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BALANCING EQUALITY AND LIBERTY IN RAWLS'S THEORY OF JUSTICE

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Abstract

This thesis examines the balance of equality and liberty in Rawls's theory of justice. By analyzing the contents of his two principles of justice, this thesis supports his claim that the principles of justice adequately represent the values of equality and liberty.

The point that this thesis focuses on is the relationship between two principles of justice. According to Rawls, the relationship between them is created by priority rules. Rawls arranges two principles of justice in lexical order – the priority of the first principle over the second. This idea of priority rules does not provide an adequate standard to reconcile the values of equality and liberty because the priority rules emphasize liberty more than equality.

This results from Rawls's position. That is, he attempts to compromise equality and liberty within a liberal' view. Liberals do not have the intention to harmonize equality and liberty because the most important value for them is liberty. Thus, Rawls's idea to balance equality and liberty has the same limit as liberals.

Table of Contents

I. Introduction 1

II. The Notions of Equality and Liberty 7

III. Rawls's Theory of Justice 11

Two Principles of Justice 11

The Original Position and Justification 11

First Principle (Liberty Principle) 16

Second Principle (Equality Principle) 23

Priority Rules 30

The Content of the Priority Rules 30

The Limits of the Priority Rules 34

IV. Conclusion 52

Bibliography 55

Vita 59

I. Introduction

Since the collapse of most communist states, the international economy has a dominant order - capitalism. To put it concretely, the only way to participate in the international economy is to accept capitalism. If a state wants a stable economic situation, the state must adjust and follow the rules of capitalism. That is, they should guarantee the basic characteristics and principles of capitalism such as economic liberty and private property rights. Thus, it is not surprising that capitalism has been supported by classical liberalism, which guarantees free economic activity through the noninterference of a state or a government.

However, due to its characteristics such as the concentration of capital and the emphasis on economic liberty, capitalism has caused many social and economic problems such as a widening economic gap between haves and have-nots. This has resulted in labor struggles as workers' demand various rights such as the right of organization, the right to strike and the liberty of political activities. As a result, the social confrontation between capitalists and workers has intensified. Liberals recognized the need to accept the demand of workers in order to maintain peace and order, and at the same time, the challenge of socialists and communists, especially Marx, caused liberalism to begin to revise itself.

In order to solve severe economic and social inequality, liberals

reconsidered the equality of all of society and attempted to accept democracy. To include the idea of democracy in liberalism, most rights, which only the bourgeois class enjoyed, started to expand to all people as basic rights. This has been the evolution of liberalism from classical liberalism to reform liberalism, which I will hereafter refer that liberal democracy is the representative form of reform liberalism.

Liberal democracy permits political participation rights to the proletariat class and gives such rights as universal suffrage. In addition, liberal democracy allows a state to control the negative results of private ownership in order to consider the general interests of the low-income brackets. That is, its goal is to guarantee the minimum standard of living and impede the arrogance of monopolistic capital, within the framework of the welfare state.

Here, the important thing to note is that the premise of these goals is to guarantee individuals liberty, private property rights and freedom of economic activity as its first priority. This premise indicates that liberal democracy is the political ideology to guarantee capitalistic property rights like other forms of liberalism. Thus, granting that equality was expanded politically, there existed inequality economically because the bourgeois class had already accumulated and monopolized huge capital. As a result, there remains serious economic and social inequality in liberal democracy. To put it simply, liberal democracy is a mixture between economic inequality and political equality.

Thus, the relationship between equality and liberty is that liberty still has much more weight than equality in liberalism. That is, while liberty has the absolute position as an unconditional right, equality has a relative position as a conditional right which can be shaken depending on the political and legal situation. Even though the efforts to alleviate social and economic inequality have been sustained through the state's intervention and various policies, the general logic or principle that has controlled capitalist society is the absolute guarantee of economic liberty.

Yet, serious social and economic inequality and severe strains on liberal concepts of social justice reveal the limits of liberalism's logical and theoretical ground. Therefore, as far as liberalism adheres to this logic, the revisions of liberalism have no meaning because the basic principle of the revisions is always the same even though the revisions include different means and attempts at reform. Thus, this continuous revision just indicates that liberalism is insufficient to correct its own limitation. The reason that liberalism has difficulty in correcting its limits and problems seems to be that liberals ignore or fail to find a persuasive compromise between liberty and equality. Even though liberalism is a theory that focuses on liberty, it is important to consider a compromise, because serious economic and social inequality can cause social unrest, conflict and disorder, so that even liberty cannot be guaranteed. Thus, the point that we should focus on is how to reconcile the conflict between the values of equality and liberty.

Given this situation, it is not surprising that John Rawls's *A Theory of Justice* [1] has evoked huge response and attention. As Clark and Gintis point out, "Rawls's work has provoked a level of response which may be taken as indicative of the seriousness of the dilemma [of liberalism]."[2]

As stated above, the core of the dilemma is the tension between liberty and equality. Rawls recognizes this fact and thus discusses equality, which most liberals have neglected or even suppressed. Rawls attempts an important theoretical work that addresses the value of equality, thereby expecting to create a theory of justice which can realize the values of equality and liberty. Thus, he even suggests that his theory – especially his two principles of justice – is "compatible with such different socio-economic systems as capitalism and socialism."[3] In other words, Rawls's theory of justice appears to be the attempt to reconcile the confrontation of the ideological values of equality (socialism) and liberty (classical liberalism). However, this middle position confronts critiques from both socialists and liberals.

In spite of these critiques of Rawls's attempt, it is worth discussing his idea because we seek a proper compromise between equality and liberty as a guide or solution to the problems of our current society. Thus, this paper seeks to explain and criticize Rawls's theory of justice. Of course, I do not intend a comprehensive

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[1] Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971. Page references throughout the text are to this book.

[2] Clark, Barry & Gintis, Herbert. "Rawlsian Justice an Economic Systems," *Philosophy and Public Affairs* 7 (Summer, 1978). p. 303.

[3] Daniels, Norman. *Reading Rawls*. New York: Basic Books, 1975. p. xiii.

explanation of Rawls. Instead, I am centrally concerned with Rawlsian ideas about the attempt to resolve the two values of equality and liberty. My main interest is thus his 'two principles of justice'.

According to Rawls, a conception of justice is appropriate for realizing in basic institutions the values of equality and liberty. Thus, his theory seeks to specify the values of equality and liberty within his theory of justice. Rawls maintains that his two principles of justice are the specific form that is capable of realizing equality and liberty. By analyzing the contents of his two principles of justice, this thesis supports his claim that the principles of justice adequately represent the values of equality and liberty.

After addressing the two principles of justice, Rawls explains the relationship between the two principles. The relationship between them is created by priority rules. According to the priority rules, Rawls arranges two principles of justice in lexical order – the priority of the first principle over the second. Because the priority rules establish the relationship between principles, they can provide the criteria of a balance between equality and liberty in Rawls's theory. This thesis argues in various ways that Rawls's idea of priority rules does not provide an adequate standard to reconcile the values of equality and liberty.

An additional aim of this paper is thus to clarify Rawls's position between socialism and liberalism. I seek to demonstrate that he supports the basic ideas of liberalism through his essential features (the priority of the liberty principle over

the equality principle, "the institutional model of a property owning democracy"[4]).

In sum, my argument proceeds in three steps. First, after studying briefly general explanations of the notion and relationship between equality and liberty, I explain, in summary, the 'original position' that provides the philosophical foundation for his theory of justice. Here, I will explore how Rawls creates his principles of justice and justifies them by using his idea of 'original position'. Next, I will concentrate on explaining and evaluating the contents of his principles of justice. I conclude that his two principles adequately represent the values of equality and liberty. Here, I also include some explanations of his modification of the 'two principles of justice' in his *Political Liberalism*. Third, I will explain and criticize his priority rules. Here, I will use the critiques by liberals and socialists. This approach seems to make sense because Rawls deals with the main values of each perspective. Through studying each field's critique, I discover the limits of Rawls's attempt to satisfy both values at once without making them limit each other.

