

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
DEPARTMENT OF PHILOSOPHY

**A Critical Examination on Some Selected Topics of John Rawls' Theory
of Justice**

BY

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Advisor

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May, 2016

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**A THESIS SUBMITTED TO THE SCHOOL OF GRADUATE STUDIES OF ADDIS
ABABA UNIVERSITY IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR
THE DEGREE OF MASTERS OF ARTS IN PHILOSOPHY**

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Acknowledgement

First and foremost I would like to thank and give glory to my God who created me, and who is cherishing and shepherding me every moment. I am nothing without God, He is everything for me.

I am very thankful with great appreciation to my advisor Dr. Bekele Gutema for his important corrections which were crucial and inspirational.

I also respect and thank my beloved family and relatives for their valuable moral support in my study. Likewise, I would like to express my deepest gratitude for all my instructors for sharing their knowledge for me in my study.

My exceptional thank goes to Mr. Getahun Dana for his sharing and lending me very important books. Likewise, I thank for my good friends Amanuel Weldu, Hadgu Atakliti and Girmay Gebrehiwot who gave me interesting books.

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Abstract

In this thesis, I have explored some selected topics of Rawls' A Theory of Justice. Rawls' A Theory of Justice has three parts, theory, institutions and ends part. But, my work is limited to some selected topics of Rawls' first part or theory part of his book, entitled as 'A Theory of Justice'. The purpose of Rawls' book is to give an alternative for utilitarianism. His reason for this is due to the weakness of utilitarian doctrine as far as it can't satisfy for constitutional democracy. That is why he wants to bring a paradigm shift from utilitarianism conception of justice into justice as fairness. Unlike utilitarianism, he follows deontological principle. Rawls' conception of justice as fairness has universal perspective and at first it is established on the consent of its entire member, freely and equally. What is new in this social contract theory is the way how the principles of justice are formulated. But, I aimed at examining critically and to expose the gaps and flaws in the ideas of Rawls' conception of justice. Then, it suffices to say that Rawls' social contract theory which is non-historical, hypothetical and merely ideal is not genuine or not workable.

General introduction

Humans judge many issues by saying that this is just or unjust, right or wrong, fair or unfair in different realms of human beings of day to day activities. It may be ours or others, decision, desires, ideologies or policies, and human actions that we mark judgment. Thus, the idea of justice may vary from time to time as well as from person to person and there are different theories and views of justice. But my concern is not to explore and examine the different conceptions of justice of different time by different peoples rather I am concerned with the conception of justice of John Rawls who comes with the idea of ‘justice as fairness’.

John Rawls’ (1971) *A Theory of Justice* has nine chapters with three categories (the theory part, the institutions and ends). Each category consists of three chapters. But, here, the discussion is limited to the theory part only. Rawls’ theory part includes three chapters: justice as fairness, the principles of justice and the original position. I am going to deal only with few selected topics of his theory part. Because, these three chapters contain many topics and vast issues, then I selected few topics which I assume as more fundamental topics and theories for Rawls’ book of *A Theory of Justice*.

My concern is not only to analyze and examine critically Rawls’ theory of justice but also to show the gaps of his theory and its practices. The core question is, how much is Rawls’ idea certain in its practical ground, or can we realize his theory into practice? And, what is the foundation of Rawls’ idea of justice? Does Rawls’ two principles and the veil of ignorance logically sound and really applicable? To respond to these and other related questions I appeal to secondary resources as far as my methodology of research is a qualitative one. This qualitative research of my thesis includes original books, book chapters, journal articles, papers, and some

websites. As I have extracted Rawls' ideas of his theory part, there are lots of contradictions, inconsistent thoughts and principles, defects, and merely abstract formulations; for this and other reasons, I can say that Rawls' theory is not applicable. Then, we will see the incompatibility of theory and reality of Rawls' social contract theory within the subsequent sub-topics and finally, in brief, on the sub-topic of my reflection and criticism part.

Generally speaking, the first chapter (justice as fairness) of Rawls' *A Theory of Justice* is taken as an introductory part for his huge and vast book. As the topic of the first chapter indicates we will try to deal with the idea of 'justice as fairness'. In this chapter we will discuss the fundamental views and theories of Rawls' conception of 'justice as fairness' typically, and his other related theories. The first part of this chapter attempts to answer the following three questions; what is the role of the principles of justice? They determine people how to act and deliberate without violating the basic rights of individuals. They are frameworks which guide human beings to live cooperatively for their mutual advantage (Rawls, 1971: 4). What is the subject of justice? It is the basic structure of the society. The basic structure of the society determines the lives of its members, so the subject of justice is a big deal so as to attain the good life of human beings (ibid: 6). What is the main idea of justice? The fundamental idea of justice is to create well-ordered society by limiting and narrowing the gaps among individuals. This idea of justice may create a better conducive environment for the society and institutions. (ibid: 4-5)

The second part is about the original positions of Rawls' as the basis of his social contract theory and we will discuss again in chapter three in detail. The third part announces the utilitarian views as contrasted with Rawls' idea of justice as fairness. Rawls undertakes his social contract theory as the best alternative to utilitarianism. Like Kant, he follows deontological universal principle

while utilitarian follow teleological principles. Finally, we will discuss the final remarks of moral theory.

In chapter two, chiefly we will discuss the two principles of Rawls' in detail. First, we will assess the rights and duties of the institutions and about formal justice. And, what is institution? As Rawls:

Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur (Rawls, 1971: 47-48).

Then, we will see the two principles: 1) equal liberty and 2) social and economic inequalities. The first principle of the basic equal liberty is neither compromised nor smashed. While, the second principle, what Rawls says, the social and economic inequalities are compromised for a greater advantages of large part of the society. Rawls argues:

First: 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. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all (Rawls, 1971: 52)

Moreover, we will discuss Rawls' idea of democratic equality and the difference principle. The democratic equality assures the basic structure of the society. And, it includes the three principles of, equal basic liberties, inequalities of social and economic and the difference principle. As Daniels says:

Democratic equality guarantees citizens equal basic liberties, ... Its guarantee of fair equality of opportunity requires that we not only judge people for jobs and offices by reference to their relevant

talents and skills, but that we also establish institutional measures to correct for the ways in which class, race, and gender might interfere with the normal development of marketable talents and skill (Daniels, 2003: 254)

Finally, we will see the two principles of individuals and theory and reality. The previous principles focus on institutions than individuals. But, here, Rawls argues two individual principles; they are the principles of fairness and the principles of natural duties. Theory and reality is my sub-topic intended to show the failure of Rawls' theory of justice into practice. Due to many defects, inconsistency, contradictions, and being merely abstract of Rawls' theory become to be groundless or unworkable practically. Therefore, his exhaustive work is verbal but almost fruitless.

Chapter three deals with the original position in detail, it consists of the circumstance of justice, the veil of ignorance and the rationality of the parties. These sub-topics are subject to the analysis of the fundamental theories of Rawls' with regard to his theory of the original position. The original position or Rawls' social contract theory is characterized as non-historical and hypothetical. However, Dworkin argues that "it is not a contract at all" (Dworkin, 1975: 18). Finally, my own reflection is presented on the sub-topic of 'theory and reality on Rawls' social contract theory'. This includes the defects and gaps of Rawls' original position. I strongly disagree with his idea of the veil of ignorance which intended to make fair and equal of the original position by depriving knowledge of the particulars from the parties in the original position. Schaefer describes the parties as "not human beings at all... they are unreal, purposeless, lifeless ciphers, unanimous in their anonymity" (Schaefer, 1974: 103).

Finally, chapter four includes the critique part and conclusions. The critique part includes communitarian (M. Sandel and M. Walzer) and libertarian (R. Nozick) criticism of Rawls' *A Theory of Justice*. Then, I include my own final reflection and criticism on Rawls' *A Theory of Justice*, briefly. At last, we will see the conclusions and final remarks, respectively.

CHAPTER ONE: JUSTICE AS FAIRNESS

1.1 Introduction

This first chapter which is titled ‘justice as fairness’: consists of the basic theories and notions of Rawls book, *A Theory of Justice*. Then it is all about the introductory part of his most massive and huge book. Since, this first chapter as ‘justice as fairness’ is too vast, then, I will explore some selected topics of it systematically, I assume these issues are more basic for Rawls’ *A Theory of Justice*. This includes the critical analysis of the basic notions and theories of ‘justice as fairness’, some more connected moral theories and also my reflections on the problems of Rawls’ notion of justice as fairness.

Generally speaking, in this chapter, I will assess the fundamental views and theories of Rawls’ conception of ‘justice as fairness’. This chapter includes four parts, in first part, I will discuss the theory of justice which typically focuses on the role of justice, subject of justice, and consists of its main idea of justice.

In the second portion, I have to present the notions and views of ‘the original position’ of Rawls’ as an introductory part but I will discuss this more in chapter three.

The third part includes how Rawls understood the idea of utilitarianism and the main difference of utilitarianism from Rawls’ theory of justice. Then, finally, I will present the core ideas of moral theory as Rawls explores them. In the subsequent topics I will present my reflections which are intended to show the flaws in Rawls’ ideas.

1.2 Rawls' Fundamental Views of Theory of Justice

1.2.1 The Role of Justice

“Justice is the first virtue of social institutions, as truth is of systems of thought.” (Rawls, 1971: 3) Justice and truth are unbending as long as they are first virtues of human deeds. Justice is the basic groundwork for existing and over going of laws and institutions as Rawls conceived it. This is to say that the social institutions and laws must be improved or disallowed as long as they are unjust no matter how they are important in different ways. To clarify it, the laws and social institutions may be important in economical or political aspect though they are unjust basically. Having such kind of importance without being just, is unacceptable for Rawls. Likewise John Rawls insisted that a theory should be also revised or rejected as far as it is untrue.

Rawls also disagrees in the loss of freedom for the sake of better good which may be shared by others. He totally rejects the stand point of utilitarian or Aristotelian saying that “the end justifies the means”. Thus, Rawls’ position shows us, visibly, that he is not teleological at all. Sandel also argues ‘like Kant, Rawls is a deontological liberal’ (Sandel, 1998: 15).

Therefore, in a just society, the liberties of individuals are inalienable, when I put Rawls’ word into Marx’s mouth. I quoted the basis of Rawls’ claim is, “Being first virtues of human activities, truth and justice are uncompromising” (Rawls, 1971: 4). Thus, we should not justify truth and justice on the merit of their end results rather on the rightness of their act. But, to me, it is not right to tell the truth always. I infer that there are exceptional cases which need to be compromised. For instance, telling the truth may bring serious risk for the individual or for society at large as well. It seems that Rawls follows a deontological perspective and somehow related with Kantian categorical imperative. As he says the few who have equal citizenships

can't sacrifice their values for the sake of calculating larger social interests. As Samuel Freeman says:

Because of their role in defining the conception of moral persons that underlies Rawls's view, justice as fairness assigns the basic liberties strict priority over other social goods. This means basic liberties can be limited only for the sake of maintaining other basic liberties. They cannot be compromised to promote greater aggregate happiness in society, to increase national wealth, or to promote perfectionist values of culture. (Freeman, 2003: 19)

Justice as fairness defines the basic structure of society as it prioritizes the rudimentary liberties of individuals. Having said that I have to deal with the following two questions; 'what are these basic liberties, and, what are the roles of citizens in settling of 'justice as fairness'?' The first question itself indicates that there are some more important liberties than others. Rawls mentions these basic liberties like, freedom of speech, freedom to own property and the like are prior to others which are non-basic liberties like economical matters. Briefly, political liberties are prior to social and economic conditions. In answering the second question as Rawls says all members of a society have an equal right at first to determine the principles of justice (Rawls, 1971: 4).

What are the roles of the principles of justice? Rawls says a society exists by the individuals' agreement on certain rules of conducts. And everybody acts on respecting them for his/her communal gain. These rules having a system of collaboration are intended to bring good and harmonious relationships for these taking in part. However, Rawls says society typically manifested by "conflict as well as by identity of interests". And those principles of justice provide different mechanisms so as to eradicate conflicts. They govern people how to act and deliberate without violating the basic rights of individuals. They are charters which guide human beings to live cooperatively for their mutual advantage (ibid).

Rawls regarded society as "a well ordered" if and only if it is applicable for both promoting the good of its members and well operating by a public conception of justice. Rawls points out two

things to happen in a society: 1) the principle of justice should be accepted and known by every one of its members. 2) These principles should generally satisfy and known to satisfy the fundamental social institutions. According to him justice makes a good balance for the different clashing interests among individuals. The fundamental idea of justice is to create well-ordered society by limiting and narrowing the gaps among individuals. This idea of justice may create a better conducive environment for the society and institutions (Rawls, 1971: 4-5).

However the “well ordered society” rarely exists due to the dispute of what is just and unjust as Rawls indicates that. They may dispute on the fundamental terms and principles of their association though they have the conception of justice. Rawls says:

In the absence of a certain measure of agreement on what is just and unjust, it is clearly more difficult for individuals to coordinate their plans efficiently in order to insure that mutually beneficial arrangements are maintained. Distrust and resentment corrode the ties of civility, and suspicion and hostility tempt men to act in ways they would otherwise avoid. So while the distinctive role of conceptions of justice is to specify basic rights and duties and to determine the appropriate distributive shares, the way in which a conception does this is bound to affect the problems of efficiency, coordination, and stability. (Rawls, 1971: 6)

It is obvious that our nature of human beings may bring various inclinations and interests even sharply opposite things of one another, but having the conception of justice may make a bond for living in the sense of tolerating and respecting each other. As Rawls pointed out justice is not only interested for a fair distribution but also in identifying the best conception of justice by and through having a wider connection so as to imply the most effective one. He says “one conception of justice is preferable to another when its broader consequences are more desirable” (Rawls, 1971: 6). Fundamentally, he is against utilitarianism but on this point he used to apply the utilitarian principle. Visibly, this shows Rawls’ theory is inconsistent with its foundation.

