A Defence of Public Reason
A Kantian Reading of Rawls's Ideal Theory

by

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Statement of Authorship and Sources

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Abstract

The thesis defends Rawls's idea of public reason as a purely normative basis of critical political judgment against its various criticisms by democratic theories of justice from normative deliberative democracy to radical democracy. The thesis focuses on the basic criticism of Rawls's idea of public reason as a legitimating basis of a conservative political doctrine that serves to perpetuate injustice and relations of domination. Criticisms of Rawls's idea of public reason are developed on the basis of an interpretation of Rawls's idea of stability in terms of a notion of political stability as concerned with the preservation of existing constitutionally guaranteed rights. Such criticisms argue that such a notion of political stability is the basic motivation of Rawls's development of a freestanding political conception that can be the basis of an overlapping consensus, and for those critiques, his idea of public reason functions as a regulative principle to secure political actors' claims of justice to be articulated within the limits of overlapping consensus over the existing political values. The thesis argues against such criticisms of Rawls's idea of public reason on the basis of reconstructing Rawls's political conception of justice in terms of Kantian political philosophy. The thesis argues that the basic contrast between critics of Rawls's political conception of justice and Rawls relies on their fundamental disagreement over the question of the subject of political justice. The thesis contends that critics of Rawls have a conception of political justice as collective self-determination of common ends of a political community. In contrast to such conceptions of democratic justice, the thesis argues that Kantian political philosophy conceives political justice as securing the conditions of co-existence of freedom of choice of individuals, and therefore, the ideal of equal freedom of external action regardless of the worth or ends of these actions is the regulative idea of political justice.

In this context, the thesis reformulates Rawls's idea of stability in terms of Kantian political philosophy. The thesis argues that the question of stability that interests Rawls is not

a question of how actual constituents of a political order can maintain their allegiance to the existing social and political institutional structures of a polity. Rather, Rawls's idea of stability is a question of normative stability, as it emerges within the ideal theory of justice. In this respect, the thesis argues that Rawls's idea of overlapping consensus does not concern the justification of the content of political justice. Rather, the idea of overlapping consensus shows only the possibility of each citizen's acceptance of the priority of demands of justice as in accord with their reasonable comprehensive doctrines.

In this context, the thesis argues that the normative content of Rawls's idea of public reason is not given by the existing political values over which there is an actual consensus, however widely shared it may be. Rather, the thesis claims that the normative content of idea of public reason is specified on the basis of those principles of justice justifiable in the ideal theory of a fictional well-ordered society. Rawls's idea of public reason provides a critical standpoint of political judgment for both public officials and private citizens on the basis of which those existing political structures and their organizing principles can be judged and transformed. When conceived in terms of a coercive system of laws as guaranteeing reciprocal freedom of actions within ideal theory, the thesis argues that Rawls's idea of public reason cannot be criticized for being normatively deficient, indeterminate or politically impotent regarding the questions of political justice.

The thesis also argues that Rawls's political conception of justice with its idea of public reason is necessary for identifying actual instances of injustice. On this basis, the thesis shows that Rawls's idea of public reason is the normative ground on the basis of which political actors can judge whether both their own claims and public laws are justifiable by the ideal of equal freedom.

Introduction

The thesis is a defence of Rawls's idea of public reason against fundamental criticisms raised by various democratic theories of justice that his idea of public reason cannot be an adequate principle of critical political judgment by virtue of Rawls's prioritization of stability on the basis of an overlapping consensus over shared public political values. The thesis defends and reconstructs Rawls's idea of public reason as a purely normative idea of political justification in terms of Kantian political philosophy. In this context, the thesis shows that Rawls's idea of public reason provides the normative basis of critical political judgment in the context of political justice.

Political philosophy is traditionally conceived as responding to 'the question of the permissible limits of coercion' (Berlin 2002, p. 168). This idea of legitimacy of coercion assumes an idea of individual freedom, and therefore, the question is commonly formulated as the question of on what basis individual human freedom can be restricted. In his *Two Concepts of Liberty*, Isaiah Berlin (2002, pp. 166-217) framed the traditional philosophical responses to the question on the basis of two different ideas of freedom, negative liberty and positive liberty. Berlin defines negative liberty as an individual's actual and possible acting without any interference by others, and positive liberty is defined as an individual's to be the source of its own actions, to be self-governing; though Berlin defines positive liberty essentially as an idea of individual liberty, as he notes, positive liberty has later been interpreted in communitarian terms, that is, individuals are free, only if their individual actions are governed by collective self-determination of ideas of common good, however defined. Thus, for Berlin, depending on a political society's commitment to negative liberty or positive liberty, each political society's understanding of acceptable limits of coercion varies. For those political societies committed to the idea of negative liberty, the end of political organization is to secure a maximal area of negative liberty for each person. However,

assuming the idea of negative liberty, by definition, any restriction on individuals' possible choices of action is an exercise of coercion. Therefore, the idea of maximal equality of the areas individuals can act without the interference of others cannot be justifiable by the idea of negative liberty. Therefore, Berlin contends that the idea of negative liberty and the idea of equality are distinct contradictory moral values. Thus, for political societies committed to the idea of negative liberty, the acceptable limits of coercion depend on a reasonable balance between the ends of negative liberty and equality. However, even when a political society guarantees negative liberties maximally, given the inequalities in social and individual conditions, some individuals cannot exercise their negative liberties at all or they cannot exercise their negative liberties equally. In addition to securing negative liberties, a political society may adopt goals of providing equal conditions of exercising negative liberties. Then, for the sake of justice, negative liberties are restricted and individuals become coerced. For Berlin, this is a case of coercing individuals for the sake of positive liberty. Coercion is justified on the basis of the fact that those individuals who do not have equal material power are not in an equal position to self-govern their own lives. The idea of justice or self-determination can be expressed in a more expansive way, and those proponents of positive liberty may argue that a political society has to be self-governed by moral, rational or particularistic community values, which are distinct from an idea of justice limited to securing the conditions of the exercise of negative liberties, and each individual should accept the restriction of their negative liberties on the basis of such collective values.

Berlin's presentation of the relationship between negative and positive liberty constitutes the basis of most of the contemporary theories of justice, democracy, and legitimacy. How to understand the ideas of negative and positive liberty and to establish a proper relationship between the ideas of negative and positive liberty are the basic concerns of most of the political theories of justice. In this respect, for most of the normative and non-

normative critical theories of justice, regardless of how they conceive the relationship between ideas of negative and positive liberty, democracy as collective self-government is the proper form of political society to legitimately realize collective values thought to be necessary for the arrangement of social organization in accordance with individual and group autonomy as self-determination. Such political theories of justice recognize the necessity of some form of negative liberties, though they are not seen as valuable in themselves. The proper question for such political theories of justice is which collective values have to govern societal practices as a whole and individual lives in particular. From the point of view of such theories of justice, given the pluralism of ideas of justice and the good life, democracy as collective self-government, conceived as a political procedure for enacting collective values through the equal political participation and political influence of citizens, makes possible for each citizen to acknowledge the legitimacy of political decisions about collective values which restrict their negative liberties (Shapiro, 2003).

In this context, depending on whether they give priority to negative liberties or positive liberties, political theories of justice and democracy is commonly distinguished into two paradigms. Those that give priority to the protection of negative liberties over collective values are identified with liberal political conceptions, and those that give priority to the collective self-determination of collective values over negative liberties are identified with democratic political conceptions.

Those liberal conceptions that accept some form of constitutional democratic government for the sake of protecting negative liberties are specified into liberal democratic political conceptions. Rawls's political liberalism is commonly considered as a liberal democratic political conception, and his political conception of justice is conceived as one of the most significant liberal democratic political conceptions of justice that decisively set the terms of debate in political philosophy.

The prevalent understandings of Rawls's political liberalism as a liberal democratic conception of justice that prioritizes negative liberties contend that Rawls's construction of his political liberalism as a freestanding political conception of justice neutral to religious and metaphysical philosophical conceptions of the good life and justice is a reflection of Rawls's commitment to a negative liberty conception of freedom as the basis of justice and democracy. Such accounts of Rawls's political liberalism claim that as Rawls is concerned about the protection of negative liberties, for liberalism and democracy to be compatible, a democratic government's authority has to be restricted to prevent the violations of rights as the constitutional guarantee of negative liberties. In this respect, given the fact of pluralism, it is argued that Rawls thought that there should be an consensus over the principles of justice that secures equal liberties for all in order to preclude the imposition of collective values that restrict negative liberties. Thus, it is claimed that given the fact of pluralism, to secure a consensus over the principles of justice, Rawls constructed his conception of justice from what he identifies as publicly shared fundamental ideas of freedom and equality in the public political culture of democratic societies, and on this basis, he hoped that citizens could accept the principles of justice in accordance with their metaphysical conceptions and therefore an overlapping consensus over the principles of justice can emerge. On this basis, it is contended that Rawls introduces his idea of public reason as a procedure of filtering reasons grounded in the ideas of good life or metaphysical doctrines in the justification of laws in order to hinder the coercive imposition of collective values over individuals. It is claimed that by requiring from citizens to justify laws by freestanding political values over which there is a consensus, Rawls intended to foreclose the possibility of violation of negative liberties by democratic governments and therefore to maintain the political stability of constitutional democracies.

In this respect, for critical democratic theories from various forms of deliberative democracy to radical democracy, despite his contrary intentions, Rawls's political liberalism

is basically a conservative political doctrine, an apologist for the injustices and domination of existing liberal democracies. It is contended that Rawls's prioritization of political stability on the basis of an overlapping consensus for the sake of protecting negative liberties legitimizes the status quo. It is argued that Rawls's idea of public reason excludes and therefore depoliticizes pluralism as constitutive of conflicts over collective values, and as a result, Rawls does not permit a democratic politics as a political contestation of existing relations of unjust power relations and his theory therefore contributes to the perpetuation of political and social exclusions and domination.

David Dyzenhaus's (1996) criticism of Rawls's political liberalism and his idea of public reason is a representative of such critiques of Rawls from the standpoint of critical democratic theories. He refers to the case of the denial of certain rights to gay couples, and he notes that as Rawls's idea of public reason excludes expressions of moral judgments regarding life-styles in the justifications of laws, his idea of public reason will not be acceptable to 'those gays who think that if past injustice is to be remedied and discriminatory practices eliminated, recognition of moral worth is essential' (Dyzenhaus 1996, p. 21). For critical democratic theories of justice, political contestations over such self-conceptions that reproduce exclusions are essential and it may be necessary for public laws to recognize the worth of different ways of life.

Dyzenhaus's case for the political recognition of the worth of different ways of life does not reveal exactly what critical democratic theories mean when they criticize a negative-liberty conception of freedom and hence Rawls's political liberalism and public reason. Unless the political recognition is translated into coercive regulation of social relations within civil society, it can be argued that political coercion is indirect and still negative liberties are respected. Sharon Krause's (2015) example of gay rights activists' political and legal struggle for joining St. Patrick's Day Parade in South Boston in the early 1990s demonstrates the

nature of controversy between liberal negative liberty conceptions and democratic conceptions of freedom. Krause describes the controversy between these two conceptions as a conflict between freedom as non-interference and freedom as non-oppression. In the case she presents, against parade organizes' denial of gay activists' request to march, gay activists fought them in court, and the court decided in favor of gay activists' right to participate. As Krause states, '[t]heir victory was a boon to freedom as non-oppression because it contested the informal relations of social stigma and cultural bias that motivated their exclusion' (Krause 2015, p. 172). This is a clear case of legal restriction of negative liberties of a group within civil society for the sake of upholding recognition claims of an oppressed social group. Eventually, the Supreme Court invalidated the lower court's order on the basis of the right to protected speech of parade organizers. Krause's example is an excellent representative for democratic critiques of Rawls's idea of public reason. It is argued that as Rawls describes the Supreme Court as 'the exemplar of public reason', for Rawls, democratic politics has no distinctive space in his constitutional democracy, and all democratic political contestations that contradict the idea of public reason are subject to the institutional filtering of the constitutional court. It is claimed that the idea of public reason and its institutional embodiment in the form of constitutional court maintains the stability by subjecting political struggles, legislative politics and lower judicial decisions to a supposedly existing overlapping consensus on the negative liberties that equally protect each person's practices and values regardless of their oppressive and exclusionary nature.

The thesis argues against such critical democratic theories' criticisms of Rawls's political liberalism and his idea of public reason. However, the argument is not that Rawls's political conception of justice and his idea of public reason are wholly consistent with an understanding of democratic politics as argued by such critical theories of democracy and justice. At least, with regard to the aforementioned cases, democratic critiques are right that

Rawls's idea of public reason will not permit the legal recognition of the worth of different ways of living in the form that democratic critiques demand and Rawls's public reason will see as justified the Supreme Court's invalidation of such legislative and judicial decisions of coercive interference into associations within civil society. However, the thesis argues against critical democratic theories' interpretation that Rawls's political conception of justice is based on a liberal negative liberty idea of freedom and therefore his ideas of public reason and overlapping consensus serve to maintain injustices and relations of domination for the sake of political stability in order to protect negative liberties. Rather, the thesis argues that Rawls's political conception of justice with his idea of public reason is a distinctive normative critical theory of justice and democracy, which is neither a liberal negative liberty nor a democratic positive liberty conception.

The thesis's argument that Rawls's conception of justice is neither a negative liberty nor a positive liberty conception may not be seen as a new contribution to an understanding of Rawls's conception of justice and democracy. It may be seen as locating Rawls's political philosophy within republican conceptions of freedom as non-domination. Philip Pettit's (2012) republicanism claims to have a conception of freedom as non-domination, distinct from negative and positive liberty ideas of freedom. Freedom as non-domination is conceived as individuals' freedom from actual or possible arbitrary interferences of others, and therefore, in contrast to negative liberty conceptions, any legal interference to secure individuals' freedom from others' arbitrary will is not considered as coercion and as a restriction of freedom. It is also argued that it is not also a positive liberty conception, as the role of government is basically restricted to securing freedom as non-domination, and therefore, the idea of popular self-determination of collective values of a political community as an end in itself is rejected. In this respect, for republicanism, negative liberties do not in itself have a priority and individuals can be coerced for the sake of securing freedom as non-

domination. Charles Larmore (2008, pp. 168-189) and Anthony Laden (2006) indicated close affinities between Rawls's conceptions of freedom and democracy and Pettit's republican conception of freedom as non-domination. A reading of Rawls's political liberalism in terms of freedom as non-domination may be considered as more in line with critical democratic conceptions of justice, as it will permit more political interventions into civil society than a negative liberty conception. If freedom as non-domination is considered as inclusive of structural relations of domination rather than simply intentional personal arbitrary interferences, then, the scope of democratic political interference will also be more extensive. Rawls's political conception of justice and conceptions of justice as freedom non-domination may converge to some extent on the subject of justice that needs to be regulated by public laws. However, the thesis contends that Rawls's normative critical theory of justice cannot be interpreted even in terms of freedom as non-domination.

The argument of the thesis is that Rawls's normative critical theory of justice and democracy with its idea of public reason should be reconstructed in terms of Kantian political philosophy grounded in the equal right to freedom, as developed by Kant (1996) in his *Doctrine of Right*. As Arthur Ripstein (2015) argues, there is a fundamental difference between Kant's political philosophy of justice as the ideal of equal freedom and political theories of justice grounded in the idea of freedom as negative liberty, positive liberty or non-domination as commonly conceived. Regardless of the fact that conceptions of freedom as negative liberty, positive liberty or non-domination are understood in moral or non-moral terms, they all conceive the subject of political philosophy as determining the ends or goals a society has to publicly endorse on the basis of which social relations are to be regulated. However, for Kant, the subject of political philosophy is the idea of right 'as a set of restrictions on the means that people can use in pursuing their purposes' (Ripstein 2015, p. 1). In this respect, 'the structure of right is always focused on the relations in which human

beings stand to each other with respect to means' (Ripstein 2015, p. 1), and therefore, only actions can be the subject of lawful coercion. This idea of right implicates an innate right to freedom '(independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law' (Kant cited in Ripstein 2015, p. 10). Kantian political philosophy is not concerned which possible ends can be legitimately coerced. Rather, the subject of political justice is over which actions coercion can be legitimately exercised, and the standpoint of normative political critique is an ideal system of equal freedom in this sense. Those social practices and relations and individual actions that do not conform to an ideal system of equal freedom under a universal law should be the subject of lawful regulation.

The thesis argues that Rawls's political liberalism with his idea of public reason should be considered as conforming to Kant's idea of justice as an ideal system of equal freedom. In this respect, the thesis contends that Rawls's idea of public reason should be conceived in terms of Kant's idea of general united will as a specification of his normative standpoint of ideal system of equal freedom both for judging the legitimacy and justness of existing political societies and for guiding political judgment of public officials and democratic political actors.

In this context, the thesis defends Rawls's idea of public reason against critical democratic theories' criticisms. As I mentioned above, critical democratic theories understand Rawls's political liberalism in terms of negative liberty conception of freedom. However, when Rawls's political liberalism and his idea of public reason are construed in terms of Kant's idea of right to freedom, then, the question is to what extent such democratic critiques are valid from the normative standpoint of Kantian ideal of justice as a system of equal freedom. As I stated, critical democratic theories of justice from various forms of deliberative democracy to radical democracy all conceive politics in general and democratic politics in

particular in terms of an end-oriented conception of justice and freedom. In this respect, the thesis shows that critical democratic theories' criticisms of Rawls's political liberalism and his idea of public reason rely on their conceptions of politics as a contestation over ends which may be rationally resolvable or not, depending on the theory. Therefore, the thesis argues that such conceptions of justice and politics do not address the proper question of political philosophy, as stated by Kant, and I argue, as reformulated by Rawls, that is, the rightful and just coexistence of free actions of individuals under law. Accordingly, the thesis contends that to the extent that individuals' self-conceptions and those social relations and practices are consistent with the idea of public reason in accordance with the ideal of equal freedom, then, critical democratic theories' criticisms that Rawls's idea of public reason serves to maintain injustice and domination is irrelevant. The thesis argues that to the extent that those social relations and practices which are considered as unjust by democratic critiques are unjustifiable by the idea of public reason, then, public law should contest and intervene into such unjust relations and practices, regardless of whether such political interventions violate or serve negative or positive liberties or non-domination of some individuals or groups. However, the important point is that, the thesis claims, legal and political interventions in the form of public laws are only justifiable, if they are in accord with the ideal of equal freedom; and they are not legitimate and just in themselves, if they can only be justifiable by whatever ends a conception of democratic justice deems just and/or legitimate.

In this context, the thesis argues that Rawls's idea of overlapping consensus cannot be interpreted as an expression of an actual consensus over existing political values of a political society, which defines the limits of political critique for the sake of protecting political stability. As for Kant, the thesis claims that Rawls develops a purely normative ideal theory of justice, and the idea of overlapping consensus is a constituent of ideal theory, which does not refer to any kind of actual consensus over political values of existing constitutional

democracies. Therefore, as a constituent of a purely normative theory of justice, the thesis contends that criticisms of Rawls's idea of overlapping consensus that it serves to legitimize existing injustices and domination by restricting and excluding actual public political articulation of potential claims of justice in public reason are not justified.

In this respect, the thesis develops a new argument for understanding the relationship between Rawls's ideas of public reason and overlapping consensus regarding the question of stability. Most of the critics and defenders of Rawls's ideas of public reason and overlapping consensus consider the idea of overlapping consensus as a form of justification of the moral content of a conception of justice to individuals, regardless of the fact that individuals are considered as idealized members of an ideal or actual society or as actual members of an actual society (Raz 1990; Krasnoff 1998; Freeman 2007; Quong 2011;). The thesis argues against such readings of Rawls, and it contends that Rawls introduces the idea of overlapping consensus as a possible resolution of the question of rational motivation for acting justly rather than the question of justification of the moral content of justice in the context of reasonable pluralism. The thesis contends that why Rawls sees a problem of motivation in the way he formulates and why he proposes to resolve it by his idea of public reason in connection with the idea of overlapping consensus can properly be understood, only if Rawls's political conception of justice is reconstructed as a reformulation of Kant's political philosophy as the idea of rightful coexistence of free actions in the context of reasonable pluralism. The argument is that as only actions can be legitimately coerced, in the cases of conflicts between justice and the good, the only possible way of non-coercive option for persons with a sense of justice to act justly is to see the demands of justice acceptable from within their conceptions of the good, as specified by their religious or philosophical self-conceptions. In this respect, the thesis argues that Rawls's idea of public reason as a freestanding form of political justification assures the neutrality of justice towards the good of

each person. Therefore, the thesis claims that the overlapping consensus does not concern the idea of right; rather, it applies to the idea of the good.

My argument that the idea of overlapping consensus applies to the idea of the good tallies with Paul Weithman's (2010) recent reconstruction of Rawls's political liberalism. Weithman reconstructs Rawls's stability argument as a resolution of the question of generalized prisoner's dilemma in ideal theory, which refers to the question of having mutual assurance that all participants to a social cooperation have to be sure that everyone would prioritize their sense of justice over their rational good. Weithman notes that the guiding idea of Rawls is his commitment to Kant's idea of morality as acting from the principles of justice, and therefore, Rawls's idea of overlapping consensus as a resolution of the question of stability in his *Political Liberalism* aims to show the possibility of acting from the principles of justice, in possible cases of conflicts between the right and the good. While I agree with Weithman's reconstruction of how Rawls presents the question of stability, my argument is that why Rawls presents the question of stability in the form of a generalized prisoner's dilemma and why he resolves the question by the idea of overlapping consensus can be properly understood only from the standpoint of Kant's political philosophy. Weithman still conceives Rawls's political philosophy in terms of moral philosophy, and he presents the question of conflict between the right and the good as a conflict between the reasonable and the rational within human reason grounded in human sociality, and he understands Rawls as guided by the idea of non-coercive resolution of the conflict between the right and the good. Weithman's presentation of the question is a socialized version of Kant's argument for acting from duty, presented by Kant as a question of conflicts within moral agents between morality and self-love. However, the thesis argues that from the standpoint of Rawls's Kantian political philosophy, as the right only concerns actions and individuals can be legitimately coerced to act in accordance with the right, it is irrelevant whether actors act in accordance with the right

from duty or from their non-moral interests. Thus, it does not matter for justice that actors act in accordance with the principles of justice by virtue of their prioritization of rational interests over justice. In this context, the question of the stability of justice emerges, as acting in accordance with justice depends on the contingent rational interests of individuals. Thus, in ideal theory, acting in accordance with justice can only be secured without relying on extensive penal sanctions, if individuals can act from the principles of justice. The thesis argues that Rawls's idea of overlapping consensus together with the idea of public reason aims to show the possibility of acting from the principles of justice in this sense.

In this context, the thesis makes a contribution to understand the proper basis for Rawls's construction of a freestanding political conception of justice. Moreover, the thesis provides an answer to sympathetic critiques of Rawls by clarifying why a political conception of justice should not be grounded in a fundamental moral principle, such as Rainer Forst's (2011; 2014a) the right to justification, Larmore's (1996; 2008) moral respect or Robert Taylor's (2011) Kantian moral autonomy.

Chapter Outline

The first chapter develops my argument that Rawls's idea of public reason conforms to Kant's idea of general united will as the justification and legitimation principle of public laws. The chapter presents the conceptual basis for my defence of Rawls's idea of public reason as a normative, critical principle of political judgment against critical democratic theories of justice in the following chapters. On this basis, the arguments of the chapter also lay out the background for my reconstruction of the relationships between Rawls's ideas of public reason and overlapping consensus as they relate to the stability argument. The chapter elaborates the argument through a critical dialogue with Forst's Kantian ideas of moral and political autonomy grounded in the basic moral right to justification as the basis of conceptions of justice, democracy, and legitimacy. On the basis of Kant's political philosophy

of freedom, the chapter criticizes Forst's ideas of moral and political autonomy as the bases of political justice in general and his particular argument that justice necessarily requires democracy as the only legitimate form of political organization in the context of the domain of the political. The chapter employs Forst's Kantian conceptions of justice, democracy and legitimacy as a foil in order to demonstrate the fundamental contrast between horizontal conceptions of political authority and political legitimacy as expressed in notions of democracy as collective self-legislation or co-legislation and Kant's own conception of political authority and political legitimacy as a vertical relationship between the sovereign and private citizens as subjects. The chapter relates the basis of contrast to conceiving rights as intrinsically juridical or not. The chapter affirms Kant's argument that the basis of political authority is each person's equal right to freedom of choice of actions under universal law and this requires universal reciprocal coercion under public authority legislating according to the idea of general united will. In this context, in the chapter, against autonomy-based conceptions of just democracy, I develop my own justification of democracy within the framework of Kantian political philosophy, arguing that a political order can be fully legitimate, only if each citizen is guaranteed to have equal rights to political participation in the exercise of political power. My argument for the justification of democracy is based on the epistemic uncertainty of private citizens as subjects of political authority with respect to the legitimacy of public laws and political decisions. The chapter then argues that Rawls's ideal theory of justice with his idea of public reason can be understood in terms of Kant's political philosophy. The chapter claims that though Rawls does not develop a justification of democracy and he merely assumes constitutional democracy as the fully legitimate form of political power, Rawls's conception of constitutional democracy and the role of his idea of public reason can be conceived in terms of my justification of democracy within Kantian political philosophy rather than in terms of autonomy-based conceptions of democracy. The

chapter concludes by noting the commonality between Rawls's and Kant's conceptions of political legitimacy as based on purely normative, ideal normative standards of political justification.

In the context of my elaboration of Rawls's ideal theory of justice with his idea of public reason in terms of Kantian political philosophy, the second chapter responds to normative critiques of Rawls's development of his idea of public reason as freestanding on the basis of his ideas of overlapping consensus and stability. The core of such normative critiques is that by conceiving justice and public reason as freestanding ideas over which there can be public consensus, Rawls neutralizes the idea of public reason as a basis of critical justification of claims of justice by empowering existing worldviews of actual citizens over the determination of moral contents of justice. Habermas is the most significant representative of such normative critiques of Rawls within critical democratic theories of justice. Habermas and Rawls directly engaged in a debate over how to understand the normativity of Rawls's freestanding political conception of justice and whether Rawls's idea of public reason empowers politically actual citizens to criticize existing injustices rather than accommodating those injustices by privileging stability through the overlapping consensus. The chapter defends Rawls's idea of public reason as a critical standard of political judgment in relation to his ideas of overlapping consensus and stability against Habermas's criticisms of Rawls. The chapter proposes to understand Rawls's ideas of stability and overlapping consensus as responding to a specific problem that stems from the motivational neutrality of political justice as the ideal of equal freedom in terms of Kantian political philosophy, in contrast to Habermas's claims that Rawls's stability argument prioritizes individuals' existing worldviews over universal claims of justice and therefore Rawls reduces justice into shared public political values of an actual democratic polity. In this respect, the chapter argues that Rawls's stability argument concerns the question of how all citizens can be mutually assured

that each citizen is normally committed to the priority of political justice in cases of conflicts between their sense of justice and their conceptions of the good, especially with respect to those citizens exercising political power directly or indirectly. The chapter contends that Rawls's reformulation of public reason as freestanding functions as a demonstration of individual citizens to each other their public commitment to the priority of political justice. In this context, after criticizing Habermas's interpretation of Rawls's ideas of overlapping consensus and stability with respect to the normativity of Rawls's freestanding conception, the chapter defends Rawls's idea of public reason by focusing on how Habermas and Rawls understand political and private autonomy in order to clarify their contrasting conceptions of democracy in relation to the question of political justice as the Kantian ideal of equal freedom. The chapter relates Habermas's and Rawls's contrasting conceptions of freedom and autonomy to the question of how Habermas and Rawls conceive political legitimacy. On this basis, in conjunction with the first chapter, the chapter shows that rather than being a liberal democrat, Rawls's political conception of justice with his idea of public reason is the truly Kantian republican with respect to the question of political justice, not Habermas himself. In this respect, the chapter concludes that Rawls's idea of public reason does not express tolerance to injustice for the sake of political consensus and stability. Rather, it guides critical political practice for the ideal of equal freedom.

The third chapter responds to democratic criticisms of Rawls's idea of public reason that the moral political duty of citizens to justify their claims of justice in their political participation and political advocacy without relying on their reasons given by religious, moral or philosophical comprehensive doctrines results in an unfair treatment of citizens, especially of religious citizens. The chapter focuses on the place of religious reasons in political decision-making and political advocacy. The main argument for such democratic criticisms is that because some religious citizens' obligations demand from them to organize their whole

existence according to their religious commitments, given that each citizen has a right to political participation, excluding religious reasons from the domain of the political is an infringement of free exercise of religion of such citizens in the realm of politics. Therefore, it is claimed that the moral duty to use public reason in democratic politics results in an unfair treatment of such religious citizens. It is also argued that as religious citizens are prevented from organizing their whole life according to the demands of their religion, given that religious citizens could not participate in politics on their own terms, the moral obligation of citizens to exclude their religious reasons in politics also results in the violation of the integrity of religious convictions of religious citizens, which is a more fundamental violation of free exercise of religion. Nicholas Wolterstorff and Christopher Eberle are the main exponents of such democratic criticisms of Rawls's idea of public reason. The chapter shows that Wolterstorff's and Eberle's criticisms of Rawls's idea of public reason are based on their conceptions of democracy as a collective determination of common ends of a social community through the equal political participation of citizens, which I contrasted with Rawls's Kantian conception of just constitutional democracy. In this respect, the chapter argues that Wolterstorff's and Eberle's argument that the moral duty to use public reason is a violation of freedom of religion is an illustration of how such conceptions of democracy contradict the ideal of equal freedom. The chapter contends that by permitting the legislation of public laws which cannot be justifiable by the idea of public reason, Wolterstorff and Eberle in fact advocate a constitutional democracy in which the equal freedom of citizens in pursuing freely their own conceptions of the good become violated systematically for the sake of some citizens' religious purposes. In this respect, the chapter contests Wolterstorff's and Eberle's arguments that their basic guiding idea for religious political advocacy is that what matters politically is the urgency of contesting moral evils. They claim that given the extent of disagreements and extreme injustices under actual societies, what matters is the

conclusion of political struggles against moral evils, not their public justifiability by shared political principles. However, the chapter contends that whether a moral evil is a moral evil and which moral evils have to politically contested depend on identifying moral evils as political injustices from the standpoint of Rawls's idea of public reason as a normative ideal principle of political justification. Therefore, the chapter concludes by arguing for the necessity of justifiability of public laws by Rawls's idea of public reason in actual societies, regardless of actual political actors' use of public reason in their political justification in law-making and political advocacy.

The fourth chapter explores further the arguments of the second and third chapters regarding the normativity of Rawls's idea of public reason in actual societies characterized by deep political disagreements and extreme injustices. The chapter consists of two sections. In the first section, the chapter responds to the criticisms of Rawls's idea of public reason for not being capable of resolving contentious political issues we face today from economic distribution to abortion. The basis of such criticisms the chapter examines is not that the idea of public reason compromises justice for the sake of consensus and stability or it is exclusionary and unfair. Rather, it is argued that Rawls's freestanding conception of public reason is normatively vacuous or incomplete. Those critiques are basically an internal criticism of Rawls's political conception. Their claim is that even if citizens accept to use public reason, they cannot resolve fundamental political issues we confront by the idea of public reason, because either citizens cannot choose between conflicting interpretations of political values and principles or because some issues such as abortion could not be resolvable by freestanding political values of public reason. Therefore, it is argued that citizens have to rely on the reasons of their religious, moral or philosophical comprehensive doctrines in order to resolve some fundamental political conflicts they face. This section argues that though such criticisms are internal criticisms made by political liberals, those political liberals actually

share conceptions of democratic justice as a collective political determination of the ends of a political community rather than Rawls's Kantian conception of political justice as the ideal of equal freedom. In this respect, from the standpoint of Rawls's Kantian political ideal of equal freedom, the section argues that Rawls's idea of public reason is normatively complete in the sense that all questions of political justice can be reasonably decidable by the idea of public reason, though there may be reasonable disagreements over the political decisions of public authorities. In the second section, the chapter develops further the defence of Rawls's idea of public reason regarding those criticisms that the idea of public reason legitimates grave social injustices and maintains the unjust status quo by virtue of its restriction of public political articulation of claims of justice to those that can be justifiable by actually shared public political values of an existing society. Such criticisms contend that Rawls's idea of public reason does not provide internal normative standards for movements of justice. Thus, they can be also seen another aspect of those criticisms of the idea of public reason as normatively vacuous or incomplete. It is claimed by those critiques that those existing shared political values may be a basis of actual, ordinary political decision-making for some political questions whose resolution does not demand a radical political transformation. However, it is argued that the idea of public reason becomes both politically impotent and also an impediment for those claims of justice whose acceptance necessarily undermines existing shared political consensus. This section of the chapter discusses Chad Flanders and Linda Zerilli as two recent representatives of such criticisms of Rawls's idea of public reason, as their works elaborate most fully the nature and implications of such radical criticisms of Rawls's idea of public reason. Flanders and Zerilli represent two divergent responses to such interpretations of Rawls's idea of public reason. Flanders does not reject the idea of public reason completely, but he proposes to reformulate the idea of public reason to be open to reasons of comprehensive doctrines on the basis of which radical social movements of justice

are organized in the background political culture. In contrast to Flanders, Zerilli says farewell to public reason entirely. Rather, Zerilli proposes an Arendtian politics of democratic judgment and action on the basis of which political actors contest existing political consensus by means of rational and basically non-rational public political discursive contestations at all levels of the society together with collective political action including radical disobedience. Rawls himself contended that his idea of public reason can be inclusive of radical political movements of justice guided by comprehensive doctrines, if his idea of public reason is conceived in terms of a wide view of public reason. In the wide view of public reason, political actors can justify their claims of justice on the basis of their religious, moral or philosophical comprehensive doctrines with the condition that they present freestanding public reasons for their claims of justice, when other citizens demand from these actors political justifications by the idea of public reason. Rawls seems to weaken the conditions of fulfilment of the wide view of public reason for actual societies with grave injustices such as slavery, etc. Under these conditions, if the claims of political actors justified by comprehensive doctrines can be seen as complying with the ideal of public reason in the future, even though those political actors do not present public reasons, then, Rawls claims that those political actors can be regarded as fulfilling the moral political duty of public reason. Both Flanders and Zerilli do not agree with Rawls's claim that his ideal of public reason along with the wide view can be a basis of radical movements of justice under actual societies. Their argument is that if Rawls's idea of public reason is to be interpreted in terms of a future possible justification, then, either the idea of public reason loses its meaning, given that political claims become justified by the values conflicting with the existing political consensus. Or they argue that if those comprehensively justified claims are to be conceived within an ideal of public reason, then, their radical potential of contesting power relations would become domesticated within the limits of existing political structures, as the basis of

such political claims will be reduced to a mere extension of principles of an existing political consensus to previously excluded areas. Flanders discusses Rawls's wide view interpretation with a reference to historical movements of anti-slavery and contemporary social movements. Zerilli establishes her whole argument on the basis of her discussion of abolitionist Frederick Douglass's 4th of July speech within the context of abolitionism in general, as Rawls specifically refers to abolitionists as an illustration of how such radical movements of justice can be seen as fulfilling the ideal of public reason without justifying their claims by the idea of public reason. The section argues that both Flanders and Zerilli are mistaken in their interpretations of Rawls's ideal of public reason and his wide view. The section argues that if Rawls's idea of public reason is conceived as a purely normative ideal of political justification in terms of Kantian political philosophy, then, Flanders's and Zerilli's objections would lose their force. In its response to Zerilli, the section particularly examines Frederick Douglass's 4th of July speech and the abolitionist movement in general, and it shows that in contrast to Flanders's and Zerilli's claims, Frederick Douglass and abolitionists in general were in their political practice guided by the idea of public reason. Thus, the chapter demonstrates that Rawls's idea of public reason is a normative critical principle for political actors in actual societies.