[4] Doppelt, Gerald. "Rawls' System of Justice: A critique from the Left," *Noûs* 15 (Sep., 1981). p. 259.

II. The Notions of Equality and Liberty

When people mention equality or liberty, they say as follows: 'All men have the right to be free', 'All men ought to be equal'. This indicates that these notions imply moral principles. This is different from other political concepts such as power or authority. That is, while the latter describes some features of human relationship, the former is a prescriptive term as well as a descriptive term. Thus, equality and liberty are regarded as ideals or principles: "something men aim at or by reference to which they guide their conduct."[5]

This view that equality and liberty are moral principles commonly assumes that "liberty and equality are sufficiently justified by refuting the arguments used against them. [Thus,] the burden of proof is always on the enemy."[6] That is, we might suppose that when people talk about these notions, we consider "some closely related evaluation concept, such as impartiality or justice."[7] For instance, just as the situation of coercion can highlight the need of liberty as a moral principle, the situation of inequality can indicate the significance of equality. In other words, these notions are a response to the moral claims of individuals, so that they make it possible to assess "arguments for or against certain practices

[5] Rees, John. *Equality*. New York: Praeger Publishers, 1971. p. 11.
[6] Graham, A.C. "Liberty and Equality," *Mind*. 74 (Jan., 1965). p. 59.
[7] Wilson, John. *Equality*. New York: Harcourt, Brace & World, Inc., 1966. p. 19.

which are justified by reference to those concepts."[8] In sum, the notions of equality and liberty are interpreted as moral principles in this thesis.

Even with a clear view of this definition, some ambiguity remains because they are complicated concepts connecting the various fields of society, not simple concepts limited to one or another field of society. That is, they are "concept[s] of which there are many conceptions." [9] As Waldron says of equality, "men appeal to [them] in a host of contexts – moral, political, legal, economic, religious, educational and social."[10] The same is true of liberty. Thus, these concepts have suffered much confusion. In order to avoid this confusion, I briefly explain arguments about these conceptual and linguistic questions below.

First, in order to avoid conceptual confusion, I use the words liberty and freedom to mean the same.[11] Of course, there are other views such as Hannah Arendt's.[12] However, the purpose of this thesis is not deep arguments of conceptual or linguistic problems. In addition, because this thesis focuses on moral values or aspects of liberty, the distinction between liberty and freedom is

[8] Blackstone, William T. *The Concept of Equality*. Minnesota: Burgess Publishing Company, 1969. p. v.
[9] Waldron, Jeremy. "Theoretical Foundations of Liberalism," *Philosophical Quarterly*. 37 (Apr., 1987). p.130.
[10] Blackstone, William T. p. v.
[11] Isaiah Berlin, in his famous essay on liberty, states that he will use both words to mean the same. See Berlin, Isaiah. "Two concepts of Liberty," in *Four Essays on Liberty*. Oxford: Oxford University Press, 1970. p. 121.
[12] Hannah Arendt considers this conceptual difference central to her most urgent theoretical concerns.

not necessary. Thus, I follow Maurice Cranston's conclusion that, "in English usage of the words 'freedom' and 'liberty' are virtually interchangeable."[13]

Second, this thesis does not distinguish the kinds or meaning of freedom. This assumption departs from Isaiah Berlin's essay "Two Concepts of Liberty". He divides freedom into negative and positive freedom. He defined negative liberty as freedom from coercion while positive liberty means autonomy, that is, "the power of self-direction."[14] However, there is no significant meaning for this thesis to distinguish between negative and positive liberty because, here, the concept of liberty is interpreted as a moral concept. That is, liberty responds to people's moral claims of autonomy as well as freedom from coercion. In addition, it seems that "the distinction between negative and positive liberty is not so sharp"[15] because both concepts of liberty share "a common ground, [that is] self-determination."[16] Thus, this thesis deals with both meanings without distinction.

Third, this thesis does not attempt the explanation of the various kinds of equality because the concept of equality in this thesis means not only the different kinds of equality but also the comprehensive concept as a value concerned with the various aspects of human good.

The clarification of these concepts is for avoiding confusion when I use these terms, not for entering the controversy of linguistic questions. I just want to limit the scope of terms in order to prevent confusion. Again, I assume simply that

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[13] Cranston, Maurice. *Freedom*. New York: Basic Books, 1967. p. 32.
[14] Merquior, J.G. *Liberalism: Old and New*. Boston: Twayne Publishers, 1991. p. 8.
[15] Ibid., p. 9.
[16] Ibid.

these notions of equality and liberty are "a moral conception worked out for a specific kind of subject, namely, for political, social and economic institutions."[17] To put it simply, these notions as necessary rules of human conduct might be relevant in explaining some features of society. This is "to urge that both equality and liberty are necessary elements in the conception of a humane society."[18]

[17] Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993. p. 11.
[18] Rees, John. p. 106.

III. Rawls's Theory of Justice

Two Principles of Justice

The Original Position and Justification

As assumed above, equality and liberty are moral conceptions. For Rawls, "a political conception of justice is [also] a moral conception." [19] We can say, therefore, that the values of equality and liberty and the political conception of justice belong to the same category. That is, they are not a separated relationship but a relationship of supportive influences on the other. Thus, Rawls seeks to realize the values of equality and liberty in his theory of justice.

However, as Rawls points out, "a deep disagreement exists as to how the values of liberty and equality are best realized in the basic structure of society."[20] Due to this argument, there is a tendency to think that it is useless to discuss a compromise between equality and liberty and difficult to create a joint principle expressing these values.

Yet, as Rawls addresses, "one task of political philosophy is to focus on such questions and to examine…a mutually acceptable way of resolving these questions publicly established."[21] Thus, unlike other liberals, he regards the

[19] Rawls, John. "Justice as Fairness: Political not Metaphysical (1985)," In Samuel Freeman (Ed.), *Collected Papers*. Cambridge: Harvard University Press, 1999. p. 389.
[20] Rawls, John. "Justice as Fairness: Political not Metaphysical," p. 391.
[21] Ibid., p. 408.

tension between equality and liberty as the main cause of the crisis of modern society and thus attempts a proper compromise to solve the controversy. To resolve the tension between equality and liberty, Rawls proposes two principles of justice. That is, Rawls creates two principles of justice "as guidelines for how basic institutions are to realize the values of liberty and equality."[22]

To create principles of justice, Rawls presents 'justice as fairness'. For Rawls, when fairness is guaranteed, people can agree to the principles of justice. Thus, he conveys the idea that "the principles of justice are agreed to in an initial situation that is fair" (11). Rawls calls an initial situation the 'original position'.

For Rawls, the conditions that people have in the basic structure of society are very different, and these differences can have a profound influence from the start. To put it specifically, the starting point of some people is better than others due to different economic and social conditions, and therefore this can become the cause of deep inequality. Yet, "[the inequality] cannot possibly be justified by an appeal to the notions of merit or desert" (7). Therefore, we need a fair and equal starting point. That is why we need social justice derived from a fair and equal situation.

To do this, Rawls devises the original position as "purely hypothetical"(19, 104). According to Rawls's assumption, people create a contract (or principles) in the original position, just as social contract theorists assume that people agree to a contract in the 'state of nature'. Rawls also agrees with the Kant's assumption of

[22] Rawls, John. *Political Liberalism*. p. 5.

people's nature. "Kant held, I [Rawls] believe[s], that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being" (222). In other words, in the original position, each person is assumed to be rational, and so is assumed to seek to maximize his well-being, that is, self-interested. Thus, "such a person would choose those principles which would maximize his expected benefits."[23] Thus, they each have fundamental aims and interests, and they each have a right to equal respect and consideration in determining the principles. They also have "a sense of justice that normally governs their conduct" (475). That is, "they are capable of having a conception of their good" (505). Thus, we can say that in the original position people who have equal status can create the principles by which the basic structure of their society is to be governed.

How, or more specifically, by which process do they create and agree on the principle? As stated above, Rawls's principle of justice is justice as fairness. That is, people need a fair situation during the process of creating principles. Thus, the original position presupposes some conditions which all people, who participate in a contract, can accept. The conditions that Rawls suggests are 'the veil of ignorance' and 'mutual indifference'.

