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From Moral Philosophy to Reflective Judgment: Rawls as a Successor to Kant

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Abstract: This study discusses the connection between John Rawls's conception of justice and Immanuel Kant's philosophy. In Rawls's first work on justice, *A Theory of Justice*, he mentions the subject's ability to have a sense of justice to demonstrate the sustainability of a well-ordered society. Rawls's discussion of this ability exhibits an affinity between his theory and Kant's moral philosophy. However, as we observe this affinity, we also see that the sustainability of a well-ordered society depends on the reduction of all its citizens to a single-minded subject, oriented toward moral autonomy and final ends. Thus, a well-ordered society is itself a Kantian intellectual world that is unrealistic for those living in real society. Rawls, after recognizing the unacceptable consequences of his affinity to Kant, reconstructs his conception of justice in another major work, *Political Liberalism*. I argue that while Rawls himself does not state this explicitly, his reconstructed conception of justice can also be interpreted through the lens of a Kantian theory of reflective judgment. Judgment provides Rawls with a new source of validity and plays an integral role in the key ideas of his theory.

Introduction

A close affinity can be observed between John Rawls's political philosophy and Immanuel Kant's philosophy. For the former, the entire justice system is inspired by the latter's social contract theory. Rawls also places great importance on Hegel's criticism of Kant's philosophy and recognizes that the categorical imperative, which is purely formal, cannot directly guide real public life. We must give content to this imperative to apply it to society. In *A Theory of Justice* (*TJ*), published in 1971, Rawls attempts to find his own way of embodying the moral law with material contents. He is mainly interested in the following question: because we are all born in some community or another and could benefit from social cooperation, how should we establish society so that everyone can benefit fairly? Rawls starts with the basic construction of society and further delves into many aspects of real society to state his response. However, in his 1993 work *Political Liberalism* (*PL*), one of his central works in political philosophy, Rawls denies the third part of *TJ* precisely because it cannot surmount the transcendental background of Kant's moral philosophy. In the wake of this self-criticism, Rawls in *PL* transformed his theory from a Kantian moral philosophy to a political theory.

Despite this dramatic change, *PL* also shows that Rawls and Kant are connected. This study argues that, in place of Kant's moral philosophy, Rawls's revised conception of justice in *PL* can be read through the perspective of Kant's theory of reflective judgment, which allows Rawls to avoid the criticism of practical solipsism and ground his conception on the plurality of subjects. Section 1.1

examines *TJ* to reconstruct Rawls's demonstration of the sustainability of a well-ordered society. In section 1.2, I trace Rawls's self-criticism to clarify why Part III of *TJ* is considered to presuppose Kant's moral philosophy. Section 2 focuses on a change in Rawls's thought, which is indeed a transition from the solipsistic idea of the subject, adopted in Kant's moral philosophy, to the idea of the subject with plurality and diversity, which is a precondition of Kant's theory of reflective judgment (section 2.1). I illustrate three essential ideas to explain how reflective judgment provides a new source of validity for Rawls's conception of justice (section 2.2).

1. The Unrealistic Idea of a Well-Ordered Society

In the introduction to *PL*, Rawls acknowledges where *TJ* was deficient: “To explain: the serious problem I have in mind concerns the unrealistic idea of a well-ordered society as it appears in *Theory*. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive philosophical doctrine” (Rawls, 2005, p. XVI). In sum, because Part III of *TJ* is based on Kant's moral philosophy, its idea of a well-ordered society is unrealistic. Basing on Kant's moral philosophy also identifies a contradiction between the third and the first two parts of *TJ*. Let us examine Rawls's argument more closely..