1.2.2 The Subject of Justice

According to Rawls there are many issues to be regarded as just or unjust: just to mention a few, laws, social systems, institutions, decisions, imputations, judgments, attitudes of persons and also many particular activities. However Rawls' interest and emphasis is all about social justice. Typically justice interests in shakeup institutions and society with the motion of fair and right principles so as to create a harmonious living of individuals. It guarantees the natural rights and duties of every member. The view of justice includes the social, political, and economical aspect of the society as well as the single individual. In Rawls' idea of justice, the single individual's basic right, interest and advantage must not be ignored for the sake of large members of a society (ibid).

The basic structure of society is regarded as the typical subject of justice. And, the basic rights and duties, and the division of benefits from the social cooperation, are distributed by the basic structure of society. The basic structure of the society determines the lives of its members, so the subject of justice is a big deal so as to attain the good life of human beings. The basic structure of a society encompasses different realms including the political constitution, economic conditions and social aspects or generally 'the major social institutions', according to Rawls. Rawls asserted that the principle of justice must first apply to the deep inequalities of men that may affect the lives of individuals. And the subject of justice is to operate choices of a political system and the main ingredients of socio-economic systems. Maintaining and protecting of the fundamental rights and duties, and in providing sociality with having a good economic opportunity is the criteria to label the just act. Rawls says this just act may apply in various sectors of life (Rawls, 1971: 6-7). Samuel Freeman says the major institutions by integrated into social system 'deeply

affects people's characters, desires and plans, and their future prospects, as well as the kinds of persons they aspire to be' (Samuel Freeman, 2003: 17).

Rawls' inquiry is limited in two ways: he argues "First of all, I am concerned with a special case of the problem of justice. I shall not consider the justice of institutions and social practices generally, nor except in passing the justice of the law of nations and of relations between states" (Rawls, 1971: 7). Rawls asserts that the principles of justice should not be satisfactory for all cases of the basic structure of a society. To clarify it, he says the principles may not be inclusive for the rules of private associations and few social groups. Again, the principles may fit with the many different informal agreements and customs of day today activities. There are also lots of conditions just like voluntary cooperative systems and contractual agreements which may not include in the basic structure of society (ibid).

So, what is the core idea of his conception of justice? Rawls' intention is the possibility to formulate the laws of nations in a different way. He particularly emphasizes on making a conception of justice for the basic structure of society and this is intended to govern how persons should live. To make it clear, the basic structure of society determines the lives of individuals in a given society. This reasonable conception of justice serves as a closed system only for the society as Rawls claims it. And he says the remaining problems of justice may prove on the light of the special case of problem of justice. Therefore, the special case is directly referring to the principles which operate the well-ordered society (Rawls, 1971: 7-8).

The second inquiry of Rawls is that in a way of just institution everyone is required to perform his or her own part justly. Hume presented justice as cautious, jealous virtue; Rawls still ask what would a perfectly just society like? Then he comes to the following point:

I consider primarily what I call strict compliance as opposed to partial compliance theory. The latter studies the principles that govern how we are to deal with injustice. It comprises such topics as the theory of punishment, the doctrine of just war, and the justification of the various ways of opposing unjust regimes, ranging from civil disobedience and conscientious objection to militant resistance and revolution. Also included here are questions of compensatory justice and of weighing one form of institutional injustice against another. Obviously the problems of partial compliance theory are the pressing and urgent matters. (Rawls, 1971: 8)

The above things are basic for Rawls because they happen in our day to day activities. Rawls believed that for understanding the main problems we have to begin with creating ideal theory. His concern is a theory of justice as a way for gaining deeper understanding which aims at settling a just and if possible a perfect society. Strictly speaking Rawls is claiming that the conception of social justice facilitates standards for assessing the distributive aspects of the basic social structure. He says this standard does not mean principles of justice, thus the standard can be efficient or inefficient, liberal or illiberal, and as well it can be just or unjust. The conception of justice should clearly imply these social cooperation of its members (Rawls, 1971: 9). As Samuel Freeman says:

He treats their situation similar to problems of partial compliance. Principles of justice are initially chosen for the ideal case of a well-ordered society, where it is assumed all have the capacities for cooperation and that there will be “strict compliance.” Just as the parties in the original position assume that the members of a well-ordered society have an effective sense of justice and normally will not violate just laws, they assume that members are normal cooperating members of society over a complete life who have the capacities needed for social cooperation (the moral powers). (Samuel Freeman, 2003: 22)

1.2.3 The Main Idea of the Theory of Justice

Here Rawls relates his theory of justice with the social contract theory of Locke and Rousseau. He says the object of the original agreement is a principal idea evidently implied by the basic social structure within the principles of justice. With regard to the functions of principles Rawls states the following point:

They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established.

This way of regarding the principles of justice I shall call justice as fairness. (Rawls, 1971: 10)

These principles determine the basic social, economical and political aspects of a society or what Kwan (1989) and, Rawls too call as major institutions. They provide a frame work of guidance for the basic structure of society. The members of the society cooperate on this frame work for their mutual advantage. If someone acted on respecting those already existing principles it is just and fair unless and otherwise it is unfair and unjust (ibid).

The principles are determining the division of social benefits and they should assign the basic rights and duties of its members, then they can engage in social cooperation being chosen together by making a joint venture with respecting of those principles. Rawls says men should be deciding together, being rational, in identifying the foundation charter of their society. Also men can defend and regulate their position against one another, reasonably. Men can present their own good rationally then together they can evaluate and measure it as just or unjust. Rawls asserts such kind of advancing his/her own good within the motion of “equal liberty” may lead to choice problem but this should solve by the determinant of the principles of justice. In doing this, we need social contract on equality or entering into what Rawls call as ‘original position’. He argues, “In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract.” (Rawls, 1971: 10-11)

Rawls describes “justice as fairness”, if the principles of justice are initially based on agreement with the wave of fairness. He says the concept of justice and fairness are not implying the same meaning. “Justice as fairness”, like Rousseau’s ‘general will’, is something a general of all

choice which is made by individuals' selection of first principles of theory of justice needs to regulate the institution. I affirm that Rawls' conception of justice as fairness is somehow related or similar with Rousseau's conception of 'general will' though this 'general will' is something higher and may not be compromised by individuals' will. Rousseau's concept of 'general will' describes as a will of all its members.

Rawls affirms that a rational person cannot accept basic structure in being calculating greater benefits without regarding its permanent effects on his/her basic rights and interests. Here, he says the principle of utility cannot go together with social cooperation for mutual advantage. Strictly speaking, he meant that the principle of utility is overseeing on the greater sum of advantage irrespective of looking over their permanent basic rights and interests. He infers that a person in the initial step makes two choices of different principles; 1) equality on the basic rights and duties, 2) inequalities on the economical matter.

Rawls argues that the possibility of selecting two different principles in making social cooperation within the sense of social justice. This happens in the first stage through equal individual's agreement for their mutual gain. According to him, these two different principles serve for all its members and should be regarded as the welfare of all. And, the economical inequalities are just or workable as long as it is advantageous for all its members and if not, at least advantageous for the "worst-off" (Rawls, 1971: 13). That is to say that the less fortunate should be advantageous in the distribution of the goods.

However, here, I am saying that Rawls' idea is unjust with regard to his idea of the distribution of the outcomes. Let me assume that there are two individuals who have equal resources but say the one is wiser and laborious while the other person is not. The hardworking man may produce huge amount while the other one may produce lesser. Is it just to distribute the outcomes for both

persons fairly or equally? If we do so, unlike Rawls, to me it is sort of exploitation instead of fairness. Here, I think, Rawls highly focuses on the fair and equal distribution but not in the production. This, fair distribution may also be an obstacle for industriousness. If we need a fair distribution of outcomes we have to also participate equally in the production of goods as well. Again, when we see the priority of the basic equal liberties over the social and economic inequalities there is inconsistency and failure on its practice. Because, if we are unequal economically then, we don't have an equal influence on the political liberties or rights. I mean that the wealthy man has great influence on the basic liberties than the poor person. As Walzer says '... money can buy power and influence, as it can buy office, education, honor, and so on' (Walzer, 1983: 317). Therefore, Rawls did not see the economic sanctions for enjoying our basic liberties and freedoms as far as we need or will.

Samuel Freeman also says the difference principle and equal basic liberties of justice can't be appreciated or justified in isolation of one another. Samuel Freeman says:

To be a liberal conception it is not enough to recognize basic liberties and assign them priority. A liberal conception of justice also recognizes a *social minimum*, a basic social entitlement to enabling resources, particularly income and wealth. For without a social minimum, the basic liberties are merely formal protections and are worth little to people who are impoverished and without the means to take advantage of their liberties. So, Rawls contends, any liberal view provides some kind of social minimum to guarantee the worth of the basic liberties. (Samuel Freeman, 2003: 23)

Rawls clearly argues, "Justice as fairness is not a complete contract theory. For it is clear that the contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles for all the virtues and not only for justice" (Rawls, 1971: 15). However "justice as fairness" is more or less general and may not include the convictions among few members.

1.3 The Original Position and Justification

Rawls says “the original position is the appropriate initial status quo which insures that the fundamental agreements reached in it are fair” (Rawls, 1971: 15). And this argument can lead to say ‘justice as fairness’ according to him. He infers that one conception of justice may be more reasonable than another, or it may be justifiable with regards to it. This would happen as long as rational persons in the initial situation choose its principles over others one for the sake of justice. As Rawls insists there is a hierarchy on the conception of justice which bases upon their acceptability to persons in different circumstances. Justice is measured on its capability to solve problems and we have to assure in which one principle should be rational for using in a given contractual situation. Having said this Rawls infers that “this connects theory of justice with theory of rational choice” (ibid).

Here, we can observe that justice is measured on its practical result or on its solving the problems. The rational person accepts the conception of justice as far as it is capable to solve more problems than other. If so, Rawls’ theory of justice is result oriented. Therefore, Rawls’ deontological foundation is inconsistent. Rawls argues:

This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. (Rawls, 1971: 11)

The above ideas of Rawls’ are somehow contraries to our human nature. If I am a rational person I have to know my conception of good, unless I need not a contract without identifying and

predicting its outcomes. Rawls is saying that this kind of affirming principles makes no one advantageous or disadvantageous. Their outcome may bring through social circumstance or by natural chance. This seems a little bit ideal. How can you formulate principles without identifying your own position, interest and without expecting the outcomes? His position is not teleological but in the first case when we select a principle we do have some requirements which should be based on rightness or usefulness. It is also merely ideal when Rawls says that no one knows his abilities and the principles are situated behind the veil of ignorance. And, I would say that the persons in the original position are persons who deny themselves or their nature.

But now let me turn to put Freeman's challenge for Rawls' original position. He compares Rawls social contract theory with historical proponent contractarianism of Hobbes, Locke, Rousseau, and Kant. According to Freeman, individuals would agree under certain conditions for obvious reasons. As he says: "A state of nature is historical in the following sense: Its inhabitants have knowledge of their circumstances and interests; they know everything about themselves that any historically situated individual might know about prevailing circumstances. So like any other contract, a social contract in a state of nature would be affected by its parties' access to information about themselves and others' situations" (Freeman, 2003: 24).

Rawls presents the original position as the outcome of hypothetical course of reflection. The original position tries to bring into single scheme of "both reasonable philosophical conditions on principles as well as our considered judgments of justice." Rawls says the self-evident truth or conditions more or less have no role on the conception of justice. The conception of justice is something that results from the cooperation for the mutual advantages with giving concerns for everything matching together in to single sound view (Rawls, 1971: 19).

Then, he underlines the principles which are agreed upon or would be agreed to the initial situation of equality are justified unless they are unjustified. Again, he emphasizes that 'the original position' is purely hypothetical. The conditions that we do accept or we do not accept on the original position should be based upon philosophical reflection. Each and every of our contractual situation should be given helpful grounds. Rawls argues that we have to be reasonable in recognizing and giving due attention to a number of conditions so as to collect together in order to bring a single conception. The spontaneous condition of 'the original position' is to do fair on realizing of our objective (ibid).

The original position is neutral of the outsets of good, according to Rawls. Sandel argues that Rawls' liberalism is without metaphysics. The original position makes the parties not to know what they do know by the assumption of the veil of ignorance. Thus, the veil of ignorance divests the knowledge of the parties or it separates them from knowing, for instance, from 'their place in society, their race, sex, or class, their wealth or fortune, their intelligence ... and abilities' (Sandel, 1998: 24). Schaefer says the depriving of knowledge from the parties, is made by unfair way (Schaefer, 1974: 96). Like Sandel, Rawls' original position is groundless to me. And, I reject totally Rawls' idea of the original position for many reasons; for instance, individuals need to know many things and permitting to their knowledge. They want to identify their conception of the good or they need to know the outcomes of their contract. Moreover, how can individuals be deprived of their knowledge initially? Is ignorance of knowledge of particulars a good means for neutrality? For this and many other reasons, Rawls' claim of his original position is merely sort of ideal. In addition to this I will come with coherent and more detailed reasons in chapter three.

The original position agrees in many conditions of the conception of the good. It results in purely liberal principles and it guarantees equal basic liberties. This original position seeks fairness and equal freedom for persons within pursuing their conception of good. Thus, Samuel Freeman says the original position is not neutral between or among the conceptions of the good. It can't be neutral towards racist or other bad doctrines. Rather it is designed to favor a conception of good than others as Rawls infers in the veil of ignorance (Samuel Freeman, 2003: 27). Therefore, I infer, like, Freeman, if the parties in the original position do not accept bad doctrines, like racist, then the original position is not neutral among the conceptions of good. So, Rawls' original position is illogical.

1.4 Rawls' Critique on Classical Utilitarianism

Rawls' notion of justice as fairness is presented as an alternative to the doctrine of utilitarianism. Rawls thinks that the doctrine of utilitarianism has many defects typically in its failure to share the great sum of pleasure for all humans equally and also its failure to share it fairly over time. Utilitarianism has also a defect on its standard to measure pleasure and good because it is not guided by the rightness of the act it would rather merely focus on the consequence of the action. It may also be against the basic human right as far as it only focuses on the maximizing of pleasure for the most part. Fundamentally, and, briefly, Rawls is unsatisfied in utilitarian canon because it prioritizes the good over the right. But, what surprises me is that Rawls did not see the defects of his own ideas of justice as fairness which is merely rhetorical. Now I am going to present the views of Rawls on the classical utilitarianism and the points which justice as fairness differs from utilitarian doctrine, respectively.