[23] Gauthier, David. "Justice and Natural Endowment: Toward a Critique of Rawls' Ideological Framework," In Henry S. Richardson (Ed.), *Development and Main Outlines of Rawls's Theory of Justice*. New York: Garland Publishing Inc., 1999. p. 211.

The veil of ignorance means that people do not know their interest and the particular contents of their perspective. That is, they have no information about their place in society (class position, social status), their natural assets (intelligence, strength), their own conception of the good (plans, values), their particular psychological attributes (attitudes toward risk, optimism), or about the particular aspects of their own society (its political or economic system, history and so on) (118-119). Such a veil of ignorance prevents people from agreeing to a contract according to their interests.

This condition, i.e., a veil of ignorance, is obviously to represent equality between human beings since people do not know their particular circumstances. In other words, because they do not know which piece of the pie they have, they divide it equally. If you know some particular facts, how is it possible to maintain a fair situation and distribute the pie evenly? For example, if one of the parties knows who the other party is, it is difficult to reach a fair contract because the contents of the contract can be changed according to whether the other people are enemies or friends. To avoid this situation, Rawls presupposes 'mutual indifference'. This is for preventing people from being influenced by other people when they create a contract. By these conditions, for Rawls, people have a fair circumstance that is capable of creating a contract in the original position.

However, the veil of ignorance does not mean that they are totally in ignorance like people in the state of nature in Rousseau's theory. They are not in

ignorance like people in a state of nature even though people have no particular information in the original position. Here, Rawls suggests the other idea to explain the original position – 'the circumstance of justice'. Rawls calls the situation that requires justice the circumstance of justice. For Rawls, society is typically marked by conflict as well as by an identity of interests. The circumstance of justice is "the condition of moderate scarcity (among the objective circumstances), and that of conflict of interests (among the subjective circumstances)" (110). These conditions of the circumstance of justice require justice. In other words, because all resources are limited and most parties want the limited resources, conflict among people or groups occurs and people discover the need for a set of principles of justice in order to solve the conflict.

Which selection is possible in the original position? In the original position, people are in a very insecure situation because they have no specific information about themselves. Thus, people tend to avoid the risk and try to secure "their unknown but particular interests from the original position" (475). To do this, they attempt to negotiate to choose the principles of justice. In other words, since people know that all are similarly situated and no one is able to design principles to favor his particular condition behind a veil of ignorance, it is possible to mediate to create fair principles among people. Thus, we can say that "the principles of justice are the result of a fair agreement or bargain" (11). Concretely, "the parties would therefore find it rational to opt for a system of

equal distribution of all social primary goods[24] except where the inequalities lead to the maximization of the long-term expectation of the worst of least well off group in society."[25]

In sum, the original position seems to be able to provide the appropriate condition to create the principles of justice. In other words, as Rawls intends, the original position can ensure fairness of process. First, in the original position, "the participants are symmetrically situated and subject to the veil of ignorance."[26] Moreover, the original position is specified to embody the appropriate reciprocity and equality between persons. Thus, people require a set of principles, which constitutes social justice in the original position. Lastly, since people are rational and self-interested in the original position according to Rawls's assumption, they seem to be able to make a reasonable, objective, relatively secure decision about principles of justice even though the principles of justice are chosen behind a veil of ignorance.

First Principle (Liberty Principle)

How do Rawls's principles represent and specify the values of equality and liberty? To seek an answer, I will explore the contents of two principles of justice.

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[24] Primary goods are goods that any rational person is presumed to want whatever else he wants. Rawls explains two primary goods: social primary goods (rights, liberties, opportunities, the social basis of self-respect and income and wealth) and natural primary goods or natural assets (health and vigor, intelligence and imagination) (54).

[25] Haksar, Vinit. *Equality, Liberty and Perfectionism*. Oxford: Oxford University Press, 1979. p. 164.

[26] Rawls, John. "Reply to Alexander and Musgrave," *Quarterly Journal of Economic* 88 (1974): 633-55 p. 638.

Rawls presupposes that the social structure may be divided into having two more or less distinct parts. That is why "he distinguishes between the aspects of the social system that define and secure the equal basic liberties and the aspects that specify and establish social and economic inequalities" (53) when he creates the principle of justice. Thus, he proposes two principles. His two principles respectively represent liberty and equality. He applies them to the basic structure of society in the social and economic spheres.

Rawls's first principle of justice is that "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" (53). This simply means that the basic liberties should be equal for all. That is, Rawls addresses liberty in his first principle.

How does Rawls realize liberty in the first principle?

According to his first principle, liberty is specified as basic liberties. Here, there is one question. What are basic liberties? Rawls states that he does not try to propose a general theory of justice. In the same way, basic liberties do not mean a general concept of liberty but refer only to specific kinds of liberty. Thus, he focuses on particular liberties not a general concept of liberty. "The basic liberties to which Rawls' principle thus refers are identified by the parties as essential for the pursuit of their ends, whatever those ends turn out to be, and so as determining

the form of their society."[27] That is why he uses the plural of 'liberty'. To clarify basic liberties, Rawls provides a list of basic liberties. These are political liberty (the right to vote and to be eligible for public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom 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 (53).

"The list is made up of two kinds of things: liberties in the strict sense and the avoidance of certain injuries at the hands of others."[28] Yet, when Rawls talks of basic liberties, he uses both kinds without distinction. Thus, we can see a certain common point here; "they can both be individuated and be said to hold without qualification for all people".[29] That is, basic liberties that Rawls suggests tend to relate to the private matters not the public matters. To put it specifically, for Rawls, an individual's free choices should be respected insofar as these choices are consistent with the demands of justice. "In this sense the autonomously chosen goods of rational moral agents have a kind of prima facie validity. Other people must respect them. Wants are, in this sense, private matters."[30] Thus, Rawls simply lists, without argument, the right to hold personal property, but not property in the means of production, as one of the basic liberties

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[27] Hart, H.L.A. "Rawls on Liberty and its Priority," In Norman Daniels (Ed.), *Reading Rawls*. New York: Basic Books, 1975. p. 235.
[28] Martin, Rex. *Rawls and Rights*. Kansas: University of Kansas Press, 1985. p. 47.
[29] Ibid.
[30] Strike, Kenneth A. *Liberal Justice and the Marxist Critique of Education*. New York: Routledge, 1989. p. 38.

(61) because Rawls regards personal property as belonging to the individual sphere.

This results from the natural characteristic of persons in the original position. To put it concretely, for Rawls, the parties who choose basic liberties and noninjuries are themselves free and equal. In the original position, they do not know the group that they belong to. They just exist as rational, moral and self-interested individuals. Thus, Rawls focuses on basic liberties that can satisfy each person's interests and equal and free status.

There is another question. As stated in the first principle, people require the most extensive total system of equal basic liberties. Does this mean unlimited liberty or limited liberty? Are basic liberties able to be restricted?

According to his principle, a basic liberty can be restricted for one if it is restricted for everyone. This means that when a basic liberty is restricted, it must be restricted equally for all. If basic liberties apply to only a particular class, the principle is violated. Thus, the goal of the first principle is not absolute liberty but equal liberty. For this, we need rules that can restrict absolute liberty and ensure equal liberty. Rawls suggests especially the constitutional process as the proper standard to restrict liberty, because "the constitutional process should preserve the equal representation of the original position to the degree that this is practicable"(195). Thus, a restriction by rules such as constitution is not to restrict liberty but to ensure liberty by regulation. That is why Rawls discusses "liberty in

connection with constitutional and legal restrictions" (177). In these cases liberty is a certain structure of institution, a certain system of public rules defining rights and duties. Thus, basic political liberty can be restricted ("on the grounds restriction will lead to just legislation"[31]) under the condition that such legislation ensures equal liberty. The guarantee of liberty by constitution seems to be convincing as a means to guarantee liberty. At least, this indicates that liberty is an important element to establish the framework of the basic structure of society.

