

John Rawls's Public Reason and Health Care Justice

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Abstract

The purpose of this paper is to search for a decision-making method for health care justice that is both morally justifiable and practically feasible, in John Rawls's theory of public reason. For this purpose, I first analyze the circumstances of health care justice in order to confirm whether health care can be a matter of distributive justice, and break these circumstances down into three conditions: the moderate scarcity of medical resources, the demand of equality in health care, and the fact of reasonable pluralism. Then, I deal with Ezekiel Emanuel's critique of Rawls' concept of neutrality because, if Emanuel's critique were valid, this inquiry would have been meaningless from the start. I demonstrate Emanuel's critique is a straw man fallacy because I interpret Rawls's theory as justificatory neutrality, but not the consequential neutrality Emanuel criticizes. Finally, I attempt a construction of a justifiable method of decision making using Rawls's concept of public reason. Rawls's public reason is effective in resolving medical issues in the sense that it is relevant as a response to the reality of modern society or the fact of reasonable pluralism. Moreover, it guarantees democratic values

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such as openness of information and discussion, autonomy, etc. I demonstrate that deliberation with public reason could break down into external deliberation between citizens and internal deliberation within each citizen. In addition, I examine how decision-making concerning medical issues can be justified and legitimated with the cooperation and interaction between external and internal deliberations. Through this inquiry, I show that Rawls's public reason could be effective and stable enough in order to resolve controversial moral issues in health care.

Keywords

Health care justice, Public reason, Neutrality, Reasonable pluralism, Decision-making method, Internal deliberation, External deliberation

1. Introduction

The purpose of this paper is to search for a decision-making method for health care justice that is both morally justifiable and practically feasible. I will deal with John Rawls' theory of public reason because his concept of public reason seems to suggest a justifiable and feasible method applicable to health care justice. His theory was somewhat successful in establishing a concept of justice counter to many reasonable and comprehensive political philosophy doctrines.

I first analyze the circumstances involved in health care justice. Then, I respond to the Ezekiel Emanuel's critique of Rawls's approach because Emanuel's critique prevents an attempt to find a method for discussing health care justice in Rawls's theory. Finally, I construct a justifiable method of decision making in health care using Rawls's public reason.

2. Circumstances Involved in Health Care Justice

Can health care be a matter of distributive justice? Should appealing to social policy or human cooperation in a given society be the best way to handle health care discussions? To answer this question, an examination as to whether the circumstances for health care justice are possible is necessary. The circumstances for justice are basic and normal conditions under which human cooperation is both possible and necessary.¹ I suggest three conditions as the circumstances for health care justice: the moderate scarcity of medical resources, the demand of equality in health care, and the fact of reasonable pluralism.

2.1 *Moderate Scarcity of Medical Resources*

The first condition is that of moderate scarcity.² If resources are overly abundant, human beings do not have to cooperate with each other. On the contrary, if resources are too scarce, a state of war may happen, rather than a state of cooperation. Therefore, moderate scarcity of resources is a necessary condition for establishing the circumstances of justice. Moderate scarcity of medical resources results from two causes: the progressive development of medical technology and the continuous increase in health care needs.

Advances in medical knowledge and technology make humans consume medical resources at an excessive rate.³ Thanks to advances in

1. Rawls, John. *A Theory of Justice*. Harvard University Press, 1999: 109.

2. Rawls, John. *A Theory of Justice*. Harvard University Press, 1999: 110.

3. Medical resources include human resources such as physicians, material resources such as drugs, building sites such as hospitals, etc. However, in order to simplify my discussion, I limit medical resources to costs in this paper.

medical technology, humans have controlled many symptoms of obstinate diseases including heart disease, cancer, stroke, AIDS, diagnostics, etc. (Although current treatments provide only life-prolonging therapies, rather than complete cures.) For example, in the past patients diagnosed with heart disease would prepare for their death because the diagnosis meant the inevitable death. However, now the situation has changed. According to Leonard Fleck, physicians performed about 2,500 heart transplants in the United States in 1995, but they these transplants did not meet patients' needs.⁴ In order to overcome the limited number of transplanted hearts available, researchers developed totally implantable artificial hearts (TIAHs). Preliminary research demonstrated a potential annual market by 2012 of 350,000 TIAHs at a cost of \$200,000 each (\$70 billion annually).⁵ These kinds of advances contribute to the total cost of health care's escalating increase because treatments for chronic illnesses are far more costly. For example, in 1995 transplants cost approximately \$150,000 each whereas the TIAHs cost approximately \$200,000 each. In addition, screening for stomach cancers using technologies such as fiber-optic scopes costs \$420,000 per year of life saved.⁶ While such technological advances help to cure diseases, the advances also drive up the total costs for health care exponentially each year.

Each society is showing trends of spending more and more money on health care. For example, the United States spent approximately \$1.7 trillion on health care, or about 14.9% of their GDP in 2003 and \$2.7

4. Fleck, Leonard. Justice, Rights, and Alzheimer Disease Genetics. In *Genetic Testing for Alzheimer Disease: Ethical and Clinical Issues*, ed by Stephen Post and Peter Whitehouse. Johns Hopkins University Press, 1998: 190-208, p.193.

5. Fleck, Leonard. Just Caring: *Health Care Rationing and Democratic Deliberation*. Oxford University Press, 2009: 6-7.

6. Ubel, Peter A. *Pricing Human Life*. MIT Press, 2000: xv.

trillion, 17.7% of the GDP, in 2011.⁷ Projections show the U.S. will spend about \$4.08 trillion for health care, 19.5% of the GDP, in 2014.⁸ Korea also reflects these annual increases. The Korean society spent roughly \$47 billion, 6% of the GDP, in 2006 and \$71 billion, 7.1% of the GDP, in 2010.⁹ This rise in health care cost relates to increasing health care needs complimented by medical advances. Patients in their last year of life and the elderly come to have hope that life-prolonging therapies will help thanks to the advancements in medical technology. The problem is that such life-prolonging therapies come with a high cost. Approximately 28% of all Medicare dollars covers the 6% of Medicare patients in their last year of life. In addition, the elderly in the U.S. comprise 13% of the general population, but they consumed 35% the health care budget, \$540 billion, in 2002. Furthermore, the “baby boom” generation will double the elderly population, to about 76 million individuals over age 65, by 2025. Due to advances in medical technology and diagnostic procedures, the needs of this generation will increase health care costs.

