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Rawls' Political Liberalism

In the first part I will outline Rawls' argument and subject it to some criticism, and then in the second part, I will critically review each of the special concepts Rawls deploys in his system.

Introduction

Imagine that the U.S.A. has decided to re-found itself, and you have been elected by a large geographical constituency as one of the founding fathers who must negotiate the principles for a new Constitution; further imagine that you are similarly elected to the Constitutional Convention to draft the new constitution under these principles, the Legislature which translates this constitution into law, and the Supreme Court which interprets this law in the light of experience.

You must do your duty by the people who have elected you and the generations to follow, but your electorate has no specific social character and your only mandate is to found a just constitution which will provide stable conditions for social cooperation and a well-ordered society.

How will you conduct yourself in negotiations with your fellow nation-founders? What kind of reasoning can you rely upon? You have your beliefs, but the others hold to different beliefs. And you are going to have to justify your actions to your constituency which is made up of all kinds of people, with all kinds of beliefs and all kinds of interests. You are going to have to explain yourself in a way which will seem reasonable to people who may not share your beliefs and be acceptable to those who do share your beliefs.

This is the thought experiment which John Rawls invites his readers to conduct. Rawls argues that ever since Catholicism and Protestantism fought each other to a standstill in Renaissance Europe, and the separation of Church and State was accepted as unavoidable, "reasonable pluralism" has become a fact of life for modern societies, and a fact which should be welcomed. He argues that if you conduct such a thought experiment, then you would have to come up with a conception of political liberalism something like that which he develops in his own thought experiment written up as *Theory of Justice* (1971) and more recently, *Political Liberalism* (1995).

Whether to endorse slavery, free market capitalism, democratic socialism or recreate a landed aristocracy, it is up to the "parties" to decide in due course, on the basis of the founding principles they decide, but given that the constitution must be defensible in terms which will be counted reasonable by the populace at large, Rawls is confident that such a thought experiment would come up with some kind of political liberalism.

Rawls regards the relations of production as a secondary question which can be sorted out in due course, once the institutions of representative democracy and the judiciary have been settled and the citizens can legislate the social system.

In Rawls' books this thought experiment is called the "original position" though Rawls describes it in slightly different terms. Rather than supposing one is

elected from large geographical electorates, Rawls proposes a hypothetical “veil of ignorance” so that the delegates do not know the social status of those that they represent nor what social position they may occupy in the state to be founded. Otherwise, his thought experiment pretty much matches the current US Constitution, barring political lobbyists, big business control of election campaigns and the naked play of self-interest within the institutions of really existing democracy.

Thus Rawls does much the same as Kant when he re-invented the Revealed Religion of the 18th century Lutheran Church by means of Reason, and Hegel when he set out to discover what was rational in the reality of early 19th century Prussia, but, it has to be said, in a way which is commensurate with a democratic republic of the 20th century, as a “self-standing” conception, limited to that which aims to accommodate *any* comprehensive metaphysical, moral or religious doctrine.

Like Kant and Hegel, Rawls does not validate everything that exists in the present-day U.S.A. as rational; he holds that the high cost of US election campaigns which ensures the restriction of nomination of candidates to the very rich, and the lack of an adequate health service and social safety net which ensures that a substantial proportion of the population cannot pursue the good life, are contrary to the requirements of justice. Nevertheless, for Rawls it is the constitution which decides the distribution of wealth and power, not the other way around.

The “original position” which Rawls characterises as a “representation device,” is used to argue for “justice as fairness” as a candidate for an “overlapping consensus” “for the right reasons,” which can withstand the test of “public reason” by “rational” and “reasonable” citizens who count one another as “free and equal,” as a “self-standing” “political” conception, as opposed to a “comprehensive doctrine,” and thus create the basis for a society as a “well-ordered system of social cooperation.” Let us follow his argument.