However, there is a problem in interpreting the condition to restrict liberty. The condition that Rawls provides is as follows: "liberty is only to be restricted for the sake of liberty itself" (250, 302). This means that liberty is restricted in two cases: when basic liberties are and can be threatened and when the restriction can promote a greater system of basic liberties (203, 229). Yet, "how could one assert that an allowed inequality in a given basic liberty could be the means to a greater system of equal basic liberties for all persons?"[32]

Rawls gives a number of examples which his principle would permit. The simplest case is the introduction of rules of order in debate (203) which restrict the liberty to speak when we please. This is not to restrict the content of speech but to regulate the order of speech in order to guarantee a greater liberty. In this very simple case "there seems to be a quite obvious answer to the question."[33]

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[31] Pogge, Thomas. *Realizing Rawls*. Ithaca: Cornell University Press, 1989. p. 159.
[32] Martin Rex. p. 57.
[33] Hart, H.L.A. p. 239.

However, Mill's example that Rawls provides is controversial. According to Mill, one person/one vote may not be best. Rather, plural voting that some people, who belong to particular parties such as college graduate, have more than one vote can accord with the natural order of human life because people who are wiser or educated can make a better decision. In addition, plural voting can encourage other people to go college and thus obtain better opportunity (or liberty) because they will want equal liberty (plural voting) that college graduates enjoy. If so, plural voting can improve other people's liberty. Thus, their judgment should have a superior weight. However, can political liberty be restricted for a better decision or for a greater liberty? For Rawls, "we are to ask which adjustment it would be rational for him [the representative equal citizen] to prefer" (179).

However, as Hart claims, "I do not understand, except in the very simple cases, what sort of argument is to be used to show what the representative's rational preference would be and in what sense it results in 'a greater liberty'."[34] Moreover, "many of the most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion."[35] Thus, Rawls modifies some part of the liberty principle: from 'the most extensive total system' that Rawls suggests in *A Theory of Justice* to 'a fully adequate scheme' in *Political Liberalism*. This is the result of accepting Hart's critique that the most equal liberty may not be the most extensive liberty. According to Hart, because

[34] Ibid., pp. 242-43
[35] Rawls, John. *Political Liberalism*. p. 58. Rawls calls this situation 'the burden of judgment.'

basic liberties can be incompatible with each other, some cases of mediation among basic liberties can happen. For example, free discussion without rules can mean more extensive liberty because when most people want to speak, they can speak. But, it also means that they, in fact, do not enjoy their liberty extensively because they cannot communicate their opinion effectively. That is, their intention (or liberty) to communicate their opinion is limited. Thus, Rawls revises his first principle in *Political Liberalism* as follows:

> "Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value."[36]

This revision suggests 'fair value' which is "measures assuring to all citizens adequate all-purpose means to make effective use of their liberties and opportunities."[37] This means that the revision demands that people receive fair value for equal political liberties and thus it seems to be reasonable, because to secure fair value for equal political liberties can guarantee liberty more properly and effectively. Rawls maintains that this can cover "citizen's basic needs as constitutional essentials,"[38] so that liberty can be realized in the constitutional stage. Thus, this modification addresses a more practical and proper representation of liberty.

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[36] Ibid., pp. 5-6, 271, 291.
[37] Ibid., p. 6.
[38] Ibid., p. 230.

Second Principle (Equality Principle)

The second principle starts from the fact that there can exist inequality even in free society. That is, it is impossible to distribute social and economic goods to everyone equally. However, this inequality should be restricted unless the inequality is justifiable. Thus, the next question is, which principle is needed in order to justify inequality? According to Rawls, the case that inequality is justified is that all people obtain a favorable result by the inequality. Here, for Rawls, because people are behind the veil of ignorance, the way that all people choose to obtain a satisfactory result is that the least advantaged obtain the most benefit. Second, in an unequal distribution situation, good positions or opportunities should be opened to all people. Rawls sums up these ideas in his second principle.

> Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity (266).

As stated above, the second principle is the principle about economic and social inequality. This principle, thus, requires a response about economic and social inequality. Thus, this is interpreted as the equality principle.

Here, the meaning of equality is not simply to divide a pie into the same size pieces but to distribute it reasonably. Thus, some inequalities may be inevitable and useful. So, granting that inequality in position is both inevitable and useful,

"each would want those positions to be open to all on some principle of equitable competition or fair play."[39] This means the principle of fair equality of opportunity. This is a part of the second principle of justice.

The opportunities mentioned here are economic opportunities because Rawls clarifies that the second principle focuses on economic and social inequality. Thus, concretely, the idea of fair equality of opportunity refers to opportunities to hold positions that generate income and wealth. In addition, "we speak here of reasonable equality of opportunity"[40] because the parties do not want to act in an unreasonable or indefensible way. Therefore, "they concur in the stipulation that the wealth-generating positions be open to all [by] some reasonable principle of equality of opportunity."[41]

Which principle is a reasonable principle of equality of opportunity? For Rawls, it rests on the interpretation of this principle.

The first interpretation is the view of the system of natural liberty. According to this view, the principle of fair equality of opportunity means that "positions are open to those able and willing to strive for them [and] will lead to a just distribution" (57). As a result, in the system of natural liberty, people, who participate in free competition, can gain a position by using their social connections. That is, the system of natural liberty regards the distribution of

[39] Martin, Rex. p. 67.
[36] Ibid., p. 66.
[41] Ibid., pp. 66-67.

income and wealth as the cumulative effects of natural and social contingencies. Thus, it is not surprising that people end up unequal under this system.

The second interpretation is the liberal equality perspective. It tries to correct the problem of the system of natural liberty by adding to the requirement of 'careers open to talents' the further condition of the principle of fair equality of opportunity. "The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. That is, we might say that those with similar abilities and skills should have similar life chances" (63). In other words, people with the same talents should have equal and fair opportunity regardless of social circumstance.

But, the liberal equality conception still has limits to solve inequality by natural contingencies. It regards natural contingencies as the outcome of the natural lottery or luck. Thus, the distribution of natural assets is a fact of nature, and no attempt is made to change it or even to take it into account. That is, this view excludes the distribution of opportunity by social contingency but still permits the distribution of income and wealth determined by natural contingencies. Finally, both interpretations cannot guarantee the values of equality.

The main problem of the principle of fair equality of opportunity is how to solve inequality by natural endowment. Natural endowment, in reality, has a significant impact on the subsequent holding of positions. If one is born with a

strong background such as a wealthy family, intelligence and strength, one has absolute advantages over people who do not have the same background. This reality has strengthened inequality between haves and have-nots. Thus, it is not easy to find a person who has a higher social position with a disadvantageous background while it is easy to find a person who succeeds with a strong background. We can see that natural endowments obstruct equal opportunity for all. Moreover, Rawls claims that such contingencies are "arbitrary from a moral perspective" (64). Thus, Rawls maintains that inequality by arbitrariness of fortune or accident should be somehow compensated.

We cannot say that natural endowment is an individuals' fault or credit. No one can choose or change his/her natural endowment. That is a fact of nature. Thus, "no individual could be said to be responsible for having the natural endowment that he has or he has not."[42] However, simultaneously, "no one could be said to deserve that endowment; its possession is unmerited".[43]

If so, how do we solve inequality determined by natural endowment? First, Rawls rejects the principle of liberal equality as well as the principle of the natural system. Then, Rawls offers the third approach, what he calls democratic equality. The point of this approach is to reduce the gap in advantages by their genetic endowment. However, in reality, the principle of opportunity cannot be completely realized as long as the family institution exists. Thus, we need another principle that can ensure equality and enhance the opportunities of those with the

[42] Martin, Rex. p. 78.
[43] Ibid.

lesser opportunity. That is why Rawls proposes the other element – the difference principle - of his second principle.

The difference principle is also the principle for the social and economic sphere. It represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. That is, the difference principle can be a general guide for redistributing offices related to wealth and income. "In this way, the difference principle acknowledges the arbitrariness of fortune by asserting that I am not really the owner but merely the guardian or repository of the talents and capacities that happen to reside in me, and as such have no special moral claim on the fruits of their exercise."[44] That is, the difference principle governs the distribution of "offices and positions of responsibility; income and wealth and the social bases of self-respect."[45]

As formulated by Rawls, the difference principle states that social and economic inequalities are to be arranged so that they are to the greatest benefit to the least advantaged. Even though this principle permits inequality, why do people choose this principle?