Those criticisms of Rawls's idea of public reason as a legitimation of injustices and domination assume its most complete form in the radical democratic theories. The fifth chapter responds to radical democratic criticisms of Rawls's idea of public reason. Radical democratic theories conceive the question of justice as a political question of co-existence of conflicting plurality of ends which manifest relations of domination and power. They propose a conception of democratic politics as a perpetual political conflict over the relations of domination and power within temporary, unstable institutionalized frameworks. Therefore, radical democratic politics is radically opposed to Rawls's idea of public reason as the basis

of ideal of a stable constitutional democracy based on an overlapping consensus, as they understood it. For radical democratic theory, any existing political consensus is always a manifestation of a particular structure of social relations of power. In this respect, as for other critical democratic theories, radical democratic theory claims that Rawls's idea of public reason legitimizes existing relations of power and domination by prioritizing political consensus over particular values. As critics of Rawls's democratic politics, Sheldon Wolin and Chantal Mouffe are two best representatives of radical democratic theory. The chapter defends Rawls's idea of public reason against Wolin's and Mouffe's radical democratic criticisms. The first section of the chapter discusses Wolin's criticisms. This section specifically focuses on Wolin's criticisms of Rawls regarding class conflict as it relates to economic justice and its implications for the equality of political power. According to Wolin, Rawls's political conception of justice as a constructivist ideal theory actually legitimizes the concentration of economic and political power against oppressed social classes and groups. Wolin claims that Rawls's constitutional democracy depoliticizes class conflicts and subordinates the demands of oppressed classes and groups for full political and economic equality by prioritizing social cooperation for the sake of stability. In this respect, according to Wolin, Rawls's idea of public reason as the basis of overlapping consensus that defines the terms of social cooperation serves to preserve the status quo in favor of those dominating political and economic classes. Thus, for Wolin, Rawls's egalitarianism is actually a form of pacification of oppressed classes by means of some redistribution of wealth within the limits that do not threaten monopoly capitalism and its political power. The chapter argues against Wolin that Rawls's ideal theory is a critical normative theory of just constitutional democracy. On this basis, the chapter contends that to the extent that the ideal of equal freedom requires some form of economic and political equality, Rawls's ideal theory provides a normative political perspective specified in his idea of public reason for those dominated

classes and groups in their political struggles for equality as required by the ideal of just constitutional democracy. In the second section, the chapter responds to Mouffe's criticisms of Rawls. In relation to Mouffe, the chapter specifically focuses on her criticisms of Rawls that he ignores or underestimates political conflict. According to Mouffe, prioritizing consensus and stability over political conflict is one of the main reasons for actual democratic societies' inability to understand and cope with those political movements which may take violent forms such as fundamentalism and racism or with those sporadic violent riots, all of which threaten existing democratic political orders. The section argues against Mouffe that Rawls's ideal theory does not ignore or underestimate political conflict in the actual societies. Rather, the chapter argues that Rawls's ideal theory provides the relevant idea of political justice on the basis of which actual political actors can judge whether the conditions of justice are present or not in. On the basis of their political judgment then political actors can confront politically those existing injustices. The section then discusses Mouffe's claim that Rawls eliminates democratic politics in his ideal well-ordered society. Mouffe's argument is based on her contention that there is a conceptual tension between justice and law and this constitutes the nature of a pluralist democratic political order. The section argues that Rawls does recognize the conceptual tension between justice and law. The section demonstrates that Rawls does have a different notion of political conflict than Mouffe's, given that Rawls's Kantian conception of political justice and democracy contradicts Mouffe's radical democratic idea of politics as a power conflict over common ends of a political community. However, the chapter argues that Rawls's idea of legitimacy is an explicit recognition of the conceptual tension between justice and law, which is implied by his purely normative ideal theory. On this basis, the chapter concludes that Rawls recognizes a certain place for a democratic politics of conflict as specified by his idea of reasonable disagreement within public reason in the ideal well-ordered society.

The thesis concludes with a recapitulation of the main arguments of the thesis.

Chapter 1:
Justice, Democracy, and Legitimacy:
A Critical Dialogue with Rainer Forst

This chapter provides the theoretical basis of Rawls's idea of public reason as a purely normative idea of political justification in terms of Kantian political philosophy. The chapter develops its argument by critically engaging with Rainer Forst's Kantian conception of morality and political justice. The chapter criticizes autonomy-based justifications of justice, legitimacy and democracy from the point of view of recent interpretations of Kant's political philosophy. On this basis, the chapter develops a different justification of democracy for a proper understanding of Rawls's idea of public reason. The chapter concludes by pointing out the Kantian basis of Rawls's ideal theory of justice with its idea of public reason.

1.1

Rainer Forst argues that political philosophy can be conceived through two distinct conceptions of political and social justice (Forst 2014a, pp. 17-37). One of them is what he terms as *recipient-oriented* or *allocative* conceptions of justice. Recipient-oriented notions of justice are based on the idea of distribution of goods specified on the basis of particular ideas of needs, desires, interests or moral rights, according to which individuals and groups are supposed to have the right to receive. In short, the main idea of recipient-oriented conceptions of justice is 'who "gets" what' (Forst 2014a, p. 18). According to Forst, even though a conception of social justice includes such aspects of distribution of goods, recipient-oriented conceptions are fundamentally distortive of how social and political justice should properly be understood. Forst argues that recipient-oriented ideas of justice leave aside the question of how the goods to be distributed should be produced and whether the production of goods can also be an issue of justice. More fundamentally, Forst contends that the problem with recipient-oriented conceptions is that such conceptions either ignore or see as a secondary issue the question of who has authority over both the organization of structures of production

and distribution and over the specific contents of goods to be produced and distributed.
However, Forst argues that the question of authority should be conceived as the fundamental
question of justice, if a proper conception of justice needs to be understood as an autonomous
production of political practice of subjects of justice. This idea of political autonomy then
requires us to conceive claims to goods to be justified through a deliberative process of
justification in principle open to all persons as free and equal individuals, and for Forst, this is
the *fundamental requirement of justice*. Assuming all these deficiencies of recipient-oriented
conceptions of justice, Forst finally states that such conceptions do not allow making
distinctions between morally required political duties of justice to abolish injustices and non-
political moral duties to alleviate others' sufferings that do not result from subjection to unjust
social and political conditions (Forst 2014a, p. 19). In this context of his criticisms of
recipient-oriented conceptions of justice, Forst argues that 'the basic question of justice is not
what you have but *how you are treated*' (Forst 2014a, p. 20).

      Forst argues that his distinction between justice as a recipient-oriented conception and
justice as the idea of justification of intersubjective social relations and structures is a morally
justified account of two contrasting notions of justice. He states that the proper idea of justice
as justification is a fuller specification of the concept of justice, and he argues that the concept
of justice is predicated on the idea of *non-arbitrariness*. He says that 'the concept of justice
possesses a core meaning of which the essential contrasting concept is *arbitrariness*' (Forst
2015, p. 89). When arbitrariness takes the form of arbitrary rule of some people over others,
there is an exercise of unjustified authority which may be mediated by personal, institutional,
and structural forms of power. Forst defines the subjection of persons to such forms of
unjustified authorities as *domination*, that is, injustice. Therefore, for Forst, claims to justice
refer to 'the demand that no political or social relations should exist that cannot be adequately
justified toward those subjected to them' (Forst 2015, p. 90). Forst argues that this idea of

justice necessarily requires that the subjects of political and social relations 'should enjoy equal rights to participate in the social and political *order of justification* in which they are involved in determining the conditions under which goods are produced and distributed, and in which they ought to have a standing as justificatory equals' (Forst 2015, p.90). Thus, for Forst, '*the first question of justice is the question of power*'. More specifically, according to Forst, justice minimally requires the equality of justificatory power of all individuals within institutional structures of justification in a particular social and political order (Forst 2015, p. 92).

Forst understands his idea of justice as justification as an elaboration of what he calls Kantian republicanism. Forst argues that the normative core of Kantian republicanism is moral and political autonomy, which means that all moral and political laws must be authored by those who are subject to these laws. Forst claims that this idea of autonomy is an expression of Kantian conception of moral respect to all individuals who are conceived as free and equal moral persons. As free and equal moral persons, persons are regarded having equal normative authority and therefore equal moral right to justification. Equal moral right to justification is specified by justifying claims to justice only on the basis of reciprocally and generally non-rejectable reasons. Only social and political orders that are normatively and institutionally guided by the equal moral right to justification should be considered just and therefore legitimate, that is, fully non-dominating and non-arbitrary. Thus, for Forst (2014b, p. 141), 'democracy, properly understood, is thus the political form of justice. Democracy, when interpreted in terms of its normative core, is not just one, but *the* practice of political and social justice' (my translation). Democracy is the necessary institutional expression of the idea of autonomy, equal moral right to justification. Thus, according to Forst, democracy should be conceived as the necessary institutional form of Kant's idea of equal right to freedom under universal law. Forst interprets Kant's idea of innate right to freedom as a

specification of fundamental moral right to justification to the moral context of political

justice. Therefore, Forst claims that Kantian idea of equal right to freedom can only be

realized only if individuals are guaranteed to have equal right to political participation to law-

making through institutional structures of democratic justification. On this basis, Forst argues

that individual claims to right to particular freedoms within a political normative order are

normatively derivative of justice as justification. He states that a claim to freedom is 'a claim

to a kind of liberty (and liberties) defined by what oneself and others can justifiably and justly

ask from one another in a basic social structure. . . . . Justice as justification determines which

freedoms are justified and what an arbitrary interference is in the first place' (Forst 2014a, p.

97).

From the point of view of Forst, then, the fundamental problem of political

philosophy, that is, reconciling individual freedom and political authority is resolved by

positing a necessary normative relationship between freedom from unjustified coercion and

democracy. Therefore, Forst can present a critical normative theory of justice, democracy and

legitimacy by grounding them in his idea of universal right to justification. Forst contends that

the justificatory context of individual moral rights is extra-political domain of moral

discourses. However, 'basic rights and principles . . . can only become legitimate law via

politically autonomous law-making' (Forst 2011, p. 110). On this basis, Forst argues that he

shows the co-originality of individual moral rights and democracy without either following

Habermas who derives rights from democratic procedures of law-making or following Rawls

who dissociates rights from democratic self-determination.

1.2

However, I argue that even if we grant that there is a universal right to justification,

Forst's argument for the necessity of democracy as the requirement of justice and the co-

originality of moral rights with democracy is not successful. As Stefan Gosepath argues, 'the

moral process of justification in universal moral terms does not result in the necessity for a democratic procedure in the political dimension' (Gosepath 2015, p. 202). Gosepath rightly claims that while Forst's idea of the right to justification can be a basis of justification of moral rights, Forst's idea of political autonomy as a specification of moral autonomy in the context of political justice cannot justify democracy. As Gosepath contends, a moral justification of democracy has to justify both why there should be an equal right to political participation in the law-making and why majority rule is a morally acceptable form of law-making. However, as Gosepath states, the idea of political autonomy as each individual's freedom to self-legislate can be considered as a justification of democracy, only if each individual participant to law-making actually consents to the outcome of the legislative process on the basis of reciprocal and general reasons. Thus, the idea of political autonomy cannot justify why majority rule is a morally justified form of political decision-making procedure particularly regarding the application of moral rights to actual contexts. Even if we assume that both majority and minority parties justified their decisions on the basis of reciprocal and general reasons, for the minority party the outcome is not morally justified. Thus, under majority rule, the minority do not self-legislate.

In this context, if individuals cannot have actual political autonomy in a democracy, despite the fact that all participants as law-makers adhere to the universal right to justification, then, Forst's idea of necessary normative interconnection between justice, democracy and legitimacy must be questioned. According to Forst (2014b), not only a just political order should be democratic, but also a democratic political order should be minimally just in order to deserve to be identified as democratic, even though it may not fulfill the demands of justice completely. Forst claims that democracy makes a minimally just society possible by its normative requirement of justification of laws on the basis of reciprocal and general non-rejectable reasons, and therefore, individual political decisions concerning individual

freedoms within a democratic political order can be considered neither democratic nor just decisions, if they could not be justifiable by reciprocal and general reasons. Moreover, for Forst, from a normative point of view, a political regime based on the equal rights to political participation cannot be identified as a democracy, if it does not justify its constitution and laws on the basis of reciprocal and general reasons. As a corollary, Forst claims that a non-democratic political regime cannot produce a just society. However, following Gosepath's argument, when the right to justification is dissociated from the idea of individual political autonomy, then, Forst's very strong claim that a non-democratic political order cannot be legitimate and just loses its force.

I argue that the claim that a fully just and fully legitimate political order should be democratic does not imply that only democratic political orders can be legitimate and minimally just. Assuming for the sake of argument that Forst is correct in grounding justice in the right to justification, Forst's mistake is supposing that a non-democratic political regime can be only an arbitrary political rule. However, it is reasonable to assume the possibility of a constitutional non-democratic political regime that recognizes all fundamental individual rights in its constitution. Such a regime can even organize its basic structure according to Rawls's difference principle. There is also no reasonable justification for assuming that such a non-democratic political constitutional order cannot legitimate publicly its constitution and individual laws on the basis of reciprocal and general reasons. As Forst argues, legitimacy is fundamentally a normative idea of public justification. Thus, we cannot argue that justification of laws on the basis of reciprocal and general reasons can only be possible by a particular institutional form of political authority. That all laws have to be publicly justifiable by reciprocal and general reasons is a political moral duty for all political authorities independent of their institutional forms. As much as a constitutional democracy, a constitutional non-democratic regime can also secure a free public sphere in which all

individuals can contribute to and critique political decisions of law-making authority. Such a political order may also institutionalize some advisory councils. When a non-democratic law-making authority justifies its political decisions properly by answering publicly expressed reasonable objections, then, we can normatively judge such a political order as almost fully legitimate, given that the right to justification is fully respected and practiced. The only difference between such a constitutional non-democracy and democracy would be the denial of equal right to participate in the exercise of political power, and in its recognition of basic rights, for instance by recognizing the right to same-sex marriage, a constitutional non-democracy can be even more just than a constitutional democracy.

The argument that the right to justification can be fully respected and practiced independently of institutional forms of political authority does not imply that there is no necessary normative connection between justice and democracy. As Forst argues, fully just political order is necessarily democratic, and justice and democracy are normatively grounded in the idea of freedom from arbitrary coercion. However, I argue that freedom from arbitrary coercion does not imply the moral right to justification as a grounding principle of all claims to political justice. Forst's argument must be reversed. Rather, properly understood, the idea of freedom as an innate right is the normatively prior and grounding principle of moral political duty to public justification in the context of political justice.

Georgia Warnke's (2013) discussion of Forst's idea of justification by reciprocal and general reasons helps us understand why Forst's argument is problematic for a conceptualization of justice and democracy. Warnke examines Forst's argument for the case of same-sex marriage. Forst argues that those who deny the right to same-sex marriage cannot justify their arguments by reciprocal and general reasons, if they deny others a right they themselves have and if they justify this denial on the basis of non-generalizable religious or ethical doctrines. I think that Warnke rightly claims that same-sex marriage can be justifiably

opposed without depending on non-generalizable religious or ethical doctrines. She argues that while all parties can accept the equal right to marriage, they may disagree over the definition of civil marriage. She states that while one of the parties can define civil marriage as the legal recognition of public respect for intimate relationships, the other party can understand marriage only as a union between partners who can engage in acts that are procreative in type. Thus, for this party, the right to same-sex marriage cannot be granted, as it cannot involve procreative acts in type. However, Warnke notes that this does not mean that others are denied a right that this party claims for herself, given that all adults are granted equal rights to marriage with the condition that they have natural capacities for what marriage requires, even if they can be defective regarding having these capacities or they may be unwilling to exercise these capacities in the relevant way. Therefore, Warnke argues that the right to same-sex marriage cannot be justifiable on the basis of reciprocal and general reasons, because the disagreement between opposing parties is not a reasonable disagreement over the priority or application of a basic right to a particular case. Rather, the disagreement depends on how marriage should be conceptualized (Warnke 2013, pp. 762-3).

In the context of Warnke's discussion of Forst, I argue that Forst's point of departure for political justice is wrong, as he starts from the idea of moral persons as ends in themselves, and as Seyla Benhabib also notes, 'Forst constructs basic rights as what individuals "owe one another, in a moral sense"' (Benhabib 2015, p. 788). Benhabib rightly criticizes Forst that '[b]asic human rights are most centrally part of a public vocabulary of political justice . . . and are not simply equivalent to what human beings "owe one another, in the moral sense' (Benhabib 2015, p. 788). Forst's assimilation of basic rights that must be respected by a political order into moral rights in a general sense may not be problematic regarding the formal contents of basic rights concerning political justice, and they may be formally identical. However, the problematic nature of Forst's argument for moral rights

becomes apparent when a political order has to apply these rights into specific contexts. According to Forst, basic rights are specified on the basis of reciprocal and general reasons. However, Warnke's criticism of Forst makes explicit why basic rights cannot be specified on the basis of reciprocal and general reasons. I think that from Forst's perspective, if parties to the debate can agree on the universal definition of marriage, then, it is perfectly reasonable to decide the right to marriage on the basis of such a definition of marriage. Forst cannot object to the justification of that right on the basis of a universal definition of marriage from the standpoint of his notion of freedom from arbitrary rule. One may claim that he can object to it due to its justification of the right on a conception of good. However, following Habermas, Forst does not in principle object to the legitimacy of laws based on ethical conceptions with the condition that they express universalizable interests. The justification of right to marriage on the basis of a universal definition of marriage can be considered as a justification on the basis of a universally accepted good. Therefore, it satisfies Forst's conditions of justice as justification, which justifies the limits of freedom. Warnke's discussion does not merely show that the problem in Forst's argument is simply the vagueness of criteria of reciprocity and generality, as rightly argued by Benhabib. Rather, I argue that the fundamental problem is that Forst's criteria of reciprocity and generality permit moral ends and universal goods in the contextual application of basic rights. Forst conceives the moral core of basic rights as non-juridical. Therefore, for Forst, basic rights are responsive to concrete needs and interests of moral persons, and therefore, no person can a priori object to the restriction of their personal freedom by universal moral and ethical ends appropriately justified.

1.3

However, I argue that a proper Kantian conception of political justice cannot be conceived from the standpoint of moral persons as ends in themselves. As Ripstein (2009) argues, the question of political justice is how an individual can be legitimately coerced,

regardless of her consent or autonomous willing. The question is not 'how people should interact, as a matter of ethics, but with how they can be forced to interact, as a matter of right' (Ripstein 2009, p. 14). Thus, in contrast to Forst's argument, the idea of right cannot be conceived in terms of non-juridical moral rights which then have to be secured and applied through a political authority. The fundamental right to freedom is conceptually pre-political, as it binds everyone without positive legislation by a political authority. But it is necessarily juridical, as it is the regulative principle of external actions of free persons, and therefore, it is conceptually identical to the authorization to coerce.

As a juridical idea, therefore, each person's innate right to freedom does not refer to moral persons' capacity for moral autonomy. Rather, the innate right to freedom is 'purely relational, purely a constraint on the ways in which others might interfere with your person' (Ripstein 2015, p. 10), and therefore, it cannot be made dependent on any person's concrete moral or non-moral ends or any end, regardless of the worth of these ends for an individual or humanity in general. Thus, the idea of right concerns only the co-existence of freely chosen actions of individuals, and political justice is the juridical condition that resolves possible conflicts of action in accordance with the universal law of right to freedom. Only in this sense, the right to freedom means freedom from arbitrary rule of not merely political authority but fundamentally from the arbitrary will of any private person. Arbitrariness does not emerge from someone's actions morally unjustifiable to any other person. Rather, arbitrariness corresponds to the juridical state of nature. As the innate right of any person's freedom of choice of action is identical with each person's entitlement to limit coercively others' freedom in accordance with the universal law of right, when there is no public judge, each person has the right to do 'what seems right and good to him' in cases of right disputes. Thus, freedom from arbitrary will can be possible only under a public authority. Public authority secures the

equal right to freedom of choice by institutionalizing a system of public right under which

right disputes are resolved by an impartial judge whose decisions are coercively enforceable.

In this context, the political form of public authority, whether it is democratic or non-

democratic, is irrelevant, because the legitimacy of public authority is an implication of

whether it institutionalizes a system of public right in accordance with a universal law of

freedom. In contrast to Forst's and Habermas's interpretations of Kant's conception of legal

order, a legitimate public authority is not a horizontal association of free and equal citizens.

Rather, public authority and subjects of law are related vertically, as argued by Katrin

Flikschuh in reference to Kant:

> The civil union (unio civilis) cannot itself be called a society, for between the commander (imperans) and the subject (subditus) there is no partnership. They are not fellow-members: one is subordinated to, not coordinated with the other; and those who are coordinate with one another must for this very reason consider themselves equals since they are subject to common laws. (cited in Flikschuh 2013, p. 181)

Public authority's political will is legitimate by virtue of its exercise of political power

through 'the general united will'. However, as Flikschuh (2012) claims, the general united

will should not be conceived as an affirmation of democratic co-legislation or collective self-

legislation. These forms of democratic law-making cannot be legitimate, as they relocate the

arbitrariness of private will into the domain of public law-making by subjecting the

authoritativeness of public laws to the consent of private individuals. However, by virtue of

their right to freedom, no one has an obligation to submit to the private judgments of any

individual. A public law-making and enforcement can be possible, only if legislators with the

coercive authority can override the wills of parties independently of their consent to public

laws. The legitimacy of public authority depends on its ruling according to the idea of the

general united will. However, the idea of the general united will is a purely normative idea

and it has 'no empirical reality: it . . . does not represent the (hypothetically) real unification

of a multitude of wills' (Flikschuh 2012, p. 41).

Therefore, the question of whether the ideal of political justice requires public authority to assume a democratic form cannot be grounded in the ideas of moral and political self-legislation. As I argued, from the standpoint of moral legitimacy, laws of a representative democracy are not more legitimate than a non-democratic public authority, as both authorities are obligated to legislate according to the idea of general united will. Dissociated from the idea of self-legislation and justification, thus, I argue that the idea of democracy as a political form only concerns by whom public coercive authority should be exercised. From that standpoint, the idea of democracy cannot be related to the epistemic quality of justifications of public laws, that is, there cannot be any argument that a majority decision would reflect a better application of the idea of general united will than a single person's decision. Epistemic quality is a contingent empirical fact, which depends on the quality of political culture and mostly on the political-moral education of political agents, collective and individual. Democracy cannot also be categorically justified as an institutional guarantee against arbitrary exercise of power, though it may be comparably a better political form to secure individuals' freedom against the arbitrary will of political authorities. However, conceptually, political will can be exercised arbitrarily under both democratic and non-democratic political forms. Rather, I argue that the idea of democratic exercise of political power should be grounded in each person's capacity to reason from the standpoint of universal law of freedom. I claim that even though a non-democratic authority is normatively legitimate and just from the standpoint of its subjects, a non-democratic authority still assumes, from a different viewpoint, a form of arbitrary exercise of political will without losing its universality. Individual subjects may reasonably disagree with the decision regarding both the content and justification. Subjects may not see the decision prudential, even though they may fully accept the normative content of the law. Or they may disagree about those decisions regarding public happiness. The question is not that the sovereign's decisions may be wrongly decided and applied; they can

be fully correct. However, each individual subject is in a position of epistemic uncertainty in relation to the sovereign position, and only by assuming the position of public authority they can be sure that the legislation and enforcement of public laws are in accordance with the idea of general united will. Therefore, the sovereign's political will is conceived as arbitrary, even though normatively legitimate. Thus, subjects cannot recognize public coercive authority as fully legitimate. Full legitimacy, then, requires equal possibility to hold the position of final authority. By virtue of their rational capacity to judge, each person can decide to whose coercive authority she should submit and therefore it is arbitrary to be subjected to any ruler who is not decided by the ruled. Then, in a democratic form of public authority, each person has an equal right to participate in the exercise of political power either directly by holding a political office or indirectly by voting. Each person's equality in the exercise of political power is secured by constitutionally guaranteed rights to the fair value of political liberties, free and fair process of election, and fair political representation in legislation. As each person participates in the exercise of political power as individual wills on the basis of equally valid claims to exercise public authority according to the idea of general united will, an ideal form of fair representation in the legislative bodies should be proportional to the votes each political candidate receives. Then, a plurality of representatives is authorized to act as a legislative power for the people within constitutional limits. Some form of majority rule is a necessary implication of democratic authorization of legislative body. As each representative is equally authorized to decide according to the idea of general united will, then, from the standpoint of legitimacy, each representative's decision is numerically equal, and therefore, some form of majority voting is a valid form of legislative decision-making within constitutionally authorized domains of legislation. Thus, political authority becomes fully reflexive, and the subjects of authority recognize their subjection to the exercise of political power fully legitimate.

1.4

I contend that Rawls's ideal conception of just constitutional democracy rests upon Kantian justification of political authority and democracy grounded in the idea of the right to freedom, which I elaborated above (see also Ripstein 2006). Accordingly, I claim that Rawls's idea of public reason fully corresponds to Kant's notion of the idea of general united will as a normative standard of just and legitimate public law-making and enforcement.

Flikschuh (2013, p. 188) claims that Rawls's idea of public reason is a form of collective self-legislation which is based on the justification of public laws according to the criteria of reasonable acceptability to each citizen. According to Flikschuh, for liberal notions of political legitimacy including Rawls's, each individual citizen is authorized to will proposed laws as public law by 'asking himself whether he could have passed the law as public law *for himself*' (Flikschuh 2010, p. 69) . However, for Kant, public laws can be legitimate only if they are legislated and enforced by a public authority, and private citizens as the subjects of the public authority have no authority to consider whether public laws are non-binding or not. Therefore, for Kant, as subjects, citizens' political role is limited to constituting a critical public sphere in which political judgment is submitted to public authority for its consideration. Thus, for Kant, 'the citizen asks herself whether, in her judgment, the *sovereign* could have passed a given law as public law for *everyone*' (Flikschuh 2010, p. 69). However, I argue that Rawls's idea of public reason is fully consistent with Kant's vertical conception of public authority and citizens' subordinate political role.

Rawls develops his idea of public reason as a normatively necessary aspect of his 'ideal normative conception of democratic government' (Rawls 1997, p. 766). He takes for granted that the ideal form of public authority should be a constitutional democracy and does not present a justification of why public authority should assume the form of constitutional democracy. However, Rawls's notion of public authority is not different from Kant's. Rawls

states that public authority is constituted as a public legal order exercising final authority (Rawls 1971, p. 236) and the idea of constitutional democracy is defined as the sovereignty of people as 'equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution' (Rawls 1996, p. 214). I claim that Rawls's definition of democracy as citizens' exercise of final authority over one another should not be interpreted as a form of liberal conception of political authority as a collective exercise of political power by individual private wills over each other. Rather, I argue that Rawls's idea of democracy is better understood in terms of my justification and conception of democracy as a political form of deciding public office-holders who exercise final authority over private citizens. Public reason is the normative standard for justifying the exercise of political power, which is equivalent to Kant's idea of general united will. In contrast to Flikschuh's claim, Rawls's idea of public reason does not refer to the subjection of normative legitimacy of public laws to their reasonable acceptability by individual citizens neither from their standpoints of conceptions of the right nor the good. Rawls explicitly argues that citizens elect their representatives as office-holders who are authorized to exercise final coercive political power. And ideally private citizens' political role is limited to holding public officials accountable according to the normative standards of the idea of public reason. As Rawls says, citizens should 'view themselves as ideal legislators, and [have] to repudiate government officials and candidates for public office who violate public reason. . . . citizens fulfill their duty of civility and support the idea of public reason by doing what they can to hold government officials to it' (Rawls 1997, p. 769). Therefore, similar to Kant, for Rawls, private citizens by viewing themselves as ideal legislators judge whether public laws are legislated for everyone, and each citizen is obligated to accept the legitimacy of laws justified by the idea of public reason, even if they regard that public officials applied the idea of public

reason incorrectly or they see laws enforced as contradicting their determinate conceptions of the good.

Therefore, I argue that Rawls's idea of public reason fully corresponds to Kant's idea of the general united will as a normative standard for public law-making and enforcement. As for Kant, Rawls's idea of public reason has no empirical reality. It does not express a procedure of legitimation for actual citizens' real or hypothetical consent. The idea of public reason is a constituent part of Rawls's ideal theory of justice as a critical normative theory. Rawls's ideal theory is a form of what Christine Chwaszcza (2013) calls *ideal constructivism*. As a form of ideal constructivism, Rawls's ideal theory is 'a purely hypothetical model' with no 'empirical "objects of reference"' (Chwaszcza 2013, p. 112). Rawls's purely hypothetical model aims 'to provide the reader with "true" understanding of philosophically contested concepts' (Chwaszcza 2013, p. 110) of political justice and legitimacy. Therefore, Rawls's ideal theory 'only describes what reality would be like *if* it were as it were ideally imagined' (Lalla 2012, p. 240). Even if an actual state of affairs corresponds to the idea of a fully just society, such a state of affairs cannot be conceived as an instantiation or realization of Rawls's ideal theory of justice. Rather, 'the theory would still only be an anticipation of a real application, not its *Aufhebung* into a transcendental reality' (Lalla 2012, p. 240). Thus, political theory's common understanding of the relationship between theory and political practice that a theory has to be a prescriptive in terms of providing concrete action-guiding norms and it has to be directly applicable is a misconception. Conversely, those political realist criticisms of Rawls's ideal theory as an applied moral philosophy are also mistaken. These are the bases of critiques of Rawls's ideal theory that it is not action-guiding or it has no practical political relevance. However, as a Kantian normative theory of justification and legitimation of individual freedom, the normative force of Rawls's ideal theory relies on common human understanding 'as an authority of absolute autonomy, in other words an

authority with which we do not only think through the hypothetical Original Position but due to it we should also build a concrete society according to an ideal of freedom . . . which cannot be legitimated as such on merely empirical grounds' (Lalla 2012, p. 234). Thus, Rawls's ideal theory of justice with its idea of public reason is fully Kantian.

In this context, the next chapter will elaborate on Rawls's idea of public reason in relation to his ideas of overlapping consensus and stability through a defence and reconstruction of Rawls's political conception of justice against Habermas's criticisms.

Chapter 2:
Two Contrasting Ideas of Political Justice
Rawls vs. Habermas

This chapter develops further the Kantian reformulation of Rawls's idea of public reason by discussing Rawls's ideas of stability and overlapping consensus in the context of Habermas's criticisms of Rawls. The chapter defends the normativity of Rawls's idea of public reason against Habermas's criticisms that Rawls's idea of overlapping consensus compromises the impartiality of normative content of his conception of justice by subjecting his conception of justice to its acceptance by existing worldviews of citizens. The chapter shows that Rawls's idea of public reason is sufficiently normative for resolving questions of political justice as conceived in Kantian terms, when Rawls's political conception of justice is conceived in terms of ideal theory.

2.1

My reconstruction of Rawls's idea of public reason as fully corresponding to Kant's idea of the general united will may be conceived as contradicting Rawls's own argument for the idea of public reason. In his *Political Liberalism*, he argues that he develops a very distinctive of idea of justification for political justice. He himself claims that the idea of public reason is a new notion he incorporated into his political conception of justice for the sake of resolving the stability problem of a just well-ordered democratic political society under the conditions of reasonable pluralism. As Rawls states, the idea of public reason is interrelated with the idea of overlapping consensus, which is another new idea introduced as a necessary condition of the stability of justice. Rawls claims that a stable conception of justice may be possible only if there can be an overlapping consensus over a conception of justice; and such an overlapping consensus can be possible, if a conception of justice is justifiable by common political values found in the public political culture and accepted by all citizens independently of conflicting conceptions of the good life. However, though common political

values are considered independent of conceptions of the good life, they should be supportable by citizens' conflicting but reasonable conceptions of the good life. The content of public reason is given by such common political values.

In this context, from a standpoint of normative political philosophy, by most of the readers of Rawls, his grounding of the idea of public reason in the idea of overlapping consensus for the sake of stability is conceived as depriving of public reason its normative critical political role regarding justice in a democratic society. For some critics of Rawls, the determination of the content of public reason by common political values results in weakening its normative critical role by disregarding the necessity of an impartial moral standpoint from which both those shared and non-shared values can be subject to critical political judgment (Rostboll 2008). However, other critiques claim that the main problem in Rawls's idea of public reason is its continuing commitment to the priority of impartiality in the form of shared political values, however weakened. Rawls's idea of public reason is criticized for its unresponsiveness to actual sufferings and needs of persons. According to such criticisms, the idea of public reason is conceived as an expression of the priority of the right as impartial norms of justice over the good. Thus, Rawls's idea of public reason is considered not sufficiently normative for judging justness of moral and political norms regarding ethical demands of individuals as embodied social beings (Azmanova 2012; Honneth 2014).