Rawls' Argument

Rawls starts from the fact of modern constitutional democracies as societies *relatively* well-ordered despite the persistence of reasonable pluralism. That is, despite people adhering to a number of “comprehensive doctrines” which approach an understanding of the world and a conception of the good from quite incommensurable systems of thought and ways of life, there exists a “overlapping consensus” in respect to a limited range of principles of justice. And while for some this is a grudging acceptance, and the domain of consensus remains narrow, unclear and insecure, in respect of a range of social arrangements and segments of society, this consensus is stable and freely given.

One such point of consensus is religious tolerance. That is, even though some people believe that salvation is only possible by accepting the sacraments of the one true church, an idea which others do not accept as true, even while continuing to try to convert people to their religion, they nevertheless affirm the religious freedom of others, the use of a secular curriculum in schools, a secular system of justice and so on. Further, when arguing for changes to the law, people are “reasonable,” in that they treat others not sharing their view as nevertheless free and equal and do not seek to *impose* their view on non-

believers.

Rawls is at pains to emphasise that liberalism, as a self-standing political conception, neither asserts nor denies the truth of *any* comprehensive doctrine. He further asserts that every politically active person must embrace such a comprehensive doctrine or as a minimum some eclectic mixture of them. He further asserts that principles of justice which are to form the agreed basis of social cooperation must be capable of being affirmed from within *any* reasonable comprehensive doctrine and therefore cannot rely upon *any one* of them. This is the sense in which Rawls describes political liberalism as a “self-standing” doctrine and as a “political” and not comprehensive doctrine.

The aim is to work out more systematically a conception of political justice which could enjoy overlapping political consensus and thereby ensure adequate, though not perfect, justice and stability “for the right reasons,” *i.e.*, not by force or grudging acceptance. More exactly, his immediate project is to define the kind of critical reasoning which could be relied upon to advance such a project.

A well-ordered society, in which all reasonable citizens understood and supported the basic structure and principles of justice would allow the growth of a fair system of co-operation and a social safety-net capable of ensuring the minimal citizen participation essential to justice.

The purpose of political liberalism is to help bring about such a “well-ordered society.” A wealthy capitalist might be inclined towards agreeing to a measure of egalitarianism by imagining themselves as representing people who may be poor, and a poor person might be less inclined towards egalitarianism if they could imagine the viewpoint of a skilled professional, that they may be deemed to be representing. A representative of a dominant religion may be more inclined towards religious pluralism if they imagined the possibility of being in a religious minority.

“Public reason” is the kind of reasoning that one is led to by Rawls’ thought experiment. “Public reason” is the kind of reasoning which is exemplified by findings of a supreme court, which cannot rely on any comprehensive epistemological or moral doctrine, but must justify itself solely by reference to “common sense” and fact, to truths which are compatible with any “reasonable” view, the *taken for granted* background of political discourse. This is the kind of reasoning to which Rawls believes anyone subjecting themselves to the thought experiment must limit themselves in justifying the principles and constitution they argue for with their hypothetical protagonists.

What does Rawls’ political liberalism entail?

Firstly, it entails the acceptance of “reasonable pluralism.” Rawls knows that he has a problem explaining how slavery could have been abolished, that is, how the abolition of slavery could have been justified at the time in terms of political liberalism, rather than being accepted, as it was for a considerable period time, under the aegis of “pluralism.” Or how the civil rights movement could have happened if its participants had embraced political liberalism and kept within the bounds of “public reason,” or women’s liberation if women had accepted Rawls’ advice and recognised the lack of an overlapping consensus on the place of women. He can feel confident however, in giving his thought experimenters free rein to abolish capitalism, because there is no way that abolition of private

property in the means of production is going to win consensus beginning from the “original position.”

In response to criticism, Rawls endeavours to plug this hole by means of a distinction between an inclusive and an exclusive view on whether arguments on the basis of comprehensive doctrines can be introduced into public reason. In asking whether the Abolitionist and Civil Rights leaders legitimately went beyond the bounds of public reason by introducing arguments based on religious doctrines about the Rights of Man:

“The abolitionists and [Martin Luther] King would not have been unreasonable in these conjectured beliefs if the political forces they led were among the necessary historical conditions to establish political justice, as does indeed seem plausible in their situation.

