Is Rawls Really a Kantian Contractarian?

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Abstract: In most of the introductions to Rawls and contemporary contractarianism, Rawls is seen as the representative of Kantian contractarianism. He is understood as inheriting a contractarian tradition that can be traced back to Kant and which has inspired followers such as Barry and Scanlon. This paper argues that the label does not fit Rawls. While a Kantian contractarian would presuppose a monistic conception of practical reason, Rawls is a hybrid contractarian who presupposes a dual conception. I shall first argue that the way in which a contractarian model is labeled is determined by its conception of practical reason. Then I show that Rawls and Kantian contractarians assume different conceptions of practical reason, and therefore should be seen as belonging to two strands of thought. I further argue that, although Rawls acknowledges his intellectual affiliation with Kant, he cannot be considered a Kantian contractarian in the commonly understood way. In his *Lectures on the History of Moral Philosophy*, Rawls interprets Kant as endorsing a hybrid contractarian model that is similar to his. By understanding Rawls as a hybrid contractarian and not confusing his philosophical project with that of Kantian contractarians, Rawls's contribution to the history of contractarianism can be better evaluated.

Key words: Rawls, Kant, Sidgwick, Kantian contractarianism, Scanlon, practical reason.

In contemporary discussions of contractarianism, contractarian theories are usually divided into Hobbesian and Kantian contractarianism.[1] In the literature, David Gauthier (1986) is viewed as a representative of the former, and John Rawls (1999, 2005) is seen as a prominent representative of the latter variety. Rawls is commonly seen as the father of Kantian contractarianism; as inheriting a contractarian tradition that can be traced back to Kant and which has inspired followers such as T. M. Scanlon (1998) and Brian Barry (1995). This label is widely used in the introductions to Rawls as well as in introductions

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1] Here I should clarify my use of the term "contractarianism," since there is no standard definition in current academic discussions. Stephen Darwall (2003) uses "contractualism" to refer to the strand of social contract theories which are influenced by Kant and which emphasize agreements which could be reasonably accepted by everyone, whereas he uses "contractarianism" to refer to the strand of social contract theories which are influenced by Hobbes and which emphasize agreements which could advance the rational interests of everyone. However, not everyone agrees with this usage. For example, Geoffrey Sayre-McCord (2000, 247-67) and Jean Hampton (2007, 478-92) use "Kantian contractarianism" to refer to the former strand, and "Hobbesian contractarianism" to refer to the latter strand. Nicholas Southwood (2010, 25-85) uses the labels "Hobbesian contractualism" and "Kantian contractualism." Samuel Freeman (2007a, 17-44) prefers the labels "interest-based contract" and "right-based contract." Despite not using the word "contract," Brian Barry's (1989) distinction between "justice as mutual advantage" and "justice as impartiality" also makes the same kind of division.

I disagree with all of these ways of distinguishing theories since they overlook the hybrid model. Here, in this essay, "contractarianism" is employed as a broad term that can be used to refer to all theories that use social contracts to justify principles of justice, regardless of whether a contract is rational or reasonable. Hence, unlike Darwall's usage, this term does not specifically refer to the Hobbesian social contract model.

to contractarianism.[2] However, there is some lack of clarity about what it means to be a contractarian. It is also unclear whether Rawls, Scanlon and Barry can be seen as belonging to the same strand of contractarianism. The purpose of this paper is to challenge the label as applied to Rawls and to argue that the Rawlsian contractarian model is in fact a non-Kantian, hybrid model that presupposes a dual conception of practical reason.

The paper consists of five sections. First, using Kantian contractarianism as an example, I shall outline the theoretical structure of a contractarian model and argue that the question of whether a theory fits a certain contractarian model is decided by its conception of practical reason (Section I). I shall then discuss the hybrid character of the Rawlsian contractarian model and show that Rawls assumes a dual conception of practical reason (Section II). Having discussed the character of Rawlsian contractarianism, I shall compare Rawls with two Kantian contractarians, Scanlon and Barry, and show how Rawls's conception of practical reason is plainly different from theirs (Section III). I will briefly introduce Sidgwick's dual conception of practical reason and show that, ironically, the philosopher who has a conception of practical reason that is most similar to Rawls's is not any one of the Kantian contractarians, but the utilitarian Sidgwick (Section IV). Finally, I shall discuss a possible objection, namely that Rawls should be seen as a Kantian contractarian due to his self-confessed intellectual affiliation with Kant. My argument will be that Rawls's intellectual affiliation should not be understood without his distinctive, "hybrid" interpretation of Kant. His *Lectures on the History of Moral Philosophy* shows that Rawls reads Kant as constructing a hybrid contractarian model that is similar to his (Section V).

I. THE THEORETICAL STRUCTURE OF CONTEMPORARY CONTRACTARINAISM

Contractarians advocate different moral or political principles, but they share the same methodology. The methodology of contractarianism is to specify moral or political principles by an agreement that would be made by people when they reason correctly. A contractarian theory should consist of three components:

(1) A conception of practical reason

(2) A state of nature

(3) A hypothetical contract (a set of moral or political principles)

A conception of practical reason is an account of how reasoning should be when people reflect on practical issues. For Kantian contractarians, the conception of practical reason is *monistic*, i.e., the correctness of practical reasoning is measured by a single

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2] For examples of introductions to Rawls who interprets him this way, see Maffetone (2010, 33-34); Audard (2006, 50-51); Mandle (2009, 84-85); Freeman (2007c, 8); Pogge (2007, 188-95). For examples of introductions to contemporary contractarianism which interpret Rawls in this way, see Darwall (2003); Sayre-McCord (2000); Hampton (2007); Kymlicka (1993).

standard, which is reasonableness.³ Reasonableness means that the process of thinking is regulated by an absolute moral constraint that requires people to "act in ways that could be justifiable to others" (Scanlon 1998, 154). People should respect the reasons given by others and be open to revising their thought in order that it should be publicly justifiable. This revision may imply that one has to compromise and give up satisfying one's rational interests. Nevertheless, Kantian contractarians believe that reasonable people are obliged to do so; being reasonable should be accorded priority over the rational pursuit of interests.