Advances in medical technology and increases in healthcare needs are making medical resources scarcer. Therefore, health care distribution in our society is a pressing problem. However, if society relegates health care to the individual, the moderate scarcity of medical resources does not require discussion. In other words, if health care is determined to be an individual matter, it may be that health care is not a matter of justice. However, because health care access is an economic issue, and there is a

7. Hartman M, Martin AB, Benson J, Catlin A. National health spending in 2011: overall growth remains low, but some payers and services show signs of acceleration. *Health Affairs*. 2013; Jan.: 87-99.

8. Fleck, Leonard. *Just Caring: Health Care Rationing and Democratic Deliberation*. Oxford University Press, 2009: 5.

9. http://www.index.go.kr/egams/stts/jsp/potal/stts/PO_STIS_IdxMain.jsp?idx_cd=1431

demonstrated demand for equality in health care, it would seem that health care is a matter of justice.

2.2 *The Demand for Equality in Health Care*

Ezekiel Emanuel argues that there is a strong intuition that health care should be distributed equally among those in need of the services, or at least that all citizens should be given equal access to the health care services in the American society.¹⁰ This intuition means that equal distribution of health care should be in social policy. American medical policy trends show this intuition is reasonable. Health care has risen from 4.4% of all federal expenditures in 1965, to 11.3% in 1977, to over 13% in 1985, and 23% in 2012.¹¹ Still, there were approximately 48.6 million Americans without health insurance in 2011 and without secure access to needed health care. Because of this, predictions show the rate of federal expenditures concerning health care increasing.¹² Two arguments theoretically support this empirical tendency.

The first claim is that health care is an essential obligation of any political community. Michael Walzer argues that a political community is not maintainable if it does not provide citizens with “the communal provision of security and welfare.”¹³ Such provision would include health care. This is because Walzer believes political communities exist for the sake of social provision and social provision exists for the sake of

10. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 105.

11. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 101.
http://www.usgovernmentspending.com/federal_budget_detail_fy12bs12012n

12. <http://www.bloomberg.com/news/2012-09-12/americans-without-health-insurance-decline-census-says.html>

13. Walzer, Michael. *Spheres of Justice*. Basicbooks, 1983: 64.

communities.¹⁴ Especially in countries such as the United States or Canada, which have many immigrants, this claim seems relevant. Because multicultural and racially diverse societies have many immigrants, social solidarity or unity in them is relatively weaker than that in societies based on a common historical and racial unity. Therefore, these societies need to create a strong social solidarity, a feeling of community, and the non-monetary attachments that can bind a society together. Health care is the most important factor in these efforts.

The second claim is that medical development is a public product. The medical sphere in nature needs a wealth of money and resources, so large public investment such as subsidizing medical research and development of technology, training physicians, providing hospitals and equipment, etc. is not feasible.¹⁵ In other words, a given society's citizens subsidize the medical sphere. Therefore, health care is not simply another market commodity properly distributed in accordance with ability to pay, but rather should be equally distributed to some degree to provide basic medical services based on the social agreement.

Although society has an obligation to ensure that either health care is either equally distributed among citizens in need or all citizens are given equal access to health care services, when citizens have the same comprehensive doctrine and thus have similar interests and needs, health care is not a matter of justice. This is because solving health care problems seems to be relatively easy in a society based on the same comprehensive doctrine. For example, if a society has a comprehensive doctrine such as "death tolerant," then medical issues concerning age-based health care

14. Walzer, Michael. *Spheres of Justice*. Basicbooks, 1983: 64.

15. Fleck, Leonard M. Just Health care Rationing: A Democratic Decision by Approach. *University of Pennsylvania Law Review*. 1992; 140 May: 1597-1636, p.1602.

rationing will not arise.¹⁶ The fact that there are many pluralist societies meets the second condition necessary for health care justice.

2.3 *The Fact of Reasonable Pluralism*

The third condition is ‘the fact of reasonable pluralism’. Rawls assumes that some degree of pluralism is not a mere historical and contingent condition that may soon pass away, but a permanent feature of the public culture of democracies and a normal result of the exercise of human reason within the framework of free institutions in constitutional democratic regimes.¹⁷ In liberal democratic societies, many secular or religious comprehensive doctrines form the basis for citizens’ identities. While citizens have similar needs and interests, such as those Rawls terms ‘primary goods’, their own life plans and conceptions of the good are different. These plans and conceptions lead citizens to have different ends and purposes and to make conflicting claims on the natural and social goods available.¹⁸ These conflicts sometimes cause serious moral disagreements about health care options such as abortion or gene therapy.

Although ‘the fact of pluralism’ can explain moral disagreements about health care, it leaves out the possibility of resolving them theoretically. Therefore, we should bound pluralism from a realistic standpoint. This is because practical problems, such as medical issues arise from the availability of access to medical care in liberal societies such as

16. Brock, Dan. *Life and Death: Philosophical Essays in Biomedical Ethics*. Cambridge University Press, 1993: 395.

17. Rawls, John. *Political Liberalism*. Columbia University Press, 1993: xvi.

18. Rawls’s primary goods are considered to be citizens’ all-purpose means in their lives. These are liberty, opportunity, wealth, income, and the social bases of self-respect. (Rawls, John. *A Theory of Justice*. Harvard University Press, 1999: 78-81.)

the U.S. The fact of pluralism can be distinguished into two ways: reasonable pluralism and simple pluralism. Although it is natural and normal that there are many incompatible comprehensive doctrines, a liberal society cannot permit all doctrines. This is because fundamental, religious doctrines reject pluralist perspectives and do not tolerate co-existence with other doctrines. They assert that the religiously true, or philosophically true, overrides the politically reasonable.¹⁹ However, this kind of doctrine cannot exist within a liberal society permitting pluralism because a liberal society already presupposes pluralism as a public political culture in history. A criterion, which can explain this distinction, is the concept of political reasonableness. The pluralism in a liberal society is reasonable pluralism, not simple pluralism. What does the concept of reasonableness mean? Three senses of reasonableness can be found in Rawls's discussion.²⁰