1.1 The Sustainability of a Well-Ordered Society

Broadly, Part I of *TJ* constructs the principles of justice and Part II aims to apply such principles to the real society in a way that establishes a constitution and ordinary laws. Here, a society ruled by the principles of justice is called “a well-ordered society.” Meanwhile, Part III demonstrates the stability of these principles of justice by showing that a well-ordered society is sustainable, the former being a *condition sine qua non* for the latter. Rawls believes that the stability of the principles of justice depends on “a balance of motives” of the members of a society (Rawls, 1999, p. 398). That is, although motives based on unjust principles would sometimes overwhelm those arising from the principles of justice, a well-ordered society is nevertheless sustainable as long as just motives are allowed to become dominant over the long term. Therefore, the key point is to reflect on whether and how principles of justice can effectively motivate the citizens of a well-ordered society.

Rawls's demonstration follows two steps. The first shows that the citizens of a well-ordered society possess a sense of justice and consider it to be goodness. Consistent with Rawls's conceptions, citizens are initially willing to participate in social cooperation because it will promote their own happiness. If their conduct in accordance with the principles of justice constitutes happiness or goodness for citizens, such principles can effectively motivate them. One's desire to act according to the principles of justice is referred to as their sense of justice. As to how citizens acquire this sense, Rawls examines two kinds of moral learning theory, which are derived from empiricism and rationalism. Here, I focus on the rationalist perspective, an exponent of which is Kant. This viewpoint maintains that moral

education in society can lead citizens' rational abilities toward maturity and develop the moral qualities implied in that nature, eventually becoming the source of the sense of justice.

Rawls introduces two premises that connect the rationalist moral learning theory with his conception of justice. The first is that the ability to obtain a sense of justice and the ability to have a conception of the good are natural attributes shared by members of a well-ordered society and entitle them to equal justice (Cf. Rawls, 1999, p. 442). Simply put, the presocial ability to have a sense of justice is a condition that allows citizens to benefit from the equal treatment of a just society. Citizens are considered equal through their natural characteristics even before any social contract is concluded. As a result, the parties, as representatives of citizens in real life in the original position, which is a hypothetical stage before the construction of a well-ordered society, must choose the principles that would treat citizens as equal. Since such a well-ordered society is ruled by principles, citizens must be treated equally with reference to their natural attributes.

Second, the members of a well-ordered society are assumed to comply with the Aristotelian principle, which posits that "other things being equal, human beings enjoy the exercise of the capacity they realized (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity" (Rawls, 1999, p. 374). According to this principle, citizens experience greater enjoyment when they exercise their innate abilities more. As discussed, one's sense of justice is identical to one's desire to act according to the principles of justice. Put another way, the stronger one's desire to act justly, the greater their enjoyment. These two principles allow Rawls to explain why the sense of justice can be considered goodness by the citizens of a well-ordered society.

However, goodness is prior to rightness because the principles of justice function based on citizens' specific conception of goodness and subjective sensation. As a proponent of Kantianism, Rawls cannot tolerate this. The second step of his demonstration is observed here. He argues that parties who are in the original position and select the criterion of rightness also regard the sense of justice as goodness. If the parties consider the sense of justice to be good, they must choose principles that promote or realize such goodness—that is, goodness must be recognized and reflected in the criterion of rightness. Consequently, goodness is necessarily in harmony with rightness, solving the problem of priority.

To clarify why a sense of justice is good for the parties in the original position, we must recall the first premise in the previous step. The parties are adequately well informed that citizens have a natural attribute of the ability to possess a sense of justice. Citizens enter the original position and entrust to the parties, who are hypothetical personalities, the duty to choose the proper principles of justice because they all want to participate in the selection of principles as equal and free beings. A sufficient condition for citizens' equality is the natural attribute of the ability to have a sense of justice. Thus, the parties themselves also consider the sense of justice as goodness and must identify the principles that can facilitate it. This second step marks the end of Rawls's demonstration, in which goodness is created in accordance with rightness.