I argue that such critiques of Rawls's idea of public reason takes for granted a similar conception of political justice that Forst defends, regardless of whether and to what extent such critiques are committed to a conception of universalist morality and autonomy. Such normative critiques of Rawls presuppose that there are in principle non-coercively enforceable basic moral duties or norms that should guide human social co-existence, though, given factual social conditions, they should be coercively enforced over both reasonably disagreeing and non-compliant actors. Therefore, for such conceptions of justice, the question of

legitimacy of political coercion is a secondary issue, and the proper political question of justice is how to justify political norms that have then to be coercively enforced. The question of political coercion gains moral significance only by virtue of the possibility of enforcing norms unjustifiable by the relevant moral standards.

Miriam Bankovsky's (2012) work provides a useful perspective on how to understand the underlying commitments of such normative conceptions of justice. From a Derridean point of view, Bankovsky claims that a practically possible and normative critical conception of justice should respect equally both impartiality among all persons and the singularity of each person, even though both aspects cannot be fully reconciled in actuality. Therefore, coercive enforcement of norms of justice is legitimate, if they are justifiable to all parties as free and equal persons on the basis of principles of impartiality and singularity. Therefore, the relevant normative standard for assessing conceptions of justice is that how they cohere the principles of impartiality and singularity.

In this context, as assumed by common critiques of Rawls, Bankovsky takes for granted that Rawls is also committed to these basic principles of justice and she assesses his theory of justice from the standpoint of whether he succeeds in both theorizing conflicting demands of justice as impartiality and singularity and also in showing the practical possibility of his own theoretical construction of justice as a reconciliation of impartiality and singularity. According to her, due to reasons I outlined above with respect to various critiques of Rawls, Rawls failed in both aspects. She claims that Habermas's theory of justice is an improvement over Rawls's theory in terms of cohering the principles of impartiality and singularity. Therefore, from her perspective, Habermas's criticisms of Rawls's political conception of justice as a whole along with his idea of public reason are grounded in interrogating to what extent Rawls's theory is guided by a proper consideration of principles of impartiality and singularity in theory and in their application to actual contexts.

I think that Bankovsky is right in arguing that Habermas's theory of moral and political justice is guided by the principles of impartiality and singularity as a basis of justification of moral and political norms. Therefore, from my point of view, Habermas's understanding of political justice is grounded in a conception of justice comprised of right, duties and norms which are not intrinsically coercive. However, as I argued in the previous chapter, political justice concerns only securing the conditions of co-existence of the right to free choice of actions, and therefore, 'any hindrance to freedom in accordance with universal laws' should be coercively hindered (Ripstein 2008). Thus, the idea of right is intrinsically coercive. I also claimed that this idea of right underlies Rawls's idea of public reason and his conception of political justice. Therefore, while Habermas characterizes his argument with Rawls as a 'family quarrel', in fact, when their conceptions are reconstructed and therefore made explicit, it will be seen that there is a fundamental difference between Rawls and Habermas. Then, as a representative of normative critiques of Rawls, Habermas's criticisms of Rawls's idea of public reason in relation to the idea of stability connected with the idea of overlapping consensus rest on assumptions made from an external point of view rather than a thorough scrutiny of Rawls's arguments on his own terms.

In this regard, the question of whether Rawls's association of his idea of public reason with the ideas of stability and overlapping consensus deprives of his idea of public reason its normative critical role can be answered by an analysis of to what extent the ideas of stability and overlapping consensus are consistent with his idea of public reason as the normative standard for judging coercive public laws' consistency with the idea of right to freedom.

A critical examination of the debate between Rawls and Habermas provides a good entry point for an evaluation of Rawls's idea of public reason in relation to his arguments for the ideas of stability and overlapping consensus, as Rawls and Habermas seem to be committed on contrasting non-foundational philosophical reworking of basically common

underlying Kantian ideas of morality and political justice in response to their recognition of the specificity of modern conditions of pluralism (Hedrick 2010). Their disagreement is apparently over the scope of a conception of political justice that all persons as free and equal citizens can reasonably accept under modern conditions of pluralism.

2.2

Habermas argues that Rawls's argument for his idea of overlapping consensus is grounded in the nature of how Rawls constructs his original position as the justificatory device of his principles of justice. Habermas claims that Rawls's justice as fairness is not actually justified by the deliberations of hypothetical agents in the original position. Rather, according to Habermas, it rests on 'less the deliberations in the original position than the intuitions and basic concepts that guide the design of the original position itself' (Habermas 1995, p. 119). Habermas states that Rawls introduces into his hypothetical procedure of justification a normative conception of citizen as a moral person with the sense of fairness and the capacity for a conception of the good. According to Habermas, a justification of this introduction of citizen as a moral person has to be given, and moreover, 'it needs to be shown that this conception is neutral toward conflicting worldviews and remains uncontroversial after the veil of ignorance has been lifted' (Habermas 1995, p. 119). Habermas claims that it is because of this requirement of neutrality and acceptance that Rawls develops a political conception of justice, given the fact of pluralism. However, Habermas sees an ambiguity regarding the validity of Rawls's theory of justice in this method of construction of the procedure of justification. According to Habermas, while Rawls seems to employ the original position as a way of producing impartial principles of justice, the procedure actually depends on the normative conceptions that need to be justified, and both these presupposed normative conceptions and the outcome of the original position are required to be neutral towards and acceptable by conflicting worldviews, that is, there has to be an overlapping consensus on the

theory of justice. Thus, Habermas questions the role of the overlapping consensus regarding the justification of Rawls's theory, and he asks 'whether it primarily contributes to the further justification of the theory or whether it serves, in light of the prior justification of theory, to explicate a necessary condition of social stability' (Habermas 1995, p. 119).

Habermas argues that Rawls justifies his normative conceptions employed in the construction and reasoning of the original position through the method of reflective equilibrium. As presented by Habermas, in the method of reflective equilibrium, the philosopher constructs the conception of justice through the organization of intuitions, which are latent in the public political culture and democratic traditions and which cannot be reasonably rejected by everyone. However, Habermas states, given the fact of pluralism, Rawls then argues that the concept of justice constructed through the method of reflective equilibrium by the philosopher must be subjected to a further process of whether it can be accepted by citizens with conflicting worldviews. As noted in the previous paragraph, Habermas argues that we need to clarify how we should understand the relationship between the justification of the conception of justice by the philosopher and the requirement of its acceptance by citizens in order to answer whether this further process contributes to the cognitive validity of the conception of justice.

Habermas states that Rawls assumes that his argument for the overlapping consensus corresponds to his notion of self-stabilization of the well-ordered society developed in *A Theory of Justice*. According to Habermas, this is not an accurate representation of the argument for the idea of overlapping consensus. Habermas claims that the stability argument in Rawls's previous work is 'a hypothetical examination of the capacity of a society already organized in accordance with principles of justice to reproduce itself' (Habermas 1995, p. 121). However, Habermas argues that in his *Political Liberalism* Rawls introduces two stages. In the first stage, the principles of justice are worked out, and then in the second stage the

principles justified are delivered to the public to test their acceptance by citizens with conflicting worldviews. In this regard, Habermas claims that only after Rawls constructs his theory, the fact of pluralism is introduced and the veil of ignorance is lifted in order to test the acceptability of the theory of justice by the actual citizens of the society rather than by fictional citizens of a just society construed within the theory.

Habermas argues that when Rawls disregards the difference between his argument for the overlapping consensus and his previous notion of stability, this becomes problematic. Habermas contends that when the overlapping consensus is conceived within the framework of stability, 'the overlapping consensus merely expresses the functional contribution that the theory of justice can make to the peaceful institutionalization of social cooperation; but in this the intrinsic value of a *justified* theory must already be presupposed' (Habermas 1995, p. 121). Thus, Habermas claims that the test of public acceptability of the theory through the public use of reason would lose its epistemic meaning, and therefore, the overlapping consensus would not be a test of the validity of theory. Rather, it would only denote the acceptance of the theory in order to secure social stability. Habermas states that Rawls's development of his theory as a political conception reflects this equation of justified acceptability and actual acceptance.

In this context, Habermas argues that if Rawls does not accept such a functionalist interpretation of his theory, he has to accept 'some epistemic relation between the validity of his theory and the prospect of its neutrality toward competing worldviews being confirmed in public discourses' (Habermas 1995, p. 122). However, according to Habermas, Rawls refrains from advocating this conclusion by insisting on his conception as a political conception which does not claim to be true in terms of cognitive validity and which does not relate its stability to the rational acceptability of its assertions. Rawls presents his theory as reasonable rather than being true.

Habermas discerns two meanings of being 'reasonable' in Rawls. One meaning of the notion of reasonable corresponds to the normative validity of the conception of justice as being 'morally true', and the other one refers to the notion of tolerance in the face of reasonable disagreements among worldviews whose truth have not been decided. Habermas claims that Rawls favors the second meaning of reasonableness.

Habermas refers to Rawls's presentation of his notion of moral persons as reasonable persons who have a sense of justice and adopt the burdens of judgment. However, Habermas states that 'the concept of a person itself already presupposes the concept of practical reason' (Habermas 1995, p. 123). According to Habermas, Rawls's notion of practical reason has two dimensions, the deontological dimension of normative validity and the pragmatic dimension of public sphere and the process of public reasoning. According to Habermas, for Rawls, through the public use of reason, citizens mutually justify to each other what is just and unjust, and thereby, when mutually justified, citizens can identify their political judgments and their conceptions of justice as objective normative statements. In this respect, Habermas argues, for Rawls, 'the procedure of the public use of reason remains the final court of appeal for normative statements' (Habermas 1995, p. 124). However, Rawls rejects that his conception of justice is true in an epistemological sense. Thus, Habermas contends that Rawls should be attentive to the epistemological connotations of his notion of 'reasonable' for his conception of justice to be normatively binding.

As presented by Habermas, Rawls claims that comprehensive doctrines from religious worldviews to philosophical conceptions can be true or false. Thus, 'a political conception of justice could only be true if it were not merely compatible with such doctrines but also *derivable* from a true doctrine' (Habermas 1995, p. 125). However, as a conception of political justice should be neutral, we cannot identify such a true doctrine. Those doctrines that accept the neutrality of political justice in political philosophy are reasonable doctrines.

In this respect, Habermas concludes that reasonableness is ascribed to the worldviews which all equally claim to be true but leave the validation of their truth claims to the public use of reason for the sake of peaceful coexistence, given that they accept the burdens of judgment. Habermas then infers that the validity of a political conception of justice becomes contingent on the future validation of a truth claim of a reasonable comprehensive doctrine. However, under the existing conditions of pluralism, a reasonable comprehensive doctrine from which a political conception is derivable is only one of the reasonable worldviews that claim to be true. Thus, Habermas claims that the reflexive attitude of reasonable comprehensive doctrines is transferred to a political conception of justice, and therefore, a political conception that shows tolerance to reasonable worldviews is identified as reasonable. Habermas wonders how Rawls can account his priority of the right over the good, if a political conception is to be characterized by a mere reflective tolerance and does not claim to be true.

Habermas criticizes Rawls's ascription of truth claims to metaphysical or religious worldviews. Habermas argues that worldviews basically answer what he calls ethical questions. Ethical questions are about what is good for me or for us, and therefore, Habermas claims that ethical questions cannot be answered impartially, in contrast to the questions of justice or morality which must have impartial answers that have to be rationally acceptable to all affected. According to Habermas, under the conditions of postmetaphysical thinking, worldviews 'do not form a symbolic system that can be true or false as such' (Habermas 1995, p. 126). Thus, Habermas argues that 'it is impossible to make the validity of a conception of justice contingent on the truth of a worldview, however reasonable it may be' (Habermas 1995, p. 126). In this respect, Habermas conjectures that Rawls's reason to recognize truth claims of worldviews may be his adherence to a view that 'morality must be embedded in metaphysical or religious doctrines' (Habermas 1995, p. 126). Habermas states that this view would be in line with Rawls's presentation of the question of overlapping

consensus on the basis of the acceptance of freedom of belief and conscience to end the wars of religion. However, Habermas thinks that what ended the wars of religions is the appeal of freedom of belief and conscience to a moral validity independent of religion and metaphysics, and thereby, Habermas implies that Rawls conception of justice cannot give us morally valid answers to questions of political justice.

2.3

Rawls responds to Habermas's criticism of his notions of the overlapping consensus and reasonableness by elaborating how his political liberalism understands the justification of a political conception of justice. Rawls argues that political liberalism conceives of justification in three stages: first, *pro tanto* justification of the political conception; second, the full justification of that conception by an individual citizen; and thirdly, the public justification of the political conception by political society (Rawls 1995, p. 142).

The stage of *pro tanto* justification is the justification of a political conception by public reason. Public reason consists of only political values of the political domain, which are freestanding in the sense that they do not depend on any comprehensive doctrine. Since the *pro tanto* justification is restricted to the political values of the domain of the political, Rawls also calls this stage of justification as political justification. The circumscription of political justification to the domain of the political means that the political conception does not have an overriding normative force at this stage of justification for individual citizens, and therefore, when the political conception conflicts with the values of citizens' comprehensive doctrines, all things considered, it may be overridden.

The political conception should be justifiable by citizens' comprehensive doctrines in order to be normatively overriding. Rawls names this stage of justification as full justification. In the stage of full justification, individual citizens in the civil society embed the political

conception into their reasonable comprehensive doctrines and relate their nonpolitical values to the political values in their own ways.

When each citizen carries out the full justification of the political conception and knows that other citizens also do the full justification, then the political conception becomes publicly justified. This is the stage of the public justification of the political conception. However, Rawls argues that the dependence of public justification on the reasonable comprehensive doctrines does not imply that the normativity of a political conception is given by the express contents of these doctrines: '. . . citizens do not look into the content of others' doctrines, and so remain within the bounds of the political' (Rawls 1995, p. 144). Rather, by knowing that other citizens carried out the full justification, citizens only 'take into account and give some weight to only the fact – the existence – of the reasonable overlapping consensus itself" (Rawls 1995, p. 144). Thereby, the political conception becomes the common ground between all reasonable citizens in political society. Then Rawls relates the public justification to the ideas of stability for the right reasons and legitimacy, all of which assume the existence of a reasonable overlapping consensus.

Rawls's argument for the idea of stability for the right reasons clarifies his idea of public justification. Given the fact of reasonable pluralism, he argues that 'seeing whether an overlapping consensus is possible is a way of checking whether there are sufficient reasons for proposing justice as fairness (or some other reasonable doctrine) which can be sincerely defended before others without criticizing or rejecting their deepest religious and philosophical commitments' (Rawls 1995, p. 146). Rawls claims that when such an overlapping consensus is possible, we as citizens can see that each of us affirm a political conception of justice as a shared basis of reasons in the exercise of coercive political power. In this case, Rawls argues that 'the conditions for democratic legitimacy are fulfilled' (Rawls 1995, p. 146), and the stability for the right reasons is achieved.

However, Rawls notes that there is the question of how can public justification of the political conception be carried out, that is, how citizens can accept the priority of a political conception when the nonpolitical values of their comprehensive doctrines conflict with the political values, given that the political justification of a political conception is always *pro tanto*. Rawls bases the possibility of public justification on the assumptions of reasonableness of citizens and the idea of legitimacy.

Rawls argues that reasonable comprehensive doctrines are held by reasonable citizens, and reasonable citizens accept to live together according to the fair terms of social cooperation, and therefore, reasonable citizens 'may well judge from within their reasonable comprehensive doctrines that political values are very great values to be realized in the framework of their political and social existence' (Rawls 1995, p. 148).

The idea of legitimacy is related to the cases of the exercises of political power in the face of disagreements. Rawls says that reasonable citizens accept the distinction between a just and legitimate constitution with fair procedures of decision-making and the legitimacy of particular decisions which may not be regarded as just. When the political power is exercised in accordance with a reasonably acceptable constitution, reasonable citizens judge the exercise of political power as legitimate.

Rawls explicates his idea of legitimacy through the example of Quakers who refuse to engage in war but maintain their support to a democratic constitution and its fundamental political values, even when a democratic government may decide to wage war. Rawls argues that Quakers may accept the priority of the fundamental political values of a democratic constitution, since they may see these constitutional political values in accord with what their religious doctrine requires of them to respect. Thus, from within their religious doctrine, even though they may see some policies of a democratic government as unjust, they may stably accept the political authority of a just constitutional democratic government.

In this context of his elaboration of three-stage justification of political conception, Rawls claims that he answered Habermas's criticisms of his notion of overlapping consensus. Rawls argues that how the idea of overlapping consensus is related to the justification of the political conception is given by the third stage of justification, public justification together with its connection to the ideas of stability for the right reasons and legitimacy, all of which presuppose 'the existence and public knowledge of a reasonable overlapping consensus' (Rawls 1995, p. 147).

Regarding Habermas's criticisms of Rawls's idea of the reasonable that political liberalism cannot avoid the questions of truth and philosophical conceptions of person, Rawls merely expresses that until it is shown that the idea of reasonable cannot be specified within a political conception of justice, this is enough for political liberalism not to give further arguments. According to Rawls, 'the main lines of the distinction between the reasonable and both the true and rational are clear enough to show the plausibility of the idea of social unity secured by a reasonable overlapping consensus' (Rawls 1995, p. 150).

2.4

However, Habermas is not convinced by Rawls's response. After Rawls's response, in his later discussion of Rawls's conception of reasonable, Habermas (1998) reiterates and further elaborates the same criticisms he made in his first article. He emphasizes that Rawls's notion of public justification is not actually public and shared, since it rests on the convergence of each citizen on a political conception as an outcome of their individual reasoning on the basis of their nonpublic reasons of worldviews. Thus, Habermas claims that Rawls's elaboration of three kinds of justification 'lacks a perspective of impartial judgment and a public use of reason in the strict sense, which would not be contingent on the overlapping consensus but would be shared *from the beginning*' (Habermas 1998, p. 91).

Habermas argues that when Rawls delivers his *pro tanto* justified conception of justice to actual citizens to be tested whether its claim to impartiality is justified, this in fact compromises the impartiality of conceptions of justice. Habermas claims that Rawls makes the content of a political conception of justice be defined by the convergence of existing reasonable comprehensive doctrines in actual democratic societies on a conception of justice, and therefore, citizens have a veto power over the adoption of a political conception of justice on the basis of their existing reasonable comprehensive doctrines, if a political conception is seen as contradicting their comprehensive doctrines. Thus, Habermas claims that citizens have the final word, and this necessarily follows from political liberalism's commitment to the political autonomy of citizens.

Rather, Habermas argues that reasonable political conceptions must be accepted from the impartial standpoint. From the beginning of the process of reaching public agreement on conceptions of justice, citizens should adopt the impartial, moral point of view in their public use of reason. Thus, in contrast to Rawls's public justification, Habermas claims that 'The rational acceptability of the outcome – be it "justice as fairness" or some other conception – would not be established by the mutual observation of an established consensus; instead authorizing force would devolve to conditions of discourse, formal features of discursive processes, which compel participants to adopt the standpoint of impartial judgment' (Habermas 1998, p. 96).

Regarding the question of impartiality of his conception of justice, Rawls rejects Habermas's interpretation. He argues that the idea of consensus in political liberalism is the idea of a *reasonable overlapping consensus*. He restates his argument in *Political Liberalism* that 'the political conception of justice is worked out first as a freestanding view that can be justified *pro tanto* without looking to, or trying to fit, or even knowing what are, the existing comprehensive doctrines' (Rawls 1995, p. 145). Thereby, when a political conception is

developed as a freestanding conception based solely on the ideas of the political domain, all reasonable doctrines can endorse the political conception. Moreover, Rawls argues that such a political conception 'in fact will have the capacity to shape those doctrines toward itself' (Rawls 1995, p. 145).

Habermas finds this presentation of reasonable overlapping consensus as similar to his own notion of impartial justification, though developed in a different manner. He refers to Rawls's adherence to the principles of political constructivism, representing the objective point of view through which reasonable principles of justice are constructed and *pro tanto* justified. However, according to Habermas, to be consistent with his own notion of impartial justification, the reasonableness of reasonable comprehensive doctrines should be defined by the impartial standpoint of morality. Habermas infers that since the impartial perspective is given by Rawls's *pro tanto* justified political conception, the moral point of view is also given to citizens by the philosopher. Habermas supports his argument by his interpretation of Rawls's ascription to the political conception a structuring force that moves reasonable doctrines toward itself. Habermas reads the attractive force of the political conception as the philosophical proposal's '*structuring* influence on the citizens' worldviews' (Habermas 1998, pp. 96-7). Habermas claims that 'On this conception the philosopher would administer an objective point of view to which the citizens have to *adapt* their comprehensive doctrines' (Habermas 1998, p. 97). Thus, Habermas concludes that this is not compatible with Rawls's claim that he does not conceive the philosopher as having a privileged authority in the determination of conceptions of justice and that he merely proposes his conception of justice in the role of a citizen having equal authority with all other citizens.

2.5

We can grant Habermas's argument that Rawls makes the justification of his political conception of justice contingent on the overlapping consensus of comprehensive doctrines on

the basis of their nonpublic reasons. However, this does not mean that Rawls leaves the reasonable comprehensive doctrines as 'the *ultimate* arbiters' (Habermas 1998, p. 95) of a political conception of justice, at least not in the sense Habermas argued. Nor does Rawls's notion of the reasonable overlapping consensus compromise the political autonomy of citizens. Habermas's insistence on his previous objections after Rawls's response shows that a proper response to Habermas needs to be more explicative of Rawls's political conception. In the end, from Habermas's point of view, one may conclude that Rawls's political liberalism is not a plausible project, but I argue that Habermas's current criticisms of Rawls are not satisfying, provided that Rawls's political liberalism is properly interpreted.

A proper interpretation of Rawls's political liberalism should begin by clarifying why Rawls regards the fact of reasonable pluralism as the guiding idea of his reformulation of his previous conception of justice as fairness as a political conception of justice. We should firstly emphasize that Rawls works within the framework of what he calls the ideal theory. He assumes a democratic society that is well-ordered, and aims to find a conception of justice for the regulation of the basic structure of a well-ordered society. Everyone in the well-ordered society is a free and equal reasonable and rational person, and they accept and know that all other members accept the principles of justice; and it is publicly known that the basic structure is regulated by the principles of justice; and each member has a strong sense of justice and normally acts as justice requires, provided they are assured that others do their part. That is, the principles of justice that regulate the basic structure must be mutually acceptable and stable. Rawls argues that what led him to rework his justice as fairness as a political conception is his recognition that justice as fairness as developed in *A Theory of Justice* cannot be a stable conception, given that a free democratic society is necessarily characterized by the fact of reasonable pluralism, by the existence of irreconcilable but reasonable comprehensive religious, moral, or philosophical doctrines. Rawls conceives the

question of stability as the question of the reconciliation of the reasonable and rational

capacities of free and equal citizens of a just democratic society. Rawls claims that a well-

ordered society regulated by the principles of justice will generate a strong sense of justice in

citizens. However, despite citizens acquire a strong sense of justice, the question of stability

still remains, since citizens may not prioritize their sense of justice over their rational capacity

for a conception of the good, if they see a conflict between their sense of justice and their

conceptions of the good (Weithman 2010; 2015). Thus, Rawls argues that the question of

stability can be resolved, if it can be shown that citizens of a well-ordered society can regard

their sense of justice and its priority as a part of their conceptions of the good. Under the

conditions of reasonable pluralism in a democratic society, Rawls claims that citizens can see

their sense of justice as a part of their conceptions of the good, only if a conception of justice

is worked out as a political, freestanding conception, which is independent of comprehensive

religious, moral, and philosophical doctrines.

I contend that Rawls's aforementioned argument for the requirement of a freestanding

political conception can be best understood from my Kantian reconstruction of Rawls's

conception of political justice as concerning the equal right to freedom.

In this respect, I argue that Rawls's arguments for the ideas of stability and

overlapping consensus respond to a very specific problem that stems from the fact that

political justice is secured whenever persons comply with the duties of right, regardless of

their motivation. As political justice is concerned only with the co-existence of free choice of

actions, as long as persons act in accordance with the duties of right, for political justice, it is

irrelevant whether persons act from moral duty or they act from their non-moral reasons

including fear from punishment. By its very nature of acting from duty, no one can be coerced

to act from moral duty, and everyone can be coerced to comply with the duties of right,

whenever they violate the universal law of freedom. Thus, there cannot be any assurance that

when persons find themselves in a situation in which their rational good conflict with the duties of right, they comply with the duties of right. Then, the practical possibility of a just political society is empirically contingent on the motivations of persons to comply with the duties of right. Whether someone complies with the duty of right can only be assured, if she is normally motivated to act from moral duty. Rawls's stability argument is about showing that it can be rationally demonstrated that persons can normally act from moral duty under a fully just society. As political justice is necessarily motivationally neutral, political justice cannot demand from persons that they act from moral duty whenever their rational good conflicts with justice. Therefore, in my view, Rawls rightly maintains that the stability of justice can be rationally demonstrated only by showing that persons can see acting from moral duty as a good either as congruent with or as acceptable from their point of view of rational good. In *A Theory of Justice*, Rawls claims that the good of justice is that 'acting justly is something we want to do as free and equal rational beings' (Rawls 1971, p. 572). However, to ground persons' desire to be just in their capacity of free choice presupposes freedom of choice as a self-standing ultimate value. For all persons to conceive their freedom of choice as a self-standing ultimate value can only be possible, if all persons adopt a universal conception of human moral nature. However, as Rawls recognizes afterwards, from the standpoint of political justice, to expect from all persons to acknowledge freedom of choice as an ultimate value is not a reasonable anticipation. As political justice basically concerns securing the conditions of free choice of action and publicly acknowledges all persons' equal right to freedom of choice regardless of their actions' purpose, there cannot be any assurance that all persons would be committed to a universal morality that conceives freedom of choice as a self-standing ultimate value. All persons are free to develop their own self-conceptions of value of their freedom of choice. They are free to ground their freedom of choice in various conceptions of religious or secular morality or what Rawls calls *reasonable comprehensive*

doctrines. In my view, this is how Rawls's *the fact of reasonable pluralism* should be understood. Thus, for the stability of justice, it is enough that each person accepts the priority of the value of freedom of choice and its rightful exercise within their own rational self-conceptions. Then, as Rawls describes, an *overlapping consensus* would obtain. Therefore, the facts of reasonable pluralism and overlapping consensus are not brute sociological facts. Rather, they are hypothetical factual assumptions of ideal theory introduced in order to demonstrate the conditions of stability of justice. To what extent these facts obtain in actual empirical world is inconsequential for the stability argument.

My argument that Rawls's stability argument is rooted in his Kantian conception of political justice as securing the equal right to freedom can be clearly understood, if we consider how Rawls describes his idea of freedom and equality of citizens. As Rawls says, citizens view themselves equally as free by virtue of their capacity for a conception of the good. In a just democratic society, all citizens have the equal right to pursue their conceptions of the good within the limits of justice. This equal right to freedom is expressed in citizens' conception of themselves as 'self-authenticating sources of valid claims. That is, they regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good (provided these conceptions fall within the range permitted by the public conception of justice)' (Rawls 1996, p. 32). This idea of freedom is at the heart of Rawls's conception of justice, and the hypothetical device of original position is constructed so as to represent citizens' equal right to freedom. While Habermas argues that Rawls needs to justify his conception of freedom, as Bohman notes, for Rawls, 'moral freedom simply consists in regarding oneself and others as "self-originating and self-authenticating sources of valid claims" . . . . [and therefore], the demand for freedom is its own justification' (Bohman 2012, p. 327). Given that the fact of reasonable pluralism is the natural outcome of citizens' freedom through their exercise of their two moral powers in a just democratic society, and as

a corollary of the fact of reasonable pluralism, 'there is no shared public basis to distinguish the true beliefs from the false' (Rawls 1996, p. 128), and since citizens make their valid claims regarding their freedom of choice on the basis of their reasonable comprehensive doctrines, for a conception of justice to be consistent with citizens' equal right to freedom, a conception of justice should neither be justified by a reasonable comprehensive doctrine nor should its acceptance depend on citizens' support or adoption of the goods of a comprehensive doctrine. Otherwise, to act justly, citizens would have to either abandon their conceptions of the good or subject themselves to others' conceptions of the good, or they maintain their continued adherence to their own conceptions of the good and they could not act justly. All of these are violations of citizens' exercise of their two moral powers. Therefore, citizens cannot consistently act as justice requires, and there would be a question of stability. Then, it follows that a conception of justice should be a freestanding, political conception. Rawls argues that a just society regulated by a political conception of justice will generate a strong desire to be just. However, as I argued, it still needs to be shown that citizens would act justly, even when their conceptions of the good conflict with the political conception of justice. Rawls argues that this can be shown only if an overlapping consensus of reasonable comprehensive doctrines over the political conception of justice is possible. That is, the stability of a political conception of justice is secured, when each citizen can regard, from within their own reasonable comprehensive doctrines, their sense of justice and the political goods of a political conception as a part of their conceptions of the good and as prior to non-political values of their conceptions of the good. In other words, when there is an overlapping consensus, citizens see the reasonable conception of justice as consistent with their freedom of choice.

In the context of the foregoing account of Rawls's political conception, Habermas is not right to argue that Rawls is wrong in his assumption that his notion of overlapping

consensus is a test of self-stabilization of the well-ordered society. Habermas interprets Rawls's overlapping consensus as a test of acceptance of the political conception by citizens of an actual democratic society. However, as I argued, Rawls still works within the ideal theory, and by pointing out the possibility of overlapping consensus in a just well-ordered democratic society regulated by a political conception, he aims to show that a political conception of justice can be stable without violating citizens' equal right to freedom. On this basis, Habermas's worries over the moral justification of a political conception regarding the role of overlapping consensus can be overcome. When conceived as a question of stability within the ideal theory, as I argued, we can see that Rawls introduces the overlapping consensus neither as a further moral justification nor as a functional contribution to the peaceful institutionalization of the political conception. The political conception is morally justified by the representational device of the original position, and this is a public knowledge present in the public political culture of the well-ordered society. Reasonable comprehensive doctrines do not play any role in the determination of the normative content of political justice. However, the role of overlapping consensus is not also securing the social stability of already institutionalized and justified conception of political justice. This would imply accepting the veto power of citizens on the basis of their existing reasonable comprehensive doctrines for the sake of social peace in order to redress the political conception to accommodate worldviews of citizens, as rightly criticized by Habermas. However, what Rawls claims concerns only the possibility of the overlapping consensus in a just society, and as he argues, the overlapping consensus is made possible by the structuring force of a political conception which compels the reasonable comprehensive doctrines to converge on it. Habermas misreads Rawls, when he thinks that the structuring force ascribed to the political conception by Rawls is the philosophically justified political conception of justice delivered to actual citizens of existing democratic societies, as if Rawls as a philosopher claims to have

an authority over citizens. Rather, the structuring influence of the political conception that Rawls speaks of comes from the educative effects of full publicity of the political conception of justice in the public political culture of the well-ordered society together with the just governance of the basic structure. There is therefore no violation of the political autonomy of citizens, and it is the education of citizens to the political ideals of a political conception of justice in public culture that makes the overlapping consensus possible without compromising the moral objectivity of political justice.

Rawls's three kinds of justification should also be thought in this context of the education of citizens by the already institutionalized political conception of justice in the well-ordered society. They do not represent a conceptual presentation of how a conception of justice can be defended in an actual democratic society, as Habermas argued. As Rawls states in his presentation of the three kinds of justification, he presupposes the fact of reasonable overlapping consensus, and in this context he aims to clarify how citizens, individually and collectively, can accept the priority of political values of a reasonable political conception governing the basic structure. This means that Rawls's three kinds of justification do not define the moral content of political justice. They only denote how citizens can accept and maintain their adherence to the political values of political justice as specifications of the innate right to freedom, that is, how a political conception can be stable for the right reasons. Public reason specified by a reasonable political conception is already presupposed. When the political domain is governed by the idea of public reason, citizens can, on due reflection, see that there is a common standpoint through which they can adjudicate their claims of justice. In this case, a political conception has a political justification for citizens, and when citizens embed the political conception into their reasonable comprehensive doctrines, they normally prioritize the political values over the non-political values of their comprehensive doctrines, and thereby, the political conception has a full justification for an individual citizen. When

each citizen achieves the full justification and knows that they all achieved the full justification, then, the political conception is publicly justified, meaning that each citizen knows that all citizens normally prioritize the political values over their non-political values. In that sense, the moral content of political justice is not contingent on the overlapping consensus. We can say that the justification of political justice is contingent on the overlapping consensus, only if we remember that the specific problem Rawls tries to address is the question of the stability of justice, that is, how citizens can endorse a conception of justice, when they may not accept its priority from within their reasonable doctrines. Rawls thinks that the problem can be resolved, if it can be demonstrated that each citizen can give a rational justification of the political conception from within their own reasonable comprehensive doctrines, assuming the reasonableness of citizens and their desire to be just. Public justification already assumes the impartial standpoint of justice given by the original position and expressed in the idea of public reason in the political society. Moreover, it is by virtue of the practice of public reason that the overlapping consensus, and therefore, full and public justification become possible. When the political justice is applied by the use of public reason, citizens can see that the political justice does not deny their equal right to freedom for a conception of the good.

In this context of the stability argument, we can understand Rawls's novelty of the idea of public reason. As I have argued, as a normative standard of political justification, Rawls's idea of public reason is identical with Kant's idea of the general united will, and in this respect, Rawls's idea of public reason adds nothing new. His novel contribution is to relate the idea of public reason to the question of stability as it relates to the exercise of political power in the context of a just constitutional democracy.