After assuming a conception of practical reason, contractarians then define hypothetical contractors who are placed in a state of nature, which is a hypothetical, idealized choice situation. The function of this hypothetical situation is to demonstrate a collective procedure of deliberation and conversation in which people reason correctly. Kantian contractarians, such as Scanlon, assume hypothetical contractors to be well-informed, reasonable people who share an end of "living with others who are also reasonable" (Scanlon 1998, 192). Due to this end, people understand that they are standing in a relationship of mutual recognition with one another, which means that they would respect one another as beings that are capable of asking for justification.

Contractarians then try to identify what moral or political principles would be agreed by these hypothetical contractors. Kantian contractarians, such as Scanlon, claim that all reasonable people eventually would choose "principles that no one could reasonably reject." (Scanlon 1998). Reasonable people would go into conversations with one another and propose different principles (Kumar 1999, 277-78; O'Neill 2004, 29). It is a process of reason-exchanging and contractors would give generic reasons to support principles that they propose. Generic reasons refer to reasons which are based on "commonly available information about what people have reason to want," rather than being based on "the particular aims, preferences, and other characteristics of specific individuals" (Scanlon 1998, 204). The strength of a reason depends upon the burden which would be imposed on someone if this generic reason were rejected. The larger the burden is, the stronger the generic reason is. In the contract situation, contractors would compare different generic reasons and would finally reach an agreement on principles supported by the strongest generic reason, that is, principles that are "least unacceptable to the person to whom [they are] most unacceptable" (Kumar 1999, 294). These are principles that "no one would reasonably reject," for no other people could further give any generic reasons to reject these principles. These principles represent a moral ideal of equal respect because they impose burdens on all society members fairly without being affected by unequal bargaining power.

The three-component structure shown above reveals the core belief of contemporary contractarianism – moral and political principles are justified if they would be agreed upon

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3] However, one should be careful about the fact that Kantian contractarians disagree over the relationship between desire and reason. Barry and Richards account for the motivation to be reasonable in terms of a moral desire (Barry 1995, 164-65; Richards 1971, 242), whereas Scanlon argues that reason, not desire, is fundamental in motivating people to action (Scanlon 1998, 17-77). Nevertheless, they all share an assumption that "being justifiable" is the absolute standard in the evaluation of practical reasoning.

in a situation where people engage in *correct practical reasoning*. While contractarians share this core belief, they assume different conceptions of practical reason. This leads to different designs of the state of nature, and thus different results of hypothetical agreement. Hence, the conception of practical reason is the most fundamental component in a contractarian model. It determines the definitions of the other two components.[4] More importantly, whether two contractarians belong to the same or different strands of contractarianism depends on what conceptions of practical reason they assume. For example, Gauthier and Scanlon belong to Hobbesian and Kantian contractarianism respectively because the former upholds the instrumental conception of rationality, which defines correct practical reasoning as the maximization of individual utility, whereas the latter endorses the conception of reasonableness, which defines correct practical reasoning as acting on the ground that could be justifiable to others. Conversely, although Barry and Scanlon derive different results from their contractarian models,[5] they are both Kantian contractarians because they use the same monistic conception of reasonableness as the starting point of their contractarian model. In short, a contractarian model is characterized by the conception of practical reason it assumes.

II. RAWLS'S DUAL CONCEPTION OF PRACTICAL REASON

With the theoretical structure of Kantian contractarianism in mind, it is worth noticing that Rawls's contractarian model is plainly different from that of Kantian contractarianism, and that the difference can be traced back to Rawls's account of practical

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4] Some might argue that this definition of contractarianism is more like constructivism. It depends upon how the two labels are understood. Onora O'Neill (2014), who uses contractarianism and contractualism indifferently, has argued that contractualism presupposes an antecedent, contingent agreement on certain intuitions, while constructivism is more concerned with constructing a process of offering and rejecting reasons. She then deems Rawls a contractualist and Scanlon a contructivist. O'Neill's definitions are correct in terms of the scope of their contractarian theories; Rawls' principles of justice can only be applied in liberal democratic societies in which citizens share certain political conceptions, while Scanlon's moral principles do not have this limit in the scope of application. However, this paper is more concerned with the structure of their contractarian theories and, unlike O'Neill's paper, does not intend to differentiate the contructivist from the contractualist/contractarian. Both Rawls and Scanlon are similarly labeled, because both presuppose certain conceptions of practical reason, and both use the hypothetical contract as a heuristic device to show that certain moral and political principles would be agreed upon, or not rejected, when all people reason correctly. Although the contents of their theories are different, their structures are the same. Thus, under this definition, Rawls, Scanlon, and Gauthier are all contractarians.

5] Although both are Kantian contractarians, Scanlon and Barry differ in at least two ways. First, Scanlon upholds a distinction between reasonable non-rejection and reasonable acceptance, and argues that the hypothetical agreement would be on "principles that no one could reasonably reject" (Scanlon 1998, 213-18). Barry thinks that this distinction is untenable; "I do not think anything crucial turns on the distinction between a formulation of the criterion in terms of non-rejectability and a formulation in terms of acceptability" (Barry 1995, 70). Secondly, Scanlon is more concerned about "a narrow domain of morality having to do with our duties to other people" (Scanlon 1998, 6), whereas Barry defines his project as "a theory about the kinds of social arrangement that can be defended" (Barry 1995, 3). In simple terms, Barry is more "political" while Scanlon is more "moral."

reason. Rawls understands practical reason in terms of a *dual conception*, which means that *the correctness of practical reasoning is measured by two mutually independent standards, reasonableness and rationality.* "Rationality" means practical reasoning on how to pursue ends that can contribute to the quality of life and what means are effective to pursue these ends. "Reasonableness" means practical reasoning on how to maintain relationships with one another in a mutually justifiable way. In short, rationality is about personal interests, whereas reasonableness is about interpersonal duty. The two paths of practical reasoning are independent of each other. If an action fails to be justified according to only one of the two standards, then it is partly justified. When it is justified according to both of these standards, it is fully justified. Thus the aim of contractarians who uphold this dual conception is to show that rationality and reasonableness do not necessarily conflict with each other and the hypothetical contract could be both rationally and reasonably justified.

