth, given the constitutional consensus, political groups must enter the public forum of political discussions and appeal to other groups who do not share their comprehensive doctrine. This would lead them to project their own views to other groups and consider others' views. Seeing citizens as not only rational but reasonable, they are led to formulate political conceptions of justice. These conceptions provide common currency of discussion and deeper basis for the dialogues of their respective concepts and principles. As for breadth, having purely political and procedural constitutional consensus will prove too narrow, hence, there must be fundamental legislations that guarantee liberty of conscience and freedom of thought, freedom of association and freedom of movement, and measures that assure basic needs of citizens in order for them to take part in social and political life. As for specificity, justice as fairness as a political conception of justice works from fundamental ideas of society as a fair system of cooperation together with the conception of the person as free and equal, which are taken as central to the political ideal. Such political conception elaborated from such central ideas would certainly be typical of the focal point of overlapping consensus.

¹²⁵ *Political Liberalism*, 212-254; *Justice as Fairness*, 164.

VII. The Idea of Public Reason¹²⁶

The idea of public reason, as a major component idea of political liberalism as expressed by justice as fairness as a political conception of justice, is an ideal of democratic citizenship, that is, people as free and equal, reasonable and rational, are to express and manifest publicly their reasons as members of a well-ordered society; hence, taken as citizens' reasoning about constitutional essentials and matters of basic justice in a liberal constitutional democratic society (i.e. the crucial positionality and active responsibility of every citizen's involvement and participation in the democratic public life). By this we mean that the idea of public reason fundamentally refers to the basic characteristic of a democratic people; **public reason is the reason of its free and equal citizens.**¹²⁷ Such reason is always conceived as the good of the public.¹²⁸ 'Public reason, then, is public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public, being given by the ideals and principles expressed by society's conception of political justice, and conducted open to view on that basis.'¹²⁹ As the reason of collective equal citizens, public reason is their exercise of 'final political and coercive power over one another in enacting laws and in amending their constitution. The first point is that the limits imposed by public reason do not apply to all political questions but only to those involving what we may call "constitutional essentials" and questions of basic justice.'¹³⁰ This is known as the limits of public reason. It has to consider first the strongest cases, that is, the so-called essentials and public political forum,¹³¹ where the political questions that matter to the most fundamental issues and topics in a liberal constitutional democratic framework are taken and deliberated upon.¹³² **Public reason aims for public justification.**¹³³ It does not involve or apply to the private reflections and personal deliberations and reasoning of those that constitute the background culture relative to those political questions.¹³⁴

With the idea of public reason, political relationship among democratic citizens is highlighted because it is found within the basic structure of their society (and therefore the need to articulate substantive principles of justice for the basic structure; the political values of justice) and at the same time the political power in liberal democracy solely lies on the power of the collective body of free and equal, reasonable and rational citizens (the political values of public reason). As such, the political power must be legitimate (through the liberal principle of legitimacy¹³⁵), which is primarily constituted by everyone's duty of civility (as a moral duty) as

¹²⁶ Generally, public reason refers to reasons responsive to the interests of the democratic citizens as free and equal. They are considerations citizens (and officials in the case of other stages) should rely upon to have a decision on laws, social development, and public policies. *Political Liberalism*, 212-254; *Law of Peoples*, 129-180; *Justice as Fairness*, 89-94; *Collected Papers*, 573-615.

¹²⁷ *Political Liberalism*, 213.

¹²⁸ *Ibid.*, liii.

¹²⁹ *Ibid.*, 213; *Justice as Fairness*, 133.

¹³⁰ *Political Liberalism*, 214; *Justice as Fairness*, 133; 'Public reason is "complete." Such reason is capable of providing reasonable answers to all questions concerning constitutional essentials and matters of basic justice.' *Collected Papers*, 585.

¹³¹ Such public political forum is divided into three parts: the discourse of judges in their decisions, the discourse of government officials, and the discourse of candidates for public office and their campaign managers. *Justice as Fairness*, 133; *Collected Papers*, 575.

¹³² *Political Liberalism*, 215.

¹³³ *Collected Papers*, 593.

¹³⁴ *Political Liberalism*, 215.

¹³⁵ Rawls' liberal principle of legitimacy states that 'our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all

posed by ideal citizenship. That is, every citizen is expected to be able to explain to one another how their fundamental political questions are explained in the light of principles and policies supported by the political values of public reason (i.e. liberty and equality of citizens, fair opportunities and other primary social goods, justice and the general welfare, the common defense, public health and other public goods, the security of persons and their property, fair distribution of income, wealth, and taxation, effectiveness and economic efficiency, respect for human life, the role of the family in achieving the reproduction of a just society over time, etc.) given the fact of reasonable pluralism. This calls for and demands the idea of the reasonable. Such moral duty must be guided by judgment and inference, reasons and evidence. This leads us to the idea that we must have a criterion of what principles and guidelines we think other citizens as free and equal, reasonable and rational, may reasonably be expected to endorse along with us. Public reason and public justification meet the criterion of reciprocity.¹³⁶ **Citizens affirm the ideal of public reason¹³⁷ when the political conception of justice is supported by an overlapping consensus of reasonable comprehensive doctrines given the great values of the political that each one thinks all others may reasonably be expected to accept such duty of civility.** The liberal principle of legitimacy is based upon reciprocity. The duty of civility is also shown ‘when government officials act from public reason’ and ‘in a constitutional democracy with judicial review, public reason is the reason of its supreme court; supreme court serves as the exemplar of public reason.’¹³⁸ Citizens, legislators, and other officials are expected to rely on reasons, values, and procedures, which for the most part are public reasons.

Conclusion

Justice as fairness (as basic, indispensable, and decisive to the idea of justice) synthesizing liberty and equality, is a political conception of justice. It is political in a sense that it aims at stability in the midst of various philosophical, religious, and moral comprehensive doctrines given the idea of the reasonable. Such political conception rests on practical reason that is objective by virtue of political constructivism. Justice as fairness as an expression of justice situates itself in the original position (with the veil of ignorance and wide reflective equilibrium) and characterizes itself with the difference principle (which concerns the rights and welfare of the worse-off members of a liberal democratic society). Justice as fairness, as a liberal political conception of justice, aims for political stability. The original position is based on the political conception of human person (as rational and at the same time reasonable with moral powers grounding justice as fairness) and society (as fair system of social cooperation). It stipulates the public principles of justice (i.e. fair equality of opportunities and justice relative to the worse-off citizens as the distinctive features of justice as fairness), which are bases for the distribution of social primary goods (as the metric of justice as fairness), which in turn compose a well-ordered society. Such well-ordered society is where political stability, through overlapping consensus and public reason in justice as fairness, is achieved.

citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.’ *Political Liberalism*, 137.

¹³⁶ Ibid., 136-137; *Collected Papers*, 578.

¹³⁷ This ideal is realized or satisfied whenever judges, legislators, chief executives, and other government officials, as well as candidates for public office, act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable. Refer to *Justice as Fairness*, 135.

¹³⁸ *Political Liberalism*, 231.

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