1.4.1 Classical Utilitarianism

Rawls says there are many forms of utilitarianism and yet there are developments of a theory of utilitarianism. However, here, he is not interested to describe those various forms of utilitarianism. Rather he is interested in representing the theory of justice as an alternative for the doctrine of utilitarianism. As Schaefer says ‘Rawls finds it necessary to develop a new theory of justice because of the failure of utilitarian thought to conform adequately to the dictates of men's sense of justice’ (Schaefer, 1974: 90). Rawls believes that “the contrasts between the contract view and utilitarianism remains essentially the same in all these cases.” In order to identify the core problem simply he goes to compare ‘justice as fairness’ with familiar components of intuitionism, perfectionism, and utilitarianism. Strictly, Rawls is interested in the describing of the classical utilitarianism. Rawls uses the idea of Sidgwick to describe the classical utilitarianism, which says, “The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it” (Rawls, 1971: 21). Sidgwick, unlike Rawls, is visibly saying that the utilitarian doctrine is the best rational conception of justice. He meant that the action is right as far as it produces a greatest sum of pleasure.

Rawls presents the two main concepts of ethics that of ‘the good’ and ‘the right’. And he believes that morally good person derives out of these two main concepts of ethics. Those two basic concepts of ethics determine the structure of ethical theory being how it connects and defines these two basic concepts of ethics. In the teleological views, “the good is defined independently of the right, and then the right is defined as that which maximizes the good” (ibid). To clarify it, the act or decision is right or just if and only if it maximizes the good or produces a greater amount of good at large. So here, rationality is just conceived as the

instrument of maximizing the good. Here, my position is moderate between these two extreme (Rawlsean and Utilitarianist) ideas. I mean that there are issues and circumstances necessarily required to follow certain universal principles or deontological perspective. And there are also some conditions that need a situational action or based on their consequences and relative to the community or borders.

When we say that teleological theories define the good independently of the right, this implies two things, as Rawls argues in the following points:

First, the theory accounts for our considered judgments as to which things are good (our judgments of value) as a separate class of judgments intuitively distinguishable by common sense, and then proposes the hypothesis that the right is maximizing the good as already specified. Second, the theory enables one to judge the goodness of things without referring to what is right. For example, if pleasure is said to be the sole good, then presumably pleasures can be recognized and ranked in value by criteria that do not presuppose any standards of right, or what we would normally think of as such (Rawls, 1971: 22).

Rawls, in the above paragraph, critically discusses the problem of utilitarianism in justifying the good. The typical problem of them is that they use 'right' as a means instead of using it as a principle for their action and their decisions. The criterion should not be only having greater sum of pleasure, rather it should evaluate whether the action is right in itself or is its goodness temporary or sustainable or we have to see whether the action is/is not deteriorating the basic or natural human rights... and the like. The teleological definition of the good is vague as far as they define it as maximizing pleasure and while sometimes they define it with connecting the right. They also define it as a pleasure or as satisfaction of desire. As Rawls says:

Teleological doctrines differ, pretty clearly, according to how the conception of the good is specified. If it is taken as the realization of human excellence in the various forms of culture, we have what may be called perfectionism. This notion is found in Aristotle and Nietzsche, among others. If the good is defined as pleasure, we have hedonism; if as happiness, eudaimonism, and

so on. I shall understand the principle of utility in its classical form as defining the good as the satisfaction of desire, or perhaps better, as the satisfaction of rational desire (Rawls, 1971: 22-23). Therefore, the teleological way of calculating the values of a thing is on its producing pleasure or pain, if the action or a decision produces pleasure it is good unless and otherwise it is bad. And Rawls infers that the judgment of utilitarianism as right, if it is maximizing the good or produces a greater sum of pleasure again the pleasure can be justified without any standard of right. Accordingly, in the classical form of utilitarianism, the principle of utility is defining the good as the satisfaction of rational desires (Rawls, 1971: 23).

Jeremy Bentham (1879) *describes five features of classical utilitarianism*: they may help us to understand simply the nature of classical utilitarianism. These are:

1. Comprehensive and deterministic
2. Naturalistic
3. Egoistic, but not subjectivist
4. Consequentialist
5. Quantifiable: Cardinal scales with interpersonal comparisons of utility

Generally, these features indicate that ‘classical utilitarianism’ is a doctrine which preaches maximizing pleasure, and it is based up on our egoistic nature or individual self decides what to act so as to benefit more by calculating the result. His/her decision to act or not to act is totally dependent on the consequence. If it will produce more pleasure he/she would act if not they rejects to do or follow as far as it results pain or less pleasure comparatively than others action. First they measure and calculate the amount of pleasure or pain which will be attained before they decide which one to act or not. I do not accept this view because we do not have to focus on our values but also on the values of the community. So, even if the result of an action is harming me, I have to act as if it is worthy in itself or worthy more for others.

Rawls' concern is not the feature of utilitarian view of justice, rather how this sum of satisfaction could be shared among individuals or how men share it over time. As far as the right distribution brings maximum good, we have to care for the means of the distribution. Here, Rawls doubts the way the utilitarian view of justice allocates the sum of satisfaction. By implication, it is difficult to allocate and distribute the sum of satisfaction equally for all members. Rawls quoted classical utilitarian view from Sidgwick; "Society must allocate its means of satisfaction whatever these are, rights and duties, opportunities and privileges, and various forms of wealth, so as to achieve this maximum if it can. But in itself no distribution of satisfaction is better than another except that the more equal distribution is to be preferred to break ties" (Sidgwick, 1907: 416, cited in, Rawls, 1971:23).

However, Rawls is not totally saying that utilitarianism does not have value in the conception and practice. It is useful in limiting men's attraction to injustice and in preventing or at least in limiting socially injurious actions. They achieve this through their 'strictness of common sense precepts of justice'. But, their failure is the strictness they assume as the first principle of their doctrine of utilitarianism. Rawls infers that "For just as it is rational for one man to maximize the fulfillment of his system of desires, it is right for a society to maximize the net balance of satisfaction taken over all of its members." But this is not guaranteed in the doctrine of utilitarianism (ibid).

1.4.2 Utilitarianism vs. Rawls' Theory of Justice as Fairness

The very basic difference of 'utilitarianism' and Rawls' 'theory of justice as fairness' is in the method they follow as standard in the different activities and practices. Rawls theory of justice is more or less similar with Kant's deontological principle though they are different in some respects. They differ, example, Kant's idea of moral theory is through 'pure practical reasoning'

only while Rawls' knowledge of moral or justice views is not only in reasoning alone but also in empirical or what we called sense perceptions, too. While, the utilitarian method operates upon teleological principle or the consequence justifies the means, Rawls presents few fundamental points in which "justice as fairness" differs from "the doctrine of utility" or utilitarianism. His principal aim is to show his contract doctrine as better alternative than utilitarianism.

First he distinguishes the matter of principles; in 'justice as fairness' the principle is a matter of equal liberty and rightness while in the 'utilitarian' views it is the matter of maximizing pleasure. Rawls gives a certain priority to the claims of liberty and right. Every member of a society is assumed to have natural rights. He says justice cannot accept the loss of individual freedom even for the greater good shared by others. In the loss of individual freedom nothing can be done as 'right'. So in just society the basic rights are 'inalienable' and cannot be compromised for any means, whether it is social, economic, or political interests but it can compromise only for better basic liberties. As Rawls says "Justice as fairness attempts to account for these common sense convictions concerning the priority of justice by showing that they are the consequence of principles which would be chosen in the original position. These judgments reflect the rational preferences and the initial equality of the contracting parties." (Rawls, 1971: 24-25)

Secondly, according utilitarianism, the society gives a chance to choice of a principle for individual while in justice as fairness, the society has an agreeable original principle, and it determines a right action. Simply utilitarian confirms a principle of choice for one person while in the 'justice as fairness' society confirms principle of social choice.

Lastly, the utilitarian view is purely teleological or the 'end justifies the means' while justice as fairness is not in that perspective, rather it prioritizes the right over the good unlike

utilitarianism. Therefore justice as fairness is a deontological theory while utilitarianism is teleological one (Rawls, 1971: 26).

I say, both utilitarianism and Rawls' theory of justice as fairness goes to the extreme but I prefer the moderate position and likewise I suggest the inclusiveness approach of both theories is better. I mean that we have to follow certain deontological principles in some circumstances and utilitarian principles for some others. Inclusiveness approach is preferable in the discipline of philosophy rather than picking the one as sole principle or means to deal with human conception of the good. I think making wall between or among theories is wrong, I mean that what the thinkers advocate their theory as unique one is incorrect. We do have not make a sharp difference among theories, example, liberalism and communitarianism, free will and determinism, objective and relative, universal and particular, empiricism and rationalism and the like are common in philosophical discourse which go on binary opposition. However, they are inseparable, the two are in one. Rawls is one of the victims of advocating one sided ideology and principle as a sole means.

1.5 Some Remarks about Moral Theory

Rawls expresses the nature of moral theory in reflective equilibrium so as to understand clearly. He explains his assumption by saying that persons who are within certain level of age acquiring intellectual capacity in the normal social circumstance develop a sense of justice. If we cultivate our mind then, we will acquire skill to judge things as just or unjust within a rational ground. Above all, we have different desires to act and to hold, to secure our lives, and thinking similar good things to others as well rationally. Our desire should not be secure on the expense of others (Rawls, 1971: 41). Rawls define the aim of moral philosophy as:

According to the provisional aim of moral philosophy, one might say that justice as fairness is the hypothesis that the principles which would be chosen in the original position are identical with those that match our considered judgments and so these principles describe our sense of justice. ... In describing our sense of justice an allowance must be made for the likelihood that considered judgments are no doubt subject to certain irregularities and distortions despite the fact that they are rendered under favorable circumstances. (Rawls, 1971: 42-43)

Rawls infers that this happens if a man lacks confidence on his original judgment because he finds unorthodoxies in his explanation. He strongly assures that this is an over simplification kind of interpretation. He asserts that in sense of justice, the fundamental thing is that of moral theory. This moral theory should match also with man's judgment in reflective equilibrium. Putting these words in Rawls' mouth, "From the standpoint of moral theory, the best account of a person's sense of justice is not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium." Thus implies that man should be first examining all possible conceptions of justice before he marks judgment (ibid). Kelly argues:

In justice as fairness, full reflective equilibrium is characterized by its practical aim, reasoned reflection, and its nonfoundationalist aspect. In this way it meets the need for a basis of public justification on questions of political justice; for coherence among considered convictions at all levels of generality and in wide and general reflective equilibrium is all that is required for the practical aim of reaching reasonable agreement on matters of political justice. (Kelly, 2001: 31-2)

There are various ways of interpretations of 'reflective equilibrium'. He say, the variation is due to the persons willing to present with all possible or little of the descriptions, or one needs to match with some or all possible philosophical arguments in the judgment for a sense of justice. To mention a few cases with regards to this: first, if we describe a person's sense of justice as it is, even though it permits certain irregularities. Second, he says, "a person's sense of justice may or may not undergo a radical shift." He selects that the second case of reflective equilibrium is

the concern of moral philosophy. But this is doubtful in its attainment or questionable whether this state is reachable or not (Rawls, 1971: 43).

Moral theory and substantive theory of justice could not be founded only on truths of logic and definitions. Moral theory should be free to incorporate various assumptions and general facts as much as it pleases. And our judgment in reflective equilibrium should be based on that account. This is what Rawls presents as he considers as classical utilitarian views, like classical British writer, Sidgwick. As Rawls says:

One has only to observe the effect of the division of theories into those which are decidable and complete, undecidable yet complete, and neither complete nor decidable. The problem of meaning and truth in logic and mathematics is profoundly altered by the discovery of logical systems illustrating these concepts. Once the substantive content of moral conceptions is better understood, a similar transformation may occur. It is possible that convincing answers to questions of the meaning and justification of moral judgments can be found in no other way. (Rawls, 1971: 45)

Rawls says our moral sensibilities are directed by the framework which designs through the views of theory of justice. By implication, theory of justice influences humans directly or indirectly in all their moral day to day activities. Simply it shows us how to distinguish the good from the bad act. Theory of justice is the reflective mirror of our moral senses. He says the principle of justice identifies the morally relevant issues and also they indicate the priority rules. The original position settles the governing idea so as to inform our activities and directs how to deliberate our actions (Rawls, 1971: 46).

To conclude just what I have said so far, Rawls theory of justice is conceived as ‘justice as fairness’, as far as, in the first step, it formulates its principles of justice based upon the agreement of all its members. These principles of justice, gives a guarantee for the basic human rights. The principles should be known by every member of that society and may also by others. They also serve as a framework of human behaving and actions. Rawls infers that the role of

justice is to specify the basic rights and duties as well as to provide an appropriate distributive share of goods for its members. He obviously identifies two principles; one is that of equality of basic rights and the other is the inequality of social and economic conditions may ensue due to having different circumstances, skills and talents.

Rawls deeply criticizes the doctrine of utilitarianism saying mainly focuses on pleasure maximizing or prioritizing the good over the right one. It has also many defects typically in its incapability to share equally or fairly the greater sum of pleasure for its members and incapability to share equally for one person's over times. While, I suggest that an inclusive approach is the right way for satisfying different human wills and different circumstances.

I have attempted to show the gaps, contradictions and defects of Rawls' a theory of justice. For instance, I have presented his fundamental deontological perspectives but, on the contrary, he used teleological perspectives in order to justify his theories. Again, when we see his two principles they are contradictory to each other. Likewise, his original position theory is merely ideal and even contrary to our human nature. Especially, Rawls' idea of the veil of ignorance is very problematic as far as it attempts to deprive the parties what they already know. Rawls says nothing about who put/s the parties under the veil of ignorance or he says nothing about who controls them whether they are under the veil of ignorance. Then, in the next chapter I will explore all about the principles of justice, chiefly Rawls' two principles of justice, in detail.