1.2 Practical Solipsism

The reconstruction of Rawls's demonstration exposes the affinity between the idea of the subject in *TJ* Part III and the subject in Kant's moral philosophy. The emerging sense of justice is considered goodness both in the original position and in real social life. As a consequence of their natural attributes, citizens in a well-ordered society tend to value the desire to conduct themselves justly and view the institutions that support and promote such desire as worth pursuing. "Thus human beings have in fact shared final ends and they value their common institutions and activities as good in themselves" (Rawls, 1999, p. 458). However, when final ends are settled, other ends that citizens have initially held lose their importance. Acting from principles of justice and constructing a constitution based on these principles show an absolute primacy over individuals' private ends. In this sense, morally autonomous citizens in a well-ordered society are reduced to one single-minded subject that acts only in relation to final ends. Simply put, citizens' plurality is canceled by the domination of such ends. In Rawls's theory of justice, the idea of the subject ultimately falls into the practically solipsistic subject emerging from Kant's moral philosophy.

Along with the idea of the subject as something that collapses into the only kind aiming at final ends, the agreement between goodness and rightness is identified with the highest good that Kant elaborated in *Critique of Practical Reason* (1788).

The concept of "highest" contains an ambiguity that, if not attended to, can occasion unnecessary disputes. The "highest" can mean the "supreme (*supremum*)" or the "perfect (*consummatum*). . . . Inasmuch as virtue and happiness together constitute the possession of the highest good for one person, and happiness in exact proportion to morality (as the worth of a person and his worthiness to be happy) constitutes that of a possible world, the perfect good. (V 110)¹

As a perfect whole, the highest good demands that happiness be distributed in proportion to the subject's morality. This way, the single-minded subject is entitled to enjoy a realization of justice and morality through the development of their capacity for moral personality and morally autonomous conduct. In any possible world, the harmony that arises between goodness and rightness itself is the highest good. In a 1981 lecture, Rawls expresses his satisfaction with the affinity between his conception and Kant's moral philosophy. "Rather, the role and exercise of these powers (in the appropriate instances) is a condition of good. . . . In particular, their just and honorable (and fully autonomous) conduct renders them, as Kant would say,

¹ This study's citations of Kant's works are located by volume and page number of the Akademie edition: *Kants gesammelte Schriften*, herausgegeben von der Preussischen Akademie der Wissenschaften (Walter de Gruyter, 1900). For translation of *Kritik der praktischen Vernunft*: Kant, I. (1993). *Critique of Practical Reason*. Beck, L.W. (trans.). Macmillan Inc.

worthy of happiness; it makes their accomplishments wholly admirable and their pleasures completely good" (Rawls, 1982, p. 49).

As expounded in the previous two parts of *TJ*, this solipsistic idea of the subject is in conflict with Rawls's thought. In the sixth section of Part I, Rawls compares his conception of justice to classical utilitarianism, one of the main positions that he objects to: "A second contrast is that whereas the utilitarian extends to society the principle of choice for one man, justice as fairness, being a contract view, assumes that the principles of social choice, and so the principles of justice, are themselves the object of an original agreement" (Rawls, 1999, p. 25). Classical utilitarianism posits that individuals would choose the principle that maximizes the number of values to give order to all such values. When this individual way of thinking is broadly applied to society as a whole, the appropriate principle for regulating society is the one that maximizes the total amount of value in it. However, "to do this is not to take seriously the plurality and distinctness of individuals" (Rawls, 1999, p. 26). Classic utilitarianism introduces a nonpersonal perspective that views individuals less favorably. Based on this viewpoint, individuals are no more than vessels of values that can be calculated collectively, and their diversity is therefore ignored.

In contrast, the conception of justice assumes that "the plurality of distinct persons with separate systems of ends is an essential feature of human societies" (Rawls, 1999, p. 25). While classic utilitarianism posits that inefficient values can be sacrificed to maximize the entire value set, a conception of justice necessarily grants equal status to the value of all ends and acknowledges the plural nature of individuals and their differences. When we understand how Rawls opposes classic utilitarianism here, we should also be aware of why Part III of *TJ* is incompatible with the previous parts. In a real lifeworld, we certainly cannot expect all citizens to voluntarily reduce themselves to being no more than the solipsistic subject of Kant's moral philosophy on practical issues. Instead, their plural and diverse existence is a plain fact and a starting point for *TJ*. Because Part III of *TJ* relies on an idea of the subject derived from Kant's moral philosophy, the idea of a well-ordered society is unrealistic and puts Rawls in conflict with himself.