The first sense of reasonableness is intelligibility. Generally, a reasonable doctrine covers the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner. It organizes and characterizes recognized values so that they are compatible with one another and so that they express an intelligible world view.²¹ The second sense defines reasonableness as the burden of judgment. One must be willing to acknowledge the existence of conflicting reasonable judgments and take an attitude of tolerance. It allows for the possibility of fallacy when concerning value judgments. Therefore, citizens with the

19. Rawls, John. *The Law of Peoples*. Harvard University Press, 1999: 178.

20. I shall borrow Attracta Ingram's classification of reasonableness into three senses. (Ingram, Attracta. Rawlsians, Pluralists, and Cosmopolitans. In *Philosophy and Pluralism*, ed by D. Archard. Cambridge University Press, 1996: 147-162, pp.154-155.)

21. Rawls, John. *Political Liberalism*. Columbia University Press, 1993: 59.

burden of judgment are willing to respect other citizens with other paradigms. The third sense of reasonableness is the sense of moderation. This is the willingness to propose standards as fair terms for cooperation and abide by them willingly given the assurance other citizens will likewise do so.²² Therefore, reasonableness is attainable only when intelligible viewpoints can find a path, through the burden of judgment, and through the sense of moderation. Therefore, with the fact of reasonable pluralism, although there are many moral disagreements and conflicts about health care, citizens are willing to cooperate with each other to resolve many moral disagreements. Because of this, we can establish the circumstances for health care justice.

3. Response to Ezekiel Emanuel's Critique

Rawls's concept of public reason has received great attention because theorists expect it to shed light on solving moral disagreements in the medical sphere. However, some critics such as Emanuel raise strong doubts regarding liberal political philosophy where health care is concerned. In this section, I examine Emanuel's critiques of Rawls, and then I provide a response.

3.1 Critique to Liberal Political Philosophy

Emanuel's critique of liberal political philosophy focuses on the concept of neutrality. Emanuel argues that liberal political philosophy cannot offer a suitable conception of justice in health care that helps resolve practical and

22. Rawls, John. *Political Liberalism*. Columbia University Press, 1993: 49.

specific medical problems.²³ This is because Emanuel believes that a specific problem has a resolution only through a specific comprehensive doctrine. In other words, citizens have to appeal to some comprehensive doctrines to suggest how these opportunities fit into a human's life, why they are urgent, and why the collection of services expresses the conception of justice. Nevertheless, the discussion of liberal political philosophy cannot tolerate such doctrines.²⁴ This is because such discussions rely on invoking particular conceptions of the good life to justify policies. This conflicts with liberal political philosophy, based fundamentally on the concept of neutrality. The liberal ideal of neutrality prohibits justification of any law or policy by appealing to a specific comprehensive doctrine such as a single conception of the good life.²⁵

Rawls accepts that the principles of justice do not single out a precise policy for basic health care services, and so he argues the principles are to serve as deliberative guides in order to flesh out specific problems.²⁶ Rawls considers deliberative democracy to be the most plausible theory for resolving specific moral problems in liberal political theories. However, Emanuel claims that deliberative democracy has no choice but to depend on a particular theory of the good because deliberation also requires some basis for discussion, arguing, and persuading. Emanuel, therefore, proposes that only a political philosophy lacking neutrality can elaborate a deliberative framework.

3.2 *Response to Emanuel's Critique about the Concept of Neutrality*

23. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 107.

24. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 149.

25. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 97.

26. Rawls, John. *A Theory of Justice*. Harvard University Press, 1999: chapter 31.

Emanuel's critique summarizes as the following: Because the concept of neutrality forms the basis of liberalism, it might secure agreement on abstract principles of justice but cannot address agreement on specific lists such as medical care. Therefore, a political philosophy should permit invocation of a conception of the good life in the justification of law and policies to resolve many important matters of justice. This would include which health care services society should guarantee to citizens as a matter of justice.²⁷ However, Emanuel's critique of the concept of neutrality in liberal political philosophy cannot be general because the concept of neutrality can be diverse.

To begin with, an examination of the status of the concept of neutrality in liberal political philosophy is necessary. Although Emanuel's critique seems plausible, the concept of neutrality is so important in liberal political philosophy we should not accept his claim easily. Most liberalists, including Rawls, have supported the concept of neutrality regarding a government's actions.²⁸ This is because the concept of neutrality is useful in resolving dilemmas between the fact of reasonable pluralism and government legitimacy. As mentioned above (2.3), there are various reasonable yet incompatible comprehensive doctrines, secular or religious, in contemporary society. Citizens in contemporary society are base their lives on their own conceptions of the good or happiness. In addition, a society should perform legitimate yet coercive actions in order to maintain

27. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 154

28. Galston distinguishes the concept of neutrality in liberal political philosophy into four categories: neutrality of opportunity, neutrality of outcome, neutrality of aim, and neutrality of procedure. (Galston, William A. *Liberal Purposes*. Cambridge University Press, 1991: 100-101.) Will Kymlicka's consequential neutrality coincides with neutrality of outcome and procedural neutrality coincides with neutrality of procedure. My interpretation of neutrality of aim is not different from neutrality of procedure, though Rawls claims they are different. (See Rawls, John. *Political Liberalism*. Columbia University Press, 1993: 191.)

itself. Therefore, if only a specific religious or conception of the good rules a contemporary society, it cannot be legitimate because it does not permit various doctrines and this violates liberty of religious belief and conscience. Therefore, neutrality is a kind of norm that should be called for in contemporary society where religious or secular comprehensive doctrines having ruled pre-modern society break down. This means that liberalism should not be dependent upon any comprehensive doctrines concerning human life in general. Therefore, the concept of neutrality in liberal political philosophy is not easily forgivable in a contemporary pluralist society.