This can be interpreted as follows: because of the veil of ignorance, agents cannot know their position. However, they want to guarantee their interests even

[44] Sandel, Michael J. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press, 1982. p. 70.
[45] Pogge, Thomas. p. 162.

when they belong to the least advantaged. Thus, agents cannot help selecting the principle that the benefits to the least advantaged are indeed maximized. The best way to prevent the worst scenario is to allow inequalities by the difference principle. Under this uncertain situation, "the maximin is an insurance policy"[46] because maximin rules tell us to rank alternatives by their worst possible outcomes. "We are to adopt the alternative the worst outcome of which is superior to the worst outcome of others" (133). That is why people ought to prefer the distributive principle that the least advantaged obtain the greatest benefit according to maximin strategy that the worst result becomes the safest choice. This means that participants choose the principle of justice with the perspective of the least advantaged person. To consider the particular parties is an unfair condition, but if some inequality can improve people's situation more than simply equality, rational people definitely choose the inequality.

Here, there is one question about the difference principle. It appears to make sense that the least well-off accept the difference principle because the principle guarantees their best benefit. What is the reason that people who have better conditions accept the difference principle? Rawls's answer is as follows: "by accepting the difference principle, they view the greater abilities as a social asset to be used for the common advantage. But it is also in the interest of each to have greater natural assets" (92). That is, the difference principle expresses a

[46] Merquior, J. G. p. 139.

conception of reciprocity and mutual benefit. Thus, Rawls claims with firm confidence that the difference principle can realize equality.

Furthermore, "Rawls says, a conception of justice should publicly express men's respect for one another; in this way they ensure a sense of their own value."[47] The public recognition of the two principles gives greater support to men's self-respect and this increases the effectiveness of social cooperation. Both effects are strong reasons for agreeing to these principles. Finally, people can be guaranteed liberty and equality and can reach justice by choosing the safest principle. Because they are rational and selfish, they select the safest choice i.e., the principle of justice, especially the difference principle. Rawls argues that these principles of justice "not only protect individuals' basic rights but insure against the worst eventualities" (154).

In sum, Rawls develops the two principles of justice by "distinction between the distributive or equality-related and the liberty-related aspects of the theory."[48] That is, each of these principles applies to a different part of the basic structure; and both are properly concerned not only with liberty (with basic rights, liberties, and opportunities), but also with the claims of equality.

[47] Kukathas, Chandran & Pettit, Philip. *Rawls*. Cambridge: Polity Press, 1990. p. 46.
[48] Mulhall, Stephan & Swiff, Adam. *Liberals and Communitarians*. Oxford: Blackwell, 1992. p. 8.

Priority Rules

The Content of the Priority Rules

However, in reality, each sphere does not exist either separately or independently. Thus, we should consider both spheres when we deal with the relationship between equality and liberty.

From a common sense perspective, it seems difficult to reach the values of equality and liberty at the same time, because people think that "the principles of equality and liberty are as much opposed to each other as they require each other."[49] That is, these notions are regarded to have incompatible characteristics. In fact, "when the version of equality under discussion requires equalization of outcomes, it is easy to see how the two ideals might conflict."[50] To put it specifically, equality tends to make up for individuals' deficiencies with outside help. Libertarians claim that this characteristic impedes the exercise of liberty. Certainly, from the liberal perspective, equality necessarily conflicts with liberty; "for when goods and services of various types – legal, economic, educational and social – are distributed to all human beings in a society according to certain criteria, this definitely prevents some individuals from doing what they want to do."[51]

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[49] Charvet, John. *A Critique of Freedom and Equality*. Cambridge: Cambridge University Press, 1981. p. 11.
[50] Fishkin, James S. "Liberty versus Equal Opportunity" In Pojman, Louis P. (Ed) *Equality-Selected Readings*. Oxford: Oxford University Press, 1997. p. 148.
[51] Blackstone, William T. p. xi.

However, these concepts are not as simple as liberals assume. "Liberty is not taken to mean simply freedom to do whatever one wants to do, just as equality as an ideal is not taken to mean simply a total leveling or uniformity of treatment of humans."[52] Thus, we cannot simply say that equality and liberty are incompatible or irreconcilable even though they are often in tension. Moreover, equality and liberty are the values that correspond to individuals' claims about some problems, for example, coercion and inequality. To solve these problems, that is, to answer the demand of individuals' claims, we should consider the values of equality and liberty simultaneously.

Thus, the next point is how Rawls controls the relationship between his two principles that represent the values of equality and liberty respectively. That is, how does Rawls reconcile the values of equality and liberty i.e., the first principle and the second principle? As introduced above, this is a very important question in the present society because this question, that is, the tension between equality and liberty, is the main reason for the crisis of modern society according to Rawls.

Rawls compromises these principles by priority rules. This priority rule is Rawls's criterion to balance the two values. Rawls seems to assume that the principles have a ranking. Thus, he assigns these principles in a serial order with the first principle prior to the second. Rawls restates the two principle of justice as rules of priority:

[52] Ibid.

> First priority rule (the priority of liberty) is that the principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty.
>
> Second priority rule (the priority of justice over efficiency and welfare) is that the second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle (302-303).

Here, there are two lexical orders. One is the priority principle between the first principle and the second principle. The other is the priority principle between the opportunity principle and the difference principle. This can be formulated as follows. The first principle > The principle of fair equality of opportunity > The difference principle. This means that the matter of protecting the first principle (liberty principle) takes priority over and is more urgent than the matter of guaranteeing fair equality of opportunity or that of "ensuring that social and economic inequalities work to the net advantage of those who are least advantaged by those inequalities."[53] Thus, we can say that basic liberties have an absolute weight in regard to other values. That is, "liberty is to be given priority over other primary social goods."[54]

Let us consider the first part. The first priority rule is the priority of liberty. This means that the first principle should be fully complied with before the second principle is considered. As discussed above, the second principle is about equality of income and wealth. Therefore, this priority rule means that the matter of liberty takes priority over the matter of wealth and income. In other words,

[53] Johnston, David. *The Idea of Liberal Theory*. New Jersey: Princeton University Press, 1994. p. 109.
[54] Daniels, Norman. "Equal Liberty and Unequal Worth of Liberty," In Norman Daniels (Ed.), *Reading Rawls*. p. 264.

"infringements of the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages" (53-54). Thus, the parties will not exchange a lesser liberty for an improved income. "It should suffice to note his consistent adherence to the inviolability of liberty."[55]

Why does liberty takes priority over equality? According to Rawls, liberty protects that which is of fundamental importance to human beings. For Rawls's example, "the basis for self-esteem in a just society is not one's income share but the publicly affirmed distribution of fundamental rights and liberties" (544-45). Thus, the right to liberty is not among the gains of social cooperation, but the necessary condition of it.

Next, the second priority rule establishes that the opportunity principle comes before the difference principle. This means that "the basic institutions of a society must be arranged that conditions providing for fair equality of opportunity are met as fully as possible before the difference principle comes into play."[56] That is, the difference principle applies within a framework that is structured by the first principle and the principle of fair equality of opportunity. Thus, the principle of fair equality of opportunity is emphasized as a key element of building the economic constitution of any just society. Finally, by choosing this order of priority, Rawls, in reality, relegates the realization of equality to the last order.

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[55] Klosko, George. "Rawls's 'Political' Philosophy and American Democracy," *The American Political Science Review* 87 (Jan., 1993). p. 351.
[56] Johnston, David. p. 109.

The Limits of the Priority Rules

Rawls claims that the two principles by priority rules can reconcile equality and liberty. Now, I evaluate his claim that his two principles of justice by priority rules succeed in harmonizing equality and liberty. This discussion is not whether liberty has the ground to have priority position but whether or not a priority rule is the proper criteria to balance equality and liberty. Here, the noticeable thing is that the meaning of 'balance' or 'compromise' between equality and liberty is not that the two values are realized at the same time with the same weight but that the two values are realized without limiting each other.