As those public office-holders of a democratic public authority are decided by citizens holding reasonable comprehensive doctrines and those exercising political power also hold

reasonable comprehensive doctrines, the stability of justice depends on the assurance that both public officials and citizens would accept the priority of justice over their other goods within their own reasonable comprehensive doctrines. In this respect, Rawls reformulates political justice as a freestanding conception independent of comprehensive doctrines and specifies the idea of public reason in terms of purely political principles of justice. As the idea of public reason is the normative standard for the exercise of political power and political judgment, then, when public officials and private citizens act from and follow the idea of public reason specified into a freestanding idea, everyone is assured that each person is free to ground their acting justly within their own comprehensive doctrines. When public laws conflict with reasonable comprehensive doctrines' values not justifiable by the idea of public reason, the freestandingness of public reason ensures the neutrality of justice with regard to persons' motivation to act from moral duty and persons can maintain their adherence to their comprehensive doctrine as a ground of the priority of justice. As Rawls shows in his example of the Quakers, even though the application of a political conception can lead to outcomes that may conflict with the values of a reasonable comprehensive doctrine, citizens can still endorse the priority of the political conception, since the political conception is applied by the use of public reason whose content is specified by shared fundamental political values citizens can find good reasons to endorse from within their comprehensive doctrines. Thus, the overlapping consensus does not rest on 'a private use of reason with public-political intent' (Habermas 1998, p. 91), as Habermas claims. Rather, we may say that it is the reverse. The overlapping consensus depends on the use of public reason with private intent, since citizens accept the use of public reason already regulating the political society on the basis of their non-shared conceptions of the good. When citizens use public reason, they may regard themselves as not only acting from a public conception of justice but also as pursuing or acting in accordance with their conceptions of the good. Therefore, the idea of public reason

is one of the preconditions of public justification of the political conception in Rawls's sense. In this context, Rawls's idea of public reason as the normative standard of political legitimacy becomes a novel contribution to political philosophy.

However, Habermas would still object to the foregoing description of Rawls's notion of overlapping consensus. Even though the moral justification is not contingent on the overlapping consensus, Habermas would argue that citizens do not regard the priority of the political justice on the basis of same rational reasons. The force of this objection does not seem to be strong. Habermas's insistence on the same reasons stems from his concerns that the moral objectivity of justice is undermined, if justice depends on the acceptance of the reasonable comprehensive doctrines. However, as I argued, this is not the case. Habermas must show that not only the moral objectivity but also the stability of justice does depend on 'the acceptance of everyone for the same reasons' (Habermas 1998, p. 86). Habermas thinks that the stability of justice can be assured, if citizens accept the epistemological validity and therefore the truth of conceptions of justice. In this respect, he does not regard the fact of reasonable pluralism as a problem, leaving aside whether this idea is consistent with the idea of political justice as intrinsically coercive. Habermas would say that his notion of justice depends on a procedural conception of rationality and morality which is neutral towards worldviews of citizens and does not prescribe a conception of the good, and therefore it can be stable. However, as Anthony Laden states, 'One cannot merely transform a comprehensive doctrine into a political conception by extracting its claims about political matters and seeing them if they can stand alone' (Laden 2011, p. 147). Habermas makes the validity of claims of justice dependent upon a particular philosophical conception of rationality, truth and morality. Therefore, citizens' acceptance of such claims of justice would require their acceptance of Habermas's philosophical conception. To demand from citizens to accept Habermas's philosophical conception would amount to demand from them to accept it as regulative of

their conceptions of the good even in the non-political domain. However, from the standpoint of political justice, even if we assume that Habermas's idea of justice is consistent with the equal right to freedom, citizens cannot be reasonably expected to accept Habermas's philosophical conception, since that would be regarded by them as an imposition of a particular conception of the good they have the right not to endorse. Therefore, such a just political society cannot be stable for the right reasons. In this context, assuming that the subject of political justice is citizens' equal right to freedom, given the fact of reasonable pluralism, Rawls argues that a conception of justice regulating the domain of political should be formulated as reasonable rather than true.

2.6

Habermas thinks that Rawls's method of avoidance together with the notion of overlapping consensus substitutes a conception of freedom as ethical-existential self-determination for the Kantian concept of autonomy as moral freedom. According to Habermas, ethical understanding of freedom refers to individual or collective self-understandings of the good life. Therefore, Habermas claims that ethical conceptions are context-dependent and they do not claim universal validity; rather, ethical discourses answer the question of what is good for me or for us. Thus, Habermas says that we cannot agree on the resolution of ethical disputes over the questions of the good life. In contrast to ethical questions, Habermas claims that 'moral questions and questions of political justice admit in principle of universally valid answers' (Habermas 1998, p. 99), 'because they are concerned with what, from an ideally expanded perspective, is in the equal interest of all' (Habermas 1995, p. 125). Hence, Habermas maintains that moral norms cannot be obtained from ethical conceptions. He then relates the difference between ethical conceptions and moral norms to his and Rawls's differing notions of autonomy. He argues that Rawls emphasizes ethical-existential self-determination, which means that 'a person is free when he accepts authorship

for his own life' (Habermas 1998, p. 100). However, for Habermas, 'autonomy is the self-binding of the will by maxims we adopt on the basis of *insight*' (Habermas 1998, p. 100). According to Habermas, this difference expresses 'the underlying intuitions that inform [their theories of political justice]' (Habermas 1998, p. 100).

Habermas claims that the point of departure of Rawls's political liberalism is the protection of individual ways of life from the state interference. Thus, Habermas contends, political liberalism takes for granted the separation of public and private spheres. In this conception, 'rights are *liberties*, protective barriers for private autonomy' (Habermas 1998, p. 113). Habermas claims that when rights are conceived in terms of liberties for the free pursuit of one's own conception of the good, then the domain of public autonomy through which rights are determined becomes an instrument for the realization of private autonomy. In this regard, Habermas implies that Rawls relegates the source of private autonomy of citizens to a pre-political realm and the political domain of rights-making is endowed with a merely functional task to facilitate the private autonomy of persons. Therefore, according to Habermas, Rawls does not regard public autonomy as a constitutive dimension of freedom of citizens, and he maintains an instrumentalist understanding of public autonomy as participation in the practice of political self-legislation.

Habermas notes that Rawls starts from an idea of political autonomy, which is modeled at the level of original position. However, Habermas claims, this idea of political autonomy does not achieve a real existence in the practices of real citizens. He argues that given that the principles and norms are given by the original position and they are institutionalized constitutionally on this basis, actual citizens become devoid of political self-determination. According to Habermas, therefore, citizens 'cannot ignite the radical democratic embers of the original position in the civic life of their society, for from their perspective all of the *essential* discourses of legitimation have already taken place within the

theory' (Habermas 1995, p. 128). Thus, Habermas claims that Rawls's understanding of public reason does not express an exercise of political autonomy of citizens; rather, Rawls's idea of public reason functions merely as a means of political stability. Habermas argues that this leads Rawls to assume a rigid boundary between the public and private identities of citizens and to espouse an understanding of basic liberal rights as a constraint on the democratic self-legislation of citizens against the private identity of citizens. Therefore, Habermas claims that 'with reference to the political value sphere, a prepolitical domain of liberties is delimited which is withdrawn from the reach of democratic self-legislation' (Habermas 1995, p. 129).

Against Rawls's political liberalism characterized by an understanding of political autonomy which is constrained by prepolitical liberties, as conceived by Habermas, Habermas advocates what he calls Kantian Republicanism. Habermas argues that freedom cannot be conceived as negative liberties in terms of reciprocal restrictions. Rather, he claims that 'correct restrictions are the result of a process of self-legislation conducted jointly' (Habermas 1998, p. 101). In this respect, he states that 'the public use of reason, legally institutionalized in the democratic process, provides the key for guaranteeing equal freedoms' (Habermas 1998, p. 101). Therefore, Habermas criticizes Rawls for affirming the predetermination of basic liberal rights to protect private autonomy of citizens. Habermas states that assuming a priori boundary between private and public autonomy contradicts both the republican understanding of co-originality of popular sovereignty and human rights and the historical experience of changing conceptions of public and private spheres. He maintains that moral freedom takes the form of public and private autonomy at the level of the domain of the political which is characterized by the coercive lawmaking, and therefore, the legal medium assumes the task of constituting historically changing boundaries of the private and the public through 'the democratic process . . . so as to secure equal freedoms for all citizens in the form

of both private and public autonomy' (Habermas 1998, p. 101). Habermas derives the co-originality of private and public autonomy from his understanding of the nature of modern coercive law. He argues that the addressees of modern law are persons constituted as legal subjects, and legal subjects are defined 'in terms of actionable subjective liberties that may be exercised by each according to her own preferences' (Habermas 1995, p. 130). However, the codification of law requires a political legislator, and the legitimacy of legislation is given by 'a democratic procedure that secures the autonomy of the citizens' (Habermas 1995, p. 130). The co-originality of private and public autonomy is implicated in the fact that for citizens to be entitled to law-making, their rights to participate in the law-making must be codified legally. However, Habermas claims, because persons cannot gain the status of legal subjects without subjective private rights, 'the private and public autonomy of citizens *mutually* presuppose each other' (Habermas 1995, p. 130).

2.7

Rawls does not accept Habermas's criticism that the determination and institutionalization of principles of justice are beyond the control of actual citizens under political liberalism. Rawls notes that the principles of a political conception of justice given by the original position are a constituent of framework of thought that citizens use in civil society as a guidance to their political judgments of justice. Furthermore, the political conception itself is always open to revision on the basis of our reflective considered judgments (Rawls 1995, p. 153).

Regarding Habermas's argument that Rawls's public reason does not involve the exercise of political autonomy, Rawls contends that

> citizens gain full political autonomy when they live under a reasonably just constitution securing their liberty and equality, with all of the appropriate subordinate laws and precepts regulating the basic structure, and when they also fully comprehend and endorse this constitution and its laws, as well as adjust and revise them as changing social circumstances require, always suitably moved by their sense of justice and the other political virtues. (Rawls 1995, p. 155)

He adds that to the extent that the constitution and laws are unjust and imperfect, citizens are involved in changing them in order to achieve full political autonomy. Thus, Rawls concludes that he also understands the constitution-making as a project and therefore he regards citizens as politically autonomous in a similar way to Habermas. However, we should note that Rawls's answer to Habermas with respect to the relationship between political autonomy and constitution-making cannot convince Habermas. In the sense that Rawls accepts the political agency of citizens of actual democracies in reforming their societies, Rawls recognizes the political autonomy of citizens. However, Habermas's objection is that citizens should themselves be the actual authors of principles of justice that will be materialized in the constitutions through political participation into democratic political procedures, and the outcome of democratic procedures confers legitimacy on the constitutions. In contrast to Habermas, Rawls does not think that a just constitution can be the product of actual democratic procedures. As he states, '[t]he idea of right and just constitutions and basic laws is always ascertained by the most reasonable political conception of justice and not by the result of an actual political process' (Rawls 1996, p. 233). In this sense, Habermas is correct that Rawls relegates the determination of just constitutions outside the political autonomy of citizens. In the well-ordered society the constitution-making presupposes the conception of justice whose content is determined by the agreement of hypothetical parties in the original position. Citizens do not themselves construct the principles of justice. Citizens begin to exercise their political autonomy in the process of constitution-making which refers to the second stage of constructing political justice, where the principles of justice are applied. Because the constitution is the domain of application of principles of justice, constitutional essentials cannot be revised and repealed through democratic legislative procedures in ways that contradict the agreed principles of justice. This restriction of legislative will of citizens is not a violation of political autonomy of citizens,

even though constitutional essentials are not authored by the legislative will of existing citizens. Moreover, such a restriction of legislative will by a constitution does not preclude an understanding of constitution-making as a process in actual democracies. Why Habermas regards such restrictions as a denial of political autonomy is a reflection of his notion of political autonomy as an aspect of moral autonomy. Unless persons actually give laws to themselves, Habermas does not affirm that persons can be autonomous. Rawls cannot admit such a notion of autonomy, as it is based on a comprehensive doctrine of autonomy which is not required by political justice. Rather, for Rawls, when existing citizens as legislators and as members of civil society through the use of public reason reflectively endorse and act according to the principles of justice, they are politically autonomous. In this respect, when citizens as legislators apply the principles of political justice by the use of public reason to improve a constitution in order to reform the basic structure accordingly, the constitution can still be viewed as a project.

Likewise, Rawls does not agree with Habermas's claim that he prioritizes the basic liberal rights as prepolitical liberties in order to constrict the political will formation. Rawls argues that the basic liberal rights as restrictions of the majority legislation are decided at the constitutional level through the political will of citizens. In this sense, the basic liberal rights are not prepolitical and do not precede the political self-determination of citizens. Thus, Rawls states that political liberalism also understands public and private autonomy as co-original. Moreover, he also relates the co-originality of public and private autonomy to their common root in the political conception of person. He notes that 'both kinds of liberty are rooted in one or both of two moral powers, respectively in the capacity for a sense of justice and the capacity for a conception of the good' (Rawls 1995, p. 164) and none of these two moral powers have priority over the other.

However, Rawls is critical of Habermas's assertion that the internal relation between public and private autonomy lies in 'the normative content of the *mode of exercising political autonomy*' (Habermas cited in Rawls 1995, p. 169). Rawls argues that this understanding of co-originality prioritizes the political autonomy, in contrast to Habermas's co-originality claim. Rather, Rawls argues that while private autonomy is related to political autonomy, the liberties of private autonomy have 'their own distinctive basis in the second moral power with its determinate (though in the original position unknown) conception of the good' (Rawls 1995, p. 169). According to Rawls, these liberties grounded in the second moral power secure the framework and provide the means for the free association of persons as members of civil society in the nonpolitical domains. Therefore, Rawls maintains that Habermas's emphasis on the political autonomy can be understandable, only if political participation is deemed to be 'the activity in which human beings achieve their fullest realization, their greatest good' (Rawls 1995, pp. 169-70). Instead, Rawls says that while some citizens can see political participation itself as part of their conceptions of the good or as a great good, the good of civil society cannot be made subordinate to the political life.

2.8

Rawls's response shows that he assumes that he and Habermas share in principle a similar understanding of just constitutional democracy, despite their contrasting accounts. Thus, by demonstrating how his view of political justice rests on the co-originality of public and private autonomy and the role of political process in the constitutionalization of basic liberal liberties, Rawls points out the commonality of their conceptions of political justice. However, I think that Rawls's assumption of commonality leads to the disguise of the fundamental distinction between their conceptions of justice, as I indicated in the introductory part. Rawls's focus on the formal affinities between the constituents of their conceptions of justice blocks the exposition of his distinctively Kantian political conception against

Habermas's comprehensive philosophical doctrine. In this context, Rawls does not present a proper account of why his notion of public reason differs fundamentally from Habermas's understanding of public reason, given their apparently similar representations of political justice.

However, I contend that Habermas discerned why their conceptions of justice and public reason differ, when he noted that the reason that the conception of overlapping consensus is a constituent of Rawls's justification of political justice is rooted in their differing conceptions of autonomy. In contradistinction to his adherence to Kantian moral autonomy, Habermas is partially right to relate Rawls's project to having a notion of autonomy as 'ethical-existential self-determination'. However, Habermas errs in interpreting Rawls's idea of freedom as restricted to the private autonomy of citizens. By construing Rawls's idea of freedom in terms of private autonomy, Habermas fails to comprehend the complementarity of public and private autonomy in Rawls's political conception of justice, and therefore, he continues to regard Rawlsian notion of rights as prepolitical liberties as external to the domain of political.

I argue that we can have a proper understanding of Rawls's notions of public and private autonomy from the point of view of my Kantian reconstruction of Rawls's political conception. In this respect, Rawls's ideas of public and private autonomy need to be interpreted as the specifications of Rawls's idea of equal right to freedom as reflected in his political conception of person. As Rawls says, the two moral powers, the sense of justice and the capacity for a conception of the good ground both public and private autonomy of citizens. The complementarity of public and private autonomy is reflected in Rawls's definition of liberties as 'essential social conditions for the adequate development and full exercise of the two powers of moral personality over a complete life' (Rawls 1996, p. 293). Liberties or these essential social conditions represent citizens' highest-order interests in their

two moral powers. In terms of my Kantian reconstruction, Rawls's definition corresponds to securing the conditions of equal right to freedom by public authority. Only if citizens affirm and pursue their conceptions of the good under these conditions, from the standpoint of political justice, they can be considered free. Citizens' exercise of private autonomy reflects their realization of determinate conceptions of the good. However, this does not mean that the liberties of private autonomy protect whatever determinate conceptions of the good citizens advance. They are not protective barriers of determinate conceptions of the good. They only protect citizens' exercise of their capacity for a conception of the good. More properly formulated, so-called private liberties protect freedom of choice in the non-political realm. As Rawls states in his *Political Liberalism*, what matters is the mutual adjustment of the basic liberties, which also includes political liberties, with a view to their role in the two moral powers. I claim that the idea of mutual adjustment of the basic liberties is a form of a system of equal freedom that corresponds to Kant's idea of political justice. In this respect, Habermas's point that Rawls regards political liberties as instrumental to the exercise of private autonomy can be accepted, though in a different sense. They are instrumental but essential, and cannot be traded off for the sake of other liberties or economic justice. To the extent that political liberties are instrumental, they only serve to the protection of citizens' exercise of two moral powers. If some determinate conceptions of the good interfere with the development and full exercise of two moral powers, they are not protected. Such conceptions of the good are not expressions of equal freedom of citizens; rather, they violate citizens' equal right to freedom. Through the exercise of public autonomy in the domain of public law-making, such violations of conditions of freedom should be confronted on the basis of principles of justice. However, public autonomy is only an aspect of political autonomy. As I have noted, Rawls does not reduce political autonomy to the exercise of political liberties. Without participating in the democratic processes of law-making process, citizens can judge

by the use of public reason whether they realize their life plans under social conditions that reflect their exercise and development of two moral powers, and thereby, they can check whether their life plans are authored under politically free conditions. This also belongs to the exercise of political autonomy.

In this context, Rawls suggests constructing the principles of justice in view of the overlapping consensus. The possibility of emergence of the overlapping consensus shows that citizens can see that the principles of justice do not conflict with their free authorship of life plans. Principles of justice grounded in comprehensive doctrines interfere with the equal right to free authorship of life plans, because, from the point of view of the political conception of person, they do not represent citizens' highest-order interests in two moral powers, given the fact of reasonable pluralism. Therefore, a conception of justice should be freestanding. In this regard, Rawls's idea of public reason remains within the bounds of the domain of the political justice, and thus, it is necessarily oriented to particular substantive conceptions that constitute political justice.

In contrast to Rawls, as Habermas himself notes, his starting point is Kantian moral autonomy procedurally interpreted. It is oriented to finding universal moral norms of interpersonal relationships. Then, Habermas transposes moral autonomy to the political domain, and he identifies political autonomy in terms of democratic self-legislation as the source of rights. However, for Habermas, political autonomy is not simply a source but in a sense the substance of rights. Rawls remarks this point in his criticism of Habermas's claim that the internal relation between public and private autonomy lies in 'the normative content of the mode of exercising political autonomy'. Rawls rightly criticizes Habermas for privileging political autonomy and identifying implicitly political autonomy as the greatest good. I think that this is a corollary of Habermas's adherence to moral autonomy. What matters for Habermas is self-legislation as a moral ideal, and if the framework of procedure of

self-legislation is constructed with a view to substantive considerations, as Rawls does, then, Habermas thinks that moral and political autonomy turns into heteronomy. In this regard, for Habermas, public and private autonomy is co-original in the sense that the right to private autonomy is given by the exercise of public autonomy for the sake of the right to public autonomy. Therefore, reflective of the ideal of moral and political self-legislation, Habermas argues for a conception of public reason as procedural rationality oriented towards rational consensus on universal truths.

In my view, Rawls's and Habermas's differing conceptions of public reason are best revealed in their approaches to the question of political legitimacy, which is rooted in their divergent understandings of freedom regarding political justice. A discussion of Habermas's views on the legitimacy of laws as he developed in his discourse theory of law and democracy and Rawls's arguments regarding the question of legitimacy against Habermas's procedural democracy in his reply to Habermas will show the implications of these two different conceptions of public reason for the recognition of freedom and equality of citizens and for the stability of political justice.

2.9

Habermas develops his conception of law-making and morality as part of his discourse ethics. According to Habermas, law and morality express two distinct but related spheres. They are responses to the question of social integration under modernity with the dissolution of traditional authority structures. Law and morality both are concerned with the questions of how to resolve interpersonal conflicts consensually. According to Habermas, as responses to the same question, law and morality define domains of specifications of what he calls the discourse principle (Habermas 1996a).

The discourse principle defines a general principle of how to justify norms of action. According to the discourse principle, '[ju]st those actions norms are valid to which all

possibly affected persons could agree as participants in rational discourses' (Habermas 1996a, p. 107). Then, Habermas specifies the discourse principle into the principle of universalization and the principle of democracy, which are principles of justification for morality and law respectively. The principle of universalization is a test of validity of action norms in terms of what is equally good for all. Action norms become constituents of morality, when these norms 'can be justified if and *only* if equal consideration is given to the interests of all those who are possibly involved' (Habermas 1996a, p. 108).

The principle of democracy is a principle of justification of legal norms. Habermas says that the principle of democracy does not define a rule of argumentation like the principle of universalization. Rather, the principle of democracy presupposes the possibility of consensus through rational discourse. The principle of democracy is about how to institutionalize discursively justified norms 'through a system of rights that secures for each person an equal participation in a process of legislation whose communicative presuppositions are guaranteed to begin with' (Habermas 1996a, p. 110). According to Habermas, because legal norms regulate collective life of citizens of historically situated political communities, they do not merely institutionalize universally valid moral norms which express what is equally good for all. Legal norms also involve pragmatic and ethical reasons which refer to 'the cooperative pursuit of collective goals and the safeguarding of collective goods' (Habermas 1996a, p. 154). Because legal norms are justified not only by moral reasons but also by pragmatic and ethical reasons, Habermas says that legal norms do not have the absolute validity of moral norms, and therefore they are not 'right' in that sense. Rather, Habermas identifies valid legal norms as legitimate. In this respect, the principle of democracy establishes the legitimacy of legal norms: 'only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted' (Habermas 1996a, p. 110).

Given his conception of discourse ethics, Habermas presumes that there can be in principle only one single right answer to legal questions. Thus, in determining legal norms, all citizens should accept the outcome of a rational discourse on the basis of same reasons. This constitutes Habermas's conception of public use of reason. Habermas identifies his notion of public reason with the imperfect but pure procedural rationality (Habermas 1996b, pp. 1494-5). Habermas says that it is imperfect, because the democratic procedures of rational opinion and will formation are arranged for the sake of producing rational outcomes; however, it is a pure procedural conception, because there are no criteria of evaluating the rationality of the outcomes of the public use of reason independent of democratic procedures. According to Habermas, the only criterion for the legitimacy of legal norms is that democratic procedures have actually been carried out.

2.10

In the context of Habermas's proceduralist conception of public use of reason, Rawls (1995) criticizes Habermas's understanding of legitimacy.

Rawls makes a distinction between justice and legitimacy. He notes that within the limits of a just constitutional democracy, when laws are enacted through democratic procedures, they may not be just, even though the enacted laws would be legitimate. Against Habermas's procedural conception of legitimacy which does not recognize any criteria of assessing the outcomes of democratic procedures independent of the procedures themselves, Rawls says that 'we always depend on our substantive judgments of justice' (Rawls 1995, p. 177) in order to evaluate the legitimacy of laws, because if laws become too unjust, democratic society begins to weaken.

More importantly, Rawls states that Habermas leaves undetermined what kinds of reasons may be used in the procedures of rational argumentation. Rawls argues that forms of argument are determinative in the outcomes of the procedures. He points to the ambiguity in

Habermas's condition of the validity of norms, the equal consideration of interests of all.

Rawls mentions that this condition may lead to a utilitarian principle. However, Rawls argues

that deliberative democracy and political liberalism require reasons for the laws to be

consistent with the equal freedom of citizens. Therefore, Rawls indicates that we need

substantive guidelines of reasoning in the procedures of decision-making, otherwise 'the mix

of views and reasons in a vote in which citizens lack awareness of such guidelines may easily

lead to injustice even though the outcome of the procedure is legitimate' (Rawls 1995, p.

178).

2.11

Rawls's criticisms of Habermas express my contention that Rawls's notions of

political justice and legitimacy are different in nature from Habermas's idea of political

justice. As I have argued, in contrast to Kant's and Rawls's conceptions of political justice,

Habermas does not conceive political justice as intrinsically coercive. Rather, for Habermas,

legal order and its coercive enforcement are functional means of securing the conditions of

morality. Legal coercion is required to secure the general observance of norms by punishing

non-compliant actors. The contrast between Kant-Rawls and Habermas is rooted in their

differing understandings of the basis of political justice. As Gary Banham correctly argues, in

contrast to Kant, Habermas does not conceive the idea of political justice as consisting of

juridical laws regulating actions (Banham 2007, pp. 34-37). Rather, Habermas's idea of right

concerns maxims of actors, as expressed by Habermas in his principle of discourse 'Just those

action norms are valid to which all possibly affected persons could agree as participants in

rational discourses'. Thus, for Habermas, positive legislation is a functionally necessary

medium of legislating moral or rational ends. Then, the external freedom of actors can be

restricted for the sake of enforcing properly justified moral purposes. However, for Kant and

Rawls, this is contrary to the idea of political justice, as political enforcement of moral and

non-moral ends restricts the freedom of choice of action on the basis of material principles, and as a result, one's freedom of choice becomes conditional upon others' choice.

In this context, we can make sense of Habermas's procedural understanding of democratic law-making and legitimacy. As what are legislated are action norms, actors have to agree to observe those norms of action. Thus, legitimacy depends on actors' actual acceptance of those norms. There cannot be substantive normative standards that may predetermine whether those agreed action norms are right, as agreement on action norms can only be possible, if those actors test the effects of norms.

Therefore, as I mentioned briefly in my exposition of Habermas's views, Habermas employs the notion of legitimacy for the validity of legal norms in an analogous way to the 'rightness' of moral norms. Thus, I think that we can regard Habermas's conception of legitimacy of laws as equivalent to the justness of laws. Given his procedural understanding of rationality which is presupposed by democratic procedures of law-making, Habermas assumes that democratic procedures are processes of truth-making. As Habermas says,

> Majority rule retains an internal relation to the search for truth inasmuch as the decision reached by the majority only represents a caesura in an ongoing discussion; the decision records, so to speak, the interim result of a discursive opinion forming process. To be sure, in that case the majority decision must be premised on a competent discussion of the disputed issues, that is, a discussion conducted according to the communicative presuppositions of a corresponding discourse. Only then can its content be viewed as the rationally motivated yet fallible result of a process of argumentation that has been interrupted in view of institutional pressures to decide, but is in principle resumable. (Habermas 1996a, p. 179)

In this respect, in contradistinction to Rawls, for Habermas, there are no substantive norms of justice by means of which we can test the validity claims of legal norms. Procedures have their own intrinsic rationality to produce rational outcomes. As Habermas says, 'reason is embodied solely in the formal-pragmatic facilitating conditions for deliberative politics' (Habermas 1996a, p. 285). Therefore, political justice amounts to the production of legal norms which gain legitimacy through truth-oriented processes of political opinion- and will-formation. Thus, from the standpoint of Habermas, his argument is not amenable to Rawls's

concern that legitimate laws may be unjust or too unjust and that we need some substantive guidelines of reasoning to judge whether laws recognize the freedom and equality of citizens. Within the framework of Habermas's deliberative democracy, legitimately decided laws are considered provisionally rational and just, until minority views succeed in convincing the majority to the truth of their own arguments. Habermas permits some constitutional constraints to ordinary democratic decision-making processes. However, these constraints are not provided for the sake of assessing the justness of legal norms produced through rational argumentation. Rather, these constitutional constraints merely function to secure the formal conditions of rational argumentation. For the actualization of discursive political opinion- and will- formation, citizens should be free and equal participants of discourse. Citizens' right to free and equal participation is given by the constitutionalization of what Habermas calls 'the system of rights' that represents 'unspecified' basic political and individual rights of citizens. Therefore, legitimate laws cannot deny citizens' basic rights that constitute their right to equal and free participation to the democratic procedures of law-making. Nevertheless, it is the task of citizens themselves by the public use of reason to determine 'the material content of those categories of potential basic rights within which an association of free and equal individuals is supposed to take shape' (Habermas 2011, p. 295).

I argue that Rawls is right in his critique of Habermas that without specifying the meaning of equal interests and without substantive guidelines of reasoning, we cannot judge whether laws are in accordance with the recognition of equality and freedom of citizens. Habermasian public use of reason is neutral to the material content of basic rights self-determined by citizens with the condition that rights to participation to discourse should be guaranteed. Since citizens substantiate the content of rights on the basis of claims of generalizable interests, citizens do not actually have any basic right that guarantee their equal freedom in Rawls's sense under Habermas's notion of system of rights. Citizens' existing

freedoms can be expanded or constrained depending on the success of some citizens in convincing the majority or even all citizens to the representation of their allegedly general interests into the legal system. In this respect, Rainer Nickel's (2006) discussion shows the normative deficit of Habermas's system of rights very well. Nickel discusses the increasing securitization of states in the context of terrorism, which undermines the basic rights of citizens. He correctly argues that Habermas's system of rights does not provide us any normative criteria to question the legitimacy of legislative decisions that prioritize the security of the state over citizens' basic freedoms, since Habermas argues that the legitimacy of laws are judged by whether their legislation conforms to the democratic procedures of decision-making. Nickel gives the case of the German Federal Constitutional Court's annulment of a law that gives permission to the use of military force to shoot down a kidnapped passenger plane, if it is suspected that the plane is used as a weapon targeting civilian population. German Constitutional Court annulled the law on the basis of the law's violation of the unamendable basic constitutional principle of the inviolability of human dignity. As Nickel notes, there is hardly any basis in Habermas's conception of system of rights to justify the decision of Constitutional Court. Thus, Habermas's system of rights permits laws which are legislated on the basis of interests of security that violates citizens' equal freedom. This is the point of Rawls's remark that if the notion of general interests is not specified, utilitarian norms cannot be excluded. Some citizens' right to life cannot be violated for the sake of protecting other citizens.

Rawls's criticism of Habermas focuses on the relation between legitimate procedures and the justness of the outcomes of procedures. However, in his reply to Habermas, I think that Rawls does not bring into focus his distinctive conception of political legitimacy and its relation to public reason, which he laid out in *Political Liberalism.* Rawls's political liberalism has actually a more demanding notion of legitimacy. Given Habermas's pure

proceduralism, Rawls seems here to be concerned to point out the determinative role of our substantive notions of justice as expressed in considered judgments. In the context of his discussion of Habermas, Rawls does not consider the question of whether it is enough for laws to gain legitimacy just because they are outcomes of legitimate procedures. In my view, Rawls's liberal principle of legitimacy addresses and answers this question. According to the liberal principle of legitimacy, for laws to be legitimate, citizens should justify their advocacy of laws by the idea of public reason. In contrast to Habermas's public use of reason, public reason, for Rawls, has a definite content given by a family of liberal political conceptions of justice. From their points of views of comprehensive religious or moral doctrines, citizens can regard enacted laws as unjust. Yet, such laws are to be considered legitimate, because they are justified by liberal political values of public reason in accordance with the ideal of equal freedom, which citizens prioritize from within their comprehensive doctrines, as in the case of Quakers' opposition to war. Thus, according to Rawls, a legitimate procedure (of rational argumentation) in itself does not accord laws legitimacy, let alone justness. In this regard, Rawls provides a substantive notion of legitimacy and public reason, which I identified with Kant's idea of the general united will.

Rawls's substantive conceptions of legitimacy and public reason enable him to circumvent the shortcomings of Habermas's proceduralist conception in responding to the fact of reasonable pluralism in accordance with the demands of political justice. However, Rawls's significance in this respect does not come from his idea of public reason as an expression of reflective tolerance to the pluralism of worldviews. This is a common reading of Rawls, and this is how Habermas interprets Rawls. Moreover, those critical of the possibility of rational consensus as advocated by Habermas aim to revise Habermas's conception of law and democracy on the basis of this reading of Rawls (McCarthy 1996). Rawls's idea of public reason certainly expresses a reflective tolerance towards the diverse worldviews of citizens,

but only in the sense that each citizen has an equal right to pursue her conception of the good in the non-political domain. However, public reason does not aim to resolve moral or ethical conflicts on the basis of accommodating reasonable worldviews of citizens in the domain of political. Rather, public reason makes possible the resolution of questions of justice in the domain of political by leaving citizens free in deciding how to maintain their commitment to the priority of political justice in the context of reasonable pluralism.

Paradoxically, it is Habermas whose conception cannot provide for the resolution of questions of justice in the face of reasonable pluralism and therefore who adopt an attitude of reflective tolerance in the political domain. Given deep ethical disagreements, Habermas accepts that there are very few moral questions that can be rationally resolved. Thus, regarding the domain of political, he adopts a moral principle of toleration for the resolution of legal questions that involve disagreement over ethical forms of life and worldviews of citizens. As an illustration of his principle of toleration, he considers the abortion question. He notes that to the extent that it is a moral question, it has to be decided on the basis of good reasons that would provide a single right answer. However, he says that we cannot exclude the possibility that it cannot be resolved in this manner, because 'it might transpire that descriptions of the problem of abortion are always inextricably interwoven with individual self-descriptions of persons and groups, and thus with their identities and life-projects' (Habermas 1993, p. 59). Therefore, for Habermas, the legal question of abortion becomes a question of 'how the integrity and the coexistence of ways of life and worldviews that generate different ethical conceptions of abortion can be secured under conditions of equal right' (Habermas 1993, p. 60). Hence, Habermas renders women's fundamental right to their bodily integrity a question of moral compromise. As most of the questions of rights and freedoms manifest the same character with the abortion question in the context of reasonable pluralism, what we see is the reduction of the questions of political justice to the legal

regulation of co-existence of ethical forms of life on the basis of moral principle of toleration. However, this is only the best possible scenario in a Habermasian deliberative democracy. Given the fact of pluralism, not only citizens cannot resolve the questions of justice rationally, but also they cannot agree that they have to resolve their ethical disagreements in the realm of law on the basis of moral principles. Because citizens themselves would determine whether a political issue should be resolved in moral, ethical or pragmatic discourses within the framework of democratic procedures of law-making, whether they would decide to resolve their ethical disagreements on a moral principle of toleration is contingent on the majority decision of legislators. Thus, it is arguable that even a moral compromise is possible. More importantly, as Habermas conceives of political justice as a legislation of action norms, regardless of whether those public laws are expressions of universal rational consensus or moral compromises, Habermasian deliberative democracy cannot be stable for the right reasons, that is, consistent with the idea of equal right to freedom.