CHAPTER TWO: THE PRINCIPLES OF JUSTICE

2.1 Introduction

We have seen so far the basic theories and ideas of Rawls that are taken as general introductory concepts for the coming chapters. As we have seen in chapter one, according to Rawls, the primary subject of the principles of social justice is the basic structure of the society. And, this basic structure of the society requires a system of cooperation through and by an arrangement of major social institutions. Now, in this chapter I am going to explore the ideas and the implications of the two principle of justice in detail. As we already know from the previous discussion, the aims of Rawls' principles of justice are intended to set the well-ordered society or what we call as democratic society. We will also see the concepts of democratic equality, the difference principle, primary social goods, and, principles of individuals. I will present the problems or gaps of Rawls' theory of justice and its practices in this chapter.

2.2 Institutions and Formal Justice

The rights and duties in these institutions are determined and showed by the principles of justice. These principles also assign the fair distribution of benefits and duties of individuals in the society. The principles of justice for institutions are different from the principles of particular circumstances and actions of individuals. As Rawls argues:

Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur. (Rawls, 1971: 47-48)

Rawls presents an institution in two ways; 1) as an abstract object; it is a form of thought for the possible conduct of persons expressed by a system of rules. 2) As putting in to practice the thought and conduct of certain persons, having a specific time and place to act by these rules. Simply, I think, Rawls' two notions of an institution are related with what we call the ideal world and practical world. He says there is a sort of ambiguity in labeling the just and unjust in respecting the two thoughts of institution as realized or as an abstract object. Then he prefers to say, 'it is the institution as realized and effectively and impartially administered which is just or unjust' (Rawls, 1971: 48). I think, in this point, he forgets his fundamental position when he criticizes against the utilitarian doctrine's being result oriented. But, here, he is justifying the institution as an abstract object by the institution as realized. So he came up with an idea that is a contradictory to his fundamental point. As he says, "the institution as an abstract object is just or unjust in the sense that any realization of it would be just or unjust" (ibid).

The above statement of John Rawls strengths my claim when I say that he is justifying the ideal part through its practical result and this is utilitarian principle or what the teleologists say 'the end justifies the means'. In this sense or in this part he seems an advocate of utilitarian doctrine. Having said this, he committed contradiction to his stand point which says prioritizing the right over the good one. It follows that in this regard, Rawls prioritizes the good over the right one.

Rawls said that we do have an institution at certain time and place when it operates through and by system of rules which comes from the public understanding and through their initial agreement. Thus the system of rules defines the institution and clearly mentions its certain actions. It may encompass beginning from how to hold a session of parliament toward taking a vote of bill. This system of rules arranges coherently many core and general norms and habits into a systematic plan or what Rawls called as 'schematic' form. Having said this he concluded

by saying that the basic structure of society is the same with a public system of rules. He says everyone knows this system of rules as long as they are established with their initial agreement and then they participate in activities by obeying it. Meaning the person who takes part in an institution knows the necessary requirements of him and others as well in acting with having and guiding by the system of rules. The principle of justice operates social arrangements to create public understanding. Moreover, he says there may be rules of sub-parts of an institution which may not know by all but to the belonging one (Rawls, 1971: 48).

Joshua Cohen has argued that the system of rules or the principles are intended to create a well-ordered society. This idea of well-ordered society demands ‘some form of democratic process of collective choice’. If the system of rules ensures the equal basic rights and the priority of the basic liberties then we consider as the achievement of Rawls’ idea of justice as fairness. And, thus, consider as a formal justice of an institution (Cohen, 2003: 116-117)

If we have an institution which is impartial and coherent in its administration then this indicates that we are deliberating within formal justice. Rawls said that formal justice demands equality in the case of administration laws and institutions. Simply formal justice implies matching with principles or respecting of the system of rules. This formal justice which is required respecting of system of rules is also called substantive justice. Thus, Rawls inferred that formal justice avoids significant kind of injustice in the institution. As Rawls argues “formal justice in the case of legal institutions is simply an aspect of the rule of law which supports and secures legitimate expectations. One kind of injustice is the failure of judges and others in authority to adhere to the appropriate rules or interpretations thereof in deciding claims.” (Rawls, 1971: 49-51)

Therefore, according to Rawls, mostly injustice in an institution is the result of irrelevant application and interpretation in the particular case/s. The individual is unjust maybe due to his personal desire or ignorance.

2.3 Two Principles of Justice

As we have seen in chapter one the two principles are, 1) equal basic liberties and 2) social and economic inequalities. The first principle which is the basic equal liberty of the individual is neither restricted nor destroyed for the sake of social or economic advantage. It is uncompromising or we can put this word in to Marx's mouth who calls as inalienable rights, so they are absolute. Whereas the second principle, what Rawls says, the social and economic inequalities are negotiated for a greater advantages of large part. He says:

First: 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. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (Rawls, 1971: 52)

Here, there are two ambiguous phrases in the second principle of Rawls' theory of justice, 1) everyone's advantage, and 2) open to all. How can be the inequalities for everyone's advantage and open to all? I will discuss these ambiguous phrases in detail on the topic of 'theory and reality'.

Chua P. Kwan, in his article, 'Do we need a theory of Justice?' has analyzed Rawls' two principles of justice as follows, the first one, he said that every person should possess 'an equal right to the most extensive total system of equal basic liberties' which are agreeable with a related system of liberty for all. The second principle, Kwan analyzed as the inequalities of social and economic required an arrangement, and, they should be both to the greatest advantage

of the less fortunate. This is compatible with the just saving principle, and under the fair equality of opportunity, offices and positions should be open and accessible to all (Kwan, 1989: 6).

Rawls insisted that the purpose of the formulation of these principles is to attain the basic structure of the society. And it mainly applies in assigning the liberties and duties. Again it governs and secures the fair distribution of social and economic matters. As we already know the principles have two distinct parts which the first one principle applying to the one (basic liberties) while the second principle to the other (non-basic liberties). Respectively these principles specify and secure the basic equal liberties and the second one creates the social and economic inequalities (Rawls, 1971: 53).

Freeman has argued that the basic liberties are more significant than others; this is why they regarded as basic. And, the basic liberties cannot be compromised for the sake of greater social and economic advantages, but they may be compromise for other basic liberties. Even we must not limit these basic liberties for the difference principle (Freeman, 2003: 17-19).

Rawls enumerates various kinds of these two distinct principles, now I am going to list them as far as they help us to distinguish which are defined and secured by the first principle known as basic and which are not basic or actions specify and establish by the second principle. The lists of these basic liberties are the following:

political liberty (the right to vote and to hold public office) and 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 (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are to be equal by the first principle. (Rawls, 1971: 53)

The second principle applies not only in the fair distribution of income and wealth but also designs an organization for making use of differences in authority and responsibility. He says the distribution of income and wealth is not intended to be equal but it must be to the advantage of everyone. Again, the positions of authority and responsibility must be open and accessible to all. This second principle specifies and consists of, all social, economic and technological values.

Accordingly, as Rawls inferred, the general conception of justice is explained as securing the basic equal liberties and having social and economic inequalities, but these inequalities must be for everyone's advantage. On the other side, injustice simply refers to the inequalities, and when these inequalities are not for the benefits of everyone (Rawls, 1971: 54).

However, here, I have question, as to how Rawls' idea is certain in its practical ground, or can we realize this theory in practice for example when he say the inequalities of social and economic conditions must be for everyone's benefit, or, is this logically sound and applicable? Again, how can individuals agree in the initial stage or in the establishing of these principles, without calculating their future advantage and consequences of these principles? I doubt these ideas of Rawls' in their applicability for some reason which I will put later on. I raise these questions but now I am not interested to put the reasons in its detail rather I will discuss in detail on the topic of 'theory and reality'.

2.4 Democratic Equality and the Difference Principle

Rawls inferred that democratic interpretation is the combination of the principle of fair equality of opportunity with the difference principle. As Rawls says, this principle creates a particular position to judge the social and economic inequalities of the basic structure of society by avoiding indeterminateness of the principle of efficiency. The institutions having the context of

equal liberty and fair equality of opportunity are just if and only if they serve for the benefits of all, if not for the least advantaged member of society. The core idea is that the social order and system of rules is not to specify and secure the advantages of the better off but to do fairly unless to benefit the worse off or less fortunate (Rawls, 1971: 65).

2.4.1 Democratic Equality

Rawls' democratic equality rests upon three principles of, equal basic liberties, inequalities of social and economic and the difference principle. The democratic equality assures the basic arrangement of the society. Rawls' equality is a simple equality and not the complex one as Michael Walzer saw it. Walzer insisted that Rawls is an egalitarian and he maintained that egalitarian shared the concept of inequality not the equality one. In the book of 'Spheres of Justice' Walzer described Rawls' equal share or egalitarian as "everyone according to his 'x', what Walzer called as replicating principle". This is to mean that an individual gains as far as his/her personal performance. Walzer strictly advocates the necessity of pluralism in distributive criteria (M. Walzer, 1983: 4-5). However, I strongly disagree with Walzer's interpretation as I assume he misunderstands Rawls' fair distribution of the outcomes but Rawls says nothing about production. As Norman Daniels argued:

Democratic equality guarantees citizens' equal basic liberties, ... Its guarantee of fair equality of opportunity requires that we not only judge people for jobs and offices by reference to their relevant talents and skills, but that we also establish institutional measures to correct for the ways in which class, race, and gender might interfere with the normal development of marketable talents and skill. (Daniels, 2003: 254)

In addition to the above, Norman Daniels said that the difference principle is intended to restrict the gaps of inequalities. And, this principle works to the advantage of the less fortunate or 'worst-off'. It is obvious, as Daniels said that Rawls prioritize the protection of the basic liberties

over the other two principles and to equal opportunities over the difference principle. Thus, Norman Daniels inferred that democratic equality allows some inequalities and condemns or even prevents other inequalities (Norman Daniels, 2003: 254-255).

2.4.2 The Difference Principle

The difference principle is an egalitarian concept that makes either person advantageous or what Rawls say, 'better off' for any given two-persons. But, here, if it is possible, equal distribution is preferred. In the beginning of this difference principle there is no gain unless the other gains also. To clarify this difference principle he uses the distribution of income among social classes; as Rawls argues:

Let us suppose that the various income groups correlate with representative individuals by reference to whose expectations we can judge the distribution. Now those starting out as members of the entrepreneurial class in property-owning democracy, say, have a better prospect than those who begin in the class of unskilled laborers. (Rawls, 1971: 67)

Therefore, the difference principle is justifiable if the inequality in expectation is to the advantage of the less fortunate or what Rawls called to the unskilled worker. As Philippe Van Parijs argued:

The core of the principle is a simple and appealing idea: those social and economic inequalities should be evaluated in terms of how well off they leave the worst off. The idea is simple; it amounts to asking that the minimum of some index of advantage should be maximized. (Parijs, 2003: 213)

Parijs referred 'the difference principle' to the general interest as having undeniable similarities to the justification of economic inequalities, and, he related this notion with the utilitarian tradition. But, Parijs said that the sum of social welfare is quite different from the interest of the least advantaged (Parijs, *ibid*).

2.5 Fair Equality of Opportunity and Pure Procedural Justice

Rawls affirmed that the liberal principle is conceived of as fair equality of opportunity. Liberal principle operates with the motto of equality; it provides an equal chance or opportunity in different realms of life. And, Walzer (1983) argued that the equality is complex equality not simple one. However there are inequalities because of persons having differences in, wills, talents, and, educational background. These differences may lead to inequalities in social and economic matters. This notion is also tied to and should not be confused with the ‘difference principle’, he is saying that the liberal interpretation of this fair equality of opportunity is not opposing to that of careers open to talents and educational background. They have an equal opportunity to the specific position as far as they are competent enough, having similar educational background and talents (Rawls, 1971: 73).

Rawls has said that justice in fairness in a society establishes cooperation for mutual advantage. The basic structure or the public system of rules specified what persons can act together for their benefits and also it assures the fair distribution based on their performance. These individuals perform with respect to what the public rules defined to do so. Thus, the idea of distributive shares is regarded as a matter of ‘pure procedural justice’, according to Rawls. As Rawls argued, “The intuitive idea is to design the social system so that the outcome is just whatever it happens to be, at least so long as it is within a certain range. The notion of pure procedural justice is best understood by a comparison with perfect and imperfect procedural justice.” (Rawls, 1971: 73-74)

The perfect procedural justice implies to the fair division which may assume as equal one, as Rawls affirmed it. While the imperfect procedural justice implies the partiality or committing

unpleasant thing and Rawls exemplified this with criminal trial. Simply, the former is correct or right distribution while the latter one is not.

Pure procedural justice is manifested by the system of cooperation and this is the role of the principle of fair opportunity. Distribution of benefits is also another manifestation of pure procedural justice and this all is assured by the principle of fair opportunity.

2.6 Primary Social Goods as the Basis of Expectations

In this sub topic Rawls began with the discussion of expectations and how much the representative individuals are expected to hold social goods by a comparison with utilitarianism. This comparison demands us to maximize the total sum of expected utilities which covers all required areas of position. To do this, we have to measure each representative individual's utility. And this is what Rawls called; interpersonal comparison of welfare may not be sound as long as we should not understand the basis of these comparisons (Rawls, 1971: 78). There are two ways of objective grounds of interpersonal comparisons which are established by the difference principle. Rawls presents these two objectives of interpersonal comparisons as:

First of all, as long as we can identify the least advantaged representative man, only ordinal judgments of wellbeing are required from then on. We know from what position the social system is to be judged. ... We never have to calculate a sum of advantages involving a cardinal measure. While qualitative interpersonal comparisons are made in finding the bottom position, for the rest the ordinal judgments of one representative man suffice. Second, the difference principle introduces a simplification for the basis of interpersonal comparisons. These comparisons are made in terms of expectations of primary social goods. (Rawls, 1971: 79)

Rawls defined the expectations in terms of indexes of goods as the representative individuals' expectation to these goods. This variation in expectation is the result of having or holding different positions. It meant that the person who has a greater position has a greater expectation. Then primary goods, according to Rawls, imply the things which are wanted by any rational person. Rawls gives the following examples of primary social goods, to mention a few rights,

liberties, wealth, income, and sense of one's own worth. He says these primary goods are social goods because they are more connected with the basic social structure (Rawls, 1971: 79).