Rawls suggests the constitutional process to explain the ground of priority rules because "the history of successful constitutions indicates the wisdom of this pattern [i.e., the priority rules]."[57] Thus, Rawls discusses his principles in the constitutional process. He proposes four stages that the two principles apply to – the original position, the constitutional stage, the legislative stage, and the stage of application of rules (171-175). The two principles are derived from the original position. And then, they are applied according to the order of each stage. The constitutional stage is a stage to establish the constitution by principles of justice selected in the original position. This has the most important meaning because the constitution is interpreted as the inviolable standard to establish the specific form of justice. That is, the constitution becomes the core reference to establish the framework of a society. Thus, "the constitution has direct influence to the

[57] Martin, Rex. p. 112.

behavior of legislators and administrators and judges."[58] People want these governmental agents to realize and promote the values of the constitution.

Here, Rawls includes the first principle (liberty principle) in the constitutional stage. This means that liberty is guaranteed by the constitution. Liberty is understood as inviolable rights in the construction of the constitution of a just society. On the other hand, he excludes the second principle (equality principle) from the constitutional stage. Rather, the second principle is applied at the legislative stage because "the second principle of justice … is not incorporated into the constitution itself" (199).

This distinction is explained concretely in *Political Liberalism*. In *Political Liberalism*, Rawls's principles of justice consist of the 'constitutional essential' and 'matters of basic justice'. The reason that Rawls suggests this distinction is that the two principles have different roles in the basic structure of society. Moreover, Rawls states additional reasons: "it is more urgent to settle the essentials dealing with the basic freedoms. It is far easier to tell whether those essentials are realized. It is much easier to gain agreement about what the basic rights and liberties should be not in every detail of course, but about the main outlines."[59] In these reasons, Rawls excludes the second principle from the constitutional essentials. That is, the second principle concerns the matters of basic justice and is applied in the legislative stage. It seems reasonable that the second principle (economic matters) is not the concern of the constitution because

[58] Ibid., p. 113.
[59] Rawls, John. *Political Liberalism*. p. 230.

economic matters take extended time to identify and seek solutions. However, the constitution does not have only a practical meaning. It can provide the most important reference and framework of society and thus it should include the basic direction or idea about economic structure, which is one part of society. Moreover, with the additional question, why is the first principle a more urgent matter, and why does the principle that people agree with easily take priority?

Without a concrete explanation, Rawls just claims that successful constitutions can provide some principles to regulate economic and social inequalities. In fact, unlike Rawls's claim, "historical evidence indicates that those who control the means of production have an inordinate influence in the [constitutional process],"[60] and thus it is difficult to expect that the powerful class will guarantee the equality principle in the legislative stage. In addition, under Rawls's claim that the second principle is excluded from the constitutional stage, when the second principle conflicts with the first principle, people will follow the first principle because, for Rawls, the first principle is applied in a prior stage than the second principle. That is, the second principle (equality principle) is realized within the framework created by the first principle (liberty principle). The realization of equality is possible within the scope of the first principle. If the demand about equality is incompatible with liberty, the structure or system created by the liberty principle will not permit the demand. This is not a real balance between equality and liberty. Rather, this shows the limits of Rawls's

[60] Clark & Gintis. p. 312.

compromise. That is, this compromise (two principles by priority rules) has limits to solve the tension between equality and liberty.

First, Rawls claims that the lexical order can be derived from the original position. People tend to avoid the worst situation in the original position, so that they want to have at least the basic rights (liberties). Thus, the first principle (liberty principle) has the first order. In addition, in any situation, people should have hope for the future. To do this, people should have the opportunities that they want. Thus, the principle of equal opportunity is the second and the difference principle has the last order.

However, this claim is not realistic. In the worst situation, do people really demand the liberty principle such as the liberty of speech or the rights of political participation? In fact, to choose the difference principle makes more sense because the difference principle makes the worst situation become the favorable result. If people are rational like Rawls's assumption, it is likely for them to choose the favorable result rather than the liberty principle. Thus, Rawls's claim that the priority rules can be explained in the original position is invalid.

Second, due to the emphasis on liberty, Rawls's compromise has the tendency to ignore the matter of economic inequality. This limits the equality principle, so that the priority rule is not the proper standard for balancing equality and liberty. However, according to Rawls, the priority rule does not limit equality as well as liberty. To put it concretely, for Rawls, if the material means, which

have good quality, are fully available, "[people's] interest in liberty grow stronger, and [their interest] of further economic and social advantage decreases."[61] However, even though people can increase material means, people have no intention or need to give up their economic interests and social status because people are selfish according to Rawls's assumption. Especially, under a capitalist society that shares the same assumption that people are self-interested, people want further economic and social advantage because capitalism is a system to concentrate on infinite capital. Thus, we need to consider economic regimes.

Yet, Rawls avoids the evaluation of economic institutions that are directly related to economic inequality. He maintains that the choice of economic institution depends upon each country's "circumstances, institutions, and historical traditions" (208). Thus, Rawls claims that the point that we have to concentrate on in the discussion of the economic arrangement of a just society is "which[,] either a private-property economy or a socialist regime[,] can satisfy this conception of justice" (272).

However, in fact, Rawls's position about economic institutions is not neutral. First, he, as stated above, follows the assumption of a liberal capitalist: people are self-interested and rational. This is "a central theme of liberal theories."[62] In order to guarantee their interest, people in a liberal capitalist society prefer liberty to equality. Thus, a liberal capitalist society seems to support the priority rules that emphasize liberty. Like Rawls, a liberal capitalist society

[61] Johnston, David. p. 117. See *A Theory of Justice,* sec 82.
[62] Strike, Kenneth A. p. 85.

attaches importance to the basic liberties such as the liberty (freedom) of the press, religion, conscience, speech and thought because these liberties can cause people to develop ideas that liberal capitalist society supports.

Moreover, Rawls includes private property as an important and basic liberty and also states that "a basic prerequisite is the compatibility of economic arrangements with the institutions of liberty and free association" (272-273). This means that he supports the main characteristics of capitalism. Of course, Rawls publicly does not support capitalism. Rather, he suggests a revised version of capitalism: "a version of the mixed economy - markets plus state intervention with public or private ownership."[63]

Here, the meaning of state intervention is to control economic inequality by prevention of monopoly and redistribution of income. This is a form of a welfare state. However, a welfare state should be within a capitalist society in order to maintain itself because a welfare state needs the abundant material base. Otherwise, a welfare state confronts difficulties to maintain and improve a good economic situation like some European countries. Thus, if Rawls wants to support the idea of a welfare state, he has to admit the structure of capitalism whether he supports it or not. In addition, even though Rawls suggests "a property-owning democracy involving a widespread distribution of property, it is not clear whether such a system is really that different from capitalism."[64] That he only concentrates

[63] Clark & Gintis. p. 312.
[64] Townshend, Jules. *C.B. Macpherson and the Problem of Liberal Democracy*. Edinburgh: Edinburgh University Press, 2000. p. 167.

on the matter of distribution, not on the economic and social structure or the means of production, indicates that Rawls assumes the framework of capitalism whether he intends it or not.

The problem is that in a capitalist regime the relationship between equality and liberty is in severe tension rather than in harmony. For example, the continuous accumulation of capital of haves cannot be limited to guarantee equality of have-nots. Thus, in a capitalist society economic inequality is taken to be inevitable and need not be unjust. Moreover, economic life in the domain of capitalism "takes precedence over the blind law of the market, or even the rule of economic efficiency."[65] Thus, "the institutions of the mixed economy [as well as capitalism] are incompatible with the [equality] principle of justice."[66] Finally, under a capitalist regime, equality cannot help but be limited. Thus, unless Rawls criticizes capitalism by revision of priority rules, it is difficult to clear suspicion that his theory accepts a capitalist framework and therefore limits equality.