According to Will Kymlicka, the concept of neutrality is distinguishable into consequential neutrality and justificatory neutrality.²⁹ The former requires that the government seeks to help or hinder different life-plans to an equal degree, that is, governmental actions should have neutral consequences. The latter permits governmental actions to help some ways of life more than other ways of life. However, it denies that the government should act in order to help some ways of lives over others. In other words, the government should not take a stand on which ways of life are most worth living, and the desire to help one way of life over another precludes as a justification for governmental actions. Therefore, Emanuel's applies to consequential neutrality, but not justificatory neutrality as Rawls's theory does. This is because Emanuel's understanding of neutrality is that "public institutions, laws, and policies should not promote any particular view of what is worthy or good."³⁰ Rawls denies this ideal because "it is surely impossible for the basic structure of a just constitutional regime not to have important effects and

29. Kymlicka, Will. *Liberal Individualism and Liberal Neutrality*. *Ethics*. 1989; July: 883-905, p.884.

30. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 7.

influences as to which comprehensive doctrines endure and gain adherents over time.”³¹ Rawls argues for procedural justice based on the public political culture because it permits pluralism. Procedural justice obtains when there is no independent criterion for the right result; instead, there is a correct or fair procedure so that the outcome is likewise correct or fair provided the procedure has been properly followed.³² Therefore, Emanuel’s critique of Rawls’ concept of neutrality is irrelevant because his critique involves a straw man fallacy.

4. A Justifiable Method of Decision Making with Public Reason

As mentioned above (3.2), Rawls’s concept of public reason responds to Emanuel’s critique because it is justificatory neutrality. The remaining problem is whether Rawls’s concept of public reason can be effective and stable enough in order to resolve numerous, very controversial, moral issues in health care. If so, how can public reason be effective? To answer these questions I analyze the concept of public reason and will then construct a justifiable method of decision making with Rawls’s theory of public reason.

4.1 *An Analysis of Public Reason*

Public reason is effective in the resolution of medical issues because it has two features related to justification or legitimacy. First, public reason guarantees the fairness of agreement. Public reason is the deliberative

31. Rawls, John. *Political Liberalism*. Columbia University Press, 1993: 193.

32. Rawls, John. *A Theory of Justice*. Harvard University Press, 1999: 75.

process of free and equal citizens as a community whole, and its subject is the good of all when it concerns questions of fundamental political justice.³³ Therefore, the publicity condition expands into an account of public reason. According to Charles Larmore, the publicity condition is very important in the contractual discussion of justice, because this condition is fundamental to the concept of contractualism in that it connects to the concept of fairness.³⁴ The concept of publicity has three levels: an object of public knowledge, a basement of beliefs to which everyone can assent, and a justifying manner all can embrace.³⁵ The first level connects with the process of agreement. If contractors have no sufficient knowledge about agendas, the contract is impossible in itself and unjustified. For example, citizens should have sufficient information concerning medical issues. The second and third levels relate to the stability of agreements. This is because citizens take part in the just process of agreement and believe that others agree and observe this agreement. Therefore, the publicity condition can justify the contents of agreement and keep them stable; retaining values such as personal autonomy, openness, honesty, etc. Therefore, citizens themselves should make the decisions about moral issues. This feature can overcome the fatal weakness of the 'invisible allocation mechanism' supported by Guido Calabresi and Philip Bobbitt.³⁶ The 'indivisible allocation mechanism' by some elite societal power-holders violates citizens' autonomy or liberty, but public reason requires that citizens including patients have sufficient information about medical issues and should determine their medical

33. Rawls, John. *The Law of Peoples*. Harvard University Press, 1993: 133.

34. Larmore, Charles. Public Reason. In *The Cambridge Companion to Rawls*, ed by Samuel Freeman. Cambridge University Press, 2003: 368-393, p.371.

35. Rawls, John. *Collected Papers*. Harvard University Press, 1999: 324-326.

36. See Calabresi, Guido and Philip Bobbitt. *Tragic Choice*. New York, 1978.

contract using their own judgments.

Second, public reason is procedural as well as substantial. The weakness of pure proceduralism is that it can result in unjust outcomes. The weakness of pure substantialism is that it can exclude other comprehensive doctrines. However, Rawls's public reason can overcome both weaknesses. This is because although Rawls bases public reason on minimum fundamental values in a given society, such values can be shared by all comprehensive doctrines in a given society. As mentioned above (2.3), we base our discussion on a given society bounded by the concept of reasonableness in the public political culture, so reasonable comprehensive doctrines in a given society can support the values of public reason. In addition, the procedural feature of public reason relates to deliberation. This is because we consider public reason as a public basis of justification or legitimacy and a way of public reasoning. Therefore, this feature can suggest guidance, as a procedural justification, to resolve medical conflicts and justify outcomes of medical issues in a deliberative democracy.

Therefore, Rawls's public reason is effective in resolving medical issues because it relates to the reality of modern society, or the fact of reasonable pluralism, in the sense that public reason is procedural. In addition, public reason is relevant in the sense that its basis is democratic values such as openness of information and discussion, autonomy, etc.

4.2 The Structures of Public Discussion with Public Reason

The deliberation with public reason divides into the external deliberation between citizens and the internal deliberation within each citizen. External and the internal deliberations compliment and cooperate with each other. The latter can help "the problem of distance" in the former to dissolve to

some extent, although the latter cannot remove the former completely.³⁷ Internal deliberations can moderate the possibility of prejudice in external deliberations. In fact, internal reflective deliberation is apt to ignore diverse views because it depends on each citizen's social or cultural backgrounds. Therefore, external deliberation helps internal deliberation observe various views and be revised or complemented by them. In addition, the outcome of the external deliberation should be justified by internal deliberation with the purpose of becoming legitimate social policy. This is because the former intends to make decisions after enough deliberation in which revision of prior judgments is possible.