“On this account [i.e., having amended the conception of public reason with the notion of inclusiveness] the abolitionists and the leaders of the civil rights movement did not go against the ideal of public reason; or rather, they did not provided they thought, or on reflection would have thought ... that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realised.” (*Political Liberalism*, p. 251)

But this is no mere amendment. Clearly the Abolitionists and Civil Rights activists resorted to illiberal means and Rawls cannot bend his conception of liberalism to include the use of illiberal means – civil war, non-violent resistance, boycotts, intolerance towards slavery and racism – to overthrow the dominant consensus and institutionalise a new conception of Right. Liberalism is simply a description of a mode of compromise *within an established way of life*. The fact is that a new consensus was not established through reasoned argument; reasoned argument came into play only once the goal posts had already been moved. In our times, *dynamic justice* is the *norm*. That is, it is generally recognised that the series of new claims to recognition and established social practices which will be called into question is indefinite. Rawls’ liberalism solves nothing in this respect.

Rawls regards the social life in which such new challenges originate as simply a “background culture.” But the crises arising in this culture are to be resolved, not within the community where the crises have originated, but in the domain of thought experiments. These thought experiments are a representation of the constitutional, legislative and judicial superstructure characteristic of modern bourgeois nations.

This superstructure is not and has never been the location of struggles to expand the domain of human rights and deepen the conception of good. This social and cultural advance has its origins in resistance and struggle, and its entry into the judicial and legislative domain is only a signal that the struggle has broken through to the extent of challenging for institutionalisation.

Even though I am a socialist and believe that there can be no justice in a world where the social means of production are the private property of a small class of

capitalists and labour is controlled by the laws of the market, I must recognise that in working out a conception of justice it would be “unreasonable” of me not to recognise the existence of a reasonable view for which private ownership of the means of production is a basic right. Given the impossibility of finding consensus on that question, Rawls holds that I must accept the current state of affairs ... unless I can demonstrate that “the political forces [supporting socialism] were among the necessary historical conditions to establish political justice.” Indeed, they are, and that is the whole point.

Hypothetically, if I were to engage in the same thought experiment at some possible future time, after the overthrow of capitalism, then the burden of accepting as given a world of freely associating producers, while postponing the question of whether or not to restore capitalism, would fall upon the shoulders of the hypothetical underprivileged Mr. Moneybags.

Rawls points to the origins of liberalism in the agreement to disagree between rival Christian churches in the 16th century. The “freedom of religion” which seemed so untenable to Renaissance people turned out to be feasible. Can’t capitalists and socialists be as reasonable as Christians about their doctrine and agree to co-exist if they can’t agree? Since I’m not going to get the capitalist to agree to disband, while I’m waiting for the revolution, shouldn’t I get consensus about equality before the law, non-discrimination in applying for jobs, union rights, a decent public health system and so on?

Well, of course, and “liberalism” is as much as result of the centuries-long struggle to exact concessions out of bourgeois governments as it is of Renaissance religious battles, perhaps more so.

For Rawls, capitalism is part of the “background culture.” What is up for discussion is forms of government which can manage a fair system of cooperation against that “background culture.” And as reasonable people, socialists recognise that others can make sense of this background culture and live a good life without sharing their socialist convictions. However, the consensus achieved is not “for the right reasons.” Socialists must view the domination of capital as imposed and grudgingly accepted even while they accept that opponents of socialism are also reasonable.

The wonderful thing is that Rawls has, through his thought experiment, expressed the rationality of liberal capitalism. The capitalist society he constructs in his head is what is rational in the reality of modern capitalism.

Rawls locates the real struggle between rival comprehensive moral and political doctrines in some other domain. There is no consensus on principles of justice, but the struggle continues within the bounds of liberal tolerance, actions being limited by law without anyone imposing their views on non-believers. If one were to accept that all such systems of values and thought are but the ideal aspects of different ways of living, then in the long run, the question is whether different ways of living in the modern world can freely co-exist in the same way as their purely ideal aspects can co-exist.