However, Rawls's idea of public reason specified by a freestanding conception of justice allows citizens to answer questions of political justice. Rawls's idea of public reason is not a normative standard for political reasoning through which citizens aim to reach moral truths or ethical self-understandings. Rather, what matters for the questions of political justice is political reasonableness, that is, to maintain conditions for each citizen freely to pursue their own conceptions of the good within the limits of justice. Hence, as Rawls's political liberalism argues, one of the constitutive premises of a free and equal society is that rights and freedoms must not depend on citizens' conceptions of the good and their comprehensive religious, moral or philosophical doctrines. Therefore, the idea of public reason should be independent of comprehensive truth-claims or ethical conceptions, and public reason has to express political values of justice that refer only to the higher-order interests of citizens in the development and exercise of their two moral powers. As Rawls says, a political conception of

justice does not aim to be fair to the conceptions of the good (Rawls 1996, p. 40). Thus, the questions of political justice that implicate basic rights and economic justice are not resolved by a moral principle of toleration. Regarding Habermas's example of abortion question, in their acting from the idea of public reason, legislators do not search for a resolution that could make possible pursuing various ethical conceptions of abortion. Citizens' highest-order interests in their right to equal freedom may require the prohibition of abortion. Then, whether the resolution of a question of political justice will result in the co-existence of conflicting ethical worldviews is entirely contingent on what political justice requires with respect to the equal right to freedom.

In the context of arguments developed in the first and second chapters, the following chapters will further substantiate the normativity of Rawls's idea of public reason.

Chapter 3:
Religious Objections to Rawls's Idea of Public Reason

I argued that Rawls's Kantian conception of just constitutional democracy with its idea of public reason contrasts with conceptions of democracy as a collective determination of common moral and rational ends of a social community through equal political participation of citizens. In this chapter, I claim that such contrasting notions of justice and democracy are the basis of criticisms of Rawls's idea of public reason as unfair and exclusionary, especially for religious citizens.

The main argument for such criticisms is that because some religious citizens' obligations demand from them to organize their whole existence according to their religious commitments, to demand from those citizens to exclude their religious reasons in the domains of political processes of decision-making and public political deliberations is an infringement of free exercise of religion of such citizens, and therefore, it is an unfair treatment. The unfairness objection is also named the integrity objection, as it is thought that religious citizens are prevented from organizing their whole life according to the demands of their religion.[1] Nicholas Wolterstorff and Christopher Eberle are the main exponents of this argument. While both Wolterstorff and Eberle state their allegiance to a kind of constitutional democracy, they are against the exclusion of religious reasons from the whole domains of lawmaking and public political deliberations. The chapter first discusses Wolterstorff's and then Eberle's criticisms of Rawls's idea of public reason. The chapter shows that Rawls's idea of public reason is not in itself unfair or it does not violate religious freedom of citizens, when the question of justice is properly conceived from the standpoint of a coercive system of equal freedom.

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[1] For general overviews of the unfairness objection to Rawls's public reason, see James Boettcher (2005) and Patrick Neal (2009). For a recent comprehensive work on the relationship between Rawls's public reason and religion, see Tom Bailey and Valentina Gentile eds. (2014).

3.1   Wolterstorff's Equal Political Voice

Wolterstorff (1997) begins his discussion of Rawls's idea of public reason by introducing his own understanding of liberal democracy. Then, on this basis, he discusses what he calls the liberal position which he characterizes by its advocacy of exclusion of religious reasons in the political decision-making and deliberation.

Wolterstorff defines liberal democracy in terms of three essential characteristics, that is, the equal protection under law for all people, equal freedom in law for all citizens, and the neutrality of the state with respect to religions and comprehensive perspectives. Wolterstorff identifies this definition of liberal democracy as an ideal (Wolterstorff 1997, p. 70). According to Wolterstorff, actual liberal societies are in differing degrees closer or far away from the ideal of liberal democracy.

Wolterstorff says that the implementation of the essentials of liberal democracy requires the governance of interaction among its members. He identifies 'the liberal position' as one of the answers to the question of how to govern liberal democracy. He says that the liberal position actually consists of various liberal positions. However, he states that what unites these liberal positions as 'the liberal position' is that 'they all propose a restraint on the use of religious reasons in deciding and/or debating political issues' (Wolterstorff 1997, p. 75).

Wolterstorff argues that the role of religious reasons in political justification for 'public reason liberalism' is an application of public reason liberalism's general conception to religion regarding how a liberal democracy should be governed. His claim is that public reason liberalism is committed to Kantian idea of autonomy according to which all members of the society should regard themselves as co-authors of the laws to guarantee individual autonomy and therefore no one is coerced (Wolterstorff 2012, p. 78). Thus, according to Wolterstorff, for public reason liberalism, 'non-coercion is always the default option'

(Wolterstorff 2012, p. 79), and therefore, given the fact of pluralism and disagreement, coercive enforcement of laws can only be legitimate, if all reasonable persons can regard that the reasons for the proposed laws are reasonable. According to Wolterstorff, thus, public reason liberalism argues that coercive public laws can be legitimate, if the justifying reasons of laws are derived from a source of reasons independent of all reasonable comprehensive doctrines in order to be accessible and acceptable to all persons. For Wolterstorff, therefore, public reason liberals such as Rawls and Audi propose idealized neutral conceptions of justice as the basis of justifying reasons upon which all reasonable persons either agree or should agree. Wolterstorff claims that this is the basis of excluding religion reasons by public reason liberalism in political decision-making and political advocacy. The question for Wolterstorff is that whether such an independent source of justifying reasons acceptable to all reasonable persons can be discovered and whether it can function as an acceptable mode of political conduct for all citizens in an actual liberal democracy.

3.1.1

In this context, Wolterstorff examines Rawls's political conception of justice as an independent source of justifying reasons for public laws. Wolterstorff notes that Rawls constructs the principles of justice theoretically from the shared political culture consisting of fundamental ideas 'independent of one and all comprehensive doctrines' (Wolterstorff 1997, p. 93).

In his criticism of Rawls, Wolterstorff firstly argues against Rawls's derivation of what Wolterstorff calls the independent source of the justificatory basis for citizens' public political deliberations from the shared political culture. Wolterstorff rejects Rawls's proposal to construct the principles of justice from the shared political culture. According to Wolterstorff, Rawls assumes that the shared political culture of existing liberal societies is the Idea of liberal democracy. Wolterstorff states that this is not a realistic picture of actual liberal

societies. Therefore, Wolterstorff claims that 'Rawls works with an extraordinarily idealized picture of the American political mind. . . . then the prospect of extracting from that political culture, principles of justice that are both shared and appropriate to a liberal democracy, is hopeless' (Wolterstorff 1997, p. 97). Wolterstorff also states that it is not reasonable to expect citizens to form a consensus on Rawls's principles of justice. Wolterstorff notes that Rawls is also aware of this fact, as Rawls accepts that there may be a family of liberal conceptions of justice. According to Wolterstorff, therefore, Rawls suggests that the only thing citizens need to agree is 'the idea of public reason' and the liberal principle of legitimacy. Wolterstorff claims that what Rawls argues is that public reason does not need to have any substantive content and we do not need to discover the principles of justice (Wolterstorff 1997, pp. 100-1). Wolterstorff does not think that we can identify a shared public political culture as an independent source of conceptions of justice, because actual liberal societies are deeply divided over the interpretation of rights and liberties. He claims that Rawls assumes that the political culture of actual liberal societies is the same with what Wolterstorff calls the Idea of liberal democracy.

3.1.2

According to Wolterstorff, such a constructive endeavor is unnecessary. He claims that we do not need to have a consensus on freestanding political principles of justice. He does not think that Rawls's rationale to exclude religions reasons from public political deliberations are in accord with how politics in actual liberal democracies works. Wolterstorff states that Rawls's claim is that

> if I make my decision concerning some political issue for reasons that I know certain of my reasonable and fellow citizens do not accept, and if I furthermore explain to them my reasons for my decision, knowing they do not accept them, then I am not treating them as free and equal with myself. In particular, I am not according them equal political voice with myself. (Wolterstorff 1997, pp. 105-6)

Wolterstorff claims that one's reasons for supporting a law or a policy cannot be a matter of equal political voice. He states that rather than reasons, conclusions matter to people (Wolterstorff 1997, p. 106). He also argues that there is no reason that the reasons for one's acceptance of a policy must be the same with the reasons this citizen offers in public for that policy (Wolterstorff 1997, pp. 106-7).

Wolterstorff says that in democratic politics, between two conflicting opinions, we insist on our opinion and decide or vote according to our own opinions. Thus, we do not treat both opinions as equal. According to Wolterstorff, 'the concept of equal voice that is relevant to liberal democracy is that we shall deal with our diverse opinions by establishing fair voting procedures, and then, within that procedure, give everybody's opinion equal weight. Everybody's voice on the matter being voted on is to count as equal with everyone else's' (Wolterstorff 1997, p. 108). Therefore, Wolterstorff argues that religious reasons do not violate the equality and freedom of other citizens who do not accept these reasons. He says that the liberal position by insisting on reaching a consensus is 'still looking for a politics that is the politics of a community with shared perspective' (Wolterstorff 1997, p. 109). Therefore, according to Wolterstorff, despite the fact that the liberal position has been criticized for being against community, 'the liberal is not willing to live with a politics of multiple communities. He still wants communitarian politics. He is trying to discover, and to form, the relevant community. He thinks we need a shared political basis; he is trying to discover and nourish that basis' (Wolterstorff 1997, p. 109). In this regard, against the liberal position, Wolterstorff argues for an ethic of citizen that allows for the inclusion of whatever reasons citizens themselves find appropriate. As an advocate of constitutional democracy, however, Wolterstorff adds that politics should be in accord with the constitution that guarantees the natural moral rights of citizens.

As an illustration of what kind of a political practice Wolterstorff's argument amounts to, we can look at the case of abortion politics. In the controversy on the issue of abortion, for the sake of the argument, we can identify one of the protagonists as religious citizens who want to ban abortion on the basis of their religious reasons. These religious citizens claim that God forbids the killing of innocent human beings, human life begins at conception, and therefore, human embryo or fetus is a human being; as a matter of fact, unborn children have a right to life, and abortion is a homicide that has to be legally forbidden. On the other side of the abortion controversy, we can say that there are non-religious citizens who reject that human life begins at conception and claim that human life begins to have a moral significance at birth on the basis of a secular moral doctrine, and therefore, they advocate the priority of women's bodily integrity and reproductive freedom. In Wolterstorff's scheme of political decision-making, in determining whether abortion should be banned or not, citizens would vote on the basis of whatever reasons they adhere to, and the winner's policy would be implemented. Whatever the outcome of the vote on the abortion policy will be, I think that Wolterstorff would declare that the outcome is within the limits of liberal constitutional democracy, because the result will be in appearance the implementation of one of the constitutional values, i.e. the right to life or women's freedom.

3.1.3

However, that just a law refers to the constitutional values does not demonstrate that it is a just or legitimate law.

Just for the reason Wolterstorff himself states, that is, political conflicts are taking place over the interpretations of constitutional rights and liberties, there is the question of how citizens can evaluate that there is no violation of the constitution. Furthermore, we have to answer the question of why and how citizens who lose in the political decision-making

process should consider the resulting decision as a political outcome that recognizes them as free and equal members of the society.

Because Wolterstorff does not accept any restraint on the use of reasons in the political deliberation and decision-making, each citizen will employ their own conflicting comprehensive religious or moral doctrines to evaluate their political status and the legitimacy of constitution and political outcomes. In the absence of a common normative standpoint, in such a society, we will face with a precarious, fluctuating system of rights and liberties whose stability would be contingent on the persuasive power of constellations of various groups of citizens converging on a policy and constitutional interpretation on the basis of their different religious, moral or philosophical doctrines. Wolterstorff concedes that this is a risky undertaking but he thinks that this is what respecting each other as free and equal requires. However, I argue that for citizens whose rights and liberties are restricted or violated on the basis of conceptions of the good they could not reasonably accept and who feel insecure because of the precariousness of their rights or liberties, Wolterstorff's conception of freedom and equality would appear as a very odd one. It is very hard to expect from citizens to regard such a society they live in a legitimate democratic society, let alone a just one.

In Wolterstorff's equal voice democracy, whether abortion should be banned would be decided as a resultant of a constellation of these conflicting religious or non-religious conceptions of religious or moral doctrines which disagree on the right to life of human fetus and the priority of women's freedom. Wolterstorff does not see any problem in this case. However, if this policy becomes implemented, this would mean that some groups of citizens would be subjected to other citizens' conceptions of the good. Citizens who become subjected could not pursue their own conceptions of the good. In this instance, we can say that the free exercise of belief of those who are subjected to the good of other citizens is infringed. When abortion becomes legal, those anti-abortion secular or religious women citizens would not

think that whatever the outcome, it is for the sake of the common good, because they would think that the right to life of human fetus is violated for the sake of furthering moral values of comprehensive doctrines they reasonably reject.

Nevertheless, it is plausible that all citizens could endorse the abortion ban on the basis of same religious or non-religious comprehensive doctrines. Wolterstorff may think that in this case, according to Rawls, we can speak of reasonable acceptability of abortion ban. However, the idea that all laws should be justifiable by freestanding political values is not related to the fact that there cannot be any agreement over some religious or secular morality. Even if a policy becomes implemented as a result of a unanimous agreement on the basis of citizens' conceptions of the good, because citizens are free to change or reinterpret differently their existing conceptions of the good, this policy would be a violation of citizens' equal right to freedom. If such a revision of conception of the good actualizes, this policy becomes an actual infringement of the free exercise of belief and again it results in the subjection of some citizens to other citizens. That is, under a law that prohibits abortion on the basis of religious reasons, if a citizen changes her theological interpretation of the moral status of fetus, for this citizen, the existing law would mean the violation of her rights and liberties such as the right to bodily integrity, the right to life, and the freedom of religion. Therefore, there would be multiple violations of rights and liberties. Rights and liberties become hostage to the conceptions of the good of some citizens. The right to life or women's bodily integrity would be contingent on the persuasiveness of one's religious or non-religious comprehensive doctrines. These rights would be secure only until oppositional political groups extend their constituency sufficiently to win the elections. I think that all these outcomes are logical conclusions of Wolterstorff's understanding of equal voice democracy. The resulting picture is the reverse of what Wolterstorff advocates: the infringement of free exercise of belief of

citizens. Thus, rather than Rawls's thinking, it is actually Wolterstorff's which leads to the violation of the freedom of religion not only in principle but also in actual practice.

This picture of political structure is, in Rawlsian terms, a political society of 'modus vivendi'. We can read Rawls's whole project of political liberalism as a normative standpoint that challenges such a 'modus vivendi' model of justice and democratic society. As Rawls states, '[t]he task is to articulate a public conception of justice that all can live with who regard their person and their relation to society in a certain way' (Rawls 1999a, p. 306). Only if there are shared principles of political justice, we can meaningfully speak of a fair social cooperation, whose members as citizens could assess each other's political claims in terms of whether these are in accord with their political conceptions of personhood as free and equal.

3.1.4

In this context, we can see that Wolterstorff's notion of democratic government as equal political voice is an another example of conceptions of legitimate law-making that conceive legal coercion as a secondary issue and that see the purpose of legislation as law-making for the common good on the basis of various religious or secular worldviews, though within the limits of some natural human rights that supposedly protect citizens against the state interference.

However, as I argued, such a conception of political legitimacy is not in accord with the idea of equal right to freedom that justifies persons' subjection to a coercive political authority. The basis of disagreement lies in contrasting understandings of right and freedom. Wolterstorff claims that citizens have a natural moral right against the state to free exercise of religion. Thus, for Wolterstorff, Rawls's idea of public reason is a violation of religious citizens' their natural right. However, Wolterstorff does not demonstrate that his idea of democracy which is identical with the procedure of voting within a constitutional framework is compatible with securing all citizens' natural right to free exercise of religion. As the case

of abortion indicates, whatever the decision, the outcome would necessarily violate some citizens' freedom of religion in Wolterstorff's sense. Moreover, given that Wolterstorff does not propose any common normative standard for political judgment in such cases of conflicts, citizens cannot even judge the normative legitimacy of the exercise of political power (see also Bernstein 2009, pp. 236-40).

However, as I argued, rights should be conceived as necessarily relational, and the idea of equal right to freedom can only make sense, if they merely secure freedom of choice. Otherwise, some persons' freedom of choice would be conditional upon others' freedom of choice. Therefore, we cannot speak of a free exercise of religion, unless each person's right to free exercise of religion is reciprocally guaranteed. Rawls's idea of public reason is a normative standard for legislating and judging public laws with regard to their consistency with a system of equal freedom. That is, each citizen has a right to pursue her own conception of the good with the condition that this does not interfere with another citizen's right to pursue her conception of the good. This is the meaning of equal liberties in Rawls. The aim of political justice is to constitute and sustain the framework that upholds societal conditions of equal liberties. Rawls formulates this understanding of justice and liberties in his notion of the priority of the right over the good. Political justice is neutral to conceptions of the good in the sense that justice cannot be a means to advance values of conceptions of the good. Therefore, only conceptions of the good that is in accord with this understanding of justice are legitimate. Only these conceptions of the good and citizens endorsing such conceptions of the good are, in Rawls's vocabulary, reasonable. This idea of reasonable citizens is based on another aspect of freedom of citizens. Citizens are also free in the sense that they are 'viewed as capable of taking responsibility for their ends' (Rawls 1996, p. 33). Citizens can adjust their aims in accordance with the requirements of fair social cooperation. As Rawls states,

> Citizens are to recognize, then, that the weight of their claims is not given by the strength and psychological intensity of their wants and desires (as opposed to their needs as citizens), even

> when their wants and desires are rational from their point of view. . . . they can adjust their ends so that those ends can be pursued by the means they can reasonably expect to acquire in return for what they can reasonably expect to contribute. (Rawls 1996, p. 34)

Citizens' capacity 'to assume responsibility for their ends and to moderate the claims they make on their social institutions accordingly' (Rawls 1999b, p. 371) constitutes the basis of what Rawls calls 'social division of responsibility'. The domain of the political, which represents the power of citizens as a collective body, is responsible 'for maintaining the equal basic liberties and fair equality of opportunity, and for providing a fair share of the primary goods for all within this framework' (Rawls 1999b, p. 371); while citizens 'as individuals and associations accept responsibility for revising and adjusting their ends and aspirations in view of the all-purpose means they can expect, given their present and foreseeable situation' (Rawls 1999b, p. 371). Citizens should accept this division of responsibility and endorse a conception of political practice that does not transcend the bounds of the political as specified by the principles of justice. In this context of the division of responsibility, citizens need guidelines of judgment to evaluate whether the application of principles of justice and the exercise of political power violate their free and equal citizenship characterized by their two moral powers. They also need guidelines of reasoning in their public political deliberations and decision-making. The idea of public reason expresses these guidelines of evaluation and reasoning. The content of public reason is provided by the political values of principles of justice independent of comprehensive doctrines and conceptions of the good. Given the specified aims of the political justice, reasoning through public reason is the means through which citizens can see whether laws and policies are implemented as a means to further purposes of conceptions of the good, and therefore whether they violate the system of rights and liberties. If citizens judge and develop political claims from the point of view of their own conceptions of the good, this would amount to seeing other citizens as a means to their own ends. Public reasoning assures all citizens that citizens who exercise political power directly

or indirectly through voting or political influence have no intention to act against other citizens' conceptions of the good. Citizens who are coerced to comply with particular laws and policies can regard that the exercise of political power is not against their rights and liberties. However, public reasoning becomes crucial particularly in cases where some citizens consider that the resulting political decision is not just or it is a restriction or violation of their rights and liberties. In this instance, if legislation and political deliberations are conducted through public reasoning, dissident citizens can accept the legitimacy of laws. They can grant that what they see as an injustice may be justified from the standpoint of political authority, or if it is actually a violation of their freedom, they can consider it as individual case of injustice they can contest it politically within the existing constitutional structure. Thus, dissident citizens can continue to recognize other citizens as free and equal at the same time as they keep on criticizing the decision. Thus, citizens can continue to keep their allegiance to the principles of justice. In a nutshell, public reasoning answers the question of political legitimacy: 'in light of what principles and ideals must we exercise that [coercive political] power if our doing so is to be justifiable to others as free and equal?' (Rawls 1996, p. 137).

In that sense, Wolterstorff's claim that if some religious citizens are constrained not to pursue their religious ends in the political realm, this violates their religious integrity and religious freedom is not a sound argument. Equal freedom of all citizens in their pursuit of conceptions of the good requires all citizens to adapt their ends to the demands of political justice. This does not amount to an infringement of religious liberty of some religious citizens; rather, the protection of equal religious liberty of all citizens demands that adaptation.

Thus, within the framework of politics conducted in terms of Rawls's idea of public reason, religious citizens should leave aside their religious beliefs that the Bible says that

human fetus is a person and therefore abortion should be banned. Secular citizens should leave aside their moral doctrines which say that human beings gain moral status, when they are self-conscious, and therefore abortion must be legal. Given the burdens of judgment and reasonable pluralism, no citizen should judge the legitimacy of public laws justified by the idea of public reason on the basis of their comprehensive doctrines no one can reasonably be expected to reasonably accept. Political justice requires that when deciding on the right to abortion, citizens should decide and deliberate in terms of free and equal political personhood characterized by two moral powers. To decide whether the fetus can have a right to life and under what conditions this right can override women's privacy rights, citizens should argue for the relevance of assigning political personhood with two moral powers to the fetus. When decided in this way, whatever the outcome would be, the resulting law will be a legitimate law. Citizens would be assured that they are not required to revise their comprehensive doctrines or to adopt any comprehensive doctrine whose truth they may reasonably reject in order to freely accept the legitimacy of public laws.

3.1.5

I have noted that Wolterstorff relates his unfairness argument to Rawls's construction of principles of justice and public reason from an independent source which excludes all religious doctrines. However, in contrast to Wolterstorff, Rawls's conception has a different understanding of the independence of principles of justice and comprehensive doctrines. Wolterstorff does not show enough attention to Rawls's notion of overlapping consensus. Wolterstorff mentions the overlapping consensus and its importance to stability. However, he misreads the relationship between overlapping consensus and the principles of justice, and the meaning of stability. He notes that according to Rawls, reasonable comprehensive doctrines must find the proposed principles of justice acceptable from their own standpoint. Then, in a footnote, he says that he finds this requirement for reasonable perspectives questionable for

the stability and endurance of the society, and he adds that 'it is the unreasonable perspectives

that constitute a threat to liberal democracies!' (Wolterstorff 1997, p. 119). Wolterstorff shows

failure to attend to Rawls's normative conception. To repeat, Rawls discusses political

liberalism within an ideal situation of the well-ordered society. Under the idealized conditions

of the well-ordered society, there are only reasonable citizens and reasonable comprehensive

doctrines. Therefore, as a matter of fact, the questions of overlapping consensus and stability

are discussed in relation to the reasonable citizens and perspectives. As I previously stated, as

Rawls says,

> the political conception of justice is worked out first as a freestanding view that can be
> justified *pro tanto* without looking to, or trying to fit, or even knowing what are the existing
> comprehensive doctrines . . . It tries to put no obstacles in the path of all reasonable doctrines
> endorsing a political conception by eliminating from this conception any idea which goes
> beyond the political and which not all reasonable doctrines could reasonably be expected to
> endorse' (Rawls 1995, p. 145).

Thus, when Rawls says that the political conception of justice is constructed as a freestanding

or independent conception, it is not in the sense that they have no relationship to religious or

other comprehensive doctrines, as Wolterstorff implies. It is independent in the sense that it

could be endorsable by all reasonable comprehensive doctrines. Therefore, from the

beginning, the principles of justice are constructed with a view to the possible formation of

the overlapping consensus. For Rawls, as I argued in the previous chapters, the question of

stability is related to whether an overlapping consensus can really emerge in the well-ordered

society, given the fact of reasonable pluralism. The question of stability is that when a

freestanding political conception of justice is institutionalized in the well-ordered society,

whether reasonable citizens with reasonable comprehensive doctrines could continue or not to

adhere to the political conception of justice in cases of the conflict between political justice

and the goods of comprehensive doctrines. It is a question of testing the capability of a

political conception of justice for self-reproduction, or in the language of Rawls, showing

whether the proposed political conception of justice is a realistic utopia. The question is that 'How is it possible for citizens of faith to be wholehearted members of a democratic society when they endorse an institutional structure satisfying a liberal conception of justice with its own intrinsic ideals and values, and when they are not simply going along with it in view of the balance of political and social forces?' (Rawls 1996, p. xxxviii). To relate it to Wolterstorff's unfairness objection, the question of stability is a question of how religious citizens could see the requirement of the use of public reason not as an infringement of their freedom of belief in cases of conflicts between justice and their religious values. Rawls's answer to this question is that when a political society is governed by a freestanding conception of political justice, it becomes possible for each citizen to justify the political conception in their own way. As Rawls says, 'the citizen accepts a political conception and fills out its justification by embedding it in some way to the citizen's comprehensive doctrine as either true or reasonable, depending on what that doctrine allows' (Rawls 1995, p. 143). Through the full justification, citizens order the political values of justice expressed by the public reason in relation to their nonpolitical values of reasonable comprehensive doctrines. When reasonable citizens achieve the full justification, the political values of public reason become affirmed as part of their reasonable comprehensive religious or nonreligious doctrines or conceptions of the good. When all citizens execute the process of full justification, a reasonable overlapping consensus emerges over a political conception, and as a result the political conception becomes publicly justified. Public justification expresses the fact that it is publicly known that each citizen endorses the priority of political values over their nonpolitical values. Therefore, in contrast to Wolterstorff's claim, under the well-ordered society, reasonable citizens with reasonable comprehensive religious doctrines do not see the political values of public reason as an independent source of political deliberation. The political conception of justice and public reason are independent sources in the sense that they

constitute a general political good which may be affirmed within reasonable comprehensive doctrines. Rawls's term module as a characterization of the political conception expresses what Rawls intends to mean with a freestanding conception. In this context, those citizens with reasonable religious doctrines can regard the requirement of the use of public reason as compatible with their free exercise of religion and religious integrity.

3.1.6

In the context of foregoing discussion of Rawls's normative standpoint, to ask from actual religious citizens, whose religious doctrines do not constitute a part of the overlapping consensus, to comply with the requirement of the use of public reason does not amount to the infringement of freedom of these religious citizens. Given that Rawls presents political liberalism as the most reasonable conception of political justice for constitutional democracies, political liberalism as a normative argument functions for the actual citizens of existing liberal democracies as a normative guide to the practical constitution of a just and stable well-ordered constitutional democracy. Therefore, we can subject such religious citizens to normative political critique that when they use religious reasons in the political decision-making and advocacy, they do violate the idea of reciprocity or freedom and equality of citizens. We cannot interpret such normative political critique as an infringement of religious liberty. Normative political critique constitutes an essential aspect of normative change. Citizens should learn that their free and equal citizenship depends on the institutionalization and realization of political values of justice and that this can be legitimately actualized and secured by the use of freestanding public reasons, given the fact of reasonable pluralism. Wolterstorff seems to be pessimistic about most religious citizens' ability for normative learning. He thinks that 'Most religious who reasoned from their religion in making up their mind on political issues would lack intellectual imagination required for reasoning to the same position from premises derived from the independent source'

(Wolterstorff 1997, p. 78). However, Wolterstorff severely underestimates the imagination and learning capacities of religious citizens. As Nathaniel J. Klemp's (2012) study on the transformation of Christian Right politics in the USA shows, religious citizens have a capacity to learn from the political culture of the society they live in. As Klemp states, the Christian right organization 'Focus on the Family' formulates its political claims in terms of public reasons. The organization is aware of why they need to use public reasons. Focus's director of social research, Glenn Stanton says that

> If we were all on the same page, then, yes, I would speak our common [religious] language, but there's a whole bunch of people in this room all coming from different perspectives. So if you're going to make progress, let's start with the thing that we all hold in common and start from there' (Klemp 2012, p. 102).

Another activist of the Focus, Daniel Weiss adds that 'I think it's respectful to the culture [not to use religious claims] and I don't think that it's a betrayal of our beliefs either' (Klemp 2012, p. 102). These are very insightful opinions on the public political culture of constitutional democracies. In contrast to Wolterstorff's claims, it shows that religious citizens need not to see the use of public reasons as an infringement of their free exercise of religion. They also justify these thoughts appreciating pluralism and the need to use public reasons within their own comprehensive doctrines. Weiss says that

> In the Book of Acts, the apostle Paul is credited largely with the amazing spread of Christianity throughout the Roman Empire because he traveled everywhere and was such an eloquent and prolific writer. Paul goes to one town in Greece, spends some time there, and then goes to the market place where all of the folks talk and he starts to talking them about their own traditions. He's speaking to them in their own language . . . So he's speaking the way they can understand. Now I think right now – for good or ill – not a lot of people understand the way Christians talk, so we speak their language. (Weiss cited in Klemp 2012, p. 103)

The narrative on the apostle Paul shows that religious citizens can find the sources of justification of public reason within their own comprehensive doctrines, as Rawls claimed in his argument about the full justification of political conception of justice. The narrative on the apostle Paul also points to another important domain of moral learning of citizens. While

political deliberation should be conducted on the basis of public reasons, the domain of what Rawls calls the background culture is the space of deliberation without any restriction between citizens. In the background culture, citizens can exchange their views on each other's comprehensive doctrines. The deliberations within the background culture can also lead to moral learning, that is, the change of unreasonable doctrines into the reasonable ones. For instance, the disclosure of the narrative on the apostle Paul through deliberations within the background culture can strongly induce unreasonable interpretations of Christianity to the use of public reasons and to an understanding of compatibility of their religion to political values of freedom and equality. All these assessments confirm Rawls's hope for the transformation of unreasonable comprehensive doctrines to reasonable ones and for the possibility of overlapping consensus. Political liberalism is a realistic utopia.

3.2 Eberle's Ideal of Conscientious Engagement

Similar to Wolterstorff, Eberle (2002) also aims to show that citizens in a liberal democratic society cannot be morally criticized for their political advocacy of coercive laws on the basis of only religious reasons. Like Wolterstorff, he claims that to require religious citizens not to use religious reasons in the political advocacy is unfair to religious citizens, and it restricts their freedom of religion. In this respect, he objects to liberal approaches which demand from citizens not to advocate their favored coercive laws on the basis of solely religious reasons and which require citizens to provide for public justifications of these coercive laws on the basis of non-religious reasons. Eberle calls such liberal approaches as justificatory liberalism. According to Eberle, justificatory liberalism bases this moral requirement for public justification in the political advocacy on the norm of respect for persons. Eberle endorses the norm of respect for persons. Therefore, as Eberle argues, the plausibility of his argument depends on showing that the norm of respect for persons does not require the public justification of coercive laws citizens advocate.

3.2.1

According to Eberle, the justificatory liberal conception of public justification actually consists of two distinct claims: *the principle of pursuit* and *the doctrine of restraint* (Eberle 2002, p. 68). The principle of pursuit refers to the pursuit of public justification for a citizen's favored coercive laws, and the doctrine of restraint refers to refraining from supporting any coercive law for which a citizen lacks a public justification.

Eberle claims that the principle of pursuit does not require the doctrine of restraint. He states that justificatory liberalism does not provide for a convincing argument that the principle of pursuit requires the doctrine of restraint. Eberle agrees with justificatory liberalism that respect for persons requires citizens to pursue a public justification of their favored coercive laws. However, he rejects that the moral obligation to pursue public justification implies the doctrine of restraint.

According to Eberle, respect for persons requires what he calls the ideal of conscientious engagement, and the pursuit of public justification is a part of the ideal of conscientious engagement. The ideal of conscientious engagement has six components (Eberle 2002, pp. 104-5): to pursue a high degree of rational justification to establish moral appropriateness of a coercive policy advocated; to withhold support from this policy, if a high degree of rational justification could not be given; to communicate publicly one's reasons for this coercive policy; to pursue public justification; to listen to and be ready to learn from other citizens, and not to support any policy on the basis of reasons that violate the dignity of other citizens.

Eberle justifies all these requirements of the ideal conscientious engagement on the basis of his conception of respect for persons. He argues that citizens are persons who have a set of cares and concerns in virtue of which things matter to them. This aspect of personhood makes persons averse to being coerced, and therefore, a citizen is morally obligated to refrain

from coercing other citizens, unless it is morally appropriate. Therefore, a citizen is morally

obligated to pursue a high degree of rational justification of her favored coercive policy to

demonstrate its moral appropriateness (Eberle 2002, pp. 86-94). Moreover, persons have also

the ability to reflect upon and revise their cares and concerns and thereby to alter what matters

to them. To respect the reflective capacity of persons requires citizens to communicate one's

reasons and pursue a public justification for the political advocacy of coercive policies (Eberle

2002., pp. 94-103).

Eberle argues that if a citizen complies with the moral obligations of the ideal of

conscientious engagement, this citizen is not under a moral duty to provide public justification

for the enforcement or support of her favored coercive policy. Such a citizen can support her

coercive policies on the basis of solely religious convictions:

> So long as our compatriots affirm our dignity as persons and manifest that affirmation by
> committing themselves to the ideal of conscientious engagement, they have done all we can
> reasonably ask of them to ameliorate the tensions and frustrations inevitably generated by our
> disagreement regarding the coercive laws to which we are subject. (Eberle 2002, p. 108)

3.2.2

Eberle claims that justificatory liberals do not give a compelling justification of why

respect for persons requires the doctrine of restraint rather than solely the pursuit of public

justification. Eberle tries to develop his argument against the doctrine of restraint with respect

to Rawls through criticizing Rawls's conception of the liberal principle of legitimacy. He

states that Rawls's notion of liberal principle of legitimacy is closely related with the norm of

respect for citizens as free and equal. Eberle notes that Rawls has not much developed

arguments in favor of this principle. However, by taking into account Rawls's contention that

the argument for the liberal principle of legitimacy is the same as the argument for the

principles of justice, Eberle tries to test this principle with Rawls's 'strains of commitment'

argument for his two principles of justice. Eberle claims that Rawls's liberal principle of

legitimacy does not satisfy the argument from the strains of commitment, and therefore Rawls's liberal principle of legitimacy violates the norm of respect (Eberle 2002., p. 142).