4.2.1 External Deliberation: Three Public Forums

External deliberation with public reason separates into three forums in proportion to the application of public reason: the constitutional forum, the legislative forum, and the open forum.³⁸ This distinction relates to the importance or urgency of agendas. In other words, the constitutional forum deals with constitutional essentials and basic justices, the legislative forum deals with specific laws and policies, and the open forum occurs as free exchange of opinions.

At first, it is necessary to mention this this distinction into three

37. Goodin, Robert E. Democratic Deliberation Within. In *Debating Deliberative Democracy*, ed. by James Fishkin and Peter Laslett. Blackwell, 2003: 54-79, p.57.

38. Rawls's view of public reason in *Political Liberalism* (1993) and in *The Law of Peoples* (1999) is not consistent because a wide view replaces an inclusive view. The problem is the following: the proviso of a wide view is so vague that the possibility of various interpretations can be open and that the scope of public reason can be blurred. (See Larmore, Charles. Public Reason. In *The Cambridge Companion to Rawls*, ed by Samuel Freeman. Cambridge University Press, 2003: 368-393) Therefore, I intend to reconstruct Rawls's public reason with Rawls's comment "public reason is the guidance for public inquiry", consistently or compatibly interpreting the difference between *Political Liberalism* and *The Law of Peoples*.

forums is not fixed but changeable. This is because some have considered the distinction between the political and the non-political as fixed, and so liberal political philosophers have criticized it. According to Jürgen Habermas, procedural constraints on public discussions should differ from limitations on the range of agendas open to public discussions.³⁹ The agenda in the forums should be changeable. This is because all struggles against oppression in the modern world begin by redefining previously considered non-public issues as matters of public concern and as issues of justice. The women's movement, the peace movement, the ecology movement, and new ethnic identity movements follow a similar logic.⁴⁰ Thus, the agendas of these forums are so dynamic they can sensitively respond to changes in social affairs and public opinion.

4.2.1.1 *The Constitutional Forum*

The use of public reason in the constitutional forum is strictly as 'an exclusive view' in an ideal society. In other words, all discussions should rely only on fundamental values within the public political culture. The view of public reason as an exclusive view has three important features. The first is that the fundamental political questions to which it applies are limited. Public reason applies only to the agenda of constitutional essentials and basic justices, but not all political agendas. In the case of health care, the constitutional forum includes the following questions: (1) Is health care a basic value, and (2) if so, what is the relationship between health care and other values or liberties? The second feature is that the persons to whom it applies are limited only to government officials and

39. Habermas, Jürgen. *Between Facts and Norms*, translated by William Rehg. The MIT Press, 1992: 313.

40. Benhabib, Seyla. *Situating the Self*. Routledge New York, 1992: 100.

candidates for public offices. With citizens, this feature can be realized by the ideal of public reason, when they vote for representatives (i.e. chief executives, legislators, etc.), thinking of themselves as if they were parties in the original position.⁴¹ This is because it is more urgent to settle the essentials dealing with basic freedoms; it is far easier to tell whether the society reaches those essentials; and 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.⁴² In order to construct a political community or a society, it is necessary to agree or share common values such as constitutional essentials, namely, to form the common democratic will, because political power is always coercive to members in the society and so it needs the legitimacy of coercive power.⁴³ The third feature is that a family of reasonable political conceptions of justice gives the constitutional forum its content. This would include substantial values such as a list of certain basic rights, liberties, opportunities, etc, and procedural values such as reciprocity, mutual respect, etc., for example.⁴⁴ As demonstrated above (4.1), although the content of public reason is substantial, the content can be shared by reasonable theories in the liberal democratic society. In addition, although the content of public reason is procedural, the content depends on the fundamental values in the liberal democratic society. Therefore, public reason can escape critiques that procedural theory results in non-moral outcomes such as slavery and that substantial theory cannot include various theories.

In the constitutional forum, also, comprehensive doctrines are less

41. Rawls, John. *The Law of Peoples*. Harvard University Press, 1999: 135.

42. Rawls, John. *Political Liberalism*. Columbia University Press, 1993: 230.

43. Habermas, Jürgen. *Between Facts and Norms*, translated by William Rehg. The MIT Press, 1992: 299.

44. Rawls, John. *The Law of Peoples*. Harvard University Press, 1999: 141-144.

strictly useful as ‘an inclusive view’ in a non-ideal society. In an ideal society, where all citizens affirm together just principles of social cooperation, citizens can reach agreement with fundamental values. However, in a non-ideal society, which is deeply at odds with itself about constitutional essentials, citizens would need public debate to look outside an exclusive view of public reason to settle what justice requires. Presenting what citizens regard as the basis of political values rooted in comprehensive doctrines is permissible, provided they do this in ways that strengthen the ideal of public reason itself in the end.⁴⁵

Although the constitutional forum can reach unanimity of agenda by an exclusive and an inclusive view of public reason, it looks vacuous because the contents of agreement are so abstract and narrow that moral disagreements in reality do not seem to be resolved. Therefore, the legislative forum is called for under the guidance of public reason.

4.2.1.2 The Legislative Forum

Constitutional essentials and basic justice are so abstract that they cannot apply to specific problems such as medical issues. For example, problems afflicting those deliberating about health care include: (1) what proportion of social resources should be allocated to medical care? (2) What medical services should citizens have as guaranteed? (3) What considerations should determine patient selection for medical services? Therefore, they need fleshing out as specific laws in the legislative forum. In order to be fleshed out, reasonable comprehensive doctrines, whether religious or secular, can and need be introduced in legislative forums, “provided that in due course proper political reasons are presented that are sufficient to

45. Rawls, John. *Political Liberalism*. Columbia University Press, 1993: 247.

support whatever the comprehensive doctrines introduced are said to support.”⁴⁶ This ‘wide view of public reason’ shows how Rawls’s political theory can be relevant to institutions that make important health care decisions. Actually, the roots of democratic citizens’ allegiance to their political conceptions lie in their respective comprehensive doctrines, and so their wholehearted position, suggested in a wide view, informs one another where they come from and on what basis they support the agenda.⁴⁷ In addition, all this may have desirable consequences and may strengthen the forces working for stability, or a deep understanding of their several points of view.