The slave who sees himself as a human being can co-exist with the slave-owner only by one or the other keeping their beliefs to themselves. The woman who sees herself as the equal of her male partner, colleague, etc., can co-exist with a sexist man and a patriarchal system only if either she is prepared to go

along with his sexist attitudes or he is prepared to grudgingly bow to her feminist views. But this is specifically contrary to political liberalism's requirements for an unforced consensus, for the right reasons.

It would appear that it is reasonable for you to ask me to accept private ownership but unreasonable for me to ask you to accept common ownership. The interests of rich and poor *can* be mediated in the liberal manner; the poor remain poor and the rich rich of course, but rich and poor can treat each other and free and equal persons and can reach a *modus vivendi*. Social safety nets, public health and education can all moderate the extremes of capitalism and so long as the liberals can hold sway in the capitalist camp all these things are possible to the extent that those who suffer are prepared to engage in the very *illiberal* struggle against the ills of capitalism.

But that is the point. Rawls' political liberalism does not answer any of the substantial questions of justice in bourgeois society; it simply advises that when someone comes forward with a legitimate claim and is capable of bringing its opponents to the negotiating table, then it should be dealt with reasonably. Once the claim has been institutionalised, then its recognition becomes part of reasonable common sense and public reason.

Insofar as Rawls' political liberalism lacks any substantive content, it is reasonable; in respect of any real problems of justice in the modern world, it has no substantive content.

Rawls' Concepts

The central concepts of his theory of political liberalism are: 1. the original position; 2. public reason; 3. self-standing conceptions vs. comprehensive doctrine; 4. overlapping consensus for the right reasons; 5. political conceptions; 6. rational and reasonable; 7. counting one another as free and equal; 8. justice as fairness.

1. Original Position

Rawls says the "original position" is a "representation device" or an "analytical device used to formulate a conjecture" (p. 381).

"The original position is analytical device used to formulate a conjecture. The conjecture is that when we ask – What are the most reasonable principles of political justice for a constitutional democracy whose citizens are seen as free and equal, reasonable and rational? – the answer is that these principles are given by a device of representation in which rational parties (as trustees of citizens, one for each) are situated in reasonable conditions that represent those citizens as both reasonable and rational. That the principles so agreed to are indeed the most reasonable ones is a conjecture, since it may of course be incorrect. We must check it against the fixed points of our considered judgments at different levels of generality. We must also examine how well these principles can be applied to democratic institutions and what their results would be, and hence ascertain how well they fit in practice with our considered judgments on due reflection." (*Political*

Liberalism, p. 381)

“The four-stage sequence [from founding through to judicial review] describes neither an actual political process, nor a purely theoretical one. Rather, it is part of justice as fairness and constitutes part of a framework of thought that citizens in civil society who accept justice as fairness are to use in applying its concepts and principles. It sketches what kinds of norms and information are to guide our political judgments of justice, depending on their subject and context.” (*Political Liberalism*, p. 397)

Rawls says that as a device it is commensurable with Habermas’s “ideal discourse situation”

“In a discourse ethics, a norm may only claim validity when all those potentially concerned with it, as participants in a practical discourse, achieve (or could achieve) a consensus that this norm is valid.”

and I would concur with Rawls that his conception is commensurate with Habermas’s. I call each a “thought experiment.” I have asserted that the thought experiment is similar to the way Hegel tests the rationality of social institutions (though in a far wider cultural and historical situatedness) and the way Kant does the same when he claims that “a person is properly subject to no other laws than those he lays down for himself” (Kant, 1785). Rousseau does something similar when he proposes the social contract as a *real* contract negotiated by all citizens, though it obviously isn’t.