The idea that rationality and reasonableness are two independent paths of deliberation has long existed in Rawls's writings. Rawls denies that reasonableness should be explained in terms of rational interests. "To see justice as fairness as trying to derive the reasonable from the rational misinterprets the original position" (Rawls 2005, 53). He also does not think that rational interest could be derived from reasonableness, since determining whether something is rationally good is different from the question of whether something is reasonably acceptable (Rawls 1999, 496-97). His view that rationality and reasonableness are mutually independent of each other can be seen in the following passage:

> The reasonable and the rational are taken as two distinct and independent basic ideas. They are distinct in that there is no thought of deriving one from the other; in particular, there is no thought of deriving the reasonable from the rational. (Rawls 2005, 51)

Given this dual conception, the hypothetical contractors in Rawls's model have a distinctive hybrid character that cannot be found in the models of other contractarians. However, there is some controversy about how exactly we are to interpret Rawls's hypothetical contract. There are two readings of Rawls concerning the locus of the contractarian element in his theory. The first, orthodox reading is that the locus of the contractarian element is in the original position. Hypothetical contractors in the original position are behind the veil of ignorance and so they are not aware of much of the information that is crucial in the decision-making of actual people. This reading renders Rawls vulnerable to an objection, namely that it is unfair to bind actual people to the decisions of hypothetical contractors because of the "information gap" between actual people and hypothetical contractors.[6] This objection can explain why other Kantian contractarians reject the idea of the veil of ignorance (Scanlon 1982, 110-11; Barry 1995, 9). For the sake of bridging the "information gap" between hypothetical contractors

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6] The problem concerning the original position was mentioned by a number of critics of Rawls. Cf. Brown (1988, 444).

and actual people, Kantian contractarians claim that their social contract is made in a "well-informed" manner and they believe that the veil of ignorance undermines the importance of the contractarian element in the whole theory.

Therefore, some Rawls scholars, such as Samuel Freeman, suggest an alternative reading, which conceives the locus of the contractarian element in public agreement in a well-ordered society. "[T]he way in which Rawls' justice as fairness is a social contract position has far more to do with his idea of a well-ordered society than does the original position" (Freeman 2007a, 4). In this new reading of Rawls's model, the hypothetical contractors are the free and equal citizens in a well-ordered society. They aim at reaching a public agreement as the basis of exercising political power. This new reading enables Rawls scholars to explain the relevance of the hypothetical contract in an easier way. The hypothetical contractors in the new reading are well-informed citizens who have the same information, or an even larger set of information than the actual people. No "information gap" exists between hypothetical contractors and actual people. Rather, now the difference is in terms of the level of reasoning; the hypothetical contractors act as a role model to show actual people what they are to choose if they are being rational and reasonable, given the shared set of information.

The two-fold feature of Rawls's model becomes more explicit after clarifying the locus of contractarian element. Unlike the Kantian hypothetical contractors, who are designed to consider only what is reasonable to do, Rawls's hypothetical contractors, free and equal citizens, are designed to have two tiers of practical reasoning, rationality and reasonableness. This is shown in the setting of two moral powers, the capacity for a sense of justice and the capacity for a conception of the good. Although it is widely known that Rawls defines the idea of free and equal citizen in terms of two moral powers, scholars rarely link these moral powers to practical reason. In fact, the two powers correspond respectively to the requirement of being reasonable on the one hand and the rational pursuit of interests on the other. In the following passages, I shall explain these connections.

Rawls defines a sense of justice as "an effective desire to comply with [principles of justice]" (1999, 274). Although he once said that a sense of justice exists in "a purely formal sense" (Rawls 1999, 126), this desire is indeed not an empty sense of duty that can be related to any principle of justice. Rather, it refers specifically to the motivation to embrace principles that specify fair terms of social cooperation. Rawls assumes that free and equal persons have a desire "to live with others on terms that everyone would recognize as fair from a perspective that all would accept as reasonable" (1999, 418-19). Due to this desire, they are willing to think impartially and comply with principles that could be reasonably justified to every free and equal person. Hence, a sense of justice, in fact, represents a motivation to be reasonable, which requires people to mutually respect one another.

Apart from a sense of justice, free and equal persons are also motivated to realize their conception of the good, which is no less important than their sense of justice. If the

sense of justice represents the aspect of "right" in practical reason, then the conception of the good represents the aspect of "good" (Rawls 1999, 491-92). Conceptions of the good are life plans that are made in accordance with formal principles of rational choice (1999, 358-65). Apart from these formal principles, Rawls also argues that conceptions of the good have to be compatible with the higher-order interests of human beings. Free and equal persons are interested in realizing and exercising the two moral powers (Rawls 2005, 74). These interests are basic to any conception of the good, because people without two moral powers are unable to be free and responsible agents who are capable of mastering their wants and answering for their actions. The earlier Rawls even considers these "highest-order interests" to be "supremely regulative" (1980, 312). The later Rawls takes a milder position, but still considers these interests to be fundamental, since "someone who has not developed and cannot exercise the moral powers to the minimum requisite degree cannot be a normal and fully cooperating member of society over a complete life" (2005, 74). Thus, from a rational perspective, free and equal persons understand that a good life cannot be realized without pursuing higher-order interests.

The setting of two moral powers in the conception of free and equal citizens aims to demonstrate what is rational and reasonable for actual people to do. Accordingly, the hypothetical contract of free and equal citizens, i.e., the public agreement on principles of justice, represents a political arrangement that would be justified from both rational and reasonable perspectives. The fact that Rawls's principles of justice as fairness could be agreed upon in the original position explains why they are reasonably right, "since the original position situates free and equal moral persons fairly with respect to one another, any conception of justice they adopt is likewise fair" (1980, 310). Furthermore, justice as fairness is rationally good because it can guarantee "the adequate development and full exercise of the moral powers" (2001, 104) and thereby satisfy the two higher-order interests. No matter who one is in a society, one can enjoy equal basic liberties and adequate primary goods, which are necessary for developing the two moral powers (Rawls 2001, 112-15). Therefore, "the principles of right and justice are collectively rational; and it is in the interests of each that everyone should comply with just arrangements" (Rawls 1999, 504).

To free and equal persons, rationality and reasonableness lead to the same demand of following principles of justice as fairness. Being just is not only a "right" thing, but also a "good" thing to do. The dual character of principles of justice is stated explicitly in the following passage:

> The desire to act justly and the desire to express our nature as free and equal moral persons turn out to specify what is practically speaking the same desire. When someone has true beliefs and a correct understanding of the theory of justice, these two desires move him in the same way. They are both dispositions to act from precisely the same principles: namely, those that would be chosen in the original position. (Rawls 1999, 501)

By embracing principles of justice, free and equal beings can achieve the unity of self. Rationality and reasonableness will not make incompatible requirements. Thus, internal conflict within practical reason can be avoided. People can give unity to their lives by accomplishing this "congruence of rationality and reasonableness," which is explained by the following:

> Now the unity is manifest in the coherence of his plan, this unity being founded on the higher-order desire to follow, in ways consistent with his sense of right and justice, the principles of rational choice…in ways that justice allows, he is able to formulate and to follow a plan of life and thereby to fashion his own unity. (Rawls 1999, 493)

The theoretical structure of Rawls's contractarian model is clearly different from that of Kantian contractarianism. Rawls assumes a dual conception of practical reason which evaluates human action by two standards, rationality and reasonableness. Due to this assumption, the hypothetical contractors, who are free and equal citizens, are designed to have two moral powers, which correspond to rationality and reasonableness. They want to be "right" by acting in a way that is justifiable to others, but they also want to achieve "good" by pursuing both higher-order interests. By demonstrating the hypothetical contract of these persons, Rawls shows that his principles of justice are both rationally and reasonably justified, and thus offers reasons to actual people in explaining why they should follow these principles. I shall call this model *hybrid contractarianism*.

III. DIFFERENCES BETWEEN RAWLS AND KANTIAN CONTRACTARIANISM

The differences between Rawls and Kantian contractarians should not be exaggerated. Like Scanlon and Barry, Rawls advances the view that reasonableness absolutely frames rationality. "The priority of the right over the good in justice as fairness turns out to be a central feature of the conception [of justice as fairness]" (1999, 28). When conflict occurs between rationality and reasonableness, both Rawls and Kantian contractarian believe that reasonableness should have priority. Nevertheless, my point that Rawls has a distinctive view of rational interests that is completely different from Kantian contractarians has not been undermined.

In general, Kantian contractarians use two strategies to explain why reasonableness should have priority over the rational pursuit of interests. The first strategy is a *devaluing strategy*, used by Barry and the earlier Scanlon. The importance of pursuing rational interests, they believe, is always exaggerated. Indeed, the motive to seek a reasonable agreement is a stronger desire in the hierarchy of motivation. It can normally win over other conflicting rational interests (Scanlon 1982, 117; Barry 1995). Thus, it is unimportant for a theory of justice to explain whether justice is compatible with the rational pursuit of interests.

The second strategy is a *reductive strategy*, used by the later Scanlon. The later Scanlon recognizes the tension between reasonableness and rationality, but he

believes that this tension is based on a wrong understanding of goodness, which is the object of rational pursuit. He rejects the teleological account of good and "argue[s] that [this account] has had a distorting effect on our thinking about value in general, and in particular on our view of the relation between rightness ("what we owe to each other") and other values" (1998, 79). Rather, he proposes a buck-passing account of good, which passes the normative buck of goodness to other properties. According to Scanlon, the fact that something is good is not itself a reason to care about it. Whether or not something is good is dependent on whether there are some *reasons* that make us think that it is good. In the buck-passing account, "many other values will be seen to have a structure similar to that which most obviously characterizes our ideas of right and wrong" (1998, 79). The ideas of right and good are not as distinct as many people think. The reason for doing right things is that individuals have a reason "to act in ways that could be justifiable to others" (1998, 154). The same reason may also explain the great value of the relationship of mutual recognition.[7] This great value can, in turn, explain why it is good to be moral, since individuals can enjoy standing in this valuable relationship with one another by complying with contractualist principles. In short, Scanlon reduces the two distinct questions, "what is right to do" and "what is good to do," to a more fundamental question, "what act is justified by the strongest reason."[8]

The devaluing and reductive strategy show that, to Kantian contractarians, rationality is either unimportant, or derivative. It is unimportant since the value of pursuing rational interest is overrated. It is derivative since the notion of rationality can be derived from a more primary notion of reason. Rawls, by contrast, conceives rationality as an important and distinct standard of practical reason. First, unlike Barry and the earlier Scanlon, Rawls places great emphasis on proving that justice as fairness represents something that is rationally good to people. Rawls even believes that a theory of justice that fails to prove this point "is seriously defective" (1999, 398). Thus one of his life-long concerns is to show that being reasonable can be reconciled with the rational pursuit of higher-order interests. This concern with reconciliation eventually motivated Rawls to radically revise his theory in *Political Liberalism*. The later Rawls gives up his comprehensive Kantian doctrine and spends a great deal of effort showing that the higher-order interests are by nature political and freestanding, and so they are compatible with various reasonable

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7] Cf. Scanlon (1998, 95, 162). In fact Scanlon does not state clearly what reason makes the relationship of mutual recognition "appealing in itself-worth seeking for its own sake" (1998, 162). Nevertheless, if there must be a reason to explain why a positive attitude toward this relationship should be held, then the reason "to act in ways that could be justifiable to others" seems to be a very plausible candidate.

8] This belief is also mentioned in the most recent writings of Scanlon (2014, 2): "Reasons might be fundamental in the further sense of being the only fundamental elements of the normative domain, other normative notions such as good and ought being analyzable in terms of reasons."

comprehensive doctrines (2005, 74). In short, proving that justice as fairness is in the interests of citizens is a necessary component of Rawls's project.

Secondly, while both Rawls and the later Scanlon recognize the tension between reasonableness and rationality, their strategies for answering this problem are significantly different. Unlike Scanlon, who uses a reductive strategy to blur the distinction between the ideas of right and good, Rawls believes that the ideas of right and good belong to two distinct aspect of practical reason. A reason that explains why a principle is reasonably right does not explain that this principle is rationally good as well. Another different reason must be offered in order to explain the goodness of this principle. As the following passage explains,

> [t]he concepts of justice and goodness are linked with distinct principles... More precisely, each concept with its associated principles defines a point of view from which institutions, actions, and plans of life can be assessed. (Rawls 1999, 496-97)

The distinction between the ideas of right and good often appears in Rawls's writings and is even described as being "absolutely crucial" by Rawls's closest colleague, Burton Dreben (Dreben 2003, 321-22). Accordingly, Rawls uses neither the devaluing strategy nor the reductive strategy to resolve the conflict between rationality and reasonableness. Rather, he answers the two questions, "what is rational to do" and "what is reasonable to do," separately and shows that these two questions lead to the same answer in his contractarian model.

The contrast between Rawls and Kantian contractarians on how they resolve the conflict between reasonableness and rational interests shows that they begin to construct their contractarian models with fundamentally different conceptions of practical reason. Kantian contractarians assume a monistic conception of reasonableness. Therefore, what matters is merely whether the contract would be reasonably justified or not. The question of whether the contract would be in the rational interest of contractors plays a negligible role in their theory. But Rawls assumes a dual conception of practical reason. The question of whether the contract is rationally justified should be taken seriously. If, as mentioned in the last section, the conception of practical reason is fundamental in defining the character of a contractarian model, then obviously Rawls's model should be separated from Kantian contractarianism and, consequently, it should be seen as a distinctive model, a hybrid contractarian model.[9] The differences between these two models are summarized in the following table:

9] Nevertheless, as an anonymous reviewer pointed out to me, the hybrid character of the contractarian model is not as strong throughout Rawls's life. Although Rawls has never abandoned the belief that justice should be in the rational interests of citizens, the belief becomes less important in his later works. Rather, he emphasizes more about the idea that reasonableness must have priority in justifying principles of justice. In brief, the hybrid character is stronger in *A Theory of Justice* as well as "Kantian Constructivism," but becomes less obvious in *Political Liberalism* and *The Law of Peoples*.

	Kantian contractarianism	*Hybrid contractarianism*
The conception of practical reason	The monistic conception of reasonableness: reasonableness is the only standard of evaluation for reasons and actions	The dual conception: rationality and reasonableness are two mutually independent standards of evaluation for reasons and actions
The characteristics of hypothetical contractors	Well-informed people who are wholly concerned with behaving in a reasonable way	Free and equal citizens who are concerned with both pursuing rational interests and behaving in a reasonable way
The hypothetical agreement	Agreement that could not be reasonably rejected by anyone	Agreement that could be justified from both rational and reasonable perspectives
Representatives	Barry, Scanlon	Rawls

Interestingly, Rawls himself also seems to recognize the uniqueness of his model. Although he does not deny the similarity between himself and Scanlon,[10] he consciously keeps his distance from Scanlon throughout his life. In a conversation with Samuel Freeman, Rawls mentioned that he and Scanlon were apparently undertaking two different projects:

> Rawls always referred to justice as fairness as a "contractarian" position. He was opposed to others' use of Scanlon's term "contractualism" as a generic term used to refer to justice as fairness…He said contractualism was Scanlon's own position, and that it was original, distinctive, and, in important respects, quite different from what he was trying to do. (Freeman 2007b, 36)[11]

Freeman believed that the reason Rawls differentiated his position from Scanlon's position was that Rawls was concerned with the problem of congruence, that is, whether "right" is compatible with "good," while Scanlon did not intend to answer this problem. Freeman's interpretation was incorrect here. Scanlon did indeed recognize the problem of congruence, but he answered this problem with his reductive strategy, in contrast with Rawls's approach. Nevertheless, Freeman's story reflects Rawls's awareness that he and Scanlon actually belong to two different strands of contractarianism.[12]

10] Cf. Rawls (2005, 85 n. 33).

11] A similar story can also be found in Martha Nussbaum (2006, 418 n. 9). Rawls describes himself as a social contract theorist but not a Kantian.

12] I owe thanks to an anonymous reviewer for suggesting that Scanlon, though usually named as the representative of Kantian contractarianism, does not accurately mirror Kant's thought. For Scanlon is interested mostly in the foundation of morality and uses the methodology of social contract to define the ideas of rightness and wrongness. Yet Kant reflects on the idea of social contract only at the political, but not moral, level. Therefore one can also doubt how "Kantian" Scanlon is. In fact, in recent years, Scanlon also

IV. RAWLS AND SIDGWICK:

SAME QUESTION, DIFFERENT ANSWERS

Ironically, the theorist who has the same view of practical reason as Rawls does is not any one of the Kantian contractarians, but rather Henry Sidgwick, a utilitarian. In this section, I shall introduce Sidgwick's dual conception of practical reason and show that, although Rawls rejects Sidgwick's utilitarianism, he shares his conception of practical reason and understands his works as continuing Sidgwick's unfinished project.

Some scholars have argued that Rawls and Sidgwick have a similar methodology.[13] A distinctive feature of *The Method of Ethics* is that Sidgwick does not manifestly advocate utilitarianism, but rather stands in a neutral position, as impartially as possible, in evaluating different moral theories. Sidgwick (1981, 338-43) defines several neutral standards, such as precision and consistency, as the standards that a moral theory (in Sidgwick's terms, a "method of ethics") must fulfil. He then uses these standards to examine three theories respectively, i.e., utilitarianism, intuitionism and egoism. Sidgwick's methodology is reminiscent of how Rawls argues for justice as fairness. Rawls also presents the original position as an impartial procedure and shows how parties would choose among utilitarianism, intuitionism, perfectionism, as well as justice as fairness. However, I shall further argue that their similarity is not only limited to the formal methodology of comparing theories, but also in more substantial understandings of practical reason.

In comparing intuitionism and utilitarianism, Sidgwick criticizes intuitionism for failing to fulfil the several neutral standards mentioned above. Intuitionism judges the rightness or wrongness of actions by various intuitions. Yet the implications of these intuitions are always imprecise. Also, when intuitions conflict with each other, intuitionism fails to offer a consistent guide for determining what one ought to do. Unlike intuitionism, utilitarianism is precise and consistent -it requires only a universal principle that "one ought to aim at the Ultimate Good on the whole," i.e., maximizing total utility. Nevertheless, the comparison between utilitarianism and egoism does not have a clear result. Egoism is a theory centred upon a universal principle according to which one ought to aim at one's good on the whole, i.e., maximizing one's own utility. Sidgwick takes great pains to admit that the principle of egoism is able to offer implications that are as precise and consistent as the principle of utilitarianism is. Both egoism and utilitarianism can fulfil the neutral standards defined by Sidgwick. Being an egoist is as rational as being a utilitarian is. The requirement of practical reason is thereby two-fold, implying the requirements of "good" and "right":

> There is something that it is reasonable for him to desire, when he considers himself as an independent unit, and something again which he must recognize as reasonably to be desired, when he takes the point of view of a larger whole; the former of

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begins to acknowledge the different between Kant and him. See his reply to Parfit in Parfit (2011b, 116-39).

13] A recent example is Mandle and Reidy (2017, 773)

these objects I call his own Ultimate "Good," and the latter Ultimate Good taken universally…I apply the different term "right," to avoid confusion. (Sidgwick, 1981, quoted in Philips 2011, 132)

Sidgwick's conception of practical reason is obviously a dual conception, formed by two principles which aim at self-interest and total utility respectively. Given this conception, one has a good reason to pursue one's own interest, while one has a good reason as well to promote the Ultimate Good impartially. Sidgwick famously claims that, in "a recognized conflict between self-interest and duty, practical reason, being divided against itself, would cease to be a motive on either side" (1981, 508).

Sidgwick is pessimistic about the reconciliation between these two aspects of practical reason. He believes that *The Method of Ethics* successfully shows that, as a moral theory, intuitionism is inferior to utilitarianism. Nevertheless, he unwillingly admits that utilitarianism and egoism are equally valid and there is no good reason to explain why any one of them should be favoured over another. As a work of moral theory, this is a disappointing result. Sidgwick's original purpose was to prove the existence of the "Cosmos of Duty" by systematizing moral reasoning and showing that moral reasoning has a unique rational answer. However, the result of philosophical reflection is that moral reasoning cannot get rid of the internal conflict within practical reason. "[T]he Cosmos of Duty is thus really reduced to a Chaos: and the prolonged effort of the human intellect to frame a perfect ideal of rational conduct is seen to have been foredoomed to inevitable failure" (Sidgwick, 1981, quoted in Crisp 2015, 233). This result of philosophizing severely disappointed Sidgwick such that he once thought about writing a book where the first word would be "ethics" and the last word "failure."[14]

Rawls's philosophical ambition should be understood against the background of Sidgwick's failure. Rawls inherits Sidgwick's dual conception of practical reason, but believes that Sidgwick gives up too early in resolving the conflict between self-interest and duty. *The Method* is an unfinished project. If self-interest and duty are understood properly, then Sidgwick's failure can be avoided. Instead of the duty to maximize total utility, the duty should be understood as one of reasonableness to act in accordance with principles that would be fairly chosen in the original position. Instead of taking whatever personal good as self-interest, self-interest should be defined as rational higher-order interests in developing the two moral powers. Given these two new understandings, duty and self-interest, the two aspects of practical reason can be reconciled. Rawls does not mean that self-interest and duty can always be reconciled, but they can be reconciled in at least one case, namely when free and equal citizens conceive of self-interest and duty in these two ways. Put succinctly, the starting point of Rawls is the end point of Sidgwick; Rawls understands practical reason as Sidgwick does and begins his work attempting to resolve the internal conflict of practical reason that bothered Sidgwick for his whole life.

14] Cf. Crisp (2015, viii).

With this admittedly brief sketch of the relationship between Rawls and Sidgwick, two points are worth noting. First, the dual conception of practical reason held by Rawls is not a weird view of practical reason. Rather, it is a philosophically plausible view that is shared by notable philosophers such as Sidgwick.[15] Secondly, in terms of the conception of practical reason, the similarity between Rawls and Sidgwick is significantly greater than the similarity between Rawls and other Kantian contractarians. In fact, the attempt to reconcile rationality and reasonableness shown in Rawls's and Sidgwick's writings can hardly be found in the writings of any Kantian contractarians. If we distinguish Kantian contractarians from Hobbesian contractarians because they uphold different conceptions of practical reason, then we have little reason not to distinguish Rawls from Kantian contractarians as well.

V. THE "HYBRID" KANT IN RAWLS'S INTERPRETATION

The claim that Rawls is a hybrid contractarian rather than a Kantian contractarian seems shocking, given that Kant is no doubt the philosopher whom Rawls is mostly intellectually indebted to. Rawls mentions his connections with Kant's ideas in Section 40 of *A Theory of Justice* (1999, 221-27). He also names his theory "Kantian constructivism" in his Dewey Lecture in 1980. Furthermore, he once said that "[w]ith Kant I hardly made any criticism at all. My efforts were centred on trying to understand him so as to be able to describe his ideas to students" (Rawls 2000, xvii). However, by reading Rawls's interpretation of Kant in the *Lectures on the History of Moral Philosophy*, it is clear that, in the mind of Rawls, Kant's theory has a strong "hybrid contractarian" character. Like Sidgwick, Kant assumes a dual conception of practical reason. He aims at resolving the internal tension within this conception and even offers a better solution than Sidgwick does.

Throughout the lectures, Rawls emphasizes that Kant's conception of practical reason is two-fold. He understands that Kant's full conception of reason, *vernunfig*, "usually covers being both reasonable and rational" (Rawls 2000, 164).[16] The structure of practical reason that consists of these two powers is regarded by Kant "as implicit in our everyday moral consciousness, the fact of reason" (Rawls 2000, 237). A person with a good will is a person who can be both rational and reasonable. Reasonableness means that one is "judicious, ready to listen to reason, has the sense of being willing to listen to and consider the reasons offered by others" (Rawls 2000, 164). A reasonable person will not force others to accept a proposal that is unfair to others, but rather will use reasons to persuade others to accept this proposal. To Kant, being reasonable implies acting from the moral law, which is the maxims that pass the test of the CI (categorical imperative)-procedure.

15] Examples of contemporary philosophers who advocate a similar form of dual conception are Crisp (2006) and Parfit (2011a, 130-49).

16] See also Rawls (2000, 188, 194, 202).

If a maxim passes the test of the CI-procedure, i.e., we are able to will an "adjusted social world" in which the maxim becomes a universal norm, then it implies that everyone has a reason to act from this maxim. Treating others in accordance with this maxim implies treating others in a way that could be justifiable to others.

Unlike reasonableness, which is about how to treat others, rationality is about how to pursue one's interests. Rawls understands that there are two kinds of rational interests in Kant's writings. First, it is the interest to act from a maxim. Everyone has different situations and desires. This leads to the formulation of different maxims that rationally guide people's actions. Some can pass the CI-procedure, whereas some cannot. A maxim that fails to pass the CI-procedure does not qualify as a moral law and fails to be a conclusive reason for us, despite the fact that it is rational from our perspective. Secondly, there is the interest in the moral law itself. One has a pure practical interest in complying with moral law and achieving good will. This interest motivates people to check maxims by the CI-procedure. Without this interest, we are not bothered with the question of whether a maxim is a moral law.

Kant finds that it is common for the pursuit of the first rational interests to conflict with the requirement of reasonableness. Acting in accordance with a maxim that passes the CI-procedure could be harmful to the advancement of one's rational interests. Rational interests should in that case be abandoned or revised, since reasonableness draws a boundary within which the rational interest is permitted to be pursued. However, this does not imply that reasonableness has to be achieved at the cost of rationality. Unlike the first rational interests, the second rational interest, the pure practical interest in acting from moral law, is compatible with the requirement of reasonableness. Thus, to avoid the conflict between rationality and reasonableness, the second rational interest should have the priority over the first in practical reasoning. "[T]he interests moving our actions are of different kinds and arranged in a certain structure, with the practical interest we take in the moral law itself…always having an *effective regulative priority*" (Rawls 2000, 178, emphasis added). To interpret this distinction using Rawls's terminology, the first rational interest is a normal interest that varies according to one's situation, whereas the second is the higher-order interest that is shared among free and equal citizens.

To Kant, one's action has moral worth only when the following two conditions are met:

i. When a question of duty is involved, we decide the case entirely by considerations of duty, leaving aside all reasons of interest and inclination;

ii. Our pure practical interest in acting from the considerations of duty is strong enough by itself to ensure that we do as we ought. It is only when our pure practical interest is not strong enough to ensure this, and those other motives are needed for us to act properly, that our will, or moral character, is less than fully good. (Rawls 2000, 204)

These two conditions imply that moral worth is meant to be achieved when rationality and reasonableness can be reconciled with each other. The first condition

represents that one acts reasonably, whereas the second condition represents that one pursues the second rational interest. An ideal moral agent should have two "grounding reasons" to act from moral law, the "justifying reason" to act in a reasonable way as well as the "reason of rationality" to pursue the pure practical interest (Rawls 2000, 166). The former motivates people to respect each person as an end in itself, whereas the latter drives people to realize the ideal of a realm of ends, which is the greatest goodness in human life.

According to Rawls's interpretation, Kant is, similar to Sidgwick and Rawls himself, a theorist who assumes a dual conception of practical reason. The distinctiveness of Rawls's interpretation can be made more explicit if it is compared with other interpretations of Kant. I shall use the interpretation of Paul Guyer as an example. In Guyer's interpretation, Kant assumes a monistic conception of practical reason, which consists of a single principle of rationality as the standard of evaluation. While each action aims at achieving a certain end, how rational an action is depends on how valuable the end is. Most of the ends only have conditional worth; they are worthwhile because they are chosen by rational agents, not because they are valuable in themselves. Therefore, "there is no other candidate for the unconditionally valuable source of conditionally valuable ends than our own capacity to choose those ends, so our capacity of choice must be the very thing that has unconditional value" (Guyer 2006, 189). A rational agent should always aim at fully realizing the capacity to choose ends, i.e., being free.

To be free and to fully realize this capacity, a rational agent should be independent of contingent inclinations. This is then related to Kant's ideas of hypothetical and categorical imperatives. A hypothetical imperative is a maxim that tells you what you must do if you are inclined to attain some end, while a categorical imperative is a maxim from which each of us should act, regardless of what inclinations we have. When an agent conforms to hypothetical imperatives he is still unfree because his choice is contingent on his inclinations. Only when an agent acts merely from duty in accordance with categorical imperatives, is he free because he is "to be governed by a law that [he] gives [himself] rather than to allow [himself] to act on whatever mere inclination happens to be alluring at the moment" (Guyer 2006, 204). In brief, a rational agent should aim to be free, and being free implies acting from duty in accordance with categorical imperatives, which constitute moral law.

When comparing Guyer's version of Kant with Rawls's version, one realizes that the former is not so much concerned with the conflict between the duty to moral law and the rational pursuit of self-interest, which is a conflict taken by Rawls's version of Kant as a fundamental philosophical problem which remains to be solved. If a person breaches the moral law for the sake of pursuing self-interest, then she/he is irrational. There is not much a philosopher could say in this case except to ask this person to be rational. Acting from moral law cannot necessarily be reconciled with the pursuit of self-interest. Practical reason has only one standard -acting from categorical imperatives for the sake of freedom. One is rational when this standard is fulfilled. The way in which Guyer's Kant

is uninterested in the conflict between duty and self-interest is shown in the following passage:

> The fundamental principle of morality, Kant has claimed, must be unconditionally valid for any rational being. If any being were perfectly rational, it would automatically act in accordance with this law, and the law would therefore not appear to be a constraint. But we human beings are not perfectly rational, and thus although we recognize the unconditional validity of the moral law, it also appears as a constraint to us, something that may be in conflict with our irrational side…….But *Kant takes it to be obvious and not in need of any special argument that we will often experience the stringent demands of morality as a constraint*; thus, although his arguments are aimed at a derivation of the categorical imperative, all of his effort is aimed at demonstrating the content of the fundamental principle of morality and proving that it is valid or binding for us, not at reminding us that we often experience that validity as a constraint. (Guyer 2006, 179-80, emphasis added)

Here I do not intend to argue whether Guyer's interpretation or Rawls's interpretation are correct. What I want to show is only that Rawls has a distinctive interpretation of Kant that describes him as assuming a dual conception of practical reason, which is different from the interpretation of other Kant scholars. Hence, when Rawls claims that he is intellectually affiliated with Kant, we should not understand this as meaning that Rawls accepts the monistic conception of practical reason that is commonly understood to be held by Kant. Rather, Rawls has in mind that Kant thinks the same as him in endorsing the dual conception of practical reason, thus belonging to a tradition of hybrid contractarianism.[17]

VI. CONCLUSION

Labels matter in some ways and do not matter in others. On the one hand, labels do not matter in that a philosopher usually has multiple labels. Mill has been labelled as a utilitarian, a socialist, a libertarian, or a perfectionist (Edwards and Townshend 2002, 180-97). A single label can hardly tell us all the substantial beliefs of that philosopher. Nevertheless, labels matter because labels usually determine our first impression of how a philosopher is linked with other philosophers in the history of thought. A label represents a strand of thought in which philosophers share certain core beliefs. Some are recognised as forerunners who first emphasize the importance of these beliefs, while some are followers who are inspired to construct a more perfect theory in this strand of

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17] I owe thanks to an anonymous reviewer for indicating how Rawls's interpretation of Kant can be made sense. To construct a Kantian political theory, one may not directly apply the theory of categorical imperative to the realm of political action. In the political domain, political principles not only have the negative dimension (you shall not! / i.e. refraining), but also have the positive dimension (you shall! / i.e. acting). The theory of categorical imperative only considers the former dimension. To take the latter dimension into account, a Kantian political theory should explain how people are rationally motivated to act in certain ways that support just institutions to work efficiently. This may explain why Rawls constructs a contractarian model that is hybrid in nature.

thought. A label affects how we understand the position and contribution of a philosopher in the history of thought. A wrong label may lead us to overestimate or underestimate the contribution of a philosopher.

In this sense, Rawls is more or less the victim of a wrong label. Rawls is usually conceived as the father of Kantian contractarianism in contemporary political philosophy, who revives a strand of thought traced back to Kant. Despite his huge influence, Rawls's contractarian model is sometimes regarded as a flawed project. An example is Barry's critique of Rawls, namely that Rawls is concerned too much with whether justice is beneficial to each party (Barry 1989, 242-54). Barry believes that the part of Rawls's theory which proves how justice is in the rational interest of people is redundant. Therefore, Rawls's theory should be further improved to a more "pure" version of Kantian contractarianism, which is concerned only with whether justice is impartially justified and has no interest in showing that it is beneficial to people. If we look from the perspective of Kantian contractarians and assume Barry's monistic conception of practical reason, then the part of proving that justice is rationally good is truly redundant. However, as I argued in this paper, Rawls in fact assumes a dual conception of practical reason that is significantly different from the monistic conception held by Barry and Scanlon. Instead of treating Rawls as a "inspiring but deficient forerunner" of Kantian contractarianism, he should be seen as a contractarian who belongs to a distinctive strand of contractarianism that should be distinguished from Kantian contractarianism. By labelling Rawls as a hybrid contractarian, his relationship with other contractarians as well as his contribution to the history of contractarianism can be better understood.[18]

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