The concrete guidance on a wide view of public reason is understandable in the concept of reasonableness.⁴⁸ As mentioned above (2.3), one can interpret Rawls’s concept of reasonableness as three senses. The first sense of reasonableness is intelligence. This means that someone’s opinions as reasons should be understandable to others although s/he uses reasons based on a specific comprehensive doctrine. Citizens must be able to present publicly acceptable reasons for their political views in cases raising fundamental political values expressed by their comprehensive doctrines freely to one another. In addition, public reason should support the deliberations. For example, someone can claim

46. Rawls, John. *The Law of Peoples*. Harvard University Press, 1999: 152.

47. Rawls, John. *The Law of Peoples*. Harvard University Press, 1999: 153.

48. Three senses of reasonableness look similar to Gutmann and Thompson’s four reasons in deliberation. The accessible reason may correspond with reasonableness as the sense of intelligence, the moral and revisable reasons are similar to reasonableness as the burden of judgments, and the respectful and the revisable reasons may resemble reasonableness as the sense of moderation. However, because Rawls’s concept of reasonableness seems to be more consistent in my discussion, I use Rawls’s concept in this paper. See Gutmann, Amy & Dennis Thompson. Just Deliberation about Health care. In *Ethical Dimensions of Health Policy*, ed by Marion Danis et al. Oxford University Press, 2002.

that genetic engineering should not be permissible because it violates the value of life God gives us. In that case, it is comprehensible to others because public reason supports this deliberative process, although others may not accept the source of premises.

The second sense is reasonableness as the burden of judgments. We base our judgments on evidence (which can be conflicting and complex), on the different weights of considerations, on indeterminate concepts in morality or politics, on our individual experience, and the like.⁴⁹ Therefore, this sense does not consider present agreement as truth, but as a temporal fixing point. New empirical evidence, results of research, or reasons that are more persuasive can revise prior agreements. In fact, this sense is very important in the sphere of health care, because new evidence and technology in the medical sphere arise continuously, and they have great influence over medical judgments. In addition, because citizens accept the possibility of fallacies in value judgments, they can tolerate each other and furthermore, can reach mutual respect.

The third sense of reasonableness is the sense of moderation. It means citizens are willing to reach moral agreement, making efforts to economize on moral disagreements and reach moral agreement.⁵⁰ This kind of effort can remove moral disagreement resulting from incomplete understanding or insufficient information and can contribute to understanding other opinions and modifying their own opinions. Therefore, under this kind of guidance based on the concept of reasonableness, the process of deliberation can go on positively.

Although deliberation in the legislative forum is sufficient, there is no

49. Rawls, John. *Political Liberalism*. Columbia University Press, 1993: 54-58.

50. Gutmann, Amy & Dennis Thompson. Just Deliberation about Health care. In *Ethical Dimensions of Health Policy*, ed by Marion Danis et al. Oxford University Press, 2002: 88.

promise that consensual outcomes will be forthcoming. Deliberation in the legislative forum may not make incompatible doctrines compatible, but it can help citizens recognize the moral merit in others' claims when those claims have merit.⁵¹ Therefore, at the end of discussion, some voting or electoral procedure such as majority rule is called for to resolve remaining disagreements or make decisions about laws or policies.⁵² This is because the legislative forum acquires its legitimating force from the discursive structure of an opinion-and will-formation that can fulfill its socially integral function only because citizens expect its outcomes to have a reasonable quality.⁵³ The fact that it may so conclude does not blur the distinction between deliberative forms of collective choice and forms that aggregate non-deliberative preferences. The institutional consequences are likely to be different in the two cases, and the outcomes of voting among those who are committed to finding reasons that are persuasive to all are likely to differ from the results of an aggregation that proceeds in the absence of this commitment.⁵⁴ This is because the aggregative conception takes citizens' preferences as given without the requirement of justification, but the legislative forum cannot be a simple aggregation of preference. This is because our judgment can be revised or at least suspended under enough deliberation if a good moral argument persuades us that our original belief about what is right is actually

51. Gutmann, Amy & Dennis Thompson. *Why Deliberative Democracy?* Princeton University Press, 2004: 11.

52. Kymlicka, Will. *Contemporary Political Philosophy: An Introduction* (Second edition). Oxford University Press, 2002: 292.; Rawls, John. *A Theory of Justice*. Harvard University Press, 1993: chapter 54.

53. Habermas, Jürgen. *Between Facts and Norms*, translated by William Rehg. The MIT Press, 1992: 304.

54. Cohen, Joshua. Deliberation and Democratic Legitimacy. In *Deliberative Democracy*, ed by James Bohman and William Rehg. The MIT Press, 1997: 67-92, p.75.

incorrect. Due to its internal connection with deliberative discussions, the majority rule justifies the presumption that the fallible majority opinion may be a reasonable basis for a common practice until further notice, namely, until the minority convinces the majority that their (the minority's) views are correct.⁵⁵ In addition, although deliberative forums must reach conclusions at any given time, the conclusions should always be open to challenges in a subsequent round of deliberation. This is because the majority rule after enough deliberation as final decision-making does not guarantee the outcome true or right itself. However, although numerical power does not make a decision morally right, the majority rule after enough deliberation can justify the outcome as legitimate. John Dewey says the majority rule “never is merely majority rule ... ‘The means by which a majority comes to be a majority is the more important thing’: antecedent debates, modification of views to meet the opinions of minorities. ... The essential need, in other words, is the improvement of the methods and conditions of debate, discussion and persuasion.”⁵⁶

Therefore, deliberative discussion performed by public reason as a wide view is possible and consequently the moral outcome is reachable by the majority rule in the legislative forum. However, because constitutional and the legislative forums relate to will-formation, or legislation, the agendas and procedures are relatively restrictive. Therefore, more free discussion is called for in the structure of forums.