“I ... regard the establishment of the political body as a real contract between the people and the chiefs chosen by them: a contract by which both parties bind themselves to observe the laws therein expressed, which form the ties of their union;” (Rousseau, 1754)

A lot of criticism of Rawls has concentrated on this “original position” being “unrealistic,” “unhistorical” or “hypothetical,” but I think it is fair image of what it represents – the ethical position of an impartial judge considering the arguments in complete isolation from what is going on outside the courthouse. Supreme Court judges ought to pay attention to Rawls’ argument. But is the position of a Supreme Court judge the proper stance for the rest of the citizenry? Is it appropriate for a person in another subject position to act *as if* they were a Supreme Court judge or a founding father of the nation in deciding upon the principles governing their own action? Does the judge constitute an ethical model for the citizens at large as they engage in social political life? If Rawls’ argument forward from the “original position” stands up, then an affirmative answer to the above questions leads to a strong argument for political liberalism.

Rawls argues how the original position could best institutionalise itself and how the good representative should conduct herself within the institutions, against certain features of representative democracy, especially as it operates in the US, mainly hinging around the capacity of big money to effectively control the legislative agenda. But this is itself a question “to be decided by the parties” in

the second or third stages of the process.

Political liberalism can only deliver justice in its own terms by excluding *interests* (by means of the “veil of ignorance”) from constitutional and legal decisions. So let us allow that Rawls provides an ethics appropriate to judges and members of Congress, but I argue that as an ethical doctrine for a “fair system of social cooperation” it fails because most decisions are not made in the way a High Court judge or member of Congress decides. Other people, who are not High Court judges or national legislators, are not in a position to pretend they decide from behind a veil of ignorance – they have obligations. They could imagine being a Supreme Court judge, but they could not at liberty to imagine the children they care for or the students they teach or the employees they hire are behind a veil of ignorance. A “fair system of social cooperation” actually demands that we are *partial* in fulfilling our obligations.

There is a second big problem with the so-called “original position,” namely that it is not original. Rawls takes it for granted that the great institutions of patriarchal secular capitalism are in place when the imaginary Founding Fathers sit down to do their work.

To illustrate the belatedness of Rawls’ “original position,” imagine a group of founding mothers and fathers gathering together, not isolated by a “veil of ignorance” but delegated by the working people of the world in the full light of experience of both “really existing socialism” and “really existing democracy,” charged with dreaming up the institutions of a New Atlantis. They would begin not with rights to be inscribed in a constitution and legislated by Congress, but rather with a system of public ownership and control of social production and the land (taking for granted the moral equality of all the participants). Such a thought experiment would qualify just as much as Rawls’ political liberalism, but would arrive at a very different outcome.

The question to be asked is this: what social position is appropriate for an ethics adequate to the crisis we face today? – a situation in which no problem can be resolved within the borders of a single country, when dynamic justice is the norm and absolute injustice is institutionalised in popularly elected governments.

2. Public reason

The concept of public reason is central to Rawls’ argument. It is the kind of reasoning which is legitimate in the thought experiments involved in establishing the correct principles and application of political liberalism. The most succinct of the various definitions that Rawls offers is as follows:

“... the relevant comparison for public reasoning is to those cases in which some political decision must be made, as with legislators enacting laws and judges deciding cases. Here some political rule of action must be laid down and all must be able to reasonably to endorse the process by which it is reached. Public reason sees the office of citizen with its duty of civility as analogous to that of judgeship with its duty of deciding cases. Just as judges are to decide them by legal grounds of precedent and recognised canons of statutory interpretation and other relevant grounds, so citizens are to

reason by public reason and to be guided by the criterion of reciprocity, whenever constitutional essentials and matters of basic justice are at stake.” (*Political Liberalism*, p. lv)

The “criterion of reciprocity” refers to the Golden Rule, essentially equivalent to the “veil of ignorance” here. In the event of a failure to agree, i.e., of failure to find a basis for consensus with which all people could reasonably agree, from their various comprehensive doctrines, then, while retaining, where relevant, freedom of individual determination, the matter should be decided by majority, with the citizens “voting” according to the dictates of public reason, having regard for the priority of values according to their own comprehensive view. I.e., if the judges fail to reach an agreed finding, we have a majority decision - an individual who recognises that they cannot convince the majority must submit to the majority view.

As Rawls points out, this is the normal type of reasoning used in political debate, insofar as it is rational and treats the listener as a free and equal citizen (rather than seeking to affect, manipulate or deceive the listener).