2. Justice Grounded in Reflective Judgment

After Rawls realized in the 1980s that incorporating the idea of the subject in Kant's moral philosophy would lead to inconsistency within his theory of justice, he abandoned Kant's comprehensive doctrine and sought new sources for validity in justice. This section argues that, although Rawls himself does not directly resort to the Kantian paradigm of reflective judgment, it could offer validity for the theory of justice that he reconstructs in *PL*.

2.1 Intersubjectivity of Reflective Judgment

First, I highlight certain reflective judgment characteristics as understood in Kant's works and in Hannah Arendt's (1982) interpretation of them in political philosophy.² In *Critique of the Power of Judgment* (1790), Kant argues that reflective judgment is to be distinguished from determining judgment in that in the latter, the universal is given, and the task of the power of judgment is to subsume the particulars under the universal, while in the former, universal laws or categories are not given in advance. Hence, the power of judgment takes on the task of finding possible universal laws through a reflection on the particular. Kant believes that, whereas individual subjects' judgments are definitely subjective, they may also include some universal elements. The key point here is to reveal the mechanism underlying these nonsubjective elements.

In section 40 of *Critique of the Power of Judgment*, Kant derives three ways of thinking through the idea of the *sensus communis* as follows:

The following maxims of the common human understanding do not belong here, to be sure, as parts of the critique of taste, but can nevertheless serve to elucidate its fundamental principles. They are the following: 1. To think for oneself; 2. To think in the position of everyone else; 3. Always to think in accord with oneself. The first is the maxim of the **unprejudiced** way of thinking, the second of the **broad-minded** way, the third that of the **consistent** way. (V 294, emphasis in the original)³

The approach prompts the subject to withdraw from every prejudice or authority and think using only their own reason. When we are overwhelmed by prejudices, we would have no space for reflection. Hence, the second way of thinking, the most important one for reflective judgment, is not introduced until the first has been acquired. The approach to thinking encourages subjects to broaden their minds so that they can think from everyone else's position. However, as long as others' judgments have yet to be reflected on, accepting them as they are merely means "to exchange their prejudices for the prejudices proper to my own station" (Arendt,

² The first part of *Critique of the Power of Judgment* addresses reflective judgment in the aesthetics context. Kant explains the kind of objects that can be called beautiful or sublime using the function of reflective judgment. Subjects who form reflective judgments are unaffected by the concept of the object and therefore do not desire its existence or realization. Thus, Kant believes that reflective judgment as elaborated in the context of aesthetics is irrelevant to practice insofar as it does not motivate our actions. Hannah Arendt (1982) offers a bold and innovative interpretation of Kant's theory of reflective judgment, applying reflective judgment to the political and practical fields and guiding actions using regulative ideas implicit in reflective judgment. Drawing on her interpretation, this study explores the possibility of applying reflective judgment to political philosophy. In this sense, I resort not to Kant but rather to a Kantian theory of reflective judgment.

³ For translation, I use Kant I. (2000). *Critique of the Power of Judgment*. Guyer, P. & Matthews, E. (trans.). Cambridge University Press.

1982, p. 43). Instead, subjects must reflect on others' actual judgments and remove the contingent elements attached to those judgments. This purification process allows possible positions from others to be represented. Subjects can then reflect on their initial thoughts to convince others in different positions of their new judgment. Third, thinking must take a consistent approach to lead to a final thought that ensures no contradiction within the self. This outcome of reflective judgment is called common sense, which is assumed to be generally communicable to others.