Eberle states that Rawls develops his initial justification of his two principles of justice through a construction of the original position. Rawls argues that representatives of citizens in the original position under the veil of ignorance would choose his two principles of justice. Rawls states that the parties in the original position are constrained by some moral claims. Eberle notes that one of them is that we must honor the terms of agreement we enter, even if we happen to be under the worst circumstances. Therefore, given this moral constraint, the parties in the original position will not 'enter into agreements that may have consequences they cannot accept' (Rawls cited in Eberle 2002, p. 143). This is what Rawls calls the argument from the strains of commitment. Eberle examines whether the argument from the strains of commitment justifies the liberal principle of legitimacy. He claims that even though the parties in the original position are ignorant of their religious commitments, they are aware that they might be theists. So, the parties should determine whether the liberal principle of legitimacy is acceptable to theists. Eberle claims that a party that might be a theist cannot abide by the liberal principle of legitimacy. Eberle says that theists have overriding and totalizing obligations to obey God, which extend into the political realm. He also adds that this characteristic of theists is what makes their life meaningful, and therefore, it is constitutive of their moral identity. Thus, according to Eberle, theists cannot agree to the liberal principle of legitimacy. However, Eberle thinks that the parties in the original position would choose the ideal of conscientious engagement for two reasons. Eberle claims that the parties in the original position could not choose the liberal principle of legitimacy, because this will require them to disobey their obligations to God. Given that the ideal of conscientious engagement does not impose such a requirement, it is a more acceptable alternative. Secondly, given that a meaningful life for theists is to obey God and the liberal

principle of legitimacy is counter to the theists to have a meaningful life in this sense, because the ideal of conscientious engagement allows citizens to support laws whose sole justification is their religious convictions, again the parties would choose the ideal of conscientious engagement. Thus, Eberle concludes that 'the liberal principle of legitimacy is unfair even on the justificatory liberal's terms' (Eberle 2002, p. 148). Eberle thinks that one may response to his criticism of Rawls's liberal principle of legitimacy that theists are unreasonable and therefore the parties in the original position cannot take into account whether theists would be burdened under the liberal principle of legitimacy. Eberle answers to such kinds of response that 'there is no good reason to deny that theists are reasonable, at least as that term is understood by Rawls, that is, as denoting a willingness to propose and abide by fair terms of social cooperation' (Eberle 2002, p. 149). According to Eberle, theists can be willing to abide by the ideal of conscientious engagement. What a theist cannot agree to is 'political principles that oblige him to violate his deepest convictions or that impede him from living a meaningful life' (Eberle 2002, p. 150).

3.2.3

I argue that Eberle's argument that public justification consists of two distinct parts, the pursuit of public justification and the doctrine of restraint and that respect for persons requires only the pursuit of public justification is not a meaningful argument from the point of view of Rawls's political liberalism.

Eberle's conception of personhood on which his argument for respect is based takes into account only one dimension of the moral powers of citizens, a capacity to form, revise and pursue a conception of the good. Moreover, he conceives citizens' capacity for a conception of the good only in terms of their freedom in pursuing a determinate conception of the good. In this context, Eberle can present a picture of political advocacy in which citizens try to convince each other to the truth of their religious or non-religious moral convictions

either through communicating their own rational justifications or pursuing public justifications of moral convictions. And even if citizens are not successful in convincing other citizens, they are allowed to impose their moral convictions on other citizens. Under Eberle's ideal of conscientious engagement, either through consensus or acquiescence, citizens are obligated to follow particular conceptions of the good which they are free to reject from the point of Rawls's Kantian ideal of equal freedom.

In this respect, Eberle's understanding of political justification in his liberal democracy violates citizens' equal freedom to pursue their own conceptions of the good or comprehensive doctrines in their own way. Thus, Eberle reduces the political personhood of citizens to having determinate conceptions of the good they adopt. This implies that Eberle conceives liberal democratic government as an instrument of realizing the objectives of one's determinate conception of the good, as other positive liberty conceptions of democratic justice I have criticized from the point of view of Rawls's Kantian conception of political justice.

I argue that what leads Eberle to have such conceptions of personhood and politics is that he does not recognize that the domain of the political is a distinctive constitutive domain of constitutional democratic society, which Rawls calls as the basic structure. The basic structure is not a contingent sphere to which a comprehensive religious or doctrine can be applied, that is, it cannot be a conceived as an instrument of applying the norms of a comprehensive doctrine. Rather, the principles, standards, and values of the domain of the political 'arise in virtue of certain special features of the political relationships, as distinct from other relationships' (Rawls 2001, p. 182). One dimension of these political relationships is that citizens are free and equal political persons in the sense that rights and liberties are not contingent on subscribing to determinate conceptions of the good. The other constitutive aspect of the political relationship is that the political power is the coercive power of equal citizens as a collective body. Thus, applying any citizen's comprehensive doctrine to decide

constitutional essentials or basic questions of justice is unjust and illegitimate, and coupled with the fact of the burdens of judgment, no citizen can be politically expected to support even just and legitimate laws on the basis of true or reasonable comprehensive doctrines, however they are widely shared. From these constitutive aspects, Rawls's liberal principle of legitimacy is derived. The liberal principle of legitimacy guarantees the equal freedom of citizens to pursue their own conceptions of the good under a system of fair terms of social cooperation.

3.2.4

Therefore, I argue that in contrast to his claim, Eberle fails to justify his ideal of conscientious engagement on the basis of Rawls's original position. What Eberle ignores is that a system of fair terms of social cooperation is made possible by citizens' another moral power, their capacity for a sense of justice. This capacity for a sense of justice is what Eberle ignores in his conception of personhood. Fair terms of social cooperation are based on the idea of reciprocity, on the mutual acceptability of principles of justice in ideal theory in order to secure the recognition of each person's equal freedom independent of their determinate conceptions of the good.

The key moral constraint that structures the deliberations of the parties in the original position is the idea of reciprocity. As Rawls notes, 'fair terms of cooperation specify an idea of reciprocity: all who are engaged in cooperation and who do their part as the rules and procedure require, are to benefit in an appropriate way as assessed by a suitable benchmark of comparison' (Rawls 1996, p. 16). Rawls identifies this aspect of fair terms of cooperation as 'the reasonable'. The idea of reciprocity requires that 'in offering fair terms we must reasonably think that citizens offered them might also reasonably accept them' (Rawls 1996, p. xIii). In the original position, the moral constraint of the idea of reciprocity is secured by subjecting the parties to the 'veil of ignorance', that is, 'the parties are not allowed to know

the social position of those they represent, or the particular comprehensive doctrine of the person each represents' (Rawls 1996, p. 24). In this way, the veil of ignorance ensures that the parties in the original position are situated symmetrically, that is, as free and equal, and therefore, their agreements could be considered as fair. The agreement process in original position is conceived in terms of the idea of social contract. Rawls says that the reason for conceiving the original position in terms of the contract is that the concept of the contract corresponds with the features of a well-ordered society (Rawls 1999c, p. 250). In a well-ordered society, everyone accepts, and knows that the others accept, the same principles of justice, and therefore the citizens of such a society, whatever social position, all find its arrangements acceptable to their conception of justice. Thus, as Rawls states, 'the concept of contract leads to the argument from the strains of commitment' (Rawls 1999c, p. 250). In this respect, Eberle's use of the strains of commitment is a valid way of testing whether the liberal principle of legitimacy or Eberle's ideal of conscientious engagement could be chosen by the parties in the original position. However, Eberle's own reasoning through the strains of commitment is flawed. In Rawls, the veil of ignorance plays a decisive role in the argument from the strains of commitment. As Rawls states, the veil of ignorance requires 'the persons in the original position to consider the worst eventualities and to regard them as real possibilities' (Rawls 1999c, p. 251).[2] In Eberle's reasoning, we do not see that the parties as representatives of theists do consider various social positions they could occupy, when they compare the liberal principle of legitimacy and the ideal of conscientious engagement. According to Rawls's conception, the parties should consider that their religion can be a minority religion, or they can find themselves in a society in which the majority of people are atheists. Therefore, to select the ideal of conscientious engagement means that theists accept

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[2] This is a different expression of Rawls's maximin principle. In his criticism of Eberle, John Chandler (2010) also brings in the maximin principle to argue that the liberal principle of legitimacy rather than the ideal of conscientious engagement could be selected by the theists in the original position. However, he does not relate it to the idea of reciprocity, as I will do.

that the political power could be employed to implement policies on the basis of atheist conceptions of the good, which are against religious obligations of theists. Moreover, the parties in the original position are constrained by the condition that the principles selected should lead to stability, which is related to the argument from the strains of commitment. Assuming that parties in the original position know the facts of reasonable pluralism and the fact of oppression, the ideal of conscientious engagement cannot engender stability, given that the ideal of conscientious engagement permits the justification and legitimation of policies on the basis of conceptions of the good, nonreligious or religious, which other citizens as free persons have no reason to accept. I argue that these considerations from the strains of commitment would lead to the selection of the liberal principle of legitimacy. In my view, why Eberle misreads Rawls's argument from the strains of commitment is that Eberle ignores the fact that the idea of reciprocity, as understood by Rawls, is actually what structures the reasoning of the parties in the original position. I have noted that the idea of reciprocity refers to the idea of reasonableness. Eberle himself claims that theists can be considered as reasonable, that is, as willing to propose and abide by fair terms of cooperation. However, I contend that Eberle's conception of fair terms of cooperation is different from what Rawls understands from it. According to Rawls, the idea of reciprocity requires the mutual acceptance of the principles. Furthermore, the parties judge that a social practice conforms to the idea of reciprocity 'if none feels that, by participating in [this practice], he or any of the others are taken advantage of or forced to give in to claims which they do not accept as legitimate' (Rawls 1999d, p. 208). Therefore, when Rawls says that the parties should consider the worst eventualities as real possibilities, while reasoning on the basis of the arguments from the strains of the commitment, he actually structures the deliberations of the parties in the original position according to the idea of reciprocity. If a principle of a practice leads to a social position one of the parties could not reasonably accept, even though s/he

deems other parties worthy of this position, this party should not accept that principle. If this party insists on the acceptance of this principle, this means that the party proposes a principle that could be reasonably rejectable. This amounts to not seeking mutual acceptance. In this instance, other parties are justified to call such a party as unreasonable or unfair, not willing to propose and abide by the fair terms of social cooperation. In this respect, in the practice of the justification of political power, if the ideal of conscientious engagement would be chosen, theists should accept that nonreligious conceptions of the good could be enforced over themselves. However, given their religious commitments, theists could not accept this position. Thus, the ideal of conscious engagement cannot be a principle that could be mutually acceptable, and it is not conforming to the idea of reciprocity. In contrast, the liberal principle of legitimacy says that the implementation of political power should be justifiable on the basis of public reasons which are independent of the conceptions of the good. Therefore, the liberal principle of legitimacy could be mutually acceptable. If theists insist on the selection of the ideal of conscientious engagement, as Eberle advocates that they do, the only way for theists to protect their integrity seems to be to resist the enforcement of nonreligious conceptions of the good over them. However, to acknowledge principles on the condition that they will not be applied over one's conduct is counter to the conception of having a morality. As Rawls says, 'A man whose moral judgments always coincided with his interests could be suspected of having no morality at all' (Rawls 1999d, p. 202). If theists would accept consistent application of the ideal of conscientious engagement, in this case, they seem to gamble and 'they would show they did not take the religious, philosophical, or moral convictions of persons seriously, and, in effect, did not know what a religious, philosophical, or moral conviction was' (Rawls 1996, p. 311). In either case, we can identify such theists as unreasonable. Thus, from the point of view of Rawls's conception of justice, from the very beginning, the idea of reasonableness and the idea of reciprocity function as normative

constraints in the construction and implementation of principles of justice for a well-ordered society of free and equal citizens. These moral ideas refer to citizens' capacity for a sense of justice. The doctrine of restraint derives from this capacity for a sense of justice.

3.2.5

Wolterstorff (2012) makes it clear in his endorsement of the ideal of conscientious engagement that Eberle's criticism of the doctrine of restraint does not rest on a mere adherence to the freedom of religion. Rather, it stems from Eberle's concerns over how citizens can morally act, if, according to one's conscience, there is a serious moral evil that has to be eliminated, and they cannot find public justifications for the elimination of moral evils (Wolterstorff 2012, p. 150). According to Eberle, in this case, a citizen disrespects other citizens not when she does not provide for public justifications. Rather, she disrespects other citizens and particularly those citizens who are wronged by that moral evil, when she does not act to remedy a moral evil, just for the reason that she lacks public justifications.

However, as I presented the question of political justice, only those so-called moral evils that violate the ideal of equal right to freedom can be the subject of legitimate political coercion. Just because a social practice is considered a mora evil from the point of view of a citizen's comprehensive religious or moral doctrine is beside the point. Even though some actions identified as a moral evil from the standpoint of some citizens' comprehensive doctrines may be 'objectively' a moral evil that has to be politically remedied, answers to this moral evil within a comprehensive doctrine may not be in accord with the rights and freedoms of citizens. All these considerations demand justifications of public laws from the standpoint of Rawls's idea of public reason. Moreover, as I argued, public reasons are not identical with those actually shared political values; rather, the content of the idea of public reason is specified by the ideal system of equal freedom.

To see the consequences of Eberle's ideal of conscientious engagement regarding concerns over the question of moral evil, let's take the controversy over the politics of abortion. Some religious citizens see abortion as one of the greatest moral evils, because they believe that God forbids killing innocent human beings, and human fetus is an "unborn child", therefore, having the right to life. Thus, according to these citizens, the right to life of the fetus overrides women's freedom of choice on the grounds of their religious doctrines, and abortion must be banned. For Eberle, for the implementation of such a policy, it is enough that these citizens pursue public justifications of their policy or trying to convince other citizens on whatever grounds they could. And if they could not find a public justification or convince other citizens, they have no duty to refrain from their advocacy of abortion ban on the basis of their religious doctrines. Therefore, when these citizens achieve the political power, all religious or non-religious women citizens who disagree for the coercive elimination of abortion as a moral evil would be forced to act for the realization of some citizens' conceptions of moral goodness. Moreover, no woman citizen can object or demand an exemption to the policy on the grounds that their bodily integrity or freedom of belief are violated, because the ideal of conscientious engagement, by definition, morally approves such an imposition of moral obligations on the citizens. However, some citizens may think that restricting women's freedom of choice is more morally evil than abortion. Moreover, it may be the case that some pro-abortion citizens not only see abortion as nothing more than one's haircut but they also morally approve infanticide on the grounds that only self-conscious human beings have a moral status that deserves to be legally protected. When these citizens have political power, after these citizens performed the requirements of the ideal of conscientious engagement, they are morally permitted to give not only the right to abortion but also the right to infanticide. Naturally, for anti-abortion religious citizens, such a society would be an extremely morally evil society. Nevertheless, the ideal of conscientious

engagement requires that these anti-abortion religious citizens should also tolerate living in such an evil society, because some citizens' conscience morally obligates them to legalize abortion and infanticide, even though other citizens could consider such a society an extremely unjust society. Hence, as in Wolterstorff's equal voice liberal democracy, Eberle's ideal of conscientious engagement makes conceptions of justice and rights and freedoms contingent on citizens' comprehensive religious or moral doctrines to be applied to the whole society through either the seizure or the influence of political power.

However, under Rawls's liberal principle of legitimacy, no citizen has a reason to endorse one of these comprehensive conflicting doctrines about the moral status of human fetus, or even if citizens endorse one of these comprehensive doctrines, they are free to pursue it in their own way and they cannot be legally coerced to affirm any particular interpretation of such conceptions of moral status of the fetus. However outrageous it may seem to some religious citizens to permit abortions or however morally insignificant it may seem to some citizens to commit infanticide, political justice is neutral to citizens' justifications of these moral evaluations of abortion and infanticide from the standpoint of their comprehensive doctrines. As I stated in my criticism of Wolterstorff, what interests the domain of the political is securing the conditions of realizing and exercising of two moral powers of citizens as free and equal political persons. Therefore, citizens should deliberate and decide on the issue of abortion from the standpoint of public reason whose content is given by the political values of freestanding conceptions of political justice, as conceived in ideal theory.

3.2.6

Wolterstorff (2012) in his recent work mentions that both critics of Rawls including Eberle and him in his previous works and also defenders of Rawls got Rawls wrong, when addressing Rawls's work as if he is referring to actual liberal democracies. Wolterstorff now recognizes that Rawls develops his conception of justice with his idea of public reason in

ideal theory for a well-ordered just society, which only consists of reasonable persons (Wolterstorff 2012, p. 125, 165). Wolterstorff notes that in an ideal society which has no injustice and unreasonable persons, Rawls's idea of public reason can be acceptable. However, Wolterstorff claims that in actual societies which are characterized by fundamental injustices and disagreements over justice, Rawls's idea of public reason cannot be an action-guiding principle for democratic political struggles against injustices. Instead of public reasoning which he associates with policy deliberation and decision, he proposes a democratic politics of moral engagement in terms of community based grassroots organizing and issue-based movement organizing, which then may take the forms of protest organizing. In his discussion of various cases of democratic politics of moral engagement in the USA, Wolterstorff refers to the case of legislation of a law against human trafficking as an outcome of political struggles initiated by a coalition of various religious organizations which came together for different reasons (Wolterstorff 2012, pp. 151-57).

Wolterstorff argues that such democratic politics of moral engagement is fundamentally different than how Rawls sees democratic politics in ideal theory and how those public reason liberals who share Rawls's idea of public reason but do not work within ideal theory conceive democratic politics for actual liberal democracies. According to Wolterstorff, public reason liberalism conceives democratic politics as simply a matter of applying shared principles to a particular policy through a process of reasonable debate and decision-making. For public reason liberalism, there is no place for moral outrage, for passion, for forming coalitions (Wolterstorff 2012, pp. 165-6). However, for a politics of moral engagement, there is a serious moral evil that has to be alleviated or prevented by legislation such as human trafficking. Therefore, for a democratic politics of moral engagement, what ultimately matters is to succeed in the legislation of relevant policies. Thus, there is no need to agree on shared principles; rather, 'a convergence on a particular policy

from ideologically diverse standpoints' (Wolterstorff 2012, p. 172) to contest such moral evils is enough.

Wolterstorff notes that Rawls did not overlook a democratic politics of moral engagement, the role of moral anger, coalition politics and the existence of conflict for actual societies. However, for Wolterstorff, Rawls had to 'intentionally *look away* from such phenomena, *look away* from our actual world to the Platonic Form of The Well-Ordered Society' (Wolterstorff 2012, p. 164). However, I argue that Wolterstorff overlooks the fact that without having an ideal conception of justice, we cannot identify a factual injustice or moral evil under actual societies as something that violates justice. Rawls constructs his conception of justice in ideal theory by abstracting from such politics of moral engagement in order to identify what justice is, and in ideal theory, the idea of public reason is the normative basis of political justification of claims of justice. In this respect, actual citizens of actual societies can only identify what is just or unjust or a moral evil from the standpoint of ideal theory. Under actual societies, laws may not be legislated as an outcome of a proper process of public political deliberation, advocacy and decision-making on the basis of the ideal of public reason. However, whether those laws legislated as an outcome of a politics of moral engagement are just and legitimate are judged from the standpoint of ideal theory. Moreover, even if a particular policy will not be decided through a political process of justification by the idea of public reason in actual societies, it is a requirement of the rule of law that all laws have to be legislated and integrated into a system of law non-contradictorily on the basis of public reasons consistent with the equal right to freedom. In this respect, the constitutional court has a decisive role in actual societies, as a democratic politics of moral engagement may result in a legislation of laws that may violate the idea of equal freedom or that may violate the rule of law, even if the law may be just in content. Thus, a democratic government is

authorized to act within the limits given by the ideal conception of justice. Therefore, Rawls's idea of public reason constitutes a normative critical point of view for actual societies.

Some may argue that Wolterstorff's democratic politics of moral engagement can be partially accommodated into Rawls's wide view of public reason, which is Rawls's own reformulation of his idea of public reason. Rawls's wide view of public reason allows for ordinary citizens, though not for public officials, the initial justification of political claims with nonpublic reasons such as religious reasons with the condition that in due process citizens should provide public reasons for their political advocacy.

Whether and how Rawls's wide view of public reason can be considered as inclusive of such forms of political struggles in actual societies and how his wide of public reason needs to be understood in relation to his idea of overlapping consensus as the basis of normative stability will be the focus of the next chapter.

Chapter 4:
Normative Determinacy and Political Relevance of Public Reason

This chapter explores further the arguments of the second and third chapters regarding the normativity of Rawls's idea of public reason in actual societies characterized by deep political disagreements and extreme injustices. The chapter consists of two sections. In the first section, the chapter responds to criticisms of Rawls's idea of public reason for not being capable of resolving contentious political issues we face today from economic distribution to abortion. It is argued that Rawls's freestanding conception of public reason is normatively vacuous or incomplete. Those critiques are basically an internal criticism of Rawls's political conception. In this respect, this section first discusses David Reidy and then Patrick Neal. The second section develops further the defence of Rawls's idea of public reason regarding those criticisms that the idea of public reason legitimates grave social injustices and maintains the unjust status quo by virtue of its limitation of legitimate political claims to those justifiable by actually shared public political values of an existing society. Thus, they can be also seen another aspect of those criticisms of the idea of public reason as normatively vacuous or incomplete. This section of the chapter discusses Chad Flanders and Linda Zerilli as two recent representatives of such criticisms of Rawls's idea of public reason, as their works elaborate most fully the nature and implications of such radical criticisms of Rawls's idea of public reason. The chapter shows that Rawls's idea of public reason can be a normative critical principle for actual political actors in their political struggles against injustice.

4.1 The Incompleteness Objection

David Reidy (2000) discusses this criticism of Rawls's idea of public reason under the heading of the incompleteness of public reason.[3] The question is whether citizens can answer all, or nearly all, issues regarding the constitutional essentials and basic structure through the

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[3] For a general overview of arguments against the completeness of public reason, see Micah Schwartzman (2004). For an initial response to Reidy, which defends the completeness of public reason, see Andrew Williams (2000).

political values of public reason. Reidy claims that public reason is not rich enough to do that work. Reidy's arguments are based on two dimensions. One dimension is that how citizens can decide 'on the order of competing or conflicting political values of very great and apparently even weight' (Reidy 2000, p. 64). The second dimension relates the inadequacy of liberal political values to resolve some issues which beforehand require 'the resolution of some background or preliminary issue' (Reidy 2000, p. 64).

Regarding the first dimension which is about the ordering of political values, Reidy gives a number of examples from affirmative action to euthanasia. Reidy claims that even though some citizens can form a decision on these political issues within public reasons, the majority of citizens are not able to form their decisions by remaining within the domain of public reason. According to Reidy, many citizens will not have a sense of how to order their political values. Moreover, many citizens will not find within their political conception guidelines to order their political values in new and difficult cases. Therefore, Reidy claims that these citizens have to refer to their comprehensive moral, religious or philosophical doctrines to order their political values. According to Reidy, Rawls's answer to such cases of indeterminacy is that citizens firstly should order their political values within a political conception of justice without considering particular cases they face and then citizens need to apply their ordering to the cases. Reidy argues that such an approach is problematic. Reidy says that citizens cannot order their political values apart from considering particular cases. According to Reidy, 'when confronted with a fundamental political issue that turns on the order of competing or conflicting political values, there can be no permanent escape from the task of rationally ordering those values within liberal public reason as they apply to that issue taken on its own' (Reidy 2000, pp. 66-7). On this basis, Reidy claims that public reason is not rich enough to provide a solution to the ordering of political values. Reidy asserts that Rawls seems to accept the role of nonpublic reasons in the ordering of political values in his wide

view of public reason with the condition that public reason views the ordering reasonable. However, Reidy maintains that 'when the political values relevant to a fundamental political issue are, when viewed from within public reason alone, both competing or conflicting and of apparently great and even weight, then there is no unreasonable way to order them from the point of view of public reason alone' (Reidy 2000, p. 68). Thus, Reidy argues that public reason is not capable of resolving some political issues.

In relation to the second dimension, Reidy claims that public reason remains indeterminate, when some political issues require the resolution of background or preliminary questions. As an example, he refers to the issue of abortion which is used by Rawls an illustration of his understanding of public reasoning. Reidy claims that the question of abortion requires the determination of the moral status of the fetus and this is not answerable within the domain of public reason. Therefore, citizens must turn to their comprehensive doctrines to resolve the moral status of fetus.

4.1.1

To begin with Reidy's arguments about the incompleteness of public reason, Reidy does not establish why liberal political conceptions cannot order and balance their political values in some cases, especially in new cases, within the limits of public reason. Rawls argues that each member of a family of liberal political conceptions has to define a list of certain basic rights, liberties, and opportunities, and then it has to assign a special priority to those rights, liberties, and opportunities. As being liberal conceptions, they endorse the ideas of citizens as free and equal persons characterized by having two moral powers. However, they diverge on their interpretations of how liberties can be made coherent and ordered in terms of their relationships to the two moral powers of citizens. As Rawls says, 'a liberty is more or less significant depending on whether it is more or less essentially involved in, or is more or less necessary institutional means to protect, the full and informed and effective exercise of

the moral powers' (Rawls 1996, p. 335). On this basis, each political conception orders or balances their political principles and values. Therefore, it is difficult to conceive why Reidy claims that citizens could not find criteria of ordering their political values in new cases. It is an intrinsic aspect of a political conception to have priority rules to order its political values. As an example, Reidy asserts that the prospect of human cloning presents a conflict between political values of reproductive freedom and human dignity, and he claims that we cannot order these values even from the point of view of Rawls's justice as fairness. However, each political conception has to order its political values on the basis of how they establish a coherent system of equal freedom, and therefore, there is not any indeterminacy in the determination of the ordering. Rights and liberties should be adjusted to one another according to their status in the hierarchy of political values in order to be made a part of a fully adequate coherent system of equal freedom. If citizens reason within such a political conception, they can easily argue for their opposition to the human cloning on the basis of the priority of human dignity against the claims of reproductive freedom within public reason. It is possible that some new or difficult cases may not involve directly political values such as human dignity whose priority are fixed within a political conception. Rather, the case may be about deciding on the balance of political values that could have no priority over each other. In this case, some citizens may not have a ready answer. However, this does not justify the turn to nonpublic reasons. Not having a ready answer does not prove that there could not be any reasonable answer within public reason. From the standpoint of political justice, each case should be decided in view of securing a fully adequate scheme of equal freedom, and the question of balancing is a question of deciding on which particular scheme of system of rights can be the most adequate system for the fullest realization of the ideal of just democracy. This is how Rawls's idea of just constitutional democracy should be understood. Democratic exercise of political power is not only restricted by constitutionally guaranteed rights. Rather,

the guiding idea of public law-making is juridical in nature, and therefore citizens as democratic political actors do not occupy a different position than constitutional judges. The challenge citizens confront in their ordering and balancing political values is the same as constitutional judges' proportionality test in adjudicating conflicts over the scope of existing rights. Thus, it is not a coincidence that Rawls argues that

> Public reason sees the office of citizen with its duty of civility as analogous to that of judgeship with its duty of deciding cases. Just as judges are to decide them by legal grounds of precedent and recognized canons of statutory interpretation and other relevant grounds, so citizens are to reason by public reason and to be guided by the criterion of reciprocity, whenever constitutional essentials and matters of basic justice are at stake. (Rawls 1996, p. liii)

Thus, if citizens are to participate in the exercise of political power, it is the duty of citizens to adopt a political conception of justice specified into a coherently united scheme of political values of equal freedom. Then, from within such a conception of justice, it is highly plausible that each citizen can formulate a reasonable political answer to new cases, even if after a laborious work of deliberations within the public political forum and background culture. However, if some citizens propose a reasonable answer from a point of view of a different political conception, those citizens who could not decide from the point of their own political conceptions should take into account the possibility that other political conceptions may be more reasonable. This is also a reasonable expectation of citizens who propose a reasonable political resolution. Political and non-political public political deliberations are just about this process of public political opinion formation.

Regarding Reidy's assertion that Rawls allows the turn to nonpublic reasons in his wide view, I do not think that this is the case. In contrast to Reidy's assertion, I think that when Rawls says that 'The ordering [of political values] is not distorted by those [particular reasonable comprehensive doctrines] provided that public sees the ordering as reasonable' (Rawls 1997, p. 777), he does not show any endorsement of giving comprehensive doctrines the role of ordering in the political decision-making and deliberation, in case some citizens

cannot balance the political values in a particular case. Rather, Rawls's concern is prior to the point where citizens encounter the problem of the conflict of political values. It is about assessing the reasonability of a comprehensive doctrine in relation to its political conception which necessarily orders political values before their application to particular cases. Rawls is very clear that political values should not be structured according to the demands of nonpublic values of comprehensive doctrines. As Rawls states,

> what we cannot do in public reason is to proceed directly from our comprehensive doctrine, or a part thereof, to one or several political principles and values, and the particular institutions they support. Instead, we are required first to work to the basic ideas of a complete political conception and from there to elaborate its principles and ideals, and to use the arguments they provide. Otherwise public reason allows arguments that are too immediate and fragmentary. (Rawls 1997, pp. 777-8)

4.1.2

Concerning the indeterminacy of the idea of public reason because of its silence on the prior moral meanings of relationships or personhood, I do not also see Reidy's arguments as justified. This criticism of the idea of public reason is one of the common points across the works on Rawls's idea of public reason; and the case of abortion, which Reidy mentions, is the universal example that critics of public reason refer as a proof of public reason's inability to provide a sufficient normative standard for political judgment in resolving contentious moral issues (Perry 1996; Shaw 2011; Thunder 2011; Neal 2014). Michael Perry also makes the same claims as Reidy. Perry asserts that whether one is pro-abortion or not, both positions have to decide the moral status of the fetus before the beginning of argumentation within public reason:

> The path of public reason runs out before the "pro-choice" position is reached. Reliance partly on a public reason or reasons, whether religious or secular, is necessary for those on the "pro-choice" side of the debate no less than for those on the "pro-life" side: for example, "A human fetus is not a 'person' and therefore does not have the rights that persons have". (Perry 1996, p. 1457)

What the quotation from Perry says is that public reason can begin to work after

deciding the moral status of human fetus from our comprehensive moral, religious or philosophical doctrines. Therefore, according to this criticism of public reason, we cannot find a determinate solution by remaining within the idea of public reason. The argument is that reasonable political positions of proponents and opponents of a particular issue, such as pro-abortion and anti-abortion positions, are partly overdetermined by their religious or nonreligious comprehensive doctrines. Then, it is argued that public political deliberation should also involve nonpublic reasons. The argument is actually about again the ordering of political values. In this case, from the point of view of the critics, the problem of ordering does not emerge because of conflicting political values; rather, it emerges because of the dependence of the ordering on a domain external to which the idea of public reason applies.

4.1.3

Patrick Neal (2014) recently addressed this criticism by discussing Rawls's brief presentation of how we can reason within the idea of public reason in the case of abortion. Rawls used the issue of abortion as an illustration of his arguments for evaluating the reasonableness of comprehensive doctrines and their relations to the ordering of political values. Neal aims to show the failure of public reason by exposing the internal inconsistency of Rawls's own reasoning. In this regard, I will examine Neal's arguments, and I will show both the invalidity of claims of indeterminacy of public reason and the coherency and significance of Rawls's work.

In his illustrative presentation of public reasoning on abortion, Rawls argues that the due respect for human life, the ordered reproduction of political society over time, and the equality of women as equal citizens are the three political values which we need to consider about the issue of abortion (Rawls 1996, pp. 243-4). Comprehensive doctrines should form a reasonable balance of these political values in order to give a reasonable answer to the issue of abortion. Rawls claimed that a reasonable balance of political values will accept the right

of abortion of women until the first trimester of pregnancy. Rawls based his judgment of what makes one reasonable with regard to the right of abortion on the overriding political value of women's equality. Rawls says that other political values cannot change the conclusion. This presentation of the political positions on the issue of abortion implied that Rawls identifies any political position that opposes abortion as an unreasonable one. According to Neal, to claim that other political values excluding the equality of women cannot change the result means that Rawls has taken for granted the right to abortion without examining the significance of other political values. Hence, Rawls's conclusion that political positions that deny the right to abortion are unreasonable created controversies, and in his later writings, he clarified that he used the case of abortion not as an argument for the right to abortion but rather as an illustration of how a comprehensive doctrine may be unreasonable. To reiterate his point, Rawls says that

> Suppose now, for purposes of illustration, that there is a reasonable argument in public reason for the right to abortion but there is no equally reasonable balance, or ordering, of the political values in public reason that argues for the denial of that right. Then in this kind of case, but only in this kind of case, does a comprehensive doctrine denying the right to abortion run afoul of public reason. (Rawls 1997, p. 798)

Then he stated that political positions that oppose the right to abortion can be developed within the idea of public reason. He refers to Cardinal Joseph Bernadin who refers to the political values of public peace, the essential protections of human rights, and the commonly accepted standards of moral behavior in a community of law. Rawls states that Bernadin hoped to justify the denial of the right to abortion on the basis of these three values. However, Rawls does not say anything about whether Bernadin's argument is reasonable or not.

Neal claims that Rawls introduced in this passage new criteria of how a citizen can be unreasonable. Neal argues that in addition to the requirement of not to introduce one's comprehensive doctrine, one should also provide a reasonable balance of political values, and moreover, one should give not only a reasonable but also equally reasonable balance of

political values against the arguments of counter-positions. Neal claims that Rawls does not elaborate on what it means for a balance of political values to be reasonable. According to Neal, this lack of account of reasonableness of balance of political values becomes more problematic in the cases of deeply contested issues such as abortion. Neal contends that Rawls does not explain 'how it is possible to stay within public reason in cases of stand-offs' (Neal 2014, p. 341).

Then Neal's discusses Joshua Cohen's account of unreasonable views as a clarification of Rawls's conception of reasonable balance of political values. Cohen also takes abortion as an example and argues that a view that denies the right to abortion during the first trimester is unreasonable. Cohen argues in a paragraph which Neal quotes:

> Given the complexities of the question of the fetus, the conscientious rejection by many citizens of the claim that due respect for human life requires that we treat the fetus as a human person in the first trimester, the weight of the equality of women as a political value, and the importance of justification to others when such weighty values are at stake, how could it be reasonable to urge the state to endorse and enforce the view that due respect for human life bars first-trimester abortions? (Cohen cited in Neal 2014, p. 344)

Neal argues that there are citizens who accept the personhood of the fetus. Neal asks that why this fact cannot be a reason to question the reasonability of the view that affirms the right to abortion, if pro-abortion citizens can question the reasonability of denial of the right to abortion on the basis of their rejection of the fetus as a person. These citizens can give more weight to the moral status of the fetus as a person as a reflection of the political value of due respect for human life than the equality of women, and therefore, these citizens can reject the right to abortion during the trimester. Neal claims that given that these are both political values of public reason, there is no reason to identify those citizens as unreasonable. According to Neal, we cannot find an account of why these citizens are unreasonable in Rawls and Cohen. Thus, Neal concludes that citizens can develop political positions for and against the right to abortion, and public reason does not make possible to decide between these positions. Therefore, Neal asserts that the idea of public reason is incomplete. This

implies that we need to determine our political decisions about such deeply controversial moral issues on the basis of our religious or other comprehensive doctrines.