Let's consider this point more concretely. Rawls claims that his theory follows democratic equality. This claim is supported by his second principle. If, like his claim, the second principle is achieved fully, it is possible to secure equality. However, unlike Rawls's claim, the difference principle by priority rules remains ideological. In reality, the demand for economic equality is the demand of oppressed minorities who cannot participate to create and change the social and economic structure. They want to realize their demand such as "redistributing

[65] Doppelt, Gerald. p. 282.
[66] Ibid., p. 311.

income, improving working conditions, and controlling the investment and market system."[67] However, under priority rules, it is very difficult for them to persuade a few greater power groups to support social and economic reforms or regulations required by the second principle because priority rules guarantee free economic activity rather than economic equality. Moreover, since Rawls excludes the equality principle in the constitutional stage, there is no device to control and restrict economic and social inequality.

The only way to resolve economic equality is thus voluntary and free transfers of benefits prompted by the ruling class's moral intuitions. However, because people are self-interested and rational according to Rawls's assumption, it is difficult to expect voluntary sacrifice by the ruling class. Moreover, history shows that no ruling class is interested in solving problems created by unequal structures and that deeper injustices result from ruling economic principles that guarantee the interest of the ruling class. Thus, in order to seek a solution to economic inequality, the equality principle should be considered with the same priority as the liberty principle in the constitutional stage. That is, the equality principle as well as the liberty principle should be accepted as independent criteria for judging decisions made in the political and economic spheres. However, the priority rules consider the liberty principle as the first criterion to decide the societal system, thereby destroying the balance between equality and liberty.

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[67] Nielsen, Kai. "Capitalism, Socialism, and Justice: Reflections on Rawls' Theory of Justice," In J. Angelo Corlett (Ed.), *Equality and Liberty*. New York: St. Martin Press. 1991. p. 220.

Second, priority rules that emphasize liberty only reveal the illusion of political equality rather than guarantee it. According to the first priority rule, political and legal equality are considered before economic equality, thus indicating that people suffering from economic disadvantages can still be politically equal to those with greater wealth and power.

However, "socialists have responded by claiming that such a belief rests on an illusion."[68] I agree with the socialist response. They believe that Rawls's conception of justice and his theory generally do not consider political, social and most fundamentally economic realities. In reality, the least advantaged (for example, the poor) do not think that legal and political equality have the meaning that Rawls claims because they cannot reform the economic inequality only with legal and political equality. In ancient Greek city-states, slavery was a necessary condition to maintain democracy. That is, the economic base is an important condition to preserve the political structure. Moreover, according to socialists such as Macpherson, Nielson, Wolff and Clark, "the realities of capitalism, both laissez-faire and modern, make impossible the attaining of equal liberty and human autonomy."[69] Thus, Rawls's claim that capitalism can be compatible with an equality of self-respect, equal liberty for all, as did most liberal theorists is invalid.

Thus, without the economic base, it makes no sense talking about political equality. That is, political equality without economic equality is illusion. Take, for

[68] Ibid., p. 219.
[69] Ibid.

example, an election. There are two candidates: one is from the working class and the other is an employer. Usually, the latter is richer than the former. However, for Rawls, both of them have the same political equality, so that they can exercise their eligibility for election. Moreover, they have the same basic liberties, that is, they have equal liberty. It appears that both candidates have the same condition. However, in reality, this is just formal equality. For example, for Rawls, both candidates have equal freedom of speech. Formally, this is true. If they want to give a speech in public, they can give it within the rules. However, substantively, it is false that both have equal liberty. In reality, a rich candidate (employer) can have more and better chances to give his/her speech, for example, he/she has more opportunity for media advertising because he/she has a better economic condition than the worker. Even though a candidate is not elected by economic ability, a working class candidate cannot help having difficulty competing. This situation can impose a burden on other workers to exercise their eligibility for election. That is, if they have ambition to compete in an election (want to enjoy their political liberty), they may give up more easily and limit their political liberty arbitrarily because of the precedent they have seen. Thus, we can say that social and economic structure (circumstances) can limit political liberty as well as political equality. As Tawney says, "extreme economic inequalities [and an unequal economic system] make liberty an empty word for the masses."[70] The emphasis on liberty may not guarantee either liberty or equality. Thus, when

[70] Morgan, George Jr. "Human Equality," *Ethics*. 53 (Jan., 1943). p. 118.

political equality and economic equality have to be considered simultaneously, political liberty as well as political equality can be realized.

The more serious problem is the constitutional process that operates by Rawls's priority principles. Since most people who participate in the constitutional process are of the ruling class, liberty may become the privilege of the few; "and the ideology of the priority of liberty becomes a device for manipulating the mass into an acceptance of their own inferior status and exploitation."[71] That is why liberal capitalists and Rawls emphasize basic liberties such as the freedom of speech, religion and thought.

In addition, as Pogge points out, the priority principle within the second principle has some problems. "The second principle imposes two requirements upon the social and economic inequalities an institutional scheme may generate: the opportunity principle and the difference principle."[72] These are serially ordered so that the former ranks lexically above the latter, just as the first principle ranks lexically above the second principle as a whole. That is, the opportunity principle is prior to the difference principle. However, this order cannot solve social and economic inequalities. To have the same opportunity without some regulations just means simple and formal equality. For example, according to the opportunity principle, all people can enter university if they pass the entrance exam. This appears that all people have the same opportunity. But if one does not have resources to prepare for the exam, how does one enjoy this

[71] Nielson, Kai. p. 220.
[72] Pogge, Thomas. pp. 161-162.

opportunity? Thus, if the opportunity principle has to be presupposed as Rawls claims, people who have vested rights have a better opportunity of getting benefits continuously because they already have resources to exercise opportunities. That is, while some people who do not have vested rights try to get resources, people who have vested rights enjoy more opportunities. Thus, it is difficult to realize even procedural equality with these priority rules. After all, the equality principle has difficulty obtaining the desired results that Rawls expects.

Thus, Rawls attempts the revision of his principles in *Political Liberalism*. In *Political Liberalism*, he claims that the tension between equality and liberty occurs not by itself but by the arguments 'for the sake of the highest things' between different religious, philosophical and moral conception of the good as well as the conflicts of social and economic interests.[73] That is why he seeks an overlapping consensus, not to attempt to synthesize the various values or substitute one value. Thus, Rawls revises his two principles of justice in *Political Liberalism*.

First, he states that he does not explain 'fair value' in *A Theory of Justice* fully. For Rawls, 'fair value' secures political liberties. "This guarantee means that the worth of the political liberties to all citizens, whatever their social or economic position, must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold public office and to

[73] Rawls, John. *Political Liberalism*. p. 4.

influence the outcome of political decisions."[74] Thus, the priority of liberty does not impede the second principle and guarantee equality. However, we cannot say that procedural matters can solve the problem of structure. To put it concretely, 'fair value' can guarantee economic equality, but this guarantee is just reached within the framework when liberty has the priority. In other words, if economic equality conflicts with matters of liberty, economic equality is beyond the scope of fair value. Of course, it is possible for the equality principle to be guaranteed in the legislative stage. For example, Rawls includes 'social minimum' in the constitutional stage in *Political Liberalism*. This shows that Rawls starts to consider basic social structure as well as individual aspects in order to achieve justice as fairness. However, in reality, even the American constitution does not manifest 'social minimum' yet. Through this example, we can see that to exclude the equality principle from constitutional essentials has very significant symbolic and practical meaning.

In sum, Rawls's attempt to revise his principles is not successful in the view of economic equality. Of course, it is true that Rawls includes the proper explanation to ensure and guarantee procedural equality. However, this cannot guarantee that people enjoy equality as much as liberty in his theory. Moreover, except the revision of the first principle[75], we do not find a significant change. The priority between the two principles of justice is still given by the order. That

[74] Ibid., p. 327.
[75] The explanation of revision of the first principle is in 22 pages in this thesis.

is, this revision[76] in *Political Liberalism* has the same limits as those of *A Theory of Justice*. The two principles by priority rules limit the two values of equality and liberty not harmonize them.

Indeed, the idea of the lexical priority of the first principle over the second and of the opportunity principle over the difference principle is not a proper compromise to realize equality and liberty. Rather, this compromise limits the realization of either.

This result is caused by Rawls's position.