Norman Daniels argued that the primary goods are regarded as the needs of citizens and the index shows people's lifetime expectations with their purposes to develop and practice their moral powers. And, he said that 'this measure of lifetime expectations is clearly different from the measure of welfare or satisfaction used by utilitarians' (Daniels, 2003: 255).

Rawls said that what a person's good is measured in its most rational long-term plan of life. It means that the person's good must be given rationally and it must be also consistent for a long period of time for reasonable conditions. He says a man is feeling happy due to the achievement of his plan. Briefly, he says, 'the good is the satisfaction of rational desire'. There are many desires and satisfaction but not rational. He affirmed that the rational plan is a preferable good which we cannot compare with other alternatives of good (Rawls, 1971: 80).

2.7 Principles for Individuals

I have presented so far about the principles which are consistent with the institutions or precisely to the basic structure of society. But, now in this sub-topic I will discuss the principles which apply to individuals as well. Then, I will show how Rawls discuss the following two principles of individuals, mainly, the principles of fairness and the principles of natural duties.

2.7.1 The Principle of Fairness

Rawls said that the comprehensive theory of right should also incorporate the principles for individuals. The principles of justice includes many principles for various reasons, it is diagrammatic for various reasons, example, for giving weights when principles clashed, to

indicate priority rules, and even to assign some specific principles for individuals. Let's assume a tree diagram. Rawls says incorporating these things is very essential part for any theory of justice (Rawls, 1971: 93). Rawls argues:

The accompanying diagram is purely schematic. It is not suggested that the principles associated with the concepts lower down in the tree are deduced from the higher ones. The diagram simply indicates the kinds of principles that must be chosen before a full conception of right is on hand. The Roman numerals express the order in which the various sorts of principles are to be acknowledged in the original position. (ibid)

As Rawls asserted in the above the diagram is essential part in the very beginning to settle the principles of justice. And the diagram which presents in tree shape represents the various specifications of the principles not to the hierarchy in their role of importance. He gives the following diagrammatical expression of principles but I present it in the form of list for simplification purpose:

Practical reasoning consists of the following three concepts of; 1) value, 2) right, 3) moral worth. The concept of right also includes; 1) the law of nations, 2) social systems and institutions, 3) individuals. Social systems and institutions consist of justice and efficiency. And, individuals include, requirements and permissions. Requirements incorporate obligations and natural duties. Obligations have fairness and fidelity, and, natural duties have positive and negative (Rawls, 1971: 94).

Rawls claimed that one of the principles for individuals is the principle of fairness. This principle of fairness for individuals is the requirement of obligations, as it is distinct from natural duties. The principle of fairness holds that what the rules of the institution requires example, what the individuals demanded to do his part, and this is carrying out when the institution is just and when the individual accepted voluntarily for his/her future benefit. Briefly, the principle of fairness

includes two parts, one the institutions must be just and the person should act voluntarily. Therefore, Rawls said that the specified requirements of principle of fairness are obligations (Rawls, 1971: 96).

2.7.2 The Natural Duties

As we have seen in the above discussion there are two types of natural duties, the positive and negative natural duties. As we have discussed so far, obligations account for the principles of fairness, and obligations are distinct from natural duties. To mention a few distinct features of obligations, in obligations, there are promises and agreements or voluntary act, they are defined what to do in the institutions, and, they are owed to specified individuals. Whereas, the natural duties are applying without consideration of voluntary act, there is no necessary connection with the rules of institutions, and, persons owed not only to definite individuals but to persons generally (Rawls, 1971: 97-98).

Natural rights are also rights given by nature irrespective of our personal willing and desires. Rawls may take this idea from Locke, as Locke has argued that ‘natural rights are stronger than any commonwealth could override’ (Locke, 1690, cited in Sandel, 1998: 3). And these natural rights are fundamental in moral and political theories likewise Rawls also considers natural duties as fundamental to the duty of justice.

Rawls also gives the distinction of these two natural duties; the negative natural duties have more weight than the positive ones. Examples of positive natural duties are, helping for someone who is in need or mutual aid, mutual respect, and the like. And, the examples of negative natural duties are the duty not to harm other innocent person, not to injure, and the like. Briefly, the positive ones refer to a duty to do something good for other persons, while the negative ones are

the duty not to do bad things to others. Therefore, he asserted that in the conception of justice as fairness, a fundamental natural duty is one manifestation of the duty of justice (Rawls, 1971: 98-99).

2.8 Theory and Reality

It is obvious that, some says that Rawls has highly contributed to political philosophy and moral philosophy as well. He is more interested in reasoning as far as his method is in the analytical tradition. Follesdal (2014) has argued that Rawls' analytical tradition is strong because it is open to criticism and easier to find the weak sides, the disputed premises and mistakes. Again, he also gives lots of definitions, arguments in detail in order to convince his assertions. Chua Pak Kwan, in his article, also says Rawls has a great contribution in his attempt to answer 'the question of justice in highly unequal industrial society.' Even though Rawls's answer is controversial, Kwan admired, his idea of fairness, his main alignment and the concern of the less fortunate are regarded as noteworthy ideas (Kwan, 1989: 12). However, I found also lots of long statements, complex sentences and ambiguous phrases which are somehow difficult to understand their implications. Having said this, now, I am turning to show the defects on Rawls' ideas which are relevant to this chapter:

In the above, when I have discussed Rawls' ideas of 'the two principles of justice', I have raised the following points and questions: how Rawls' idea is certain in its practical ground, or can we realize his theory into practice...for example when he says the inequalities in social and economic conditions should be for everyone's benefit... is this logically sound and really applicable? Again, how can individuals maintain and exercise their liberty equally...having inequalities in power and resources? Moreover, in the beginning, how can individuals agree in

the initial stage or in the establishing of these principles, without calculating their future advantage and consequences of these principles? Because Rawls argued that individuals remain neutral of their personal desire in the initial choice of principles. I doubt these ideas of Rawls in their applicability. These questions are assumed to expose the gaps between Rawls' theory of justice and its practices or its reality in the practical realm as far as this reveals one of my statements of problem.

In response to the above questions, in my point of view and as well as my observation of what history tells us, Rawls' claim of equal liberties and social and economic inequalities or his two principles are somewhat ideal and difficult in realizing and putting into practice. The following are my reasons;

(1) In history we have not seen such kind of perfect principles which enjoy basic liberties equally. If I am dependent on others how can I enjoy my basic liberties equally with the wealthy persons? I may be forced to remain silent instead of expressing my feelings if my feelings are not wanted by my sponsors, in order to survive. Gutmann (1980) has argued that the welfare right should be included into the basic liberties. Gutmann's idea implies the necessity of welfare to attain our basic liberties. Again, Kwan (1989) in his article also says that the inequalities in resources and power affect our political debate and communications or simply, if we do not have equal wealth and power we cannot enjoy our basic liberties equally. John Stuart Mill also argued that to have right is 'to have something which society ought to defend me in the possession of' (Mill, 1863: 459, cited in Sandel, 1998: 3). Then, Rawls' argument has a defect when he says basic liberties are uncompromised... how can it be possible? For instance, poor men are forced to compromise their basic liberties for sake of survival. If we are incapable to feeding ourselves

then we cannot exercise our freedoms or we cannot live according to our own desires and wills. So there is an economical sanction to our basic liberties.

(2) The social and economic inequalities also cannot be beneficial for everyone and it is not always to the advantage of the less fortunate as Rawls' theory of justice and his difference principle implied. Persons have different skills, talents, choices and commitments. Having these kinds of differences, everyone cannot benefit equally and what Rawls argued that the inequalities in economic conditions should be for the advantage of the less fortunate or unskilled individual. But does this really happen throughout the history of this world?

On the contrary, we are observing that the more advantageous person or what Marx said the haves exploit the less prosperous persons or the have not's. For example we can see the few investors in our country and the many daily or monthly paid workers of their companies. The few capitalist men simply exploit the wage of their workers because they own the economic resources and capitals or what we call the means of production and the poor has no choice to lead their lives. Again we have to consider the different habits of persons, some persons are selfish, greedy either by nature or through time they may change their manner and conducts.

The liberal conception of individual rights may have also influence on individuals to be selfish. So this horrible conducts and behaviors are a challenge to have an equal or fair distribution of benefits. The system of rules of an institution or nations cannot control all minds of individuals, i.e. if there are greedy individuals they can exercise their unjust practices in hidden or in the guarantee of the individual right of property. Sandel also says the individual rights promote an egoistic and selfish ethos and individuals in the liberal conception are not considering the wider

social context and social values. These rights fail to address and promote community values. Individuals may distort these communal values and traditions. (Sandel, 1998: 60-63)

(3) When Rawls says, fair equality of opportunity and open to all, this is also a very doubtful point. First even the competent individual may not get equal access to hold political power or in other public offices due to corruption and as I have explained in the above paragraph may be due to individuals selfish and greedy behaviors. And, what about the persons with disability or physically weak persons, in some areas they are neglected due to their physical disability. So we can conclude that Rawls' phrases open to all and advantage for everyone's are ambiguous and more theoretical but less achievable practically.

(4) In the above I have argued that persons have different behaviors... then how can they reach agreement in the initial stage and individuals have also different inclinations and desires. I strongly doubt this point of Rawls. Again, in an institution or nation there are many activities and conditions which are required to have diverse principles. Having said this how can a nation or society be governed by a single or a few principles? Taylor (1989) argued that a modern society does not need a single organized principle for governance. There are various diverse processes and social conditions and they cannot be reduced to a single principle of institution.

To conclude, so far we have discussed the two principles including the difference principle, democratic equality, social goods as the basis of expectation, and the principles of individuals. I had raised some questions and, in response to my questions, I tried to expose the gaps of Rawls' theory and its reality. Then, in chapter three we will see Rawls' original position in its detail.

CHAPTER THREE: THE ORIGINAL POSITION

3.1 Introduction

The nature of the argument of Rawls is conceived as hypothetical, non-historical and not belonging to the traditional theory of nature. Rawls argued that “This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture” (Rawls, 1971: 11). Freeman analyzed that the nature of the argument of the original position is a hypothetical agreement which people agrees at certain condition. Thus, Rawls' original position describes as social contract doctrine which is not natural one (Freeman, 2003: 23).

Kelly also described the original position as 'a device of representation' and these imitations two things. First, there are representatives of free and equal persons of citizens required for making agreement to fair principles of social cooperation. This is done to regulate the basic structure. Second, it consists of restrictions on reasons of the parties for putting certain principles of justice and rejects others (Kelly, 2001; 80). This indicates the contradiction of Rawls' claim, as first it says individuals are unrestricted and equal in the original position while they are restricted on reasoning of putting principles of justice.

In this chapter, I am going to discuss three selected sub-topics of Rawls' idea of the original position as it consists of, 'circumstance of justice', 'the veil of ignorance' and 'the rationality of the parties'. These sub-topics are subject to the analysis of the fundamental theories of Rawls' with regard to his theory of the original position. After all, I have to show my position in the sub-topic of 'theory and reality on Rawls' social contract theory'. This includes the defects and gaps

in Rawls' social contract theory on its practices. Finally, it suffices to say that Rawls' social contract is not workable at all.

3.2 The Circumstances of Justice

Rawls described the circumstance of justice as the idea of the possibility and necessity for human collaboration under preferable condition. He said that 'a society is a cooperative venture for mutual advantage'. However, it is manifested by a conflict due to distinctiveness of interest. There is also a clash of interests of how to share the benefits produced by cooperation. For this matter, principles are required to specify the standards of proper sharing of advantages or what Rawls called as 'proper distributive shares'. The principles define the role of justice and the background conditions realize 'these necessities are the circumstance of justice'. Sandel also analyzed the Rawls' idea of the circumstance justice as the environments appointment to the asset of justice. This makes the possibility and necessity of human cooperation for mutual advantage. And, the cooperation helps them to distribute their fruits fairly and to prevent the conflict of identity of interests. Such kinds of arrangements are done by the circumstance of justice (Rawls, 1971: 109; Sandel, 1998:28-9).

According to Rawls these circumstances of justice according to their conditions are divided into two, objective and subjective circumstances. The objective circumstances make both possible and necessary for human cooperation. Accordingly, individuals live peacefully together within the same location and at the same time as well. Here, individuals are more or less similar in their physical, mental powers and then no one can dominate the rest in their way of lives. However, they are exposed to risk by external attack. To tackle any attacks especially external ones, they need cooperation to secure their mutual advantage as well (Rawls, 1971: 109-110).

Whereas, the subjective circumstances imply that the parties have more or less different needs and interests, it is possible to have cooperation for mutual advantage but not necessary one and 'they nevertheless have their own plans of life'. Having their own plans, what Rawls called as 'conception of the good' may bring to have differences in their purposes. Simply, in subjective circumstances there is conflict of interest. Thus, having different ends lead them for conflict in the natural and social resources. And, here the interests of self that regards his conception of the good as 'worthy of recognition and that advances claims in its behalf as deserving satisfaction'. On behalf of this, he also supposed the shortcomings of men in their knowledge (Rawls, 1971: 110). As Rawls argued:

Their knowledge is necessarily incomplete, their powers of reasoning, memory, and attention are always limited, and their judgment is likely to be distorted by anxiety, bias, and a preoccupation with their own affairs. Some of these defects spring from moral faults, from selfishness and negligence; but to a large degree, they are simply part of men's natural situation. As a consequence individuals not only have different plans of life but there exists diversity of philosophical and religious belief, and of political and social doctrines. (Rawls, 1971: 110)

Rawls has assumed that persons in the original position know the gain of the circumstances of justice. And, these circumstances of justice could be granted the conditions of the society. Here, I think, Rawls committed contradiction because he argued that the parties do not know the effects and consequences of their contract, but now on the contrary, he says that persons in the original position know the gain of the circumstance of justice. Moreover, he affirmed the parties would advance their conception of the good as much as possible. In advancing their conception of the good they are free from prior personal beliefs and moral ties to each other (Rawls, 1971: 111).