After going through all three ways of thinking—especially the second—the result of reflective judgment acquires a special universality between pure subjectivity and an objective universality of supersensible laws. While this indeed begins from purely subjective judgment, the subjectivity is stripped away during reflection; it does not rely on the objective universality provided by supersensible sources such as moral law and final ends. “The nonsubjective element in the nonobjective senses is intersubjectivity” (Arendt, 1982, p. 67). The scope of the intersubjectivity of reflective judgment is limited to the scale of others who are expected to agree with the judgment’s result. The subject must seek the possible consent of others with whom they share a reality. The greater the number of those who agree, the wider the scope of intersubjectivity. The validity of reflective judgment presupposes the existence of others who embody plurality and diversity. By its nature, the Kantian theory of reflective judgment can overcome practical solipsism and become a new source of validity.

2.2 Reflective Judgment in *PL*

I turn to *PL* to illustrate how reflective judgment facilitates Rawls’s reconstruction of his theory of justice. Many scholars have observed the role played by (wide) reflective judgment in *PL*, and most of their arguments concentrate on Rawls’s methodology of (wide) reflective equilibrium (Cf. Thiebaut, 2008; Okochi, 2019). This method demands us to move back and forth between particular judgments and general principles to revise each in light of the other. It considers both particular judgments and general principles to be fallible; that is, the principles applied in Rawls’s conception of justice hold no objective universality. Instead, the power of reflective judgment must be used to develop the principles so that they can get closer to the universal. I fully approve of the relation between reflective equilibrium and Kantian reflective judgment, and this study may be viewed as a supplement to such a relation. I will illustrate this link by examining three ideas essential to *PL*: the idea of the reasonable, the idea of public reason, and the idea of overlapping consensus.

In *PL*, Rawls’s starting point is the modern democratic society. He believes that the basic ideas of individuals and of society are implicit in the political culture of such a society and constitute the cornerstone of the theory of justice (Cf. Rawls, 2005, pp. 13–14). We first encounter the application of reflective judgment although this does not appear within the theory. That is, the application takes place not on the level of the parties and the original position or that of citizens and the living world but on the level of Rawls and the reader. Rawls does not justify his introduction of these ideas; instead, they are in fact the result of his own reflection

on political culture assuming that they can successfully convey his argument to his readers. Rawls believes that these ideas are sufficiently intersubjective to be publicly shared by the members of a modern democratic society (including Rawls and us readers).

Regarding the content of these ideas, as described in section 1, it is the practically solipsistic idea of the subject that causes *TJ* to contradict itself. Therefore, I will focus on the idea of the subject here. Rawls argues that subjects in a modern democratic society must be equal and free individuals because only such individuals have the need and capacity for social cooperation. Again, for individuals to be as such, they must acquire the ability to have a sense of justice and the ability to have a conception of the good. However, unlike the case of *TJ*, these two abilities are now combined with the idea of the reasonable and the idea of the rational.

The ability to possess a conception of the good refers to rationality and exhibiting the subject's isolated aspect. Put another way, through rational consideration, subjects themselves can determine what ends to pursue through rational consideration, ignoring what others might think. Conversely, the ability to possess a sense of justice is a reasonable one that exhibits the social aspect of the subject's interconnection with others. This reasonable aspect involves two elements, one of which is related to the concept of the burden of judgment, which posits that even if everyone makes a determination on certain public issues using all available wisdom and honesty, not everyone will arrive at the same conclusion as the grounds of judgments are so different across persons. However, this does not necessarily mean that some grounds are unreasonable; on the contrary, the burden of judgment leads subjects to realize that there are many others who are of a different mind but are as reasonable. The concept reveals to the subject reasonable pluralism, which is a fundamental aspect of modern democratic society. Subjects are reasonable to the extent they are aware of and bear the burden of judgment.