4.1.4

I claim that Neal's arguments that Rawls does not explicate how we can identify whether a political position goes against the ideal of public reason are not convincing. Likewise, his assertion that Rawls's and Cohen's presentation of the case of abortion shows that the idea of public reason is unable to determine a reasonable answer to controversial moral issues is unsubstantiated.

I argue that Rawls's statement that a comprehensive doctrine does not put forward a reasonable political position, unless it should be able to develop an equally reasonable balance of political values against the counter political positions is a reflection of Rawls's very elaborate conception of the idea of public reason. The requirement of presenting equally reasonable balance of political values for political arguments serves as a normative demand for citizens to fashion their reasonable comprehensive doctrines in accord with the requirements of public reason. More importantly, the normative condition of 'equal reasonability of ordering or balance' is a means of testing whether political positions justify their arguments by the political values and guidelines of public reason.

Rawls's distinctive conception of liberal democratic politics is based on his notion of reasonable overlapping consensus of reasonable comprehensive doctrines over a reasonable liberal political conception of justice. A reasonable political conception gives the content of public reason. The reason that public reason is complete is that a political conception orders the political values coherently without taking into account the demands of comprehensive doctrines. As Rawls says,

> . . . the ordering of values is made in the light of their structure and features within the political conception itself, and not primarily from how they occur within citizens' comprehensive doctrines. Political values are not to be ordered by viewing them separately and detached from one another or from any definite context. They are not puppets manipulated from behind the scenes by comprehensive doctrines. The ordering is not distorted by those doctrines provided

that public reason sees the ordering as reasonable. (Rawls 1997, p. 777)

Rawls's introduction of equal reasonability is meaningful in this context of assessing whether the proposed balance of political values can stand on its own and whether it can be judged by the guidelines of public reason without the involvement of nonpublic values of a comprehensive doctrine. Therefore, I think that claims of indeterminacy of public reason over moral issues such as abortion are rooted in conceiving any use of conflicting political values within a political argumentation as an indication of a reasonable disagreement within the domain of political. These claims do not consider whether these political values are ordered coherently within a freestanding reasonable political conception. These claims ignore Rawls's statement that political values are not to be ordered by viewing them separately. Rawls's understanding of reasonable balance of political values with a qualification of 'equally' points to this dimension of public reason. It is not enough for an anti-abortion political position to be reasonable by claiming that in its balance of three political values, due respect for life outweighs women's equality. Mere articulation of some political values in a political argumentation, as Neal claimed, does not suffice. How one's political conception orders coherently these political values without introducing one's comprehensive doctrines should be argued within public reason. In this respect, Micah Schwartzman's argument that '[o]ne can be moved by a religious claim and believe that political action should follow from it only if it can be substantiated by sufficient public reason' (Schwartzman 2011, p. 389) suffers from the same deficiency of critics of public reason. Certainly, one can be moved by a religious claim as an initial consideration of a political question. However, a religious citizen's mere declaration of her sincere beliefs in the sufficiency of her public reasons in favor of a denial of the right to abortion does not indicate the reasonableness of this political position. The ordering of political values must be grounded in the political values of public reason. This means that a religious citizen should be able to defend the priority of due respect to human

life over women's equality without the support of the religious belief in ensoulment at conception. Due respect to human life must be expressed as part of a coherently ordered political conception of justice. Daniel Dombrowski (2001) makes the same point, by referring to Audi, in his interpretation of Rawlsian view of public reason. Audi argues that when religious opponents of abortion appeal to genetics, they should,

> in order to fulfill the demands of public reason, make sure that they are sufficiently motivated by this reason to oppose abortion. That is, if they think that their appeal to genetics needs to be supplemented by a religious belief in divine infusion of a soul into the early fetus, then they have not met the demands of public reason. (Dombrowski 2001, p. 129)

Thus, in contrast to Schwartzman's (2011, p. 390) claim that Audi's demand for shared motivation from religious citizens is 'unjustifiably exclusionary', this is a proper interpretation of requirement of public reason. Otherwise, even if one does not introduce one's comprehensive doctrine into political discussion and remains within public reason, this does not mean that these political values are not 'puppets manipulated from behind the scenes by comprehensive doctrines'.

In a sense, Neal's misreading gains its force from Rawls's and Cohen's ambivalent claims on the personhood of the fetus. Neal rightly argues that if Cohen can base his pro-abortion position due to the legitimacy of rejection of the person status of the fetus on the basis of the complexities of determining the personhood of the fetus, why not other citizens cannot justify their anti-abortion position on the basis of the personhood of the fetus for the same reasons. In this case, both positions seem to be equally reasonable and it seems that there is no solution within public reason. Perry seems to be right that without resolving the question of the personhood of the fetus, one cannot argue for or against abortion. In this respect, I agree that Cohen's reason is not a valid one for determining the reasonableness of political positions on abortion, if what Cohen means with the complexity of the issue is the disagreements on the moral status of the fetus based on the comprehensive moral, religious or philosophical doctrines. From the point of view of a liberal political conception of justice,

whether there is an agreement or disagreement between comprehensive doctrines on the personhood of the fetus is irrelevant. As I have argued in the preceding chapters, a political conception of justice has its own autonomous purposes. It adjudicates between moral claims of comprehensive doctrines within the context of the principles of justice. A political conception of justice organizes a fully adequate system of rights and liberties from the point of view of two moral powers of free and equal citizens. A political conception of justice has its own conceptions of political morality independent of comprehensive doctrines. It is not true that one needs to turn to comprehensive doctrines to have a conception of personhood of the fetus. A political conception of justice has its own conception of person as characterized by the higher-order interests in the exercise and development of two moral powers. The personhood of the fetus and its rights can be ascertained in relation to these interests (DiSilvestro 2010, pp. 85-94). If external norms will be introduced into the political conception, citizens will be a means of other persons' ends. In this context, we can understand what Rawls means with the terms of equally reasonable balance of political values. We should evaluate political claims in terms of whether they agree with the purposes of a political conception of justice and its constitutive unit of political conception of personhood. Thus, if proponents or opponents of abortion justify their balance of political values on the basis of their non-political conceptions of personhood, we can argue that these political positions are not equally reasonable. In this case, this means that these political positions express the political values of comprehensive doctrines which run afoul of public reason. If political argumentation is predominated by these political positions, the consequence will be a clash of comprehensive doctrines under the guise of public reason. This is contrary to the ends of political justice characterized by the idea of reciprocity. Thus, I think that criticisms of the indeterminacy and incompleteness of public reason stem from regarding the domain of the political as a realm of resolving conflicts of moral values which are not related to the ends of

political justice. However, political justice is not interested in whether a political right or liberty such as the right to abortion prescribes a morally valued practice or not independent of the principles of justice. Citizens adhering to various comprehensive doctrines may see some practices permitted by the principles of justice as immoral within their own comprehensive doctrines. Political justice is neutral to such evaluations. Hence, a conception of political justice has to be self-contained. It has its own criteria of justification and evaluation with a view to realizing and sustaining the conditions of equal freedom for all citizens within the limits of principles of justice. In that sense, the idea of public reason as a guiding idea for political judgement is necessarily normatively complete.

4.2 The Novelty Objection

A more serious objection to Rawls's notion of public reason is that the idea of public reason does not have internal normative standards for guiding political changes. Lawrence Solum (1996) has identified this criticism as the novelty objection, which can be seen as another aspect of so-called incompleteness of public reason.

4.2.1

Chad Flanders (2012) has recently discussed the novelty objection to Rawls's idea of public reason. Flanders discusses the novelty objection under the heading of the conservatism objection. Jeremy Waldron (1993) and Michael Sandel (1998) are two representatives of this objection. Their claim is that the idea of public reason cannot allow novel reasons, and therefore it favors the status quo. Their conclusion is that the idea of public reason functions as a filter which prevents public expression of political claims of grave social injustices. As Flanders notes, Waldron claims that

> John Rawls offers . . . an overly narrow conception of the matrix of public reason, suggesting that it must always proceed from some consensus – "from premises that we and others can recognize as true, or as reasonable for the purpose of reaching a workable agreement. . . . Rawls' conception seems to assume an inherent limit in the human capacity for imagination and creativity in politics, implying as it does that something counts as a legitimate move in public reasoning only to the extent that it latches onto existing premises that everybody already shares. (Waldron 1993, pp. 837-8)

Flanders argues that Sandel is also presenting a similar argument against Rawls's conception of public reason. Sandel criticizes Rawls for his bracketing moral judgments in the political debate. Therefore, Sandel claims that at the time of the debate on the abolition of slavery, Rawls would side with Stephen Douglas who suggested bracketing the question of morality of slavery and leaving the decision to the states themselves, rather than siding with Lincoln who expressed his opposition to slavery on the basis of moral reasons. Flanders suggests reading Sandel's criticism not in terms of whether the idea of public reason involves moral judgments or not; rather, Flanders argues that Sandel's objection is actually 'about whether the judgment that slavery is wrong could proceed from controversial "metaphysical" judgments of the nature of persons that would make that argument violate the restrictions of public reason' (Flanders 2012, p. 184). Therefore, according to Flanders, it seems that claims of equality of races or gender, as a matter of fact, violate the idea of public reason, if widely accepted beliefs of citizens contradict such claims of equality.

Flanders considers alternative readings of Rawls's public reason in order to evaluate whether the novelty objection can be countered. Solum has provided an answer to Waldron's criticism. Solum suggested reading public reasons not as currently accepted reasons by the public but as reasons 'that could be widely shared by those considered them, and these can be as novel as one likes' (Solum 1996, p. 1477). Solum bases his reading on the interpretation of Rawls's statement that public reasoning should 'rest on plain truths now widely accepted, or available, to citizens in general' (Rawls 1996, p. 225). Flanders does not find this interpretation convincing. He argues that this reading of public reason eliminates any restrictions on the content of public reason. Flanders notes that proponents of comprehensive doctrines are making the same argument that their comprehensive doctrines could be available. He gives the example of Dworkin's argument against Rawls's public reason.

Dworkin claims that his own controversial moral position can be reasonably accepted by others independent of the possibility of its actual acceptance. Flanders proposes to read Rawls's reference to availability of plain truths to citizens as reasons 'that are based in widely accepted ideals and beliefs, or ideals or beliefs that are so uncontroversial that they are not widely accepted simply because they are not known' (Flanders 2012, p. 188). Therefore, Flanders claims that the novelty objection could not be challenged from the point of view of Solum's reading.

Flanders does not also see Rawls's proviso as allowing novel reasons that can change the injustices of the status quo. He claims that mere introduction of comprehensive doctrines into the public debate does not change the existing content of public reason. He states that the novelty objection is about the need to introduce novel premises such as the equality of women or blacks. However, Flanders argues that

> the only comprehensive beliefs we can air in public, given the proviso, are those which we know can be justified by public reason. . . If we give novel comprehensive reasons that we cannot later "make good" on with public reasons, we have violated the duty of civility, and gone against those "very great values" of public reason (Flanders 2012, p. 190).

Flanders, then, considers whether Rawls's distinction between the idea of public reason and the ideal of public reason can allow the introduction of novel reasons into the idea of public reason. Flanders discusses the issue in relation to Rawls's account of the abolitionists. Rawls discusses the abolitionists in terms of his 'inclusive view' of public reason. Here Rawls claims that the abolitionists who argued against slavery on the basis of their religious doctrines were conceptually within the ideal of public reason.

Flanders finds Rawls's 'inclusive view' controversial. In relation to the abolitionists, Flanders argues that we can plausibly say that the aim of abolitionists was trying to realizing God's kingdom on earth, in contrast to Rawls's argument that their struggle was for the sake of establishing a well-ordered liberal democracy (Flanders 2012, p. 193). More importantly, Flanders claims that as the inclusive view justifies the use of comprehensive reasons for the

sake of a political value which could be justified by public reasons to be given by the realization of a political conception in the future, 'it is no longer so clear how we tell whether a person is arguing in accord with an "ideal" of public reason or not' (Flanders 2012, p. 195). In this view, according to Flanders, anti-abortionists arguing on the basis of their metaphysical conception of personhood of the fetus could claim that 'they are arguing in light of an ideal of public reason, even if they violate present-day public reason' (Flanders 2012, p. 195). Flanders, however, says that the point of public reason is that '[w[e cannot violate public reason because we think our conception of the political really is the right one, because it embodies the whole truth as we see it. Public reason asks us to reason in terms that are widely shared' (Flanders 2012, p.195). On this basis, Flanders concludes that the 'inclusive view' of public reason is actually not a conception of public reason. Therefore, according to Flanders, Rawls's ideal of public reason cannot allow novel reasons without the violation of the idea of public reason at the present.

As a solution to the question of novel reasons without the violation of public reason, Flanders proposes two approaches by considering how the content of public reason changes historically. His first approach is to argue that when religious beliefs are widely shared, public reason can involve such religious beliefs in different historical periods. Flanders thinks that viewing public reason in this way resolves the novelty objection in relation to the abolitionists. He argues that because at the time of the abolitionists religious arguments were widely shared and therefore part of the public political culture, the abolitionists did not violate the terms of public reason by arguing on the basis of their comprehensive religious doctrines. His second approach is to argue that public reason can change historically through the introduction of novel reasons from the non-public political culture to the public political culture. Flanders argues that if public reason is historical, we should explain 'how public reason changes and so can adapt to allow novel reasons, but in a way that does not itself

violate the strictures of public reason' (Flanders 2012, p. 200). While Flanders accepts that the content of idea of public reason can change politically through introducing novel reasons from our comprehensive doctrines in the political sphere, he states that changes in public reason can also occur culturally. Flanders states that this cultural change can be actualized by 'comprehensive doctrines [that] may – as a form of conjecture – try to show how the public political culture can support something like what is affirmed in their comprehensive doctrines' (Flanders 2012, p. 201). As examples of the change of content of public reason from the background culture through the work of social movements, Flanders notes the acceptance of 'sexual harassment as a violation of the civil rights of women rather than just a private matter of personal sensibilities' (Flanders 2012, p. 202). Another example is the recognition of 'a failure to pay disability leave for pregnant women . . . as sex discrimination, rather than a gender-neutral determination that does not unfairly burden women' (Flanders 2012, p. 202). Thus, Flanders concludes that 'a norm once thought to be comprehensive or at least controversial and not widely accepted comes to be part of a political liberalism, and so part of the public political culture and not outside of it' (Flanders 2012, p. 203).

4.2.1.1

I argue that the common thread among the proponents of novelty objection to the idea of public reason from Waldron to Flanders is that they all conceive the idea of public reason as a domain of shared beliefs of an empirically existing community. Thus, they can speak of an actuality of an existing public reason which justifies slavery and gender discrimination. The force of novelty objection and its related justification of inclusion of comprehensive doctrines into the political debates stem from this conception of public reason. However, I claim that Rawls's notion of public reason is diametrically opposed to such an understanding of public reason.

As I have argued in the previous chapters, Rawls understands political conceptions of

justice and the idea of public reason as purely normative conceptions in a Kantian sense. Reasonable political conceptions of justice which constitute the content of public reason are not defined by the terms of existing common political beliefs of a people in a particular context. I think that we should take serious Rawls's argument that the idea of public reason is the reason of free and equal citizens of a constitutional democratic society. As I stated, Rawls develops the idea of public reason as a necessary constituent of a reasonable political conception of an ideal just well-ordered democracy, and for that reason, the idea of public reason can also be conceived as a normative guiding idea to reform existing polities towards the ideal of a well-ordered just constitutional democracy. In this regard, when Flanders interprets Rawls's argument that in political justification we need 'to appeal only those presently accepted general beliefs' as denoting any currently accepted general views of public of an actual society regardless of however legitimizing grave injustices they are, he ignores that the context that Rawls expresses this reference is the public justification in a well-ordered society which presupposes fully rational and reasonable persons as free and equal citizens. As Rawls says, the ideal of public reason '[a]s an ideal conception of citizenship for a constitutional democratic regime, it presents how things might be, taking people as a just and well-ordered society would encourage them to be. It describes what is possible and can be, yet may never be, though no less fundamental for that' (Rawls 1996, p. 213). Thus, the idea of public reason, by definition, excludes beliefs of slavery or legal discriminations from the domain of reasons that need to be widely accepted within the public political culture of constitutional democracies. At least, for such cases of injustices, the novelty objection does not apply. Rather, the idea of public reason functions as a normative standard for critical political judgment. The idea of public reason expresses the normative ideal of a fully just constitutional democracy. It guides political judgment for assessing the justness and legitimacy of political structures and for criticizing the existing political culture of societies.

In my view, why Flanders following Waldron ignores such a normative conception of public reason is that he reads the idea of public reason as a merely epistemological conception. However, even his epistemological reading is defective. His criticism of Solum's defense of public reason as available reasons is an uncritical reading of epistemological dimension of public reason. Flanders wrongly restricts the meaning of availability to the current public ignorance of already existing arguments that support the existing ideals and beliefs of the public. Nevertheless, as Rawls always emphasizes, all evidences and reasons for political arguments should be acceptable on due reflection. Therefore, arguments as outcomes of due reflection can contest the existing widely shared beliefs. If someone produces a novel argument through the use of uncontroversial scientific and common sense reasoning and methods, and even if such an argument is critical of widely shared general beliefs, this argument is certainly part of the public reason. Such critical arguments are constituents of the idea of public reason. Moreover, any kind of widely shared general belief which is based on metaphysical premises and which contravenes common sense and uncontroversial scientific reasoning and methods cannot be a part of the idea of public reason. Therefore, Flanders's concern that Solum's interpretation of availability of reasons makes possible any kind of comprehensive doctrine to be included within public reason is not substantiated. In this regard, critical novel political arguments are available to citizens in their public reasoning. Thus, Flanders's claim that Rawls's notion of public reason does not permit one to propose novel arguments without violating the terms of public reason is not valid. In my view, regarding the epistemological dimension of public reason, Solum's reply to the novelty objection is correct.

In this context, when the idea of public reason is conceived as a critical normative standard and as epistemologically open to novel arguments, Flanders's attempt to explain the historical change of the contents of public reason either through redefining the meaning of

public reason as involving comprehensive doctrines or through arguing for the transmission of norms from background culture to the political public culture loses its legitimacy.

The idea of public reason is a technical concept of Rawlsian conception of justice. When we redefine the idea of public reason in order to include religious beliefs, as Flanders suggests, then, this amounts to disconnect the notion of public reason from the notions of reciprocity, burdens of judgment, reasonable pluralism, and higher-order interests of citizens, that is, from the theoretical edifice of political liberalism. Likewise, the fact that some norms of a comprehensive doctrine become widely shared as a result of their transmission from the background culture to the political public culture does not make these norms acceptable to the idea of public reason. Whether these norms should be a part of public political culture are to be determined by the idea of public reason itself, given that all citizens should be able to evaluate, decide, and be assured that political claims meet the criterion of reciprocity. In this respect, for instance, in contrast to Flanders's claim, the inclusion of 'sexual harassment' as a violation of civil rights of women into the public political culture through the work of feminist movement does not in itself show that this inclusion is justified. Even though the emergence of 'sexual harassment' as a new concept to make sense of injustices experienced by women is partly a product of feminist movement in the background culture (Morgan-Olsen 2010), to be included into the domain of public reason, the relevance of this new concept as a political value must be justifiable by the political values of public reason. To be more specific, all norms that are going to be the basis of public law-making must be consistent with a system of equal freedom. Comprehensive feminist doctrines can have no place in the public political debate to decide whether and how 'sexual harassment' as a distinct category of rights violation should be included into the political conceptions of justice. The political justification of 'sexual harassment' as a rights violation cannot be based on the comprehensive feminist doctrines, because no citizen has a reason to organize his/her social relations on the basis of

particular feminist conceptions of sexuality or gender. Moreover, the 'sexual harassment' as a particular category of rights violation restricts other citizens' liberties such as free speech. Therefore, it must be shown that liberties are not restricted for the sake of some particular feminist conceptions of the good life. However, there may be the case that citizens with existing liberal political conceptions of justice may be incapable of incorporating the injustice of sexual harassment in the sense that they may consider existing laws and political values of gender equality adequate to tackle the issue of sexual harassment. This is not in itself an obstacle for political change, because citizens with comprehensive feminist doctrines can propose to the public the injustice of 'sexual harassment' as a considered conviction that other citizens should take into account in the process of reaching the state of wide reflective equilibrium over a political conception of justice. As Rawls says, '[t]he overall criterion of the reasonable is general and wide reflective equilibrium' (Rawls 1995, p. 141). When citizens achieve wide and general reflective equilibrium, this means that citizens have justified the injustice of sexual harassment within the idea of public reason by revising their existing political conceptions. Therefore, the idea of public reason is the normative standard that guides political judgment in establishing the legitimacy and reasonableness of normative change for the fullest realization of a fully just democratic society. In this regard, Flanders is wrong to claim that Rawls does not explain how the content of public reason changes.

4.2.1.2

However, there is the question of what we should make of the historical cases of the abolitionists and civil rights movement, given that these movements were characterized primarily by religious comprehensive doctrines. In my view, Flanders is wrong in his interpretation of Rawls's inclusive and wide of public reason regarding such cases. In contrast to Flanders's argument, the acceptability of such movements' religious justification does not stem from possible future justifiability of their claims of justice by the idea of public reason.

Rawls's arguments for inclusive and wide view of public reason should not be interpreted as a possible future justifiability of the content of comprehensive doctrinal political claims by the idea of public reason. Rather, the inclusive and wide views of public reason presuppose that such political claims are justifiable by the idea of public reason at the present time, regardless of how wide they are publicly known and shared. Therefore, Rawls's argument that abolitionists did not violate the ideal of public reason does not 'involve a confusion between the content of a belief and the reasons for it' (Lott 2006, pp. 91-2).

We should recall that the ideal of public reason is justified by the idea of reciprocity. As Rawls states, the criterion of reciprocity

> requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position. (Rawls 1997, p. 770)

Regardless of whether a society's constitution declares adherence to liberal democratic political values, slavery and legal discriminations based on race, gender, etc. are, by definition, violates the idea of reciprocity. Thus, with respect to the issues of slavery or legal discriminations, persons cannot be under a moral political obligation to abide by the terms of public reason in order to demand abolishing these grave injustices.[4] However, this does not mean that movements struggling against slavery and legal discriminations should be totally free of the moral duty of complying with the demands of public reason. To the extent that these movements articulate political claims for redressing society's political structure beyond abolishing slavery or legal discriminations, then, they are bound by the norms of public

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[4] Therefore, I do not fully agree with Rawls's historicist justification of the abolitionists. According to Rawls, 'it may happen that for a well-ordered society to come about in which public discussion consists mainly in the appeal to political values, prior historical conditions may require that comprehensive reasons be invoked to strengthen those values. This seems more likely when there are but a few and strongly held yet in some ways similar to comprehensive doctrines and the variety of distinctive views of recent times has not so far developed. Add to these conditions another: namely, the idea of public reason with its duty of civility has not yet been expressed in the public culture and remains unknown' (Rawls 1996, p. 251). In contrast to Rawls, I present a principled conditional justification, and it is not contingent on the development of the expression of public reason in the political culture.

reason, because new constitutive political principles of the society must be in accordance with the freedom and equality of all persons. For instance, if an anti-racial or anti-gender segregationist political movement demands affirmative action policies to be institutionalized after the elimination of legal segregations, this movement has to justify its political claims of affirmative action by the norms of public reason. Moreover, the fact that these movements are not strictly bound by the norm of public reason does not entail that public reason liberalism cannot subject these movements to normative political critique in order to demand from them to justify their claims by the idea of public reason. Without denying historical legitimacy of such movements of justice, in my view, even in their struggle against slavery and legal discriminations these movements can be required to be under a prima facie political obligation to comply with the norm of public reason. However, to make it clear, this prima facie obligation does not stem from the moral requirement to justify abolishing slavery or legal segregations. Rather, it derives from the normative conditions of a well-ordered just constitutional democracy. Given that the stability and legitimacy of such a political structure depends on the acceptance of the norm of public reason, political public culture of such a society should consist of freestanding political values. To the extent that anti-slavery or anti-segregation movements justify their political claims in terms of their comprehensive religious or nonreligious doctrines, the emergence and entrenchment of a freestanding liberal political public culture would become retarded and more conflictual. Thus, I disagree with Rawls's conclusion that 'the appropriate limits of public reason vary depending on historical and social conditions' (Rawls 1996, p. 251). In contrast to Rawls's assertion, 'to take a longer view' (Rawls 1996, p. 251) forces us to honor the ideal of public reason even under the conditions we are not strictly bound by the norm of public reason.

A brief glance at some arguments of the abolitionists and the proslavery party may give support to why citizens in their political advocacy should try to honor the ideal of public

reason even under non-binding conditions.

The abolitionists identified slavery as a sin to be immediately abolished. They justified

their opposition to slavery on the basis of their conception of divine sovereignty and

individual moral accountability. They claimed that a man should not be sovereign over

another man, because this amounts to playing God. According to the abolitionists William

Lloyd Garrison and Theodore Dwight Weld, as Lewis Perry expresses, slavery

> interfered with man's role as "an accountable moral agent". The imagery is legal: all men
> would stand before the bar of God and account would then be taken of their lives. . . . When a
> man presumed to claim that he owned another man, he competed with God for control and
> government over mankind. He tried to make his slave accountable to him instead of to God.
> (Perry 1973, p. 48)

As advocates of individual moral accountability to God, some abolitionists opposed in

principle to any intermediary institution such as human government and churches between

individuals and the government of God. According to these abolitionists, '. . . human

government was no more necessary than sin' (Perry 1973, p. 46). Abolitionists furnished these

theological interpretations with the natural rights doctrine of the Declaration of Independence,

which says that all men are created equal. Moreover, in accord with their advocacy of

unmediated relationship to the government of God, abolitionists did not give any special

authority for the Scriptures. According to Garrison, 'To say that everything contained within

the lids of the bible is divinely inspired . . . is . . . to require the suspension of the reasoning

faculties. . . .' (Garrison cited in Noll 2006, p. 31). Therefore, according to Garrison, if there

were passages that justify slavery in the Bible, these passages could be removed from the

Bible: 'To discard a portion of scripture is not necessarily to reject the truth, but may be the

highest evidence that one can give of his love of truth' (Garrison cited in Noll 2006, p. 31).

However, abolitionists' arguments were contested by the religious advocates of slavery.

According to Methodist proslavery advocate Rev. Thomas Thornton,

> [a]n abolitionist is not only an enthusiast and a fanatic, but he is also a disorganizer . . .
> pledged for upturning the institutions of society . . . men are to be thrown back into a state of

insubordination and disorder, under the vain show of *equality*, founded on the *abstract*
principles of *moral, civil, and natural rights*. (Thornton cited in Sparks 1998, p. 285)

On the contrary, according to the proslavery thought, 'The system of slaves and masters . . .

realized the divine government and forestalled anarchy' (Perry 1973, p. 32). Likewise,

proslavery Henry Van Dyke criticized abolitionists' attachment to individual free judgment

which extends to the denial of the authority of the Bible:

Abolitionism leads, in multitudes of cases, and by a logical process, to utter infidelity. . . . One
of its avowed principles is, that it does not try slavery by the Bible; but . . . it tries the Bible by
the principles of freedom. . . . This assumption, that men are capable of judging beforehand
what is to be expected in a Divine revelation, is the cockatrice's egg, from which, in all ages,
heresies have been hatched. (Van Dyke cited in Noll 2006, p. 32)

In this context, the question of slavery became a conflict between two irreconcilable

conceptions of religious doctrine. Each party to the conflict was equally sure that they

possessed the highest truth. On these terms, to the extent that abolitionists turned the question

of slavery into a questioning of the authority of churches and the Bible, the problem of slavery

could not be resolved reasonably. Accepting the arguments of abolitionists meant abandoning

one's fundamental religious commitments. This was not a politically reasonable demand and

it had far-reaching effects. As Mark Noll states, '[b]y defining slaveholding as a basic evil,

whatever the Bible might say about it, radical abolitionists frightened away from antislavery

many moderates who had also grown troubled about America's system of chattel bondage, but

who were not willing to give up loyalty to Scripture' (Noll 2006, p. 36). Because of their

religious condemnation of slaveholders, Abolitionists were also contested by secular anti-

slavery labour leaders. Labour association, National Reform Association (NRA) opposed 'any

thing like intolerance, whether it proceeds from orthodoxy or heterodoxy, the believer or the

unbeliever, from the Presbyterian or skeptic' (cited in Lause 2005, p. 73). According to one of

the leaders of NRA, George Henry Evans,

If [slaveholders] had been educated to believe that it was right to traffic in human flesh as well
as in the material of Nature necessary to sustain existence . . . we could not blame them from

doing so till informed of their error, and till the owners of the bodies in which they were trafficking had claimed their rights. (Evans cited in Lause 2005, p. 73)

Thus, in the period of abolitionists, both the presence of a wide majority who could not question the authority of Bible and secular labour associations is an indication of why antislavery political claims should have been formulated through the idea of public reason without recourse to religious doctrines.

4.2.2

Linda Zerilli (2012) also criticizes Rawls's idea of public reason for being restrictive and not permitting novel political claims. She develops her arguments by comparing Rawls's conception of politics which is characterized by the idea of public reason to Arendt's understanding of political practice characterized by judgment as a reflective political activity. She suggests abandoning Rawls's notion of reasonable which is defined by the method of avoidance. Instead, she proposes to understand the reasonable 'as a form of making political judgments and claims that generates agreement on matters of common concern by enlarging our sense both of what so much as counts as a common matter and who counts as a political speaker' (Zerilli 2012, p. 9).

In her assessment of Rawls's understanding of reasonable, Zerilli asks that how we can know that 'prior to the actual moment of speaking and judging, what another person will count as reasonable, and thus as political speech according to Rawls, in the context of a political debate' (Zerilli 2012, p. 10).

Zerilli discusses Rawls's account of the abolition of slavery to criticize Rawls's conception of public reason. She recounts Rawls's inclusive view of public reason through which Rawls explains how the political practice of the Abolitionists and Martin Luther King can be conceived as consistent with the ideal of public reason. Zerilli argues that conceptually assimilating nonpublic reasons of such political practices into the ideal of public reason

'might occlude the contingency of these advances as genuine but fragile political achievements' (Zerilli 2012, p. 15). She claims that such political struggles involved speaking against the existing public reason and 'refusing to limit oneself to the mere extension of already legitimate political principles' (Zerilli 2012, p. 15). She thinks that the abolitionist Frederick Douglass's Fourth of July address is a brilliant example of how these movements made their political claims outside the bounds of the idea of public reason.

In his speech, Douglass questions the meaning of arguing for the wrongness of slavery. He says that 'At a time like this, scorching irony, not convincing argument, is needed. . . . The feeling of nation must be quickened; the conscience of the nation must be startled'. On the basis of similar passages in Douglass's speech together with its rhetorical character, Zerilli claims that Douglass's speech cannot be interpreted in terms of the realization of the ideal of public reason. Zerilli argues that what Douglass seeks in his speech is not 'to convince others on the basis of what everyone already accepts but how to reanimate what they already know so that it becomes politically – and not just personally, morally, or religiously – significant' (Zerilli 2012, p. 18).

In relation to the role of comprehensive truth claims in political practice, Zerilli argues that 'the problem facing citizens of democratic societies is how to make critical judgments in the absence of a single conception of the good' (Zerilli 2012, p. 21). According to Zerilli, Rawls does not see the problem of political practice of citizens in this way. She states that in contrast to Arendt who emphasizes 'the importance of developing one's capacity to judge in the absence of a transcendent rule' (Zerilli 2012, p. 21), Rawls argues for 'the necessity of taking certain topics of political judgment off the table and abiding by the rules of public reason' (Zerilli 2012, p. 21). Zerilli claims that the consequence is that Rawls's conception alienates us from reflective judgment in the absence of universal rules.

Zerilli finds in Arendt's reflective judgment a different conception of democratic

citizenship. Zerilli says that for Arendt, 'to belong to a democratic political community is to have a "common world"' (Zerilli 2012, p. 21). Zerilli claims that the common world is different from the conception of 'overlapping consensus'. However, Zerilli says that '[f]or Arendt, what is common for us is not some comprehensive doctrine that we all share but rather a public space that is created out of the public expression of the plurality of comprehensive doctrines' (Zerilli 2012, p. 23). Zerilli claims that through the creation of such a common world by our political practice that new claims are articulated in the public. Thus, Zerilli argues that the political expression of novel reasons requires us to take the risk of going against the existing idea of public reason. On this basis, Zerilli claims that comprehensive worldviews should be freely expressed in the public world and they must be evaluated by 'the reflective judgments of citizens in the very practice of politics itself' (Zerilli 2012, p. 25), rather than by the idea of public reason. Therefore, Zerilli declares that we need to say farewell to public reason.