I have one question here, as far as human beings decide and act based on their beliefs and moral conceptions, how can it be possible to assert that the parties advance their conception of good

free from their moral ties and prior beliefs? Or, if they are free from their prior conceptions of good, in what mental state are they capable to advance their conception of good? I will discuss and bring relevant reasons for challenging Rawls' point later on the sub-topic of 'theory and reality on Rawls' social contract'.

Rawls asked 'whether the persons in the original position have obligations and duties in the third parties, for example, to their immediate descendants'. However, Rawls inferred that the purpose of justice as fairness is attempting to 'derive all duties and obligations of justice from other reasonable conditions'. For example, the parties are representatives of the head of families and then they have inclinations of the well-being for their immediate descendants. But, he said that we could create awareness for the agreement of the parties to respect the principles which subject to constraints that they will follow the same logic, all preceding generations. Then by appropriate combination, he believed that 'the whole chain of generation can be tied together and principles agreed to that suitably take into account the interests of each' (ibid).

Erin Kelly argued that the parties are representatives of 'free and equal citizens, act as trustees or guardians.' They tend to secure the fundamental interests of those they represent in the agreement of the principles of justice. But, this does not imply their selfishness but their effective exercise of their freedom and promoting of their conception of good. Kelly also argued that the parties in the circumstance of justice no more engage in deep difference like religious and moral conflicts rather engage in defending their basic rights and fundamental interests. Briefly, they do not appreciate the conflict of doctrines, rather they create a political domain for establishing 'a reasonable political conception of justice with its idea of public reason' (Kelly, 2001: 84-85).

Finally, Rawls assumed that in the original position, 'the parties are mutually disinterested'. Here, the parties would not sacrifice their interest for others. This may be contrary view and create conflicts for the deeds and ideas of the saints or spirituals and the heroes. But, I have one question of his idea of mutually disinterested of the parties. If there is no scarification of individual interests, then how can they be agreeing in the original position, having different interests? Then he has argued 'thus justice is the virtue of practices where there are competing interests and where persons feel entitled to press their rights on each other' (Rawls, 1971: 112). He said, if community of saints exist, then saints live together peacefully without disputes of justice by agreeing on a common ideal. Because, according to Rawls everyone is determined by their common religion so as to serve for the same purpose and end, selflessly. Simply, all saints are the servants of God and live according to the will of God. Thus, they have not their own desires and interests which may lead to conflict (ibid). But, Sandel argued that the circumstance of justice is badly fit with primacy of justice. Sandel summarized the circumstance of justice as:

One can say, in brief, that the circumstances of justice obtain whenever mutually disinterested persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity. Unless these circumstances existed there would be no occasion for the virtue of justice, just as in the absence of threats of injury to life and limb there would be no occasion for physical courage. (Sandel, 1998: 29)

3.3 The Veil of Ignorance

Rawls affirmed that the original position is regarded to settle a fair procedure which the principles are agreed to the original position justly. Its aim is, as Rawls argued that the basis of theory should be the notion of pure procedural justice. The veil of ignorance is a natural condition which happens to many persons. He said that men without knowing the future effects are attracted to exploit social and natural conditions for their own benefit instead of using their

proper ratios. To prevent such kind of exploitation, Rawls assumed to incorporate 'the parties are situated behind a veil of ignorance.' They are incapable to identify the effects of different options for their particular cases but simply they calculate the principles from the general considerations (Rawls, 1971: 118). Thus, I think, Rawls came up with the idea of 'the veil of ignorance' to avoid the unnecessary and unfair desires of individuals. But, how can it be in doing this or in practice? I will discuss this later in the last topic of this chapter. As Rawls argued:

...the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. (Rawls, 1971: 118)

Sandel has analyzed Rawls' idea of 'the veil of ignorance, as 'the parties are assumed to be deprived of any knowledge of their place in society, their race, sex, or class, their wealth or fortune, their intelligence, strength or other natural assets and abilities.' Again, Sandel argued that the parties do not know their values, aims and their conception of the good for the sake of prevention from biases when they choose principles. Thus, according to Rawls, the depriving from knowledge secures the sense of equality and fairness in selecting the principles of justice. Moreover, Sandel said that the purpose of the veil of ignorance is to secure that 'the initial agreement be unanimous'. However, Sandel totally disagrees on this idea of Rawls' (Sandel, 1998: 21-22).

Therefore, persons in the original position do not have knowledge of economic conditions or political matter. Again, according to him, they do not know...what and how... the cultural civilization should look like in the future. Moreover, Rawls argued that they do not have the

information to which generation they belong. Freeman argued that Rawls brings the concept of 'veil of ignorance' for preventing knowledge of the particular information from the parties in their discussion and contract. The information may be advantage or disadvantage in their agreement (Freeman, 2003: 24; Rawls, 1971: 118). I have doubt and question on this point of Rawls' assertion, in regard to, how the parties could make a contract without good knowledge of the issues and without predicting the effects of the contract in their future lives. And, let us assume that the parties had made an agreement to the original position within certain period of time and specific place, but through time there may be changes due to technological advancement or other factors as well and new generation who are not part of that agreement must become part of that community. Then, these persons may need another contract. Here, my question is how can Rawls' social contract face such kind of circumstances and may be challenges? But I am not interested to forward my point right now rather I will discuss it on the sub-topic of 'theory and reality'. Kelly also argued as:

Along with other conditions on the original position, the veil of ignorance removes differences in bargaining advantages, so that in this and other respects the parties are symmetrically situated. Citizens are represented solely as free and equal persons: ... By situating the parties symmetrically, the original position respects the basic precept of formal equality ... or those similar in all relevant respects are to be treated similarly. With this precept satisfied, the original position is fair. (Kelly, 2001: 87)

However, Rawls argued that there is one particular fact which is known by the parties that is 'their society is subject to the circumstances of justice and whatever this implies.' These includes as Rawls has argued that the parties know the general facts about human society.' They have to understand the economic principles of theory and political affairs, the basis of social arrangements and 'the laws of human psychology'. Therefore, the parties are assumed to know the general facts which may help them in choice of the principles of justice. This implies that

Rawls' conception of the original position has a division of knowledge to be known by the parties and not to be known by the parties. Simply, knowing and having the general facts and information are acceptable while the parties are not admissible to know the specific facts and particular cases of information (Rawls, 1971: 119). Rawls argues:

...the original position is not to be thought of as a general assembly which includes at one moment everyone who will live at some time; or, much less, as an assembly of everyone who could live at some time. It is not a gathering of all actual or possible persons. If we conceived of the original position in either of these ways, the conception would cease to be a natural guide to intuition and would lack a clear sense. In any case, the original position must be interpreted so that one can at any time adopt its perspective. (Rawls, 1971: 120)

As Rawls argued the original position is not conceived to include and gather all actual or possible persons who live at the same time, or, simply it is not a 'general assembly'. But, he said, if we think of the original position in this regard it seems 'a natural guide to the institution' and becomes senseless (ibid).

Moreover, Rawls insisted that the original position does not specify the person who belongs to do something but the restrictions are only intended to have the same principles. He claimed that the requirement for achieving this one (original position) is having the veil of ignorance. Thus, the veil of ignorance insures the availability of relevant information and it is the same at all times. However, Freeman argued that Rawls' argument of original position does not imply its neutrality of these conceptions of good as far as the principles reject the racist doctrine and other difficult conditions to secure the condition of the well - ordered society. Briefly, the original position seeks fairness and equal freedom for individuals and to secure this it rejects all the antagonist outlooks and doctrines (Freeman, 2003: 26; Rawls, 1971: 120). As Freeman argues:

...the original position assigns importance, not to existing ends but to people's freedom and moral powers to shape and amend their ends. Consequently, the original position's conditions

encourage a diversity of conceptions of the good. In this regard, the original position necessarily results in distinctly liberal principles that guarantee equality of basic liberties. (Freeman, 2003: 26)

Before, we reach a single conception of justice; we have to examine all possible alternatives as rational persons likewise we have to come up with diverse conceptions of the good. Rawls has affirmed that we all are capable to make fully agreement to select a particular conception of justice by the veil of ignorance. The limitation of knowledge of the parties is possible to be resolved by having contract theories. To do this, Rawls came up with Perry's contractarian doctrine which involves that social and personal integration coming through by person's good will and rational prudence. The right action is when the action comes through reflective agreement which promotes social ends. Here, according to Rawls, we have to reject utilitarian approach and we need not calculate the results of such agreement. Rather we have to elaborate more the account before we pass to conclusion (Rawls, 1971: 122).

Why, is Rawls not attracted to have good knowledge of particulars and specific things? Because, Rawls argued, if we have knowledge of particulars we will commit bias by calculating our future conditions. Again, he is interested to avoid complications by incorporating the veil of ignorance or by preventing the facts of particulars. Here, equal treatment as rational persons is essential in the initial consent for having a just original position. In doing this, as Rawls argued, arbitrariness should be corrected to have 'a genuine reconciliation of interests' (ibid). But I am totally against Rawls' idea because we cannot create an important agreement which advances social aims without good knowledge and information of particulars. This seems to me like the blind man directs on the way for people or a blind man driving a car on high way which is highly difficult and even impossible to do so. Moreover, I will put my detail reasons with this regard in the sub-topic of 'theory and reality... '.

3.4 The Rationality of the Parties

Rawls has assumed that persons are rational in the original position. But, he has also assumed that persons do not know their conception of the good. This implies that persons have 'some rational plan of life' but they do not know in detail of the particular purpose and interests. And, according to him it is rational to suppose that the parties do want a larger share. Then, how can they come up with the best conception of justice which promotes their benefits? Or, do they select their conception of justice by depending on guessing? To answer these couple of questions Rawls forwards the following points: The parties have general knowledge which helps them to label the possible options though they have limitation of knowledge of the specific information and facts (Rawls, 1971: 123). And, Sandel called 'the veil of ignorance' a "kind of complicated amnesia" that helps to reach the desired equality in the original position (Sandel, 1998: 105). As Rawls argued:

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 and the general facts of moral psychology, their deliberations are no longer guesswork. They can make a rational decision in the ordinary sense. (Rawls, 1971: 123)

The concept of rationality is a crucial standard for social theory, as Rawls argued. And, the rational person is assumed to possess logical set of preferences to select the best options. He selects and follows the plan which greatly satisfies his interest by ranking these options. Rawls has argued that the rational person is not the victim of envy. The rational individual calculates his gains and losses of primary social goods independent of others. He meant that the rational person does not accept a loss for himself because others also possess less (Rawls, *ibid*).

Rawls said that the parties should not be engaged in envy. They should not also possess the feeling of shame and humiliation. To secure the conception of justice, envy should not exist in the derivation of the principles of justice. Because, Rawls argued that envy makes everyone worse off and disadvantageous generally. Rather, rational individuals should hold their own worth without stopping their aims. Therefore, envy and other destructive feelings should be rejected in making social arrangements so as to deliver conception and practice of justice in the society at large (Rawls, 1971: 124-5).

Then, Rawls came with the assumption that rational persons in the original position are mutually disinterested. They attempt to advance and promote their system of ends as long as it enables them to reach the highest index of primary social goods as much as possible. Again, they 'promote their conception of the good most effectively whatever it turns out to be' (Rawls, 1971: 125). Briefly, Rawls argued the following:

The parties do not seek to confer benefits or to impose injuries on one another; they are not moved by affection or rancor. Nor do they try to gain relative to each other; they are not envious or vain. Put in terms of a game, we might say: they strive for as high an absolute score as possible. They do not wish a high or a low score for their opponents, nor do they seek to maximize or minimize the difference between their successes and those of others. (Rawls, 1971: 125)

However, Rawls said that the parties intend to have as many scores as possible, while the games really concerned to win. But, the parties are guided and judged by their own system of end, so the exemplary game does not really apply in this sense. (ibid) As Schaefer argued:

Each participant is assumed to aim at maximizing the sum of his "points" in the game of justice. Because envy should not enter into the determination of justice, however, Rawls assumes that the participants "strive [only] for as high an absolute score as possible" without regard to the scores of their opponents. (Schaefer, 1974: 96).

Rawls insisted that the motivation of persons in the original position is somehow different from the motivation of persons in everyday life. A person has knowledge of his condition and he can live as he wishes and wills, he can calculate and serve to promote his personal advantage in the practical affairs. In the original position, he should move with the sense of justice, he must also be free from egoistic acts and desires in order to stand along the principle of right. Generally, Rawls conclude that 'the motivation of the parties in the original position does not determine directly the motivation of people in a just society. 'Rather, the motivation of the people is determined indirectly by the mutual disinterestedness of the parties throughout the effects of the agreement on principles (Rawls, 1971: 128).

The parties should move within the sense of benevolence, impartiality and good will as far as to build the sense of justice and the contract theory. Rawls inferred that the sandwich of mutual disinterestedness and the veil of ignorance have an equivalent purpose as benevolence. Such kind of combination of conditions, are important to take into account the goods of others in the original position. He claimed that the combination of knowledge and benevolence has various advantages in the original position or conception of justice. As well as, good will has great impact on justice as fairness so as to work cooperatively and jointly (Rawls, 1971: 128-9).

Finally, Rawls argued that the willing of any means of exploitation, racial doctrine, and, sexual or any form of discrimination for their own advantage has no ground in the rationality of the parties and as well as in justice as fairness. Rawls argued that they are unjust, irrational and not moral conceptions at all while they are means of suppression. Simply, they have no ground or they are pointless in the rationality of practices and in the list of reasonable conception of moral traditions, as well (Rawls, 1971: 129).

3.5 Theory and Reality on Rawls' Social Contract Theory

Here, I will argue and raise questions which are relevant to this chapter. My aim is to show the limitations, gaps and defects of Rawls' idea of the original position and his social contract theory in general.