It is important for Rawls to distinguish between consensus achieved in this way by recourse solely to public reason, and consensus (or stability) achieved “for the wrong reasons,” grudgingly, as an adaptation to necessity, as opposed to freely given consent. But it is difficult to see how, when it comes issues for which there is not agreement, the consensus achieved by public reason differs essentially from “agreement” achieved at the point of a gun. Because of the belated character of Rawls’ “original position,” the paradox of the status quo leaves us with an economic system which continuously generates inequality.

Rawls point out that every institution (in the broad sense) has its own characteristic mode of reasoning. Science, for example, requires reference to certain bodies of agreed knowledge, standards of evidence and logic, authentication and so on; a family on the other hand, uses quite different forms of reason, diplomacy another, church another. However, public reason still bears the stamp of the ideology inherent in the form of society inherited by the belated “original position,” namely bourgeois ideology.

The owner of a steel mill which is not making as much profit as it could if it were moved to a country where labour is unregulated has every right to move the mill; there is no question of all those affected having a vote on the decision. Or if Rawls imagines that employees would have a vote, then he must explain just when political liberalism abolished the rights of private property, and how far this abolition of private property goes.

Public reason as described by Rawls is only one side of the reasoning used in public ethical and political debate, the side which emphasises *static* justice, which goes no further than clarifying and applying already agreed principles, values and institutions, or at least those principles, etc., insofar as and until they are changed.

The whole point however, is that the existing principles, values and institutions of modern society are *not* agreed, and are *dynamic* not static, being normally subject to challenge. *Ethical reason* is then the *direct opposite* of public reason.

3. Self-standing conception vs. Comprehensive doctrine

Rawls aims to develop a conception of political justice which qualifies as a “self-standing conception” which can be affirmed by all reasonable “comprehensive doctrines,” and can therefore be recognised by all reasonable citizens. A common word for a conception which can be affirmed from the standpoint of any ideology is *fact*, such as that a \$10 note is worth 10 \$1 coins, the name of the city occupying Manhattan Island is New York, or a policeman has right to demand your name and address. Only such a conception could provide a basis for “overlapping consensus”.

While this claim – that a theory of justice must base into upon facts – appears self-evident, it raises the serious question of what service the construction of such a theory could perform other than as an apology for the status quo. A theory which *confines* itself to the existing social facts can do more than *rationalise* them. As soon as it succeeds in either calling into question what was previously accepted as fact or adds something new which is not already accepted as fact, then it has crossed the boundaries of a “self-standing” conception. Alternatively, a new fact may disrupt a theory and cause it to modify itself to accommodate the new fact.

So for example, the intellectual and moral inferiority of the female gender was a fact which was challenged and eventually undermined and replaced with the fact of equality of genders; the liberal conception of justice was then accordingly adjusted to incorporate the new fact. Facts are constituted and overthrown by social practice which, on the whole, proceeds and changes independently of notions of justice, let alone moral philosophy, until such time as the factual anomaly finds an agency for its advocacy in some social strata.

Does this mean that the legislative and judicial institutions of a society should *not* base themselves in this way on *fact*? No, of course not. Rawls’ aim of a self-standing conception of justice is perfectly commensurate with his aim, of an appropriate legal framework to a liberal-capitalist democracy which maintains order in relation to the clash of social forces until such time as that struggle has established a new fact which has to be taken into account.

4. Overlapping consensus for the right reasons

The notion of “self-standing conception” is closely related to that of “overlapping consensus for the right reasons.” Rawls’ qualification “for the right reasons” aptly indicates the distinction between the *fact* which is imposed by force and that which is freely recognised and parallels the distinction between the “real” and the “existing” in Hegel and the notion of legitimacy of authority and social institutions in general.