4.2.1.3 *The Open Forum*

55. Habermas, Jürgen. *Between Facts and Norms*, translated by William Rehg. The MIT Press, 1992: 306.

56. Dewey, John. *The public and its Problems*. Swallow Press, 1954: 207.

The open forum relates to opinion forming, but not will forming, because there is no burden to reach agreement in an open forum. So, even non-public reasons can be used in the method of declaration or conjecture because public reason guides the open forum much less strictly. It does so only as the second sense of reasonableness, or mutual respect. This kind of open forum has two important features. First, various methods of debate and deliberation can be used in this forum and citizens can have a positive opportunity for learning about and understanding different opinions or convictions more correctly and evidently concerning controversial issues. For example, in 1971, before the forum covering national health insurance, Shep Glazer's wife connected him to a dialysis machine publicly as a performance for emotional appeal.⁵⁷ Walzer claims politics has other values in addition to, and often in tension with, reason. These values include passion, commitment, solidarity, courage, and competitiveness. Such values are exemplified in a wide range of activities such as mobilization, demonstration, statement, debate, campaigning, etc.⁵⁸ These kinds of activities in the open forum need not have the intention to persuade or understand others but rather have the intention for an individual to express his/her position clearly. Still, citizens can sometimes find themselves persuaded by the way someone defends an initially unattractive opinion. On the other hand, citizens can support comprehensive opinions more evidently and clearly in the open forum.

Second, the open forum is effective in searching for a social agenda, or opinion forming. According to Habermas, "the opinion-formation uncoupled from decisions is effected in an open and inclusive network of overlapping, sub cultural public having fluid temporal, social and

57. Emanuel, Ezekiel J. *The Ends of Human Life*. Harvard University Press, 1991: 98-100.

58. Walzer, Michael. *Deliberation and What Else?* In *Deliberative Politics*, ed by Stephen Macedo. Oxford University Press, 1999: 58-69, pp.59-65.

substantive boundaries.”⁵⁹ Therefore, the open forum can collect citizens’ interests and so form agendas for the legislative forum. The open forum has developed and become active due to the ubiquity of Internet access. This forum is especially important and relevant in medical issues because research discovers new diseases due to the advancements in medical technology. For example, a disease may not be on a list of national health insurance although coverage is necessary and urgent. If the necessity for national health insurance covering the treatment of the discovered disease appeals to the open forum and the appeal arouses public response extensively, the legislative forum can bring the agenda to discussion and be legislate it as AIDS was.

4.2.2 The Internal Deliberation: Wide Reflective Equilibrium

Although the external deliberative model involving three public forums can explain the structure of public discussion and can guarantee external legitimacy and justification, the process of each citizen’s internal justification is necessary. This is because opinions suggested in forums should not be simple judgments, but instead should be well-considered judgments that are justified at least within each citizen in the same sense that public reason guides the three public forums. In addition, an outcome following enough deliberation and decision-making should be and can be justified within each citizen, in order to become legitimate policy. This is because each citizen sufficiently understands other judgments and revises his/her judgments through deliberative processes in forums, even when the content of agreement is different from his/her original judgment. The

59. Habermas, Jürgen. *Between Facts and Norms*, translated by William Rehg. The MIT Press, 1992: 307.

process of wide reflective equilibrium (WRE) explains this dynamic process of justification well. The method of WRE is an attempt to guarantee justification by producing coherence in three ordered sets of beliefs held by a particular citizen, namely a set of considered moral judgments, a set of moral principles, and a set of relevant background theories.⁶⁰

4.2.2.1 Considered Judgments

The method of WRE can be considered as “foundationalism without foundations” because this method begins from a considered judgment, which is not given epistemic priority.⁶¹ Unlike intuitionism, WRE thoroughly depends on the possibility of fallacy in human knowledge, and considered judgments may undergo extensive revisions in the process of critical reasoning and investigation. Furthermore, not all judgments are considered judgments. Rawls proposes that we should exclude judgments made when we are upset, frightened, and so on.⁶² This is because these judgments are likely to erroneous and excessively attentive to our own interests. Kai Nielsen agrees, saying that we must filter judgments made when we are out of control, enraged, depressed, under stress and the like.⁶³ In fact, it cannot be morally permissible and justifiable for judgments made under these kinds of mental instability to have a great influence on forums when it comes to medical issues. This filtering test

60. Daniels, Norman. *Justice and Justification*. Cambridge University Press, 1996: 22.

61. Daniels, Norman. *Justice and Justification*. Cambridge University Press, 1996: 83.

62. Rawls, John. *A Theory of Justice*. Harvard University Press, 1999: 42.

63. Nielsen, Kai. Searching for an Emancipatory Perspective. In *Antifoundationalism and Practical Reasoning*, ed by E.Simpson. Academic Printing and Publishing Co., 1987: 143-163, p. 148.

applies to the background conditions for judgments, but does not apply to contents of judgments themselves. This test is different from intuitionism, which examines the compatibility between our particular moral convictions and our more general moral principles with narrow reflective equilibrium without background theories.

Considered judgments going through this filtering process have some features.⁶⁴ First, the judgment should be one relating to an actual conflict of interests such as those occurring with medical issues. This is because if judgments rely on hypothetical conflicts, we cannot expect them to receive whole-hearted support. Second, judgments should only follow careful inquiries into the facts of the question at issue. This is because it cannot be justified that medical judgments based on incorrect facts have a great influence on medical policies. Third, the citizen making the judgment should feel it to be certain. It means ‘certitude’, which is a citizen’s conviction, but not ‘certainty’, which is a logical relation between a theory and its evidence. In other words, the judgment should be relatively stable. It means that citizens will have rendered the same judgment on similar cases at other times and at other places if the relevant facts and the competing interests are similar. However, it does not permit the possibility for revising judgments because of new facts or information.

4.2.2.2 *Background Theories*

Background theories can extensively explain citizens’ judgments and are widely shareable by those specialists concerned. These include social or scientific theories related to empirical judgments as well as moral theories

64. Rawls, John. Outline for a Decision Procedure in Ethics. *The Philosophical Review*. 1951; 60: 177-197, pp.181-182.

supported by considered moral judgments. In practical moral issues such as medical concerns, these kinds of theories are very important. Theoretic reasoning without empirical backgrounds can be logically justified, but cannot result in feasible outcomes and cannot resolve moral conflicts. For example, Immanuel Kant's categorical imperative does not suggest a definite and feasible answer to the problem of tragic choice, although it is logically excellent.