Rawls explains the other element as follows:

Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose. (Rawls, 2005, p. 49)

When subjects propose any principle they consider applicable to social life, they must assume that it could be justified to others and everyone could have the will to act according to it. "It is by the reasonable that we enter the public world of others and stand ready to propose, or accept, as the case may be, reasonable principles to specify fair terms of cooperation" (Rawls, 2005, p. 53). In such a public world, the motivating function of the principles of justice depends on whether these principles can be assumed valid on an intersubjective basis. Consequently, the reasonable ability to possess a sense of justice concerns not only the subject's natural attribute but also displaying a reasonable attitude in relation to others. Such an ability is actually one that adopts broad-minded thinking and examines whether the universality (which is the principles of justice in Rawls's case) would be acceptable

to others. Therefore, in *PL*, the power of reflective judgment plays an essential role again.

This ability to construct reflective judgments is closely linked to two other important features of *PL*: the idea of public reason and the idea of an overlapping consensus. As previously discussed, in *PL*, the subjects are citizens of a modern democratic society that features plurality and diversity. When citizens with such different minds discourse on fundamental public issues, any agreement is impossible to reach if each individual adheres to grounds that are valid only for themselves. To guide society in a way that is fair and acceptable to all free and equal citizens, each must comply with the constraints of the regulative idea of public reason in the political field. “The point of the ideal of public reason is that citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that the other can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood” (Rawls, 2005, p. 226). Simply put, citizens should debate on grounds that make sense for others.⁴ Consequently, private beliefs that are only valid for an individual must be precluded from all public discussions and decisions about political affairs. Again, we must withdraw from practical solipsism and use the power of reflective judgment to think from others’ positions. “The chapter on public reason is one of the sections of *Political Liberalism* in which the presence of a newly developing judgment-oriented understanding of the operation of reason . . . is most visible” (Ferrara, 1999, p. 25).

Restricted by public reason, intersubjective principles, constitutions, and ordinary laws as the result of citizens’ public debate can constitute the core of an overlapping consensus of many doctrines and beliefs. On the one hand, the subjects’ plurality and diversity are preserved in this case, and they can continue to believe in their own doctrines or religions. On the other hand, the political sphere is independent of private doctrines and beliefs. Principles, laws, and institutional arrangements that have passed the reflective judgment test are considered acceptable to everyone in this sphere. Regardless of their private beliefs, people are assumed to endorse one set of principles, constitutions, and institutional arrangements in the political field as long as they are reasonable beings. Thus, doctrines and beliefs that are disparate or even hostile to each other could reach consensus to the degree they are restrained in the political sphere. The idea of an overlapping consensus presents the possibility that various doctrines and beliefs and the citizens who believe in them can coexist in one society. To reach a consensus, citizens must use the power of reflective judgment to think from the positions of others.

⁴ Because of the burden of judgment, citizens still find it difficult to reach the same judgment even with the idea of public reason, which only relieves such a challenge and does not eliminate it. Nevertheless, we must respect the idea as regulative and work toward realizing it in society.

Conclusion

To prevent the potential self-contradiction arising from the solipsistic subject, Rawls reconstructs the idea of the subject in *PL*. Subjects' reasonable aspect allows them to both realize the existence of others who have different minds and use their reflective judgment power to propose intersubjective principles of justice through thinking in others' positions. The intersubjectivity of the principles of justice is itself the source of its motivating function, constituting the first reason why a society consisting of citizens capable of reflective judgment is sustainable.

Furthermore, once intersubjectivity derived from reflective judgment becomes a new validity criterion, all purely subjective ways of thinking and the grounds resulting from them must be excluded from the political field. Political arrangements can be fair to all free and equal citizens only when the public use of reason is regulated by the idea of public reason. Within such a constraint, various beliefs and doctrines may reach an overlapping consensus in the public sphere. This overlapping consensus is the second reason why a society composed of citizens with such different minds can endure over the long term.

In the three basic elements—the subject, the validity of the principles of justice, and the sustainability of society—Kantian reflective judgment plays an indispensable role. In this sense, Rawls's work continues to be a successor to Kantian theory.

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