Whilst the notion of “for the right reasons” is clear enough it should be recognised that the consensus which is freely accepted one day may fail on the next. Since political liberalism *aims* for consensus for the right reasons, liberalism is *non-emancipatory*. For example, some African women may freely accept “female circumcision” and it runs counter to the project of liberalism to agitate in order to upset a consensus for the purpose of creating consciousness of an injustice. Such a campaign could only base itself on a “comprehensive doctrine” which declared female circumcision to be inhumane irrespective of the consent of its victims, and would challenge the fact of this practice as a

legitimate traditional ritual integral to the way of life of a people.

By committing itself to the domain of *fact* and seeking overlapping consensus by excluding counter-factual appeal to comprehensive doctrines, political liberalism does not just tolerate such practices but must actively place itself in opposition to emancipatory projects of this kind. Contrariwise, all emancipatory struggles are *illiberal*. That is a fact.

5. Political conceptions

Rawls distinguishes between political conceptions and other kinds of reasoning which are the normal mode of intercourse within the framework of other social institutions, be it scientific discourse, friendship, advertising or religious dialogue. Central to this conception is that of the political domain which is *non-voluntary, life-long and open-ended*.

The use of different modes of reasoning and communication in different domains of human interaction is a fact of modern life, and the use of the wrong mode of reasoning or speech in some social setting is inevitably confusing and inappropriate. However, institutions are as much constituted by their corresponding mode of Reason as conversely; Universities are as much constituted by academic discourse as academic discourse is constituted by the awarding of degrees, etc., families by loving and unconditional support as care is constituted by kinship. Equally, the proposal that justice ought to be a political conception recognises this *fact* of modern life and in doing so helps to sustain the constitution of the political domain in its separation from other domains and further, confines the real business of questions of justice to the political arena.

The effect of this is two-fold: *firstly*, it facilitates other modes of discourse in distancing themselves from problems of justice (so that business can make decisions which aggravate problems of justice, but no matter, because business is not involved in the political domain, which is deemed to be the proper domain for problems of justice); *secondly*, it denies to the political domain resources which lie outside it in other domains, ensuring the kind of spiritual poverty which leads to political liberalism becoming the form of so much injustice.

6. Rational and reasonable

Rationality and reasonableness, according to Rawls, are two human virtues active in the public life of citizens, which are essential preconditions for a well-ordered society and a fair system of cooperation.

To be rational is to be able to effectively pursue whatever is taken to be good; to be reasonable is to seek to cooperate with others, respecting them as free and equal. To be reasonable therefore, means recognise the rational self-determination of others; in Kantian terms, to recognise other people as ends not just means, in Hegel's terms to be a person and treat others as persons. Thus, to be reasonable is by definition, to cooperate on the basis of reciprocal, rational pluralism.

“In everyday speech we are aware of a difference and common examples readily bring it out. We say: ‘Their proposal was perfectly rational given their strong bargaining

position, but it was nevertheless highly unreasonable' ...

“Reasonable persons, we say, are not moved by the general good as such [altruism] but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept. They insist that reciprocity should hold within that world so that each benefits along with others.

“By contrast, people are unreasonable in the same basic aspect when they plan to engage in cooperative schemes, but are unwilling to honour, or even propose, except as a necessary public pretence, any general principles or standards for specifying fair terms of cooperation.” (*Political Liberalism*, p. 48-50)

“Reasonable pluralism” therefore means that even among reasonable and rational people, there are divergent and mutually incompatible *legitimate* conceptions, values, goals and practices in relation to one and the same field of activity.

Rawls holds that the existence of “reasonable pluralism” is a fact of modern life. This pluralism is not only something to be welcomed, but its existence tells us something about the human condition, or more specifically about the plurality of practical life in modernity.

The point is that the differences in theory and morals are but the ideal and spiritual aspect of differences in practical life; mental and spiritual pluralism is the reflection of heterogeneity of practical life as much as it is a reflection of religious history and migration.

Further, pluralism can only manifest itself where social cooperation (division of labour) exists, otherwise we have “ships in different oceans,” ways of life between which there is no point of contact, and for which “difference” is meaningless.

The problem is that Rawls stops here and omits the *third* human social power, that of *creativity* which is manifested in social *collaboration*.