Background theories have two features. First, background theories help WRE to escape from the fallacy of circularity. WRE is the process of mutual supports. Here, considered judgments and background theories support moral principles. Considered judgments and moral principles support background theories. Therefore, the feature of this mutual support in WRE seems to open the fallacy of circularity.⁶⁵ However, according to an account of "independence constraint" suggested by Norman Daniels, the considered judgments that support the background theories we use for arriving at a WRE must be different, in part, from the considered judgments we use for arriving at a narrow reflective equilibrium.⁶⁶ This is because background theories in WRE include social and scientific theories as well as considered moral judgments.

Second, background theories help WRE guarantee both justification and feasibility. Background theories can guarantee justification of WRE in the sense that it is not only a framework for revision, but it also supports considered judgments and moral principles. In such shuttling of moderation, background theories sometimes help an individual modify or abandon a particular considered conviction, moral principle, social theory, or another background theory. Nielsen compares this process of

65. Haslett, D.W. What is Wrong with Reflective Equilibrium? *Philosophical Quarterly*. 1987; 37: 305-311, p.310.

66. Daniels, Norman. *Justice and Justification*. Cambridge University Press, 1996: 23.

modifying and adjusting to “rebuilding the ship at sea.”⁶⁷ This kind of extensive possibility for revision depends on background theories. In addition, ‘background theories of background theories’ that have more social or scientific features than moral features are ones that guarantee the feasibility of moral principles. In theory, processes of ‘background theories of background theories’ can be infinitely regressed but, in reality, they can be equalized to some degree. Therefore, background theories can guarantee the feasibility of moral principles.

4.2.2.3 Moral Principles

Moral principles before the process of WRE can just explain considered moral judgments systemically. However, moral principles after the process of moderation between considered judgments and background theories can guarantee justification and feasibility. However, some critics propose that moral disagreement can remain even among moral principles after a WRE.⁶⁸ This is because there can be many coherent principles after WRE and furthermore, we cannot decide which we should choose definitively. If WRE is a method for pursuing logical consistency and factual coincidences, this critique may be valid. This is because WRE cannot suggest a criterion of choice for a more relevant principle. However, the concept of coherency means comprehensive explanation as well as logical consistency and factual coincidence. In other words, the criterion, which one can explain our considered judgments more

67. Nielsen, Kai. Searching for an Emancipatory Perspective. In *Antifoundationalism and Practical Reasoning*, ed by E.Simpson. Academic Printing and Publishing Co., 1987: 143-163, p.149.

68. Haslett, D.W. What is Wrong with Reflective Equilibrium? *Philosophical Quarterly*. 1987; 37: 305-311, p.310.

comprehensively and much efficiently, can decide the best amongst moral principles after WRE.

Moral principles following WRE are revisable or capable of moderation through a new WRE with the presentation of new evidence or a new background theory. Each citizen in the three public forums has a specific moral principle concerning a specific medical issue after an individual WRE. However, in the deliberative discussion, each comes to experience a new WRE process because each comes to take in new information and opinions. After a new WRE process, citizens can reach a new moral principle different from the originally held one. For this reason, WRE is dynamic and progressive. Take a simple example. When a woman attends a legislative forum about genetic therapy, she has a considered judgment that all genetic therapies should be equally applied to all citizens regardless of ability to pay. She bases her on the principle of equality. In the forum, she learns about the high cost of genetic therapy, the limited government budget, the low rate of success, and moral theories including Fleck's argument against priceless human life.⁶⁹ Because she has the burden of judgment and is willing to cooperate with other citizens, she positively raises her opinion and tries to understand other opinions. After due considerations and decision-making, she can revise her conviction or at least can admit and justify an outcome different from her original conviction.

5. Conclusion

This paper has explored a justifiable method for making decisions

69. Fleck, Leonard. The Moral Costs of Medical Progress. *The Centennial Review*. 1990; Spring 34: pp.241-248.

concerning medical issues using Rawls' concept of public reason. In the first section, I analyzed the circumstances of health care justice, and broke these circumstances down into three conditions: the moderate scarcity of medical resources, the demand of equality in health care, and the fact of reasonable pluralism. In other words, these conditions make health care a matter of justice. In the second section, I dealt with Emanuel's critique of Rawls' concept of neutrality because, if Emanuel's critique were valid, this inquiry would have been meaningless from the start. I demonstrated Emanuel's critique is a straw man fallacy because I interpret Rawls's theory as justificatory neutrality, but not the consequential neutrality Emanuel criticizes. In the final section, I attempted a construction of a justifiable method of decision making using Rawls's concept of public reason. Rawls's public reason is effective in resolving medical issues in the sense that it is relevant as a response to the reality of modern society or the fact of reasonable pluralism. Moreover, it guarantees democratic values such as openness of information and discussion, autonomy, etc. I demonstrated that deliberation with public reason could break down into external deliberation between citizens and internal deliberation within each citizen. In addition, I examined how decision-making concerning medical issues can be justified and legitimated with the cooperation and interaction between external and internal deliberations. Through this inquiry, I showed that Rawls's public reason could be effective and stable enough in order to resolve controversial moral issues in health care.

In conclusion, I want to mention that education about deliberation and democracy is essential to perform this kind of deliberation about medical issues efficiently. This is because enough education about deliberation and democracy can economize on moral disagreements and, furthermore, can help reach moral agreements. If citizens share the ability of an internal reflective deliberation process such as WRE, medical policies

created by majority rule can be justified and legitimated even when moral disagreements about medical issues may not be resolved in spite of external deliberation. If citizens are well educated about deliberation and democracy and public forums are fairly constructed, health care justice will become more progressive. In order to prove my belief and respond to an expected critique that my prospect is too optimistic and idealistic, I will have to develop this theoretic model more and will inquire into a practical, empirical model corresponding with my theoretical model.

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