4.2.2.1

I argue that like Flanders, Zerilli also understands Rawls's idea of public reason as commonly accepted beliefs of an existing community. Thus, she misses the point, when she asks that how we can know whether a citizen is unreasonable, before her actual speaking of political claims. However, as I argued, the idea of public reason is a purely normative standpoint of ideal of political justice. Rawls's construction of political conception of justice assumes the reasonableness of citizens. In that sense, reasonableness is also a normative conception. For citizens to be considered reasonable, they have to accept the burdens of judgment, reasonable pluralism, freedom and equality of citizens in terms of two moral powers of having a capacity for a sense of justice and a capacity for a conception of the good. Then, under the assumption of a hypothetical well-ordered society that has an overlapping consensus over a political conception of justice, if a citizen justifies public laws by

comprehensive doctrines in the exercise of political power and in political advocacy, we say that this citizen is unreasonable in this case. The question is not one of whether one's comprehensive truth claims can be intelligible or not without the performance of an actual political practice. Zerilli claims that the requirement of the method of avoidance amounts to detach the assessment of the reasonability of a political claim from the context of articulation of political claims. In contrast to Zerilli's claim, I argue that Rawls's idea of public reason does not do policing of moral truths on the basis of defining some rules of intelligibility. Rawls is not insensitive to the context. Rather, as I argued, the nature of political justice requires the method of avoidance for the stability of justice. I do not think that Rawls would disagree with Zerilli's characterizing of the reasonable 'as a form of making political judgments and claims that generates agreement on matters of common concern by enlarging our sense both of what so much as counts as a common matter and who counts as a political speaker'. But Rawls's concern is that how this can happen consistent with the idea of justice, that is, the freedom and equality of citizens. Rawls's reply is the reformulation of the idea of public reason as a freestanding normative idea of political justification. In that sense, Rawls's idea of reasonability does not express simply a possibility of agreement on any kind of concern that could be a constituent of any of our common relationships. Rather, Rawls's notion of the reasonable expresses the fact that the idea of equal freedom limits which kind of agreements on what terms could be realized for a fair terms of social cooperation. People in a society can form a consensus on a comprehensive moral or religious idea through what Zerilli calls their reflective judgments but they should not enforce their agreement through the state power, because this would not be a reasonable agreement consistent with the idea of justice. The reason is that the idea of free and equal citizenship assumes citizens as having two moral powers, and the legalization of a comprehensive philosophical, moral or religious truth means the violation of citizens' right to revise their conceptions of the good. Zerilli may think that

people can reach agreements over their conceptions of the good, as her understanding of common world implies. However, the point is that the subject of justice is not to reach an understanding of a common good, and as I argued, Rawls's argument for the fact of reasonable pluralism basically concerns the stability of justice.

Zerilli states that '[t]he common world is built not only out of different perspectives but also imaginative acts of thinking and judging that take them into account' (Zerilli 2012, p. 23). Zerilli claims that this Arendtian view of common world is different from Rawls's 'overlapping consensus', because, according to Zerilli, the consensus requires citizens to abide by the method of avoidance. However, I claim that not only Rawls's view of 'overlapping consensus' is very similar to Zerilli's Arendtian common world, but also the formation of overlapping consensus is grounded on the use of citizens' reflective judgments. I think that Zerilli's underestimation of reflective judgment in Rawls is rooted in her understanding of the idea of public reason as an external authority that citizens should obey. However, the freestanding of the idea of public reason ensures that each citizen can by their exercise of reflective judgment accept the priority of the idea of public reason within their reasonable comprehensive doctrines. When citizens express an overlapping consensus over a reasonable political conception of justice, this means that citizens have managed to ground the political values of a reasonable political conception in terms of nonpublic values of their own reasonable comprehensive doctrines. When this happens, the idea of public reason is conceived not as an external authority; rather, the idea of public reason is seen as an overriding normative political value which citizens consider it as an integral part of their reasonable comprehensive doctrines in their political relationships. The grounding of the idea of public reason in a comprehensive doctrine can be seen a result of a process of reaching to what Rawls calls 'wide reflective equilibrium'. Rawls says that

> [w]ide reflective equilibrium (in the case of one citizen) is the reflective equilibrium reached when that citizen has carefully considered alternative conceptions of justice and the force of

various arguments for them. More specifically, the citizen has considered the leading conceptions of political justice found in our philosophical tradition (including views critical of the concept of justice itself) and has weighed the force of the different philosophical and other reasons for them. We suppose this citizen's general convictions, first principles, and particular judgments are at last in line. The reflective equilibrium is wide, given the wide-ranging reflection and possibly many changes of view that have preceded it.

. . . Recall that a well-ordered society is a society effectively regulated by a public political conception of justice. Think of each citizen in such a society as having achieved wide reflective equilibrium. Since citizens recognize that they affirm the same public conception of political justice, reflective equilibrium is also general: the same conception is affirmed in everyone's considered judgments. Thus, citizens have achieved general and wide, or what we may refer to as full, reflective equilibrium. . . . This equilibrium is fully intersubjective: that is, each citizen has taken into account the reasoning and arguments of every other citizen. (Rawls 1995, p. 141)

This long quotation from Rawls is a clear expression of how citizens' reflective judgment can be the essential aspect of personal justification of political liberalism for citizens. When citizens achieve full wide reflective equilibrium, then citizens create a common world. Rawls's contention is that for this common world to be a stable constituent of a just society of free and equal citizens, the idea of public reason should be specified as freestanding, given the fact of reasonable pluralism. To underscore the decisiveness of reflective judgment in the process of achieving a reflective equilibrium, we should note that Rawls does not accord any foundational primacy to principles or particular considered judgments. In the process of reasoning, both principles and particular considered judgments can be revised or affirmed. As Rawls states,

we may reaffirm our more particular judgments and decide instead to modify the proposed conception of justice with its principles and ideals until judgments at all levels of generality are at last in line on due reflection. It is a mistake to think of abstract conceptions and general principles as always overriding our more particular judgments. (Rawls 1996, p. 45)

However, despite these statements of Rawls, Zerilli may assert that she is justified in not taking into account the role of reflective judgment in Rawls and she is right to insist that Rawls has a conception of public reason as externally imposed rules. I think that Zerilli would say that before the full and public justification of the normative authority of public reason, nevertheless, citizens should first justify and evaluate their conceptions of justice pro tanto,

that is, citizens should begin to reason independently of their comprehensive doctrines. In other words, Zerilli may say that the idea of public reason functions as a formal constraint or meta-rule, before citizens internalize the idea of public reason. Thus, Zerilli could argue that for Rawls, determinate judgment which requires the application of universal rules to particular cases has priority. Firstly, I should note that I do not deny that determinate concepts or judgments have priority in Rawls's conception. However, for Rawls's political liberalism, determinate concepts have a different meaning than what Zerilli asserts. I will argue that Zerilli misreads Kant's notions of determinate and reflective judgments, and this misinterpretation is reflected in her faulty reading of Rawls and liberal conceptions of freedom and right. Before discussing these issues, however, I would like to note that I do not see any ground for discarding in advance the normative demand to pro tanto justify one's political conceptions independently of comprehensive doctrines. This normative demand to comply with the idea of public reason is based on the normative idea of reciprocity as expressing the fair terms of social cooperation between free and equal citizens. Following Arendt, Zerilli also argues that reflective political judgment is guided by normative constraints. Zerilli says that reflective judgment is thinking and judging without taking into account the function and utility of objects (Zerilli 2005a, pp. 174-5). Thus, for Zerilli, there is a normative standard to evaluate whether someone thinks and judges reflectively, as well. Public reason is a norm no more external than the demand to judge non-instrumentally. More importantly, we can legitimately argue that one of the reasons for the introduction of the norm of public reasoning independent of comprehensive doctrines is that to prevent the subjection of citizens' rights and freedoms to the utilitarian and functionalist judgments of comprehensive doctrines. Therefore, even at the level of pro tanto justification, the reflective judgment is a constitutive aspect of Rawls's idea of public reasoning.

I relate Zerilli's inattentiveness to reflective judgment in Rawls to her failure to

differentiate between two different conceptions of political practice. This is also associated

with her misreading of the meaning of so-called liberal rights and freedoms. From Zerilli's

claim that 'the problem facing citizens of democratic societies is how to make critical

judgments in the absence of a single conception of the good' (Zerilli 2012, p. 21), I infer that

Zerilli has a conception of political practice as a formation of opinions on different

conceptions of the good. This is also related to her notion of 'common world'. She argues that

reflective political judgment about the demand of sexual freedom means that enlarging our

common world is about counting other conceptions of the good as part of our common world.

She claims that liberal demands to extend marriage rights cannot think of such a conception of

freedom (Zerilli 2005b, p. 157). Zerilli reads liberal rights as 'rules or criteria according to

which to adjudicate plural perspectives' (Zerilli 2012, p. 22), and therefore, she argues that

they cannot lead to the enlargement of our common world. I affirm the value of Zerilli's

interpretation of enlarging our common world. I also do not think that Rawls's political

liberalism is averse to such a conception of political practice. However, contrary to Zerilli's

claims, I find her understanding of common world less pluralist than Rawls's political

liberalism. Rather than understanding rights and freedoms as rules for the adjudication of

plural perspectives, political liberalism remains neutral to various conceptions of the good. As

I have emphasized throughout the chapter, the aim of political liberalism is to provide and

secure the conditions of pursuing various conceptions of the good in accordance with the two

moral powers of citizens. Political liberalism leaves to citizens themselves whether through

reflectively judging they should see nonheteronormative sexual practices as part of their

common world in Zerilli's terms. Given the fact of reasonable pluralism, some citizens may

see such sexual practices as unacceptable. From Zerilli's perspective, this would amount to a

contracted common world. In contrast, Rawls's political liberalism says that despite our

irreconcilable moral or religious disagreements, we can sustain and expand our common

world. According to political liberalism, this is only possible, if we recognize everyone's rights and freedoms independent of our conceptions of the good. Therefore, when the state recognizes sexual rights including gay marriage, here, the rights do not function as a rule to adjudicate between various perspectives on the value or morality of non-heterosexual relations, as Zerilli implies. Rather, the rights declare that everyone, whatever their sexual practices, is equal and free citizens. The rights express to the whole society that even if we may not affirm others' ways of life from the point of view of our religion, we should treat them as our equals, we should recognize that we must not discriminate others because of their differences. More importantly, liberal rights are so essential that even sexual freedom as Zerilli understands it will not be a real freedom without the existence of rights. Without liberal rights that protect consensual relations, subjects of sexual freedom cannot constitute free and equal relationships. In this respect, for political liberalism, the protection and extension of rights and freedoms constitute the main form of political practice with respect to the exercise of political power. As a corollary, liberal political practice requires the idea of public reason to justify political claims in order to preclude the imposition of one's conception of the good over other citizens and to maintain the conditions of free allegiance to the priority of justice.

Zerilli's disregard of the constitutive role of liberal rights and freedoms is reflected in her omission of the normativity of liberal political values expressed by the idea of public reason. This manifests itself in Zerilli's misreading of the role of determinate concepts and their relationship to reflective judgment. Zerilli's misreading is very well exemplified in her interpretation of 'The Declaration of Sentiments'. Zerilli says

> We miss the creative expansion of the concept whenever we talk about the logical extension of something like equality or rights. The original concept of political equality, after all, is a determinate concept, historically constituted in relation to white, propertied male citizens. The Declaration of Sentiments did not simply apply this concept like a rule to a new particular (women). (Zerilli 2005a, p. 181)

Zerilli claims that rather 'The Declaration of the Sentiments' is an expression of

imagination through reflectively judging without applying a concept of right. Through imagination, 'new relations between things that have none' (Zerilli 2005a, p. 181), in this case, new relations between sexes, are created.

However, Zerilli confuses Kant's determinate concepts having normative content with their application to practical cases. For instance, equality is a determinate concept, whose normative content is given independent of particular cases or historical experience. When Zerilli defines political equality in terms of how it is historically institutionalized, she equates a normative determinate concept with its empirical application. Thus, Zerilli does not differentiate between normative determinate concepts and determinate concepts as empirical applications. It is true that imagination and reflective judgment are primary in the declaration of women's equality. However, in contrast to Zerilli, their exercise takes place by judging empirical instantiations of concepts of right in terms of normative determinate concepts of right such as equality. Imagination and reflective judgment are essential, because the only legitimate way to judge whether laws and political claims are in accordance with the normative principles of right is to employ 'the idea of original contract' as an idea of reason. The idea of original contract is to think hypothetically whether laws or political claims are consistent with the idea of equal freedom of the people. As Kant says,

> All right, that is to say, depends upon laws. But a public law that determines for everyone what is to be rightfully permitted or forbidden him is the act of a public will, from which all right proceeds and which must therefore itself be incapable of doing wrong to anyone. But this is possible through no other will than that of the entire people (since all decide about all, hence each about himself); for it is only to oneself that one can never do wrong. But if it is another, then the mere will of one distinct from him can decide nothing about him that could not be wrong, and the law of this will would, accordingly, require yet another law that would limit its legislation; then no particular will can legislative for a commonwealth. . . . This basic law, which can arise only from the general (united) will of the people, is called the original contract. (Kant 1996, pp. 294-5)

As I argued, Rawls's ideal of public reason is based on the same idea of the original contract. Rawls himself notes the similarity between his notion of public reason and Kant's idea of original contract. As Rawls says, to realize the ideal of public reason, 'ideally citizens

are to think of themselves as if they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact' (Rawls 1997, p. 769). We can read the idea of public reason expressing the political values of liberal political conception as normative principles of the right to be applied. Thus, in contrast to Zerilli's arguments, as I have noted, the idea of public reason does not represent or affirm actual political beliefs of a political community. Rather, through the idea of public reason as the expression of normative principles of justice, persons can judge the legitimacy of laws or political claims by means of their exercise of imagination faculties and reflective judgments. When citizens formulate their political claims and deliberate in the public political forum in terms of public reason, citizens show other citizens that they do not act to legislate their own particular wills for the general will of citizens as a collective body.

In this context, Zerilli's criticisms of Rawls's 'inclusive view' of public reason in her discussion of the political practice of the abolitionist Douglass is not justified. Zerilli contends that

> [t]he idea that one can redeem nonpublic reason with public reason assumes that one is in the position of a speaking subject who is counted as the source of claims, and who can therefore make arguments, that is, engage in the practices of justification based on a conception of the reasonable, which, for political liberals, are the only game in town. (Zerilli 2012, p. 15)

As I argued in my discussion of Flanders, the idea of public reason is a normative presupposition of political justice, regardless of actual subjects' awareness or acceptance of it, and the validity of political claims depend on their justifiability by the idea of public reason at the present.

In this context, Zerilli's claim that abolitionist political discourse in general and Douglass's political practice in particular refute Rawls's argument that their comprehensive doctrines did not violate the ideal of public reason is an empirical claim with respect to political actors' possible acceptance of the idea of public reason. Therefore, political actors'

actual or hypothetical future compliance with the idea of public reason has no bearing on the normative force of the idea of public reason. However, Zerilli's empirical claim is also wrong regarding abolitionists' and Douglass' commitment to the idea of public reason in their political practices.

Zerilli claims that Douglass's speech indicates a refutation of Rawls's argument that abolitionists' political practice can be conceivable in accordance with the ideal of public reason. According to Zerilli, her claim is supported by Douglass's expression, when Douglass says that 'where all is plain there is nothing to be argued. . . .Is it to be settled by the rules of logic and argumentation, a matter beset with great difficulty, involving a doubtful application the principle of justice, hard to be understood?' (Douglass 1999, pp. 195-6). Jason Frank (2009) also states that the abolitionist Wendell Phillips makes the same claim with Douglass. In his Philosophy of the Abolition Movement, Phillips says that the abolitionists were charged with that 'in dealing with slaveholders and their apologists, we indulge in fierce denunciations, instead of appealing to their reason and common sense by "plain statements and fair argument"' (Phillips 1884, p. 99). Nevertheless, however rhetorical was Douglass's speech in particular, as Zerilli argues, or the abolitionist political discourse in general, as Frank notes, I argue that the rhetorical language of both Douglass's speech and the abolitionist political discourse articulates and is decisively accompanied with the fundamental political values of the idea of public reason against slavery.

Zerilli concedes that Douglass is making arguments but she says that 'his rhetorical genius was to bring his audience to hear reasonable political judgments in the very moral denouncements that his imaginary interlocutor dismissed as politically ineffective and a political liberal might call unreasonable' (Zerilli 2012, p. 17). I do not think that a political liberal can identify this speech as unreasonable. I think that the important point is not that Douglass gives reasons but he presents his reasoning in terms of the political values of the

idea of public reason. Even under contemporary circumstances there is a great resistance to political change for the fullest realization of the ideal of justice. Democratic political actors employ such rhetorical political discourse and this may be necessary to politically activate the public (Chambers 2015). What would make us to identify which rhetorical discourse is reasonable or not is to check whether political discourses articulate their moral denunciations by acknowledging political values of the idea of public reason and not by declaring the truth of one's political claims on the basis of a comprehensive doctrine.

I claim that Douglass's speech is an example of such a rhetorically argued reasonable political speech. In his speech, Douglass says that 'This, for the purpose of this celebration, is the Fourth of July. It is the birthday of your National Independence, and of your political freedom' (Douglass 1999, p. 189). Then, he says that

> Your high independence only reveals the immeasurable distance between us. The blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not me. The sunlight that brought light and healing to you, has brought stripes and death to me. This Fourth July is yours, not mine. You may rejoice, I must mourn. To drag a man in fetters into the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacrilegious irony. (Douglass 1999, p. 194)

These passages are expressions of critical employment of the ideal of public reason. Frank, and following him Zerilli, acknowledges that these passages can be read in terms of the standpoint of public reason. Frank understands the standpoint of public reason in this context as an immanent critique:

> According to this approach, Douglass exposes a *contradiction* between the universality of the principle and the historical particularity of its application. He affirms the underlying principles that are said to animate the 'nation's jubilee'- the Declaration's 'all men were created equal', for example, or the righteous morality of a humanistic Christianity – and then exposes the hypocrisy of declaring these in principles in a country that accepted the conversion of black men, women and children into slaveholder's property. (Frank 2009, p. 93)

Reading of Douglass as articulating the ideal of public reason in terms of an immanent critique of the shared principles of the Declaration and the Constitution is supported by his

endorsement of the Constitution as antislavery. He states that

> as it ought to be interpreted, the Constitution is a glorious liberty document. . . . if the Constitution were intended to be, by its framers and adopters, a slaveholding instrument, why neither slavery, slaveholding, nor slave can anywhere be found in it. . . . Now, take the Constitution according to its plain reading, and I defy the presentation of a single pro-slavery clause in it. On the other hand, it will be found to contain principles and purposes, entirely hostile to the existence of slavery. (Douglass 1999, p. 204)

However, Frank and Zerilli argue that Douglass's criticism cannot be reduced to an immanent critique. Rather, Zerilli asserts that

> In such moments, the claim to "we the people" does not call upon an already existing subject formed through consensus on basic political principles only to affirm them. Rather, it is a form of speaking and judging that unsettles how we understand those principles and the apparent coherence of the "we" that denies its contingent and exclusionary character. (Zerilli 2012, p. 19)

In my view, such interpretations and criticisms of the idea of public reason as an immanent critique underestimate the normative critical force of Rawls's ideal of public reason. To reiterate, the idea of public reason expresses an evaluative standpoint of justice, and principles of justice is not reducible to their application to the constitution. Consensus over some political principles of constitutive political documents does not in itself legitimate these principles. Their legitimacy is judged by the idea of public reason of political justice. My reading of Rawls's ideal of public reason in an analogical way to Kant's original contract implicates such a perspective. Thus, we can read aforementioned passages of Douglass as showing not the contradictions between the declared principles and their application; rather Douglass, in the role of an ideal legislator, judges the Declaration and the Constitution from the standpoint of public reason in terms of prior fundamental political values of freedom and equality. This reading is consonant with Zerilli's interpretation, when she says that Douglass's reference to 'we the people' unsettles shared understanding of political principles. However, as my reading implies, this unsettlement does not come from the rhetoric; at most, the rhetoric reflects the prior principles of justice. In this regard, while Douglass's words, 'This Fourth

July is yours, not mine' and similar passages in his speech seem to be rhetorical expressions, in my view, Zerilli's argument that the point of Douglass's rhetorical speech is 'to gain critical purchase on what each takes for granted' (Zerilli 2012, p. 18) underestimates Douglass's radical critique. I claim that Douglass makes a real argument in such passages, that is, he means that 'the very cause and animating principles his audience celebrates are the basis of his exclusion' (Frank 2009, p. 91). This point can become more understandable, if we take into account that Douglass must have been considered the general public. What Douglass's speech does is presenting to the public a new political conception of justice that challenges the understanding of liberty of the general public which is complicit in the perpetuation of slavery. In this sense, Douglass acts according to the ideal of public reason. Zerilli disagrees with the claim that the unsettlement of shared political understanding can be read as the realization of the ideal of public reason. Her reading is based on an interpretation of the idea of public reason as a process of justification that 'must always proceed from some consensus' (Rawls 1985, p. 229). Nevertheless, as I argued throughout, the existing political consensus cannot be equated with the normative content of the idea of public reason. As Douglass's speech attests, under the circumstances Douglass made his speech, there was no 'publicly acceptable political conception of justice'. In such conditions, what should be done is to establish a new political consensus on normatively prior ideas of justice, rather than proceeding from the established consensus. By positing a new political conception of justice, Douglass acts in accordance with the ideal of public reason.

Moreover, while Zerilli claims that Douglass's speech is not 'based upon reasons and evidence after discussion and due reflection' (Zerilli 2012, p. 18), if we follow Douglass's sentence 'where all is plain there is nothing to be argued', which Zerilli quotes as an indication of the refutation of Rawls's argument, we can see how Douglass reasons in terms of political values of justice. In arguing against the need to prove that the slave is a man,

Douglass contends that this is already conceded by the practices of slaveholders themselves (Douglass 1999, p. 195). He notes that the slaveholders acknowledge the humanity of the slave by subjecting the slave to the laws which punish their disobedience. He notes the presence of numerous crimes, which, if committed by a slave, subject him to the punishment of death. Douglass states that no one can point any such laws in reference to the beasts. He also notes that the slaves are engaged in all kinds of work common to other free men, including confessing and worshipping the Christian's God (Douglass 1999, p. 196). Thus, Douglass says that 'What is this but the acknowledgement that the slave is a moral, intellectual, and responsible being' (Douglass 1999, p. 195). I think that such statements are powerful expressions of how the slaves are already recognized by the slaveholders that they have two moral powers, a sense of justice and having a conception of the good. These statements declare that as having two moral powers, the slaves have to be legally recognized as free and equal citizens. This is the constitutive fundamental political value of Rawlsian idea of public reason, and it is at the heart of Douglass's conception of political justice and most of the abolitionist politics.

Public reasoning in terms of common sense and scientific reasoning constitutes also a significant aspect of the abolitionist political discourse in general.[5] This is affirmed by the abolitionist Phillips whom Franks quotes as an example of the abolitionists' 'refusal to engage in common deliberation or dwell on public justifications' (Frank 2009, p. 99). However, this is not the case, and Frank, similar to Zerilli, does not take into account Phillips' passages following his saying that the abolitionists were charged with rejecting to appeal to reason. Phillips states that 'the antislavery cause has, from the first, been ably and dispassionately argued, every objection candidly examined, and every difficulty or doubt anywhere honestly entertained treated with respect' (Phillips 1884, p. 116). Then, Phillips gives a list of

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[5] This also undermines Flanders's claims that Rawls's understanding of the idea of public reason is conservative.

abolitionist literature that engaged in the critique of slavery in different areas from the practical workings of the slave system to various constitutional issues in terms of political values, common sense and scientific reasoning.

To conclude, besides giving legitimacy to the moral requirement to articulate political claims through the idea of public reason, as I argued in my discussion of Flanders, the historical movement of abolitionists shows that novel political claims can be articulated through the idea of public reason. The decisive role of the idea of public reason in the historical struggles of abolitionists attests to the normativity of the idea of public reason for critical political judgment in the constitution of political practice for justice (see also Macedo 1997). Even before we observe the approximate realization of Rawls's ideal of just and stable well-ordered democratic society in which reasonable citizens with reasonable comprehensive doctrines develop an overlapping consensus over political conceptions of justice, the ideal of public reason guides critical political practice.

The last chapter will develop further the normative, critical force of Rawls's idea of public reason in actual societies through a critique of radical democratic objections to Rawls's idea of public reason together with his political conception of justice.

Chapter 5:
Radical Democratic Objections to Public Reason

This chapter defends Rawls's idea of public reason against radical democratic criticisms that Rawls's idea of public reason legitimizes injustices by ignoring or underestimating political conflict and power relations.

The radical contrast between Rawls's Kantian ideal of just constitutional democracy as securing equal freedom of choice of each person and the idea of democracy as the medium of end-oriented (regardless of its moral, rational, or interest-based character) politics becomes fully expressed in the radical democratic critiques of Rawls. When politics is conceived as a resolution of conflicts between ends rather than action conflicts, then, we can say that radical democratic conception of politics is a logical conclusion of such end-oriented conceptions of justice and democracy. Radical democratic conceptions do not deny the idea of human freedom in some form of individual and collective free agency, and radical democracy is committed to a kind of Kantian idea that ends can only be a matter of free choice or decision and it depends on the agents themselves whether and how to pursue their ends. Taken together with the plurality of ends, for radical democracy, conflicts between ends are constitutive of social coexistence, and therefore, conflicts between ends cannot be procedurally resolved and they cannot be contained within constitutional structures. For radical democrats, the question of social coexistence of conflicting ends becomes more disturbing, as free agents are embedded in the structures of power relations and the ends agents pursue are articulations of power relations. Some of these power structures are intrinsically dominating or some of power relations tend to produce domination. Therefore, for radical democracy, the question of politics is formulated as a question of how to respond to the social coexistence of plurality of conflicting ends which are articulated predominantly in and through relationships of domination. In this context, the problem of radical democratic politics of justice is whether

conflicting ends can be politically mediated by common ends (Wenman 2013; for a critical reading of radical democracy, see McNay 2014). Sheldon Wolin and Chantal Mouffe are representatives of two contrasting conceptions of radical democracy responding to the question of politics and justice in the context of the plurality of conflicting ends embedded in the relations of power and domination.

Wolin is committed to the ideal of human equality, and for Wolin, justice becomes possible, when people as a collective actor exercises collective power to create commonalities in their contestation of injustice as dominating power relationships (Wolin 1994a). In this respect, democracy is the mode of expression of people's collective sharing of power (see Botwinick and Connolly eds. (2001) for a critical evaluation of Wolin's conception of democracy). As a mode of sharing power, Wolin argues that democracy cannot be restricted by constitutional forms. According to Wolin, given the fluidity and pluralism of social relations, constitutionalization always results in the reification of a particular constellation of power relations, and therefore constitutional democracy always legitimizes the exclusion of some individuals and groups from the collective exercise of power over the equal determination of common concerns. Therefore, rather than constitutions restrict democracy, democracy should dominate constitutions (Wolin 1994b). As Romand Coles notes, this does not mean that Wolin's idea of democracy is indifferent to constitutional forms. Rather, 'they are vital conditions of its possibility. Yet they are most significantly thus insofar as they disorganize and disperse constitution-as-organization and paradoxically help facilitate the disorganization and dispersal of hierarchical tendencies of institutionalization' (Coles 2008, p. 140). Democracy as a possibility of justice becomes possible to the extent that collective action creates new commonalities by constant questioning and transgressing the modes of exclusion of others through and beyond non-reifying institutional forms.

In contrast to Wolin, Mouffe accepts the framework of constitutional democracy as the institutional form of mediating political conflicts. Moreover, she thinks that every form of institutionalization of power is necessarily exclusionary, not simply by virtue of its fetishizing effects, as Wolin's critique of constitutionalization implies. Rather, for Mouffe, there cannot be a unitary idea of justice. According to Mouffe, every political creation of commonality is by its nature a political imposition of particular forms of power over opposing conceptions of commonality, and there is no possibility of discriminating between conflicting political forms of commonality within a constitutional democratic framework. The only commonality possible between conflicting political groups within a constitutional democracy, for Mouffe, is on the radically indeterminate democratic values of freedom and equality, and the articulation of these democratic values by political actors expresses conflicting power constellations. In this respect, Mouffe conceives democracy as a relatively peaceful mode of power struggle over conflicting and intrinsically exclusionary ideas of common good (see Oksala 2012, for a proper reading of Mouffe's agonistic democracy).

In this context, both Wolin and Mouffe conceive Rawls's political conception of justice as either trivializing or eliminating democratic politics. As interpreted by Wolin and Mouffe, Rawls's priority of the right over the good, and more importantly, Rawls's ideas of stability and overlapping consensus depoliticize political conflicts over justice and serve to maintain existing relations of domination and power.

The chapter defends Rawls's idea of public reason against Wolin's and Mouffe's criticisms. It consists of two sections. In the first section, the chapter discusses Sheldon Wolin's criticisms of Rawls that his construction of conception of justice preserves existing economic and political concentration of power, and therefore Rawls's idea of public reason is undemocratic in that it functions to restrict political action of exploited classes and groups against dominating power relations. The second section discusses Chantal Mouffe's criticisms

of Rawls that he ignores political conflict and power relations. The section focuses on her criticisms of Rawls that his idea of public reason cannot be a basis of political contestation against those anti-democratic political forces in existing democratic political orders. The section elaborates Rawls's notion of political conflict both in actual and ideal democratic societies. The chapter concludes that Rawls's idea of public reason recognizes the place of political conflict both in actual and ideal democratic societies, and his idea of public reason can be a political principle of political contestation for actual political actors against relations of domination that violate the ideal of equal freedom.

5.1

Wolin claims that the idea of democracy as collective political participation does not have a central place in Rawls's *Political Liberalism*. Wolin states that its supreme political value is individual liberty rather than power sharing, and its main institution is the Supreme Court rather than democratically accountable and popularly elected delegates. According to Wolin, such trivializations of democracy are a consequence of Rawls's conception of politics rooted in his contract theory. Wolin claims that in the contract theories 'the meaning and scope of politics is to be "settled" beforehand, that is, before conflict and controversy among social groups and the alignment of classes is recognized' (Wolin 1996, p. 98). This containment of politics is realized through the constitution and institutional arrangements designed according to the requirements of the constitution. Wolin contends that such containment of politics is valued for the central values of stability, social unity, and cooperation, which Rawls cherishes.

Wolin regards contract theories as problematic, because he argues that the formation of contract is based on the abstraction from the real inequalities of power between actual actors. Through the abstraction from the realm of real inequalities, each party to the contract

is represented as having equal rationality and therefore as giving their consent under equal conditions. According to Wolin, in this representation of emergence of consent,

> there are no politics of consent, no negotiation, and no seeing of consent through the eyes of different classes, groups, and sects, only a politics in which reason argues with itself to legitimize the contract, as though the central issue were rationality rather than disparities. (Wolin 1996, p. 99)

Wolin asserts that Rawls's constructivism designed to produce agreement reproduces this feature of contract theories which remove politics in the formation of consensus. In this respect, Wolin maintains that 'Rawls adopts the worst feature of contract theory . . . the mystifying role of consent' (Wolin 1996, p. 99). According to Wolin, because the society is conceived as founded on the equality of its members through the contract, 'it is then possible to mystify all later elections as ritual reenactments of original equality' (Wolin 1996, pp. 99-100).

Wolin mentions that contract theories had also a radical dimension, given that they had emerged in the historical context of real or possible revolutions against arbitrary rules with social inequalities and political exclusions. Contract theories responded to this reality in order to identify fundamental principles of a new order. However, Wolin contends that Rawls develops his device of original position without responding to the real contexts that may be subject to revolutions or that may need a radical critique. Hence, according to Wolin, the consequence of Rawls's constructivism is '[a]n idealization of the status quo' (Wolin 1996, p. 100).

5.1.1

Wolin's contention that Rawls removes politics in the formation of actual consensus can be valid, provided that one reads Rawls's abstractions as if his abstractions operate under real societal contexts which are considerably unjust and these abstractions are projections of real social positions. When read in this way, Wolin is right to say that Rawls mystifies unjust social relations of power and he leaves intact the existing order. Thus, according to Wolin, the

hypothetical and nonhistorical character of the original position reproduces the social reality, and therefore, he claims that Rawls lacks the revolutionary aspect of traditional contract theories by not engaging in real political problems that demand a critical response.

I claim that such an understanding of Rawls's employment of the idea of contract in his construction of the original position is a misreading of Rawls's political constructivism. Rather than 'an idealization of status quo', I contend that Rawls develops his constructivist thought in order to present an ideal just society that can be employed to criticize the status quo. As Rawls states, the parties in the original position are artificial agents and these artificial agents are not representatives of actual citizens of an actual world. Rather, the parties as artificial agents are representatives of free and equal citizens of an ideally constructed well-ordered society. Thus, Rawls's employment of the idea of the contract works through ideal agents as representatives of ideal citizens under ideal conditions. In this respect, the original position does not express 'a scenario of abstracted rationality in which each act of consent is equal to every other act of consent even though the actors are not' (Wolin 1996, p. 99), as Wolin asserts. Wolin's claim implies that consenting parties to the contract assume their unequal positions. However, in the original position, all the parties are subject to equal conditions in all respects, and this is provided by the constraint of the veil of ignorance. Therefore, in contrast to Wolin's claim, the original position does not a priori confer any legitimacy to the inequalities between actual or ideal actors, and the legitimacy of inequalities are decided by the agreed principles of justice in the original position.

In this context, Rawls's constructivism is not an abstraction from real political issues that demand radical answers, as Wolin argues. Rather, Rawls's constructivism aims to provide a global perspective through which we can unite our critiques of existing unjust practices. The original position expresses our moral commitment to 'arrange our common political life on terms that others cannot reasonably reject' (Rawls 1996, p. 124). Practices that violate this

moral commitment cannot be accepted in the original position. Thus, as Rawls says, the perspective given by the original position unites political facts such as the unjustness of slavery, tyranny or exploitation. In this way, the original position functions as a means of ordering of our considered convictions of justice. As Rawls notes, 'No political conception of justice could have weight with us unless it helped to put in order our considered convictions of justice at all levels of generality, from the most general to the most particular. To help us do this is one role of the original position' (Rawls 1996, p. 45). In this respect, in an unjust society, for real political actors who are subject to injustices, the original position as a device of representation that models the well-ordered just society provides a mode of reasoning for political judgment to be employed in the political struggles of constituting a fully just society.

5.1.2

According to Wolin, individuals in the original position select the principles of justice according to the theorist's prescriptions, rather than through their own discovery of the values of equality. Wolin reasserts his claim that this reflects Rawls's adoption of a kind of guardian democracy in which the constitutional structure defines the limits of democratic politics.

Wolin claims that given that the original position is designed to eliminate bargaining advantages, this amounts to Rawls's acceptance that a liberal society is characterized by inequalities. However, Wolin asserts that Rawls's argument that the representatives of persons in the original position aim at a fair agreement between free and equal persons is a denial of the fact that the persons being represented are neither free nor equal' (Wolin 1996, p. 101), given the existence of inequalities in the society.

Wolin argues that Rawls should have considered that inequalities were structural consequences of liberal economic organization of the society, and therefore, one should have emphasized the political activities of the socially and economically disadvantaged classes. According to Wolin, however, rather than viewing the issue from the perspective of these

classes, Rawls sees the problem from the viewpoint of the wealthy. Therefore, