



Well-Being Freedom and The Possibility of Public-Provision Unit in Global Context¹

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SUMMARY

The purpose of this paper is, first, to investigate the interconnections of *substantive freedoms*, which are indispensable for every individual to “lead the kind of lives they have reason to value” (Sen, 1999b, p.10,18), and which have legitimate and ethical reasons to be publicly secured, second, to investigate a conception of *public-provision unit* that embodies “the right to well-being freedom”, and a conception of *decision-making unit* that corresponds to it, based on the perspective of Sen’s *capability theory* and its extension, comparing with that of Rawls’ *Theory of Justice* and *A Law of People*. If we intend to construct such a *public-provision unit*, which conducts redistribution as a whole, and which receives every individual who cannot belong to any fixed local group, what kind of a body should we assume as a *public-provision unit*? And further, what kind of a body should we assume as a *decision-making unit*, which is responsible for deciding or revising the basic conceptions of *public provision unit*?

KEY NOTES

freedom, capability, needs, responsibility, agreement, incompleteness

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1. INTRODUCTION

In economics, the concept of freedom has been conventionally interpreted, based on the inviolability of private ownership, as the freedom of choice, the freedom of economic behavior and the freedom of contract. It means that decision-making related to an autonomous economic behavior should not be interfered with provided that an individual's entitlements - an individual's capacity for production, consumption and negotiations, and legal rights to external resources - are given. In contrast, the freedom Amartya Sen has adopted as the subject of his economics of well-being and development is the freedom in a more broad sense that means an individual can "lead the kind of lives they value - and have reason to value"³, that is, an individual can be an independent and responsible agent who is pursuing, evaluating and revising his unique goals with his own interests - for himself and for others - and will. In this a broad conception, various substantive freedoms that should be institutionalized as rights - legally or morally - can be extensively identified, for example, "being free from arbitrary constraints" to "being secured of material and social-relational means".

Yet, as Sen recognizes, it is not an easy task to identify the contents and the weights (or priorities) of substantive freedoms, which have indispensable values for every individual, and which have legitimate and ethical reason to be publicly secured in a coherent rights-system. The reasons why are, first, some of freedoms may not be fully compatible with each other; second, the evaluations on freedoms may not be congruent among individuals either in terms of private interests for themselves or public interests for others, third, among those to be indispensable for all there may be some that cannot or shall not be institutionalized, either legally or morally.

As well known, Rawls's theory of justice puts priority on freedom to general interest beyond individual will. Yet, his theory starts from a conception of person accompanied with two moral powers: the Rational and the Reasonable and focuses only on the conditions for, say, "leading the kind of lives he himself values". In contrast, Sen's capability theory takes the cleavage between "the kind of lives they (actually) value" and "the kind of lives they *have reason to value*" more seriously. And he considers further conditions (well-being policies) needed for the latter, including those needed for supporting (fostering, keeping, or recovering) moral powers themselves. This consideration grounds its originality on the conception of well-being freedom, as will shown in the section 2, proposed by Sen.

Needless to say, to consider this problem, philosophical viewpoints are necessary, since we should carefully consider identify the contents of substantive freedoms regarding the nature and the interconnections of freedoms. Meanwhile economic viewpoints as follows are also important: if social distribution of resources is necessary for securing freedoms for all individuals but it constrains more heavily the entitlements of some individuals compared with the results of market, can we expect them to voluntarily participate in it? An economic or financial system, while satisfying such a precept as "providing according to their abilities,

³ Sen, 1999b, p. 10, p.18.

taking according to their needs for well-being freedom”, which is run fairly and efficiently should be constructed.

Previously, many economic arguments presuppose, as their background, not only factual viewpoints that people evaluate every problem exclusively as that of intra-personal distribution (from the viewpoints of private interests) but also normative viewpoints that individual revealed-value should not be interfered with no matter what the contents may be. Therefore, the compatibility of decentralized decision made by each individual and socially constructed goal has been the very question to be addressed. For instance, in the context of economics, public goods are defined as in-excludable ones in their nature, and public economics has managed to construct the proper intra-personal equity every per individual according to his “willingness to pay” for public goods. And further, social choice theory has brought the setting of social goals itself back to the problem of decentralized and autonomous decision-making of individuals again⁴. Is it really possible, while respecting autonomous decision made by each individual, to set social goals which have legitimate and ethical reason to be publicly secured as institutions by aggregating individual decision in a reasonable way⁵?

In these concern, the first half of this paper investigates the nature and the interconnections of freedoms and the second half a conception of *public-provision unit* that realizes substantive freedoms, and a conception of *decision-making* unit that corresponds to it, based on the perspective of Sen’s *capability theory* and its extension, comparing with that of Rawls’ *A Theory of Justice* and *A Law of People*.

2. WELL-BEING FREEDOM AND CAPABILITY APPROACH

As for the arguments of substantive freedoms, Sen has made an unprecedented contribution. One contribution lies in the establishment of the concept of well-being freedom and the right to well-being freedom. Well-being freedom is the concept which represents people’s fundamental abilities of doing or being well (Sen calls it “capability”), for example, to avoid disease, to ingest nutrition in proper quantities, to transfer freely, to express properly what they feel or think, and to understand necessary information appropriately, which are indispensable not only for having a tolerance of vulnerability, but also for developing his own unique life, say, “lead the kind of lives they have reason to value”.

It is assumed that these abilities are “objective” in the sense that they are effective in improving his objective conditions beyond his subjective perception, in which effectiveness itself should be affirmed extensively by people’s public and reasonable judgments⁶.

⁴ As for the difference of fundamental attitude between K. Arrow and P. Samuelson concerning social ends, refer to, for instance, Suzumura, K. and Gotoh, R (2001/2002), ch.1and2.

⁵ The conditions Arrow imposed on the way of aggregation are based on his method following strict procedure. Refer to Gotoh, R (2002 a), p.394f.

⁶ Notice that reason has an interpersonal nature in itself, going beyond a separable individual recognition, say, “public framework of thought” (Rawls, 1993, 110f, Sen, 2002, 456). Both Rawls and

Moreover, these abilities are “absolute” in a sense that they are indispensable for the life of any individual born in a certain society in a certain period, though they are variable according to various social and economic contexts. Meanwhile, in order to secure for every individual these basic abilities of a certain level, differentiated resource distribution according to individual characteristics (physical, spiritual, circumstantial, etc.) is required. Sen’s concept of well-being freedom thus presents the framework of resource distribution mechanism that appropriately reflects the diversity of personal characteristics of each individual properly⁷.

Second contribution lies in the confirmation of independent meanings of the freedom of individual’s decision-making, say, “agency freedom”⁸. His conception of agency freedom is comprehended in two phases. One is the freedom of choice concerning personal goal-pursuing activities within given social goals (usually called “civil freedom”), and the other is the freedom of participating in the process of setting social goals themselves (usually called “political freedom”). The former has been conventionally considered self-evident in economics and the latter has been explored by social choice theory. Third contribution lies in the exploration of the inner relationship between three freedoms. To illustrate, institutions without civil and political freedom make it difficult to secure for every individual well-being freedom; they may be too fragile to withstand natural and social disasters such as famine or earthquakes. In contrast, public discussion and verification is indispensable for finding out “our needs” and to embody the securities of well-being freedom by cohering different kinds of freedoms exercised by individuals⁹. It is a distinctive feature of Sen’s theory that any kind of freedom is not given any priority for others, only the interconnections of them are emphasized¹⁰. In the next section, let us examine Sen’s idea on the meanings of substantive freedoms and their interconnections more closely.

3. CHOICE AND RESPONSIBILITY

In general, a right guarantees publicly (legally or morally) for individuals a certain range of actions (doings) or states (beings) with certain reasonable constraints¹¹. Freedom requires to respect an individual as an end itself, or as an independent and responsible agent, who pursues his own goals and evaluates their consequences according to his own values,

Sen notice the functioning of reason to assume substantive freedoms that can be publicly accept by people.

⁷ Sen’s theory concerning capabilities covers various subjects such as economic formularization, philosophical foundation, and practical meaning. See Suzumura and Gotoh, (2002 a), ch.6.

⁸ As for the meaning of distinguishing the two aspect of freedom and the possibility of conflict between the agency freedom and the well-being freedom, see, Gotoh, 2001, p.216f.

⁹ For the detail of the linkages between different types of freedoms including the well-being freedom, see Sen (1999 b)

¹⁰ I think Rawls can agree with Sen in this point. Though he stresses the priority of freedom, it means only the priority of freedom to general interest beyond individual will. It does not refer to the priority among freedoms.

¹¹ See, Gotoh, 2003.

interests - for himself and for others - and will. Thus, “the right to freedom” means within a certain guaranteed range (under the permitted extension), the actual point of achievement (his own action or state) must be determined in a way that reflects each individual’s values, interests, and will.

One way to respect an individual as an end itself is to prohibit arbitrary constraints or interferences imposed by others on his body and spirit. Another way is to let an individual choose his own actions or states voluntarily from his publicly permitted personal sphere. For example, the protagonists of “the right to negative freedom” often stress not only the prohibition of mental and physical constraints but also the protection of an individual’s choices of actions and states in his given endowment whether or not they correctly represent his own interests. Moreover, they stress that society should pay attention only to individuals’ revealed choices regardless of any kind of consequential evaluation. The reason behind respecting individual choice lies mainly in its intrinsic value for a person. Adding an assumption that the true interests of an individual can be known only by himself, an individual choice could be admired in the reason that it is the only way to reach “better” outcomes for his own interest.

Sen also respects individual choice in its intrinsic meaning for a person. Well-being freedom proposed by Sen is often represented as “opportunity set”¹², from which an individual can choose on his own will¹³. But we must notice that, on the one hand, Sen’s scope goes beyond that and reaches the responsibility of individuals for society. As being represented in his famous formulation of “the impossibility of a Paretian Liberal”, he recognizes even an individualistic action induced by his own choice can be a constituent of a “social state” and can be an object of public interest¹⁴. Moreover, he notices that individual choice has a social and public meaning itself, in that it is apt to be accompanied by individual responsibility not only for himself but also for others. For example, one may rationally and reasonably evaluate the consequences of his choice not only with regard to his own interests but also in consideration of the effects on others, near and far. It may happen that after a full consequential evaluation, one may choose not to choose by himself, or refrain from a certain choice. Because on the one hand, he has not obtained enough information to make a reasonable judgment on that issue, and, on the other hand, he knows, notwithstanding, his choice will be equally counted in a social decision process.

This observation gains significance especially in the context of exercising the right to political freedom. Usually, it is assumed that since an individual’s interest is multiple and the criterion of evaluation is variable in its nature, he is sometimes obliged to choose backward the interest and criterion he should adopt in each context, for example, what

¹² As for a trial of operational formulation of capability, see to Gotoh, R. and N. Yoshihara (2003)

¹³ The concept of functioning itself is related to the freedom in a sense of ability-expansion while the concept of opportunity set is related to the freedom in a sense of respect of agency under the fact of plurality of evaluation. In the industrialized society, several problems are raised regarding the latter kind of freedom. See, Gotoh, 2001, p.219f.

¹⁴ Sen, 1970a, Chapter 6*; 1970b; 1992.

should I express, independently of my private interests, as the judgments of preference to be counted publicly?

Sen emphasizes that to make a responsible choice, one should take various consequential evaluations in the light of “position depending objectivity”¹⁵, i.e. understanding universal meanings of each individual’s situated evaluation. What is crucial is that fair aggregating procedures of democracy include public deliberations that promote and respect an individual meta-choice (preference), which try to choose what is worth to be accounted publicly in each context, after a full reflection on his potentially plural types of choices (preferences)¹⁶.

4. CHOICE INHIBITION AND THE NEED OF POSITIVE INTERVENTION

On the other hand, we must be aware, as Sen points out, that there is a problem of “choice inhibition”, which must be distinguished from the reasonable restraint stated above. For example, one may make a choice by being obliged to adapt to his suppressive surroundings, departing from his “true interest” - for himself or for others - that he would rationally and reasonably choose if he were in better conditions of circumstance. In this case, the true interests of an individual may be better known by other agents who try to infer his true interests. Regarding this possibility, in order to respect freedom, that is, to respect an individual as an end itself, we cannot stop at considering an individual’s revealed choices. A certain positive intervention, such as trying to grasp his true interest more directly and compare it with an individual’s revealed choices, will be needed. If some gaps are acknowledged there as a result, we should investigate causes and reasons that prevent his more rational and reasonable choices, and persuade him to change his choice with certain reasons based on consequential evaluations¹⁷, while securing individuals well-being in some direct way. In addition, if we think that the ability to choose rationally and reasonably, and to reveal one’s true interest is itself a basic well-being (functioning) for which a society should take responsibility, we should find out such conditions, epistemic conditions and institutional conditions, that supports rational and reasonable choice itself.

Whereas, the following point should be noted. Although individual choice is inevitably accompanied with various restrictions - usually the range of one’s choices (the range of effectiveness of his right) is publicly restricted, and occasionally an individual will choose not to choose by himself, or, occasionally an individual is persuaded to change his own choice with sufficient reasons -, these restrictions are not the same as restrictions on “the right to freedom” in any means. It should be noted that the exercise of choosing in itself promotes his ability of choosing rationally and reasonably and his consciousness of responsibility for himself and for others, and it explores the existence of a gap between

¹⁵ Sen, 1993, p.127

¹⁶ [I]t is important to distinguish between a person’s preferences as they actually are and what he thinks he would accept as a basis of public policy given the preferences of others and given his values on collective choice procedures. (Sen, 1970, p.66) Moreover, refer to Sen, 1977; 1982, p.99.

¹⁷ I think the reason based on consequential effects other than his own interest should not be applied easily, except as a prior rule that restricts the range of the effectiveness of right.

individual's revealed choice and his true interest. As Sen correctly points out, "the adult who lacks the means of having medical treatment for an ailment ... may also be denied the freedom to various thing - for herself and for others - that she may wish to do as a responsible human being. ... the subjugated girl child stifled by a repressive society ... are all deprived not only in terms of well-being, but also in terms of the ability to lead responsible lives"¹⁸.

We should notice that abandoning "the right to freedom" means losing forever a chance to choose as J. S. Mill points out¹⁹, that is, to revise his previous choice or to choose choosing again by himself. In contrast, as long as freedom is publicly recognized as a right, society has an obligation to respect an individual as an end itself; that is, society should support positively the concrete conditions necessary for an individual to be an agency of himself, while at the same time, leaving room for an individual to make an ultimate decision by his own choice or according to his interests - for himself or for others.

Of course, it is true that this kind of vision, neither theoretical nor pragmatic, is to eliminate complications among three freedoms completely. Tensions among different assertions are left: for example, an urgent protection of well-being should be prior to any persuasion on his choices; an individual choice to dare run the risk of losing their lives should not be interfered with; social decision-making should depend on only individual well-informed judgments. However, it should be noticed that those are tensions among differently justifiable reasons that can have different weights according to the condition of each situation. If so, what is essential must be, firstly, to balance different freedoms under a certain situated-reason (a reason conditioned by the particular situation of each context), secondly, to find out the logic and ethics of (at least incompletely) coordinating different situated-reasons regarding both the particularity of situations and the universality of their meaning²⁰, and thirdly, to explicate such epistemic and institutional conditions that support individual public reason and action to find, recognize, and revise the logic and ethics²¹.

Thus, while nursing various individuals' sprouts of personal interests or values, Sen deliberates the systems for realizing certain social goals for which individuals' participation is indispensable through individuals' public-interest and deliberation ("a coherent goals-rights system"). What is needed now is to examine the systems embodying it, and elucidate concretely the conditions making possible the public activities of individuals who critically scrutinize, approve and improve such way or systems.

¹⁸ Sen, 1999b, p.284

¹⁹ "[B]y selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act," (Mill, J, S, 1962, p.236). See also Sen, 1983, p.24.

²⁰ For Sen's arguments on the way of ordering moral judgments, see Gotoh, (2002 a) p. 281f.

²¹ Refer to Rawls, "a more or less general rule of a practice must be a rule which according to the structure of the practice applies to more or fewer of the kinds of cases arising under it...a particular case cannot be an exception to a rule of a practice. An exception is rather a qualification or a further specification of the rule." (Rawls, 1958, p.38, cited from 1999)

5. PUBLIC-PROVISION UNIT AND DECISION-MAKING UNIT

The rest of the paper investigates a conception of a *public-provision* unit that embodies the right to well-being freedom while respecting the right to civil and political freedom, and a conception of a *decision-making* unit that corresponds to it.

Before proceeding to the discussion, let me note briefly the terms and the setting of the problem. *Public-provision* is a way of distribution that implements resource-transfer as a whole to secure a certain basic well-being freedom for all individuals. It is distinguished from a competitive market, or from a private contract (such as a private insurance) in the sense that it does not require cost-benefit equity per individual based on individuals' private interests (i.e. providing according to his benefit, or taking according to his cost). It usually takes a way of distribution: "providing according to ability, being provided according to needs", where needs are conceptualized in terms of well-being freedom. The objects of *public-provision* need not be congruent to individuals' private interests, but they need to be consistent with individuals' public interest based on a reasonable deliberation.

Here, if we intend to construct a public-provision unit in which all individuals have equal rights and obligations to well-being freedom regardless of his origin, and in which all individuals - including one who are excluded by or who cannot live well in the given fixed groups (community, association, or state) - can participate, we will have to confront the following two questions.

First, what kind of a body should we assume as a public-provision unit. That is, what conception of membership (if it is possible to specify, a qualification of membership) is it assumed to have? What conception of distributive justice (if possible, a rule of distribution) is it assumed to have? What conception of well-being (if possible, a list of well-being) is it assumed to have? Second, what kind of a body should we assume as a decision-making unit, which is responsible for deciding or revising the basic conceptions (or rules) of a public-provision unit, for example, through a public deliberation? What devices or constraints - epistemic or informational - is it assumed to have to promote reasonable decisions? Moreover, what relation does it have with a public-provision system itself?

Concerning the first problem, it is obvious that we cannot rely on a given fixed group (or its simple extended form) that has already had a widely shared conception of membership and of distributive justice. For example, a community already has a fixed conception of membership based on a "communal identity" and has a conception of distributive justice such as "providing according to his ability, being provided according to his needs (in terms of well-being freedom) as a communal member". Or, an association has a conception of membership based on a "contribution to the body" in a broad sense and has a conception of distributive justice such as "providing according to his ability, taking according to his needs (in terms of well-being freedom) as a contributor to the association". Similarly, as for a conception of well-being, what kind of good is commonly necessary for a person to live his

own life and what kind of risks (diseases) are commonly coped with are determined partially depending on particular features of a community or an association.

In contrast, a public-provision unit is assumed to have the following characteristics. As for the conception of membership, it should receive every newcomer without any qualification based on a particular notion. As for the conception of distributive justice, it should adopt such a precept as “providing according to his ability, being provided according to his needs (of well-being freedom) as an individual”. Moreover, as for a conception of well-being, it should respect plural lists (including weights of items) of well-being that can reflect actual or potential diversity of place and time, and should coordinate them in a certain, though not complete, fair way. But who can accept such conceptions of public-provision unit? Does a person accept such conceptions if he has no need for public provision beyond what he can obtain in the market, private insurance, or through a communal provision in given groups? Does he keep participating in it, or does he voluntarily exit from it?

Concerning the second question, it is obvious that we cannot assume a given group (community or association) or its simple extension of it to be a decision-making unit as well. Nor we can practically assume a unit that coincides with a public-provision unit itself, since an individual may come into a public-provision unit, by birth or immigration, only after decision-making is completed. More fundamentally, as Sen points out, “the decisions to be taken by any focal group can influence the size or composition of the group itself”²². Thus, a decision-making unit cannot include all of individuals who will belong to a public-provision unit, while it might include some individuals who may never belong to a public-provision unit itself.

What is important is two kinds of openness, as John Rawls and Amartya Sen both suggest, though they are different in their focal points. Firstly, the openness in the sequence of time, say, the decision should be open to criticisms, and a new comer can also participate in that decision through examining and revising it himself at the next point in time. Second, the openness in the practical reason of an agent, that is, an agent who participates a decision-making process will form a judgment that takes not only actual members of a public-provision unit but also potential members of it or non-members who have a possibility to be affected into consideration under appropriate epistemic and informational conditions.

In the following section, let us try to explore the above questions more precisely by examining the perspectives of John Rawls and Amartya Sen.

²² This is a problem of “inclusionary incoherence” pointed out by Sen. (Sen, 2002).

6. THE PERSPECTIVE OF RAWLS' THEORY OF JUSTICE AND POLITICAL LIBERALISM

John Rawls describes certain formal conditions that practical reason should satisfy, i.e., generality, universality, publicity, ordering, and finality²³. Moreover, as is well known, he proposes several informational constraints: the so-called “veil of ignorance” which focuses on the essentially abstract nature of a person, *the Reasonable* and *the Rational*, the thin theory of the good which evaluates individuals' advantages only in the light of abstract conception of the good (social primary goods). All these assumptions are supposed to help make an overlapping consensus on a family of principles of justice that is appropriate to keep fair relations among all free and equal persons with *the Reasonable* and *the Rational*²⁴.

Drawing on Rawls, we can consider a public-provision unit as follows. It can receive and treat all individuals equally, focusing on *the Rational* and *the Reasonable*, regardless of differences in identity or contribution related to given fixed communities and associations. There, an individual provides according to his ability and being provided according to his needs under a guarantee of equal basic freedoms (including political freedom) and fair opportunities, where needs are defined only in terms of abstract conception of well-being, that is, the endowments of social primary goods.

As for a decision-making unit, from his theoretical construction, it can include all individuals who can use a practical reason appropriately. In addition, as indicated by stressing the importance of political freedom (the fair value of political freedom), Rawls certainly considers that actual and potential members of a public-provision unit has a right to participate in a decision-making unit at each point in time.

Then what about the relation between the two units? It is said that Rawls assumes no conflicts of any kind between a decision-making unit and a mutual provisional unit: the latter immediately accepts what the former decides and faithfully implements them. This indication is correct partially, from a static point of view. However, as Rawls has clarified in a discussion with Jürgen Habermas²⁵, the principles once accepted by a decision-making unit

²³ More precisely, they are called “the formal constraints of the concept of right” by Rawls (Rawls, 1971, ch.23).

²⁴ Notice that “social contract” is not the same as private contract. According to Rawls: “Following Rousseau’s opening thought in *The Social Contract*, I shall assume that his phrase “men as they are” refers to persons’ moral and psychological natures and how that nature works within a framework of political and social institutions; and that his phrase “laws as they might be” refers to laws as they should, or ought, to be. I shall also assume that, if we grow up under a framework of reasonable and just political and social institutions, we shall affirm those institutions when we in our turn come of age, and they will endure over time”(Rawls, 1999, p.7).

²⁵ Rather those institutions are the work of past generations who pass them on to us as we grow up under them. We assess them when we come of age and act accordingly. ... What may cause misunderstanding is the thought that ... imaging the parties to understand their selection of principles to hold in perpetuity, justice as fairness apparently supposes that citizens’ conception of justice can be

needs not be kept forever. For example, the future generation of a public-provision unit may disagree with the principles of justice settled by a previous decision-making unit. They may critically reexamine and revise them except for eliminating the right to political freedom itself. In practice, there may be a time lag, and an individual can participate in a decision-making unit only after he has participated in the public-provision unit. But it is considered to be crucial that even if it is only *ex post*, an individual does have an opportunity to examine what a public-provision unit should be, with a wider perspective toward future generations.

7. THE PERSPECTIVE OF SEN'S CAPABILITY THEORY AND ITS EXTENSION

In contrast to Rawls who has concentrated on a public conception of justice in a higher and abstract dimension, Amartya Sen opens up a new vista to examine the conception of a public-provision unit more concretely, namely, in the dimension of well-being policies. In his theory, individuals are understood to possess with diverse characteristics and plural criteria of evaluations, and individuals' advantages are verified in the light of a more concrete conception of the good, i.e. functionings and capability, which makes it possible to grasp the internal and external conditions of human well-being, including conditions that support *the Rational* and *the Reasonable* themselves. Further, informational non-constraint is a distinguished feature of Sen's theory. That is, relevant historical and circumstantial features of given local groups (communities and associations, nations), relevant characteristics of individuals, and relevant situated evaluations formed in different positions are all expected to be known as much as humanly possible.

Drawing on Sen, as for a public-provision, we can assume such a unit that receives every individual equally without any qualification, including a qualification of *the Rational* and *the Reasonable*, beyond the boundaries of given fixed groups, including the boundaries of nations. There, each individual provides according to his ability and being provided according to his needs, where needs are captured by a conception of functionings and capability. These are the basic features of a public-provision unit.

In addition, since the concrete list of functionings may vary depending on the particularity of time and place, reflecting certain historical and circumstantial features, it is reasonably assumed that a public-provision unit is constitutive of plural sub-units on one hand, each of which implements a diverse type of provision based on a particular list of functionings, whereas the partition itself may variable corresponding to changes of the conception of functionings. On the other hand, since there may be sub-units that cannot secure the minimum well-beings of their members, it is assumed that every sub-unit is coordinated one another, for example, through a multi-layered financial system that transfers resources between sub-units according to needs, whereas needs are captured by a certain criterion that compares plural lists of functionings adopted in each sub-unit.

fixed once and for all. This overlooks the crucial point that ... the political conception of justice ... is always subject to being checked by our reflective considered judgments" (Rawls, 1996, pp. 399).

As for the decision-making unit, we cannot assume a unit accompanied with a specific body. It should go beyond not only the boundary of a specific group (a community, an association, a nation, or one cosmopolitan nation) but also the specific way of partitioning between groups (including non-partitioning) itself. It is assumed that the only condition imposed on a decision-making unit is a kind of epistemic condition, i.e., “open impartiality”, which makes it possible to be free from any kind of local prejudices while taking diverse local information into consideration. According to Sen,

“[T]he liberating role of open impartiality allows different types unprejudiced and unbiased perspectives to be brought into consideration, and encourages us to benefit from the insights that come from differently situated impartial spectators. In scrutinizing these insights together, there may well be some common understanding that emerges forcefully, but there is no need to presume that all the differences arising from distinct perspectives can be settled similarly”(Sen, 2002, p.468).

The essential feature of “open impartiality” is making it possible to understand particular meanings of position-situated evaluations in each context, and, at the same time, to reasonably recognize a certain universal, human meaning each evaluation has.

Taking these features into consideration, what is assumed in Sen’s theory concerning the relation between the decision-making agency and the public provision-unit? Is there any guarantee that the latter accepts the policies settled by the former? If there is a potential individual belonging to a multi-layered public provision-unit who cannot fully accept its policies, does he have an opportunity to revise it as a political right, or can he only exit from it? Furthermore, if all individuals repeatedly exit and enter, who take responsibilities for setting or revising principles and implementing a public provision? Indeed, since there might remain remarkable differences in the lists of functionings or in the measures of public provision²⁶, an individual may move between sub-units with a motive of his private interest on them.

In short, how should we consider the problem of agreement and responsibility for setting and implementing a public provision in Sen’s model.

8. COMPARING RAWLS AND SEN

For considering this problem, let us start from re-examining the basic conceptions of Rawls that seems to be underlying agreement and responsibility. First, it is noticed that Rawls likewise Sen regards “incomplete ordering”, which leaves several social states non-comparable²⁷, as a distinguished feature of rules. Whereas Sen insists that “systematic guidance to reasoned decisions can come from incomplete orderings that reflect unresolved

²⁶ Since the principle of “providing according to his ability and being provided according to his needs” is a weak demand, there can be many rules of distribution that satisfy this demand.

²⁷ Note that “non-comparable” may not mean “indifferent”.

conflicts”²⁸, Rawls insists that “indeterminacy” is an essential feature of the “rules of a practice”²⁹. Rawls’s stage-sequential framework both in terms of the level of law - principles of justice, constitution, and legislations - and in terms of the scope of law - a law of peoples, the first principles of justice of a people, the precepts of an association - represents not an actual time-sequence but an order of priority of rules that constraints the decision-making process reasonably though incompletely.

Second, the concept of society (of a people) that Rawls refers to needs not be restricted to a political “state” as traditionally conceived³⁰. It is nothing but a unit that certain political ideas, which support the following conception of “reciprocity” in the decision-making stage, are gently shared³¹. “[O]ur exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions.”³² Furthermore, when he says “a society is closed”, we cannot take it literally. It is because he tries to symbolize a unit in which members will keep taking responsibilities of implementing a public provision and setting or revising principles of it with a motive of a reasonable choice. It is distinguished from an “open” unit like an association from which members will voluntarily exit with a motive of a rational choice based on his self-interest.

Comparing Rawls, Sen seems to pursue a more actually and more flexible unit in a global context, keeping the conceptual meanings Rawls tries to grasp through the conception of “society”. On the one hand, while an individual can belong to diversely diverse sub-units simultaneously and each sub-unit permits free exits and entries, he is expected to take responsibility for participating in a well-being policy of each sub-unit he actually belongs to. He is also expected to take responsibility for participating in setting or revising well-being policies of each sub-unit. On the other hand, he will take responsibility for participating in the well-being policies of other sub-units through financial transfers between sub-units. He will also take responsibility for participating in setting or revising well-being policies of other sub-units for protecting the rights of individuals beyond the boundaries of sub-units. Furthermore, he will take responsibility for the coordination among the sub-units in terms of finance, politics, ethics and so on.

To illustrate this, let us imagine a public-provision unit in an actual world. There are various sub-units that are variable themselves and variable in the way of partitioning. Each sub-unit has a certain transfer-system to secure the well-being of members, based on a particular list of functionings. Meanwhile, the universal meanings of the particularity of each sub-unit can

²⁸ Sen, 2002, p.468.

²⁹ Refer to Rawls, 1971, p.201, refer also to Gotoh, 2002a, p.276 and Gotoh, 2002b. This argument seems to be shared with the deliberative democracy, see Gutmann and Thompson, 1996, p.35.

³⁰ Rawls, 1999, p.25f.