In the beginning, I have doubt on Rawls' assertion, with regard to, how the parties could make a contract without good knowledge of the issues and without predicting the effects of the contract in their future lives. I am totally against this idea of Rawls because we cannot create an important agreement which advances social aims without good knowledge and information of particulars. Rawls argued that it is possible to reach an argument of original position having the general knowledge and facts or under “the veil of ignorance”. However, Schaefer argued that ‘rational choice should not be under “veil of ignorance” but in the light of the fullest possible examination” (Schaefer, 1974: 102). I am saying that the general knowledge or fact is also the result of the particular knowledge which may gain through reason or an experience. Again, I think that “the veil of ignorance” which is used to deprive knowledge of the particulars, this prevents me from enjoying my rights and desires to know something. Having said this, it is a contradictory for Rawls' idea of equal basic liberties. For instance he said that ‘freedom of speech’ is a basic liberty and if so I have basic liberty of speech by having the knowledge of the particulars of political matters or other issues. Moreover, if I have no knowledge and information of the individual's desires and interests especially about my own self, how can I stand as representative to advance the good conception of life? To me, it is like to say that a blind man drives a car on the high way which is highly difficult and even impossible to do. Rather, the parties should be free from restriction for the rationality of choice of the principles of justice. Thus, an anonymous person says that the parties are characterized as “...neither people in our

society, nor people in a just society; they are merely the artificial creatures created for purposes of deliberation” (www.ucl.ac.uk/~uctyvmd/Handout.pdf: 4).

And, I have one similar question to the above discussion; Rawls argued that the parties in the original position are free from prior beliefs and moral ties. As far as human beings decide and act based on their beliefs and moral conceptions, how can it be possible? Or, if they are free from their prior conceptions, in what mental state are they capable to advance their conception of the good? This seems to me to be ridiculous, because, I think individuals on their common wealth or different activities, decisions and communications are influenced by their previous beliefs, knowledge and moral conception of their society as well. If not, they conduct based on their direct observations and predictions of the future effects of their conduct. To be sure, if I am free from prior conception, I do have nothing, I am not only incapable to advance the good conception of my life or others’ lives, even I cannot do or write what I am writing now. Weber also argued “Rawls did not deal extensively with theories of human nature that have often played a major role in social contract theory” (Weber, 2009: 1).

Moreover, let us assume that the parties made an agreement to the original position within certain period of time and specific place, but through time there may be changes due to technological advancement or other factors as well and new generations who are not part of that agreement must become part of that community. Here, my question is how Rawls’ contract faces such kind of circumstances and may be challenges? I have no idea to answer this question but I bring it simply to show the defect and gap of Rawls’ idea of the original position and rather it would have been answered from the defendant of Rawls’ theory of justice.

Finally, I want to examine Rawls' social contract theory, whether it is genuine contract or not. Rawls argued that the original position is a hypothetical contract but not an actual historical contract (p.12). In the article titled as 'modern political thought: ...' professor Lakatos also describes the original position as an agreement held 'under the given theoretical and hypothetical conditions'. Hall also called this contract as "as-iffed" (Hall, 1957, cited in Lakatos, n.d: 2). And, as Rawls claimed justice as fairness, this original position established within the motto of fairness or fair equality under the veil of ignorance or what Sandel called this as "kind of complicated amnesia" (Sandel, 1998: 105). Having said that Rawls' theory or contract is not genuine contract at all, for the following reasons:

First, the theory is incapable of forwarding certain principles rather it is a hypothetical one. It lacks its actuality. Ronald Dworkin also says a "hypothetical contract is not simply a pale form of an actual contract; it is not a contract at all" (Dworkin, 1975: 18). And, Rawls' social contract is not the contract of nature as the works of Hobbes, Locke and Rousseau. I think this is why Rawls became uncertain in his theory and he prefers to be hypothetical one. Rawls did not come with the solid and clear idea; especially he said anything about the actor/s that assigns and controls the parties to be under 'the veil of ignorance'.

Second, as I have discussed prior, if we are decided to have a contract we have to well understand and we have to assess all possible detailed information of what we are going to give our promise. And, we are required to estimate the interests and desires of individuals especially in the issues of politics, economic conditions, social and moral conceptions of the society. Again, we need to map out and predict the effects of our contract. It may be harmful to have social contract without identifying our ends. If we do have a contract without well understanding of the issue, it is not a real contract. Schaefer also argued that the parties are "not human beings at all...

they are unreal, purposeless, lifeless ciphers, unanimous in their anonymity” (Schaefer, 1974: 103). That is why I reject Rawls’ original position which is made under the veil of ignorance and I appreciate and prefer Schaefer’s idea of social contract which is made “in the light of the fullest possible examination” of the parties (ibid).

In the beginning, who is the agent or actor, who puts the parties to be ‘under the veil of ignorance’? If this is so there is no individual choice rather the parties are directed to do so by someone or something. Then, if the agent is/are person/s, he/they may direct them according to his/their will. Or, if the agent is the actual situation or circumstances, the parties have a chance to establish the original position according to their own interests. And, who controls whether the parties are under ‘the veil of ignorance’ or not? That is why I am dissatisfied with Rawls’ theory which is complex but not realistic, highly ideal and less or no significance. Thus, I conclude, Rawls’ social contract theory is not genuine contract or not workable at all, on the ground.

To conclude, we have seen so far the ideas of the original position and the possible means to reach the contract through and by the ‘veil of ignorance’, according to Rawls. We have informed also the circumstance of justice which divides as objective and subjective circumstances of justice. And, we have discussed the rationality of the parties in formulating the equal and fair of original position. Finally, I have attempted to show my position which is more or less against Rawls’ social contract theory being unreal, non-historical, and purely abstract, no or less significance and no actual contract at all. Then, in chapter four, I will present the criticisms of Rawls’ theory, mainly the communitarian and libertarian critiques, then after, my reflections and finally my conclusions.

CHAPTER FOUR: THE CRITIQUE OF JOHN RAWLS'

THEORY OF JUSTICE

4.1 Introduction

So far, we have discussed on selected topics from the first part out of the three parts (theory part, institutions, and ends) of Rawls' "A Theory of Justice". Briefly, in the previous three chapters we have dealt with the fundamental theories of 'justice as fairness' of John Rawls' conception. Now, we are going to discuss the critique of Rawls' "A Theory of Justice" from the communitarian and libertarian as well. This includes Sandel and Walzer, even though Sandel himself is not satisfied with categories of communitarianism instead he appreciates republicanism. The libertarian criticism arises from Robert Nozick. Then, I will present my reflection or my criticism for Rawls' a theory of justice followed by a conclusion.

4.2 Michael Sandel's Critique of Rawls' Theory of Justice

Sandel argued, "Rawls' concept of right does not extend to private morality, nor does any other instrument of detachment save the good from thoroughgoing implication in the agent's existing wants and desires" (Sandel, 1984: 159). There is a failure to compromise the different desires that may lead to conflict among individuals. Sandel also rejects Rawls' conception of the good. Dworkin argued 'That we have one conception of the good rather than another is not relevant from a moral standpoint. In acquiring it we are influenced by the same sort of contingencies that lead us to rule out knowledge of our sex and class' (Dworkin, 1975, cited in, Sandel, 1984: 159-60).

Gutmann argues:

The central argument of Sandel's book is that liberalism rests on a series of mistaken metaphysical and metaethical views: for example, that the claims of justice are absolute and universal; that we cannot know each other well enough to share common ends; and that we can define our personal identity independently of socially given ends. Because its foundations are necessarily flawed, Sandel suggests in a subsequent article that we should give up the "politics of rights" for a 'politics of the common good'. (Gutmann, 1985: 310)

Sandel says justice as fairness undermines the values of our commonality as utilitarianism fails to recognize our distinctness. He argues, 'In regarding the bounds of the self as prior, fixed once and for all, it relegates our commonality to an aspect of the good, and relegates the good to a mere contingency, a product of indiscriminate wants and desires 'not relevant from a moral standpoint'.' Rawls reduces the conception of the good and gives priority to the conception of right. The priority of right over the good would seem an unobjectionable and unquestionably claim indeed. Sandel says, 'utilitarianism gave the good a bad name, and in adopting it uncritically, justice as fairness wins for deontology a false victory' (Sandel, 1984: 168).

Sandel argued that Rawls or generally liberalism accepts the 'distance of self and ends, when this distance is lost, we are submerged in a circumstance that ceases to be ours.' But, when liberalism seeks to hold this distance, it undervalues its own perspective. Rather we should identify our ends and our conception of good before a mutual cooperation is held, unlike Rawls' idea of the veil of ignorance. Liberalism puts the self beyond the influence of politics. Sandel said this leads to misplace the quality of politics and forgets its possibilities. If the politics goes wrongly, it results risk easily like, dissatisfactions and displacements. I think Sandel identifies the end as a personal identity (Sandel, 1998: 54-59, 183, 1984: 175-6).

Sandel criticized Rawls' conception of the self; it is unlikely when Rawls claimed the self is completely prior to its ends. If this is so, in analyzing our ends, the self is separate from them/ends. He argued that Rawls' conception of the self is not only implausible but also not neutral in the conception of the good, while Rawls argues the individual is neutral of the conception of the good in the original position. Sandel, then, argued that Rawls' understanding of the self is highly problematic for many reasons. For instance, it is not a matter of how we perceive ourselves. And, he argued, "When I talk about me, I do not see myself as a disembodied self. I see myself as someone who is located in time and space, as well as in a network of deep relationships which are important to me". In addition, Sandel claimed, the ends are part of 'who I am' or who he is and he identifies with his ends. But, if the self were entirely prior to the ends, then they could not be part of 'who I am' or who he is (1998: 176).

Secondly, Sandel said, in addition to the above, 'the self does not choose its ends' as far as it is prior to its ends. So, he affirmed that Rawls' understanding of the self is mistaken. He argued, the liberals, particularly, Rawls has been asking, 'whom do I wish to be, or become?', Rather, we should be asking that 'who am I?' (Sandel, 1984: 19-22).

Sandel stated that the liberals' understanding of the relationship between the individual and the community is flawed. Because, he says ideology of the liberals undermines the values and importance of the community. And, the liberal individual is self-centered and not cares for the communal life and values. More ever, the liberal individual does not accept obligations if it is not directed by the rule of the contract, for instance he does not accept the obligations which happen in his familial relationships if the obligation does not stand with his will (1998: 60-64).

Sandel contended that it is wrong when Rawls' liberal ideology confirms that the state should be neutral between the conceptions of the good. Rather, according to Sandel, the state should 'promote the community's way of life'. He is not also satisfied when Rawls and liberalism as well, over value the importance of individual rights. Because, individual right failed to 'promote community values'. For instance, there is individual right, freedom of speech, based on this right the individual may degrade the community values by using things like pornography. And, liberal rights promote individualism, which have egoist and selfish ethos. Liberals do not consider the wider social context. Moreover, he said, rights, and justice in general should not be only seen as a solution to social conflicts. Rather, we need a strong unity as a community with understanding of the values we can treat each other, and in doing this 'rights and justice would not be necessary' (Sandel, 1998: 147-153).

4.3 Walzer's Critique of Rawls' Liberalism:

Walzer criticized Rawls' liberalism, particularly; he focuses on the distribution of goods but not how to think about justice. Rawls in his "A Theory of Justice" claimed the universality of the principles of justice; it applies to all individuals wherever he is regardless of his religion or culture. But, Walzer denied Rawls' conception of universality declaring that justice is culture-specific or relative. Again, Walzer disagreed with Rawls, definitely, liberals in general, ideas or assumption of the distribution of the primary goods according to single principle. But, Walzer claimed that primary goods should be distributed as to their social meaning and in doing this, he came up with complex equality, instead of simple one. Walzer's theory of justice, unlike Rawls, is relative and the distribution of goods is historical (Walzer, 1983: 312-13).

Walzer argued that different goods should be distributed according to different procedure. He criticized Rawls' idea of simple equality which is typically dominant by one good which is money, while Walzer affirmed the complex equality which has different goods with respect to the different social meaning. Unlike Rawls, Walzer argues:

The theory of justice is alert to differences, sensitive to boundaries. It doesn't follow from the theory, however, that societies are more just if they are more differentiated. Justice simply has more scope in such societies, because there are more distinct goods, more distributive principles, more agents, and more procedures. And the more scope justice has, the more certain it is that complex equality will be the form that justice takes. (Walzer, 1983: 315)

Walzer argues that liberalism in general makes a wall to separate an integrated society. According to Walzer, Marx also believed that the art of separation by liberals were successful as Marx claimed that 'an individual separated from the community, withdrawn into himself, wholly pre-occupied with his private interest and acting in accordance with his private caprice'. They separate many things, for instance, state from church and university, public life from private life, and the like, but these are inseparable and two-in-one, according to Walzer. For this, Walzer calls liberalism 'a world of walls' (Walzer, 1984: 318).

Walzer said Rawls' conception of freedom or liberals' freedom in general, is unreal. According to Walzer, 'As the formal freedom of the worker is only a mask for wage slavery, so religious liberty, academic freedom, free enterprise, self-determination, and privacy are masks for continued or reiterated subjection: the forms are new, but the content is old.' And, he claimed, liberal freedoms are described by having the quality of theoretical willfulness and flouting with the art of abstraction. According to Walzer, Rawls' liberal conception of theory of justice has been serious but it is guided by an inadequate and misleading theory (Walzer, 1984: 320).

4.4 Nozick's Critique of Rawls' Theory of Justice

Sandel and Walzer condemn Rawls for prioritizing the individual while; Nozick argues that Rawls' original position focuses on clusters rather than individuals. And this is 'ad hoc and inadequately explained', according to Nozick. Rawls says that the difference principle is accessible as essential condition for the good of everyone. But the better gifted will still have grounds for complaint under the principle: a principle that favored them might also provide the benefits of social cooperation. Nozick asks 'Why assume that the least well-endowed can expect the willing cooperation of the better endowed in a redistributive scheme'? (Nozick, 1972: 274). I think, Nozick's idea is that the less- fortunate should not only cooperate with the better-off in expecting redistributive outcomes.