When people work together, there are three stages of development: (i) rationality which is manifested in one person *directing* the activity of the other, using them as a means, but not an end, (ii) reasonable cooperation, which is manifested in the separate self-determination of both parties each pursuing their own good, as in the exchange of commodities or in the relation of contract, and (iii) creative collaboration, in which people do together what neither could conceive of or do separately. Collaboration is manifested every time someone offers constructive criticism or *resistance* to someone else’s activity, even when a purchaser says to a seller: “But can’t you sell me a such-and-such instead?” To continue Rawls’ metaphor of bargaining with someone who may be rational but unreasonable, the power of creativity corresponds to the parties collaborating to find the famous “third point,” which neither party recognised before entering the relationship.

People coming together and working together with different even incommensurable world-views is not just a problem to be managed but a

creative force which *has* to be and *is* utilised; otherwise the “problem” becomes a disaster. Live-and-let-live will not do. But collaboration is a *sublation* of the rational and the reasonable, not just a third path, for collaboration *includes* the maintenance of reasonable difference not its elimination; collaboration is not just the identification of shared or compatible values and concepts, but the discovery of *new* values and concepts, new ways of living.

Rawls’ objective is of course just to find a minimal overlapping consensus on principles of justice, not the pursuit of a wider social good. Is it relevant then to criticise Rawls for stopping short of advocating collaboration? Isn’t reasonable pluralism sufficient to lay the basis for a stable and well-ordered system of social cooperation in which people could pursue their own idea of the good within their own associations and communities?

The answer lies in the existing state of bourgeois society. Broadly speaking, what Rawls describes in *Political Liberalism* is the existing system of social cooperation, idealised by trying to rule out the forms of domination which inevitably grow out of the social system in which exchange of labour is the form taken by the struggle of each to use the other as a means to their own ends. So long as social cooperation is limited to the bounds of political liberalism, then capital must be the form taken by social cooperation. The accumulation of capital inevitably transforms exchange of labour into exploitation of labour.

7. Counting one another as free and equal

Rawls rightly prefaces all his propositions with the proviso that political liberalism governs the relations between people on the basis that in the domain of political life, each treats the other as free and equal. This means of course that very many relations and forms of social cooperation are ruled out. In fact, people treat each other as equal only within the same stratum of a social cluster or what Rawls calls an “association” and when they relate to the other “externally”; that is, in *political* relations properly so called in Rawls’ terminology. The majority of social cooperation takes place though within definite systems of hierarchy and mutual obligation and expectation which are not at all free and equal.

People treat their workmates as free and equal, but here people *collaborate* rather than simply cooperating in the way of political liberalism. In relation to their bosses and their employees, people command and obey most illiberally. The same mixture of relations which lie above and below the liberal precepts of cooperation of free equals apply in all associations.

Rawls makes the fair point that political society is *not* an association, and that treating each other as free and equal is the characteristic feature of citizens, and that liberalism does not and should not try to transform political society into a form of association. Such an attempt means the imposing of a single idea of the good and one way or another, given the involuntary character of membership of society, failure to recognise each other as “free and equal” must necessarily lead to domination and conflict.

However, we are all in fact participating in one and the same division of labour. In so far as we face each other as foreigners, then there can be no question but that the liberal standpoint of free-and-equal citizens is the right relation. The question is however whether such a principle can lead to anywhere but the

domination of the rich and powerful over the majority, whether in fact the society of free and equal does not lead inevitably to unfreedom and inequality.

Is the ability of big business to buy presidents and laws and to enslave the majority of the world's citizens not the *outcome* of liberalism rather than its negation? Is not the level playing field the ideal arena for those with guns to terrorise those without?

Why should I treat Mr. Moneybags as a free and equal citizen?

8. Justice as fairness

Justice as fairness is the law of the market place. The great historical role of the market place in liberating the world from traditional and fundamentalist forms of domination is undeniable. Liberalism is its expression. But the market place originated in a world of unequals and the exchange of equivalents by free and equal economic agents ensures the continued exploitation of the many by the few, "the best democracy that money can buy," as the title of a recent book puts it.