³¹ We should notice that the concept of “reciprocity” in Rawls is remarkably different from the concept of “mutual advantage” usually used in economics. Refer to: “they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.”(Rawls, 1993, p.49)

³² Rawls, 1996, x 1 vi

be reasonably recognized by others living outside and financial transfers between sub-units are implemented in the whole world based on the following rule: “providing according to ability, being provided according to needs”. Then, can’t we say that responsibility for a world-wide public provision is derived from both from the recognition of the situated necessity of each particularity and from the recognition of the universal meanings of it? The underlying condition of these recognitions is nothing but “open impartiality”.

9. CONCLUDING REMARKS

In summary, from Sen’s perspective, the relation of a public-provision unit and a decision-making unit can be connected as follows. Individuals who have “open impartiality” can take a responsibility to set or revise well-being policies in a decision-making unit and individuals who have “open impartiality” can take a responsibility to accept and implement them in a public-provision unit. The collaboration based on “open impartiality” makes it possible to connect two units effectively, whether or not the members of them actually coincide or not.

Finally, let us briefly comment with regard to the possibility of agreement. In discussing on “the law of peoples”, Rawls starts from a conception of “a society of societies” by analogy with the discussion on “the first principles of justice” in “a society”. “A society of societies” has the same nature of “a society” in that it receives every individual equally and protects his basic rights beyond the boundaries of given groups and promotes coordination among them. Moreover, it plays a roll of decision-unit like a society in that the parties gathered in the original position will appropriately detach from their group-oriented interests and exercise their practical reason. However, there is not a small difference between the possibility of agreement on “the law of peoples” and on “the first principles of justice” as follows.

The parties in the stage of “the law of peoples” are permitted to know and take “the first principles of justice” of all societies into consideration when they form their judgments on the law. Hence, it is said that only if they can understand not only the particular meaning of the principles of each society in its context but also the commonly human meaning of them in more universal context, it becomes possible to settle “the law of peoples”, which is consistent with diverse principles of societies at least partially. This conclusion seems to approach the above description drawn on Sen’s perspective.

However, a subtle but important difference still remains between Rawls and Sen. Rawls seems to predict that a party in the stage of “the law of peoples” may confront a tension between two kinds of responsibility and might not fully avoid prejudice derived from the principles of the society he actually belongs to. Since the set of individual preferences is not restricted beforehand, there is a room to express such a judgment to strictly prefer the principles of his society to “the law of peoples”, even if there is a possible conflict between them. Rawls has recognized that even under “a veil of ignorance” that can nullify group (society)-oriented interests, there might remain moral conflicts among different sort of principles, laws, or “political ideas”.

This is in contrast with, *on the one hand*, the stage of settling the principles of justice in a society, where under strong informational and epistemic constraints, such a preference that precedes the precepts of local groups to principles of a society if they are in conflict, are excluded in advance. In other words, it is assumed that the superiority of the principles of justice in a society be fully accepted by the parties in the stage of setting the principles of justice in a society. This is in contrast to, *on the other hand*, Sen's theory, where any constraint on the set of individual preferences is not assumed *a priori* like the stage of "the law of peoples", but simultaneously, incomplete consistency is supposed to be not unfeasible as mentioned above³³. According to Sen,

"The basic relevance of the distinct perspectives - some congruent, some divergent - of the people of the world (diversely diverse as they are) is part of the understanding that open impartiality tends to generate."(Sen, 2002, p.469)

From where can this perspective derive? In the case of Rawls, the possibility of agreement and responsibility derives from the possibility of sharing certain political ideas including the conception of a society as a cooperative body. When Sen rejects the conception of "social contract" and focus on the epistemic condition of "open impartiality", does he believe it will widen or strengthen the possibility of responsibility and agreement? If so, on what grounds and reasons?

I have not a definite answer on this question except for the following conjecture. Sen points out that an individual who actually belongs to diversely diverse groups (such as class, gender, or professional groups) does have an opportunity to examine each position-situated evaluation through the eye's of other position-situated evaluations³⁴. Accordingly, Sen seems to have a perspective that an impartial spectator who actually belongs to diversely diverse groups grasps a possibility to make a certain consistency at least partially for their conflicting relations, if she can integrate her multi-layered identity internally after reflecting diverse moral judgments derived from group-situated evaluations.

It is our responsibility to clarify the grounds and reasons that can support Sen's perspective, further developing his illuminating theory.

³³ "In scrutinizing these insights together, there may well be some common understanding that emerges forcefully, but there is no need to presume that all the differences arising from distinct perspectives can be settled similarly"(Sen, 2002, p.468)

³⁴ Sen, 1999a, p.28.

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