Kymlicka argues that both Rawls and Nozick have continuities on the abstract principle of equality and they have also similar positions against utilitarianism. Both Rawls and Nozick argue that utilitarianism treats individuals as means not as ends in themselves. Here, individual desires and rights may be sacrificed for the greater advantages of others. Having said that, so, 'both Rawls and Nozick agree that treating people as equals requires limits on the ways that one person can be used for the benefits of others, or for the benefits of society generally.' Briefly, according to Rawls and Nozick there are individual rights which the society shall respect and these rights are not subject to utilitarian calculations (Kymlicka, 2002: 108) Nozick declares the inviolability of others by saying, 'don't use people in specified ways'. In other words, individuals are ends in themselves and we should not treat them merely as means. At least we have to minimize to use as means in dealing with humanity (Nozick, 1974: 32).

Kymlicka also presents the different points of Rawls and Nozick, they differ on having the best rights and most valuable ‘in treating peoples as ends in themselves.’ For instance, for Rawls, one of the highly ranked rights is the fair distribution of society’s resources. While, for Nozick, the rights over oneself or ‘the rights of self-ownership’ is one of the vital rights (ibid). Moreover, Nozick disagreed with Rawls on the commencement of how to distribute the outcomes, encumbrances, and welfares of the social cooperation. (1974: 185).

Nozick objects Rawls’ principle of fairness, especially the conditions of fair sharing may be burden for the person who produces large. This implies that there is/are individual/s that benefit(s) from the action of others and basically this is unfair. And, social cooperation indicates the division of labor, exchange and mutual advantage. But, in the absence of working together for their good, this couldn’t be regarded as social cooperation and then it is unjust if there is fair sharing of the products between the producer and the idle. Or, I say, this may be conceived as exploitation rather than fair distribution. I think, Nozick strongly condemns Rawls’ principle of fairness because it motivates and allows a wrong way for the persons who are not willing to work hard rather they need to live on the expense of others. But, Nozick suggested a complex principle which is not easily objectionable (Nozick, 1974: 94-95).

Moreover, Nozick challenges Rawls’ non-historical principles. In his ‘entitlement theory’, Nozick outlines to avoid the nature and defects of other conception of distributive justice. As he argues, “the entitlement theory of justice in distribution is historical; whether a distribution is just depends upon how it came about.” Nozick’s objection also works for welfare economics and utilitarian as well. These non-historical or what Nozick calls as ‘time-slice theory’ or principles merely look at the matrix and structures of the distribution in comparing other distributions without understanding how that distribution came about. Again, the non-historical principles of

justice need no further information in to their account of principles of justice (Nozick, 1974: 153-4). In contrast to these non-historical principles of justice, Nozick argues:

Historical principles of justice hold that past circumstances or actions of people can create differential entitlements or differential deserts to things. An injustice can be worked by moving from one distribution to another structurally identical one, for the second, in profile the same, may violate people's entitlements or deserts; it may not fit the actual history. (Nozick, 1974: 155)

4.5 My Reflection and Criticisms

First, persons have different inclinations, desires and behaviors... then how can they reach agreement in the initial stage. This shows metaphysical failure of Rawls' social contract theory. There are also many incompatible assertions and analysis. As Rawls declares that his theory of justice is an alternative for utilitarianism. Then, he follows Kantian deontological fashion. However, I have observed his various views and interpretations are based upon utilitarian doctrine or principles. For instance, he says the rational person accepts the conception of justice as far as it is capable to solve more problems than others (Rawls, 1971: 15). He also says, "The institution as an abstract object is just or unjust in the sense that any realization of it would be just or unjust" (ibid, 48) If so, Rawls' theory of justice is result oriented. Therefore, Rawls' deontological foundation is inconsistent.

Second, Rawls emphasizes on the fair and equal distribution of the goods. If there are inequalities, then it must be for the benefit of the less-fortunate person. However, he has no idea about the production of these goods. If we need an equal and fair distribution of outcomes we have to participate equally in the production of goods. But, if we simply distribute the outcomes without consideration of their engagement in the production of goods, it is unjust and sort of

exploitation. Again, Rawls' fair distribution doesn't motivate for industrious individual/s. To clarify, we can assume that there are ten (10) farmers who have equal plots of land and equal membership in a given local area. They worked on their land by using different mechanisms so as to maximize their product. Some of them may be wiser and laborious than others, for this reason, they produce different quantity of products. Some of them may not survive because their product is little. So, is it fair to distribute the products fairly for all as a principle in order to secure fair distribution? It is not just to distribute fairly as a principle, but due to the sense of morality the farmers can share their products as much as they will.

Third, Rawls says that justice and truth are uncompromising (4). I disagree with this idea of Rawls, because there are exceptional cases in which it may not be right to tell the truth. There may be a necessity not to tell the truth but to keep it as secret for security. And, there is a condition which forces to deceive may be for protecting from harmful practices or killing of individual/s. Therefore, as truth is right in itself, there are exceptional cases that lies can also be conceived as right in it-self. My point is, there is some circumstance which needs to follow universal principles and there is also some other circumstances which are exceptional and need a situational mechanism to solve or to do something.

Fourth, Rawls introduces two principles of justice (first, equal basic liberties, and second, social and economic inequalities). He prioritizes the first principle over the second one. And, he says, the basic liberties are equal to everyone and should not compromise for other greater advantage. But, Rawls was not really concerned about the impact of social and economic inequalities over the basic equal liberties. How can individuals maintain and exercise their liberty equally...having inequalities in power and resources? Wealthy persons have great influence on the political and decision matters of the society. As Walzer (1983) argues money buys power,

influences, honor, education and the like. For instance, let us see the following argument; we see that freedom of speech is one best example of the basic equal liberties. Basic equal liberties are uncompromising for other greater advantage (it may be social or economic advantage), according to Rawls. Therefore, freedom of speech is uncompromising for other greater advantages. However, if we are incapable to feed ourselves then we cannot exercise our freedoms or we cannot live as our own desires and wills but on the wills of others. So there is an economical sanction to our basic liberties. Simply, we can see the lives of the household servants. Persons are forced to compromise their basic liberties for the sake of survival. Therefore, Rawls' two principles contradict, each other.

Fifth, Rawls brings the veil of ignorance to secure the fairness of equality of the original position by preventing the parties from particular knowledge and facts. The individuals are neutral of different conception of the good. Thus, when the parties are under the veil of ignorance they don't know 'their place in society, their race, sex, or class, their wealth or fortune, their intelligence, strength or other natural assets and abilities' (Sandel, 1998: 22). I am totally against this idea of Rawls because we cannot create an important agreement which advances social aims without good knowledge of particulars and without identifying our conception of the good. In the beginning, I think that "the veil of ignorance" which is used to deprive knowledge of the particulars, this prevents me from enjoying my rights and desires to know something. Having said this, it is a contradictory for Rawls' idea of equal basic liberties. Second, if I have no knowledge and information of the individual's desires and interests especially about my own self, how can I stand as representative to advance the good conception of life? If we are decided to have a contract we have to well understand and we have to assess all possible detailed information of what we are going to give our promise. So we do not need a veil of ignorance in

the original position. Rather, the parties should be free from restriction for the rationality of choice of the principles of justice.

Even though we assume that the veil of ignorance is important or right means in the original position, who is the agent or actor, who puts the parties to be ‘under the veil of ignorance’? If this is so there is no individual choice rather the parties are directed to do so by someone or something. Then, if the agent is/are person/s, he/they may direct them according to his/their will. Or, if the agent is the actual situation or circumstances, the parties have a chance to establish the original position according to their own interests. And, who controls whether the parties are under ‘the veil of ignorance’ or not? That is why I am dissatisfied with Rawls’ theory which is complex but not realistic, highly ideal but less or no significance. And, it consists of many contradictions or inconsistent ideas, many gaps, defects and flawed ideas. Thus, I conclude, Rawls’ social contract theory is not genuine contract or not workable at all, on the ground.

Conclusions

Rawls theory of justice is conceived as ‘justice as fairness’. His principles of justice, is formulated based upon the agreement of all its members of the society. These principles of justice give a guarantee for the equal basic human rights, and, social and economic inequalities. The principles should be known by every member of that society and also by others. They also serve as a frame work of human behaviors and actions. Rawls infers that the role of justice is to lay down the basic rights and duties as well as to run an appropriate distributive share of goods for its members. Or, justice is the basic foundation for existing and over going of laws and institutions as Rawls conceived it. He recognizes two principles; the equality of basic liberties and the inequality of social and economic conditions may ensue due to having different

circumstances, skills and talents. The basic equal liberties are not compromised for other greater social and economic advantage. Moreover, Rawls came up with the 'difference principle' to regularize the economic inequalities by privileging the less-fortunate.

Rawls argues the primary subject of the principles of social justice is the basic structure of the society. And, this basic structure of the society requires a system of cooperation through and by an arrangement of major social institutions. The aims of Rawls' principles of justice are intended to set the well-ordered or democratic society. We have also discussed that Rawls' democratic equality rests upon three principles: equal basic liberties, inequalities of social and economic and the difference principle. Thus typically, democratic equality is required to assure the basic structure of the society. Rawls defined primary social goods as the goods wanted by every rational person, they are basis of expectation. Primary social goods include political rights, basic liberties, wealth, income, and sense of one's own worth.

I have shown the unattainability of Rawls' formulating two principles. Fundamentally, there is metaphysical failure of his two principles. Rawls thinks that the ultimate source of the contract is from free individuals' agreement equally in the initial stage of establishing these two principles. There is difference on individuals' idea of many things but Rawls says the basic liberties of individuals are uncompromising. So, how can Rawls compromise the individuals' difference of equal basic liberties to reach an agreement?

Rawls deeply criticizes the doctrine of utilitarianism saying that it predominantly focuses on pleasure maximizing or prioritizing the good over the right one. It has also many defects typically in its incapability to share equally or fairly the greater sum of pleasure for its members and incapability to share equally one person's over period of times. That is why Rawls came up

with his principles of justice to replace utilitarianism or to serve as an option to it. Unlike utilitarianism, he follows the Kantian deontological orientation although they differ in some respects. However, I have observed that some ideas of him are the same with utilitarianism. For instance, he argues that the rightness of the principles is measured based on their capability to solve problems practically. Thus, I say that Rawls' theory of justice is inconsistent.

Natural duties are duties without a conviction, and they can be further divided as positive which allows doing something and negative which prevents to do something. We have seen also how natural duties differ from obligations. To mention a few distinct features of obligations, in obligations, there are promises and agreements or voluntarily act, they are defined what to do in the institutions, and, they are owed to specified individuals. Whereas, the natural duties are applying without consideration of voluntary act, there is no necessary connection with the rules of institutions.

We have discussed Rawls' idea of the original position. The nature of the argument of Rawls is conceived as hypothetical, non-historical and not belonging to the traditional theory of nature. In this part, we have informed three sub-topics: 'circumstance of justice', 'the veil of ignorance' and 'the rationality of the parties'. These three sub-topics are intended to show us the nature of the original position and to inform us how to formulate the original position by free and autonomous individuals. Rawls described the circumstance of justice as the idea of the possibility and necessity for human cooperation under preferable condition. He argues that these circumstances of justice according to their conditions are divided in to two, objective and subjective circumstances. The objective circumstances make both possible and necessary for human cooperation. Here, there is no more difference and conflict between individuals. While, in

the subjective circumstance, human cooperation is possible but not necessary. Here, there are individual differences in interests and life plan purposes.

The veil of ignorance is used as a means for formulating fair and equal principles of the original position. It also prevents any form of exploitation. In the original position, the representative parties are not permitted to have knowledge of the particulars but only the general fact and knowledge. In doing so, the veil of ignorance deprives knowledge of particulars of the parties. The parties even don't know their race, class, outcomes of the agreement, conception of the good, goal, and their position and abilities.

I disagree with Rawls' idea of the veil of ignorance, because it appreciates ignorance. And, ignorance is the sources of evil as Socrates also said that. Schaefer also argues the parties should be in the light of the fullest possible investigation (Schaefer, 1974: 102). If we have no full understanding of the issues that we are discussing for contract then we are incapable to identify which is good or bad. The veil of ignorance is also contrary to Rawls' equal basic liberties. And, Rawls does not say anything about who puts and controls the parties to be under the veil of ignorance.

Rawls argues that the parties in the original position are rational although they do not know their conception of the good. It is to mean that persons have 'some rational plan of life' but they do not know in detail of the particular purpose and interests. The parties have general knowledge which helps them to rank the possible options though they have limitation of knowledge of the specific information and facts (Rawls, 1971: 123). The concept of rationality is a crucial standard for social theory, as Rawls argued. However, if Rawls really follows the deontological view, how the parties know the best option as far as they don't know the result. If the parties are ranking

different options to formulate principles then either they do it based on prediction or they know it based on experience. So, Rawls has lots of contradictions, example when he says that people in the original position are free from their previous experiences, moral ties, and they do not predict their future conception of good. Therefore, I say, Rawls' detailed arguments and reasons have many defects, contradictions, typically ideal but less or no significant. His social contract theory is not genuine and not workable as long as it is unattainable and fails in its fundamental foundation.

My final remark is: Rawls' theory of social contract fails to meet its target because it is merely abstract and exclusive in its approach. In my observation, not only on the Rawls' a theory of justice but also many philosophical theories and doctrines fail to achieve their goal partially or completely because they go contrary to the nature of philosophy. Philosophy is inclusive in nature. Example when we see the sources of knowledge some say reason, while others say sense perception/experience is a sources of knowledge, but both sources contribute to have complete knowledge. Likewise, we have to recognize the importance of liberalism and communitarianism in some respect or we do have to use some universal and some relative principles, the two are in one and inseparable for complete understanding the world. Having said this, we don't have to pick the one side as a sole means, method or theories rather we have to use all possible ways for complete understanding or mechanisms so as to solving human problems. Therefore, Rawls' theory should recognize the importance of utilitarianism and likewise the liberal in general should recognize the importance of communitarian view and vice versa. They should follow the moderate and inclusive approach instead of going to the extreme side.

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