As stated above, Rawls does not concede the egalitarian position. He claims that his theory of justice supports democratic equality. Thus, some people evaluate that Rawls's theory can be compatible with socialism and capitalism. However, according to socialists, like Macpherson, "Rawls endorses the fundamental relations of capitalist market society and its property institutions."[77] They claim that Rawls fails to understand the possible political consequences of modes of production. "It is argued that private ownership of the means of production and exchange will undermine first principle and fair equality opportunity." [78] Moreover, they criticize Rawls's priorities as follows: "correct property relations ought to constrain the choice of a constitution and basic

[76] Revised second principle is as follows: social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society. (*Political Liberalism*, pp. 5-6, 271, 291)

[77] Macpherson, C.B. "Do we need a theory of the state?," In Graeme Duncan (Ed.), *Democracy and the Capitalist State*. Cambridge: Cambridge University Press, 1989. p. 17.

[78] Francis, Leslie Pickering. "Response to Rawls from the Left," In H. Gene Blocker and Elizabeth H. Smith (Ed.), *John Rawls' Theory of Social Justice*. Athens: Ohio University Press, 1980. p. 484.

liberties rather than vice versa."[79] Other problems raised by the left about Rawls's treatment of economic life center around his failure to analyze production itself. "Rawls says almost nothing about the organization and control of the production process."[80] Thus, it is not true that Rawls's theory is compatible with socialism. Macpherson maintains that "Rawls has a model of a just society which is essentially that of the liberal-democratic capitalist welfare state."[81]

In fact, his priority rule that emphasizes the values of liberty ensures "a primary validity for the liberal version."[82] The equal citizenship rights defined by Rawls's first principle of justice are in fact identical with the civil liberties and political rights characteristic of western capitalist democracy (61). Consequently, "he supports, in the second part of [*A Theory of Justice*], which deals with institutions, the typical American liberal balance – constitutional democracy and a free economy."[83] There is much evidence that Rawls supports the liberal perspective.

First, as stated above several times, Rawls follows the assumption of liberal capitalism: people are rational and self-interested. Second, when he creates the principles of justice, he divides justice into political and economic spheres. This is the evidence to support capitalism because "capitalism is consistent with the principle of equal liberties only if the separation of political and economic spheres

[79] Ibid.
[80] Ibid.
[81] Macpherson, C.B. *Democratic Theory*. Oxford: Clarendon Press, 1973. p. 88.
[82] Charvet, John. p. 111.
[83] Merquior, J.G. p. 139.

of social life can be sustained."[84] Rawls also seems to distinguish between the private and public spheres because he focuses only on liberties in the private sphere. This distinction is exactly what liberals maintain. When liberal capitalists accepted democracy, they were afraid that some basic liberties would be abolished by the political decision that all people can participate. Thus, they accept only the democratic process without considering its structural question of who are the subjects of democracy. In fact, Rawls also explores procedural justice rather than structural matters of a society. This shows that he already accepts a social system and as claimed above, the system is within the framework of liberal capitalism. In addition, the reason that Rawls considers the constitution as important in the process of two principles of justice is that "the viability of liberal democratic societies is contingent upon the sustained and widespread legitimate [grounds] of their basic institutions."[85]

However, libertarians criticize that Rawls's idea restricts the value of liberty. First, the list of basic liberties appears too narrow to the libertarians. Second and more a serious critique, their objection to Rawls is that his principles for the distribution of economic goods stress the value of equality at the expense of other values and rights, especially the value of economic freedom and the right to property. Even though "Rawls's claim that an unequal distribution of economic goods is justified only if it is to the advantage of society's worst-off individuals, it is insufficient for the libertarian as a ground of rights and freedom, which others

[84] Clark & Gintis. p. 311.
[85] Ibid., p. 302.

imply have no right to abridge or infringe upon"[86] because Libertarians, for example Nozick, regard the rights as fundamental or basic. For Nozick, "there are no justified sacrifices of some of us for others."[87] Thus, Nozick locates his theory in the center of individuals' rights resulting in autonomy and individuality of persons being considered above of all. "Consequently, [there is nothing] that could be held to infringe anyone's liberty."[88] Nozick argues that Rawls's theory does not fully respect the autonomy and individuality of persons.

In fact, Rawls does not completely agree with the libertarian perspective. He does not claim that only liberty has the absolute value. Rather, he proposes the equality principle in order to harmonize equality and liberty. This shows that Rawls is not a libertarian because libertarians do not believe equality can be compatible with liberty. Yet, at least, Rawls agrees with the importance of liberty even though the degree of emphasis on liberty differs from libertarians. His priority rules certainly guarantee the liberty principle as priority. Even though Rawls is not a libertarian, we can see that he supports the basic principles of liberal democracy. As a result, Rawls attempts to reconcile between liberty and equality within the framework of liberalism.

However, as discussed above, balancing equality and liberty cannot be done within a liberals' view. Liberals do not have the intention to harmonize between

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[86] Goldman, Alan H. "Response to Rawls from the Political Right," In H. Gene Blocker and Elizabeth H. Smith (Ed.), *John Rawls' Theory of Social Justice*. Athens: Ohio University Press, 1980. p. 444.
[87] Nozick, Robert. *Anarchy, State and Utopia*. New York: Basic Books, 1974. p. 33.
[88] Scanlon, Thomas. "Nozick on Rights, Liberty, and Property," In Paul (Ed.), *Reading Nozick.* New Jersey: Rawman &Littlefield, 1981. p. 123.

equality and liberty because the most important value for them is liberty. That is, the demand for balancing between them is beyond the liberal framework.

IV. Conclusion

This thesis starts from agreeing with Rawls's acknowledgement that the crisis of current society causes the tension between equality and liberty. To solve the tension, I study the principles of justice that Rawls suggests. As Charvet states, "the way in which Rawls seeks to deduce these principles of justice is through the idea of contract in which self-interested persons choose principles of justice."[89] The principles of justice derived from the original position imply interests and status of equal and free persons. Thus, Rawls's principles represent equality and liberty respectively. Rawls maintains that his perspective is egalitarian liberalism because his two principles of justice deal with equality and liberty together.

After addressing each principle, Rawls proposes a priority rule as the criterion to set up the relationship between the two principles. That is, his liberty principle and equality principle are arranged based on a priority rule: the priority of liberty over equality. According to Rawls, this compromise can reconcile the tension between equality and liberty.

However, his compromise by priority rules is not proper to harmonize between them. By choosing the priority rule, the emphasis on liberty strengthens the value of liberty while weakening the value of equality. This means that Rawls's compromise fails to satisfy both values. More concretely, according to

[89] Charvet, John. p. 109.

the priority rule, under the condition of equal liberty and fair opportunity, the difference principle in which the least advantaged get the greatest benefit, is applied. Thus, he restricts fair distribution of wealth, income and power as a secondary matter. The distribution of wealth, income and power can be realized only when a citizen's liberty and fair opportunity are presupposed. That is, Rawls argues that the problem of social inequality by wealth and power never surpasses the problem of liberty. This is the same compromise between equality and liberty that liberalism attempts. Thus, the difference principle that can solve the inequality cannot be applied and have an effect on society, unlike Rawls's expectation. Finally, even though he tries to create a proper compromise, he remains within the liberal tradition.

As stated above, in liberalism's framework, it is not possible to find the way to compromise between equality and liberty. Liberalism regards the relationship between equality and liberty as a conflict relationship, so that we have to choose between them. However, as discussed above, "it is not to be assumed that these are necessarily competing categories"[90] because they belong to the same category as moral conceptions. In other words, they have the same ultimate purpose of improving people's lives. Therefore, they should have a supportive relationship. As a result, we do not need to choose which value has priority. Rather, both values demand to be reunited and reconciled because they can be guaranteed when they are together achieved. Of course, this does not mean that equality and

[90] Rees, John. p. 92.

liberty increase together without limit. In reality, they can conflict with each other. The compromise that I claim, thus, is to reconcile between equality and liberty in order to care about improving the quality of people's lives. Under this purpose, we continue to seek a balance that can satisfy the values of equality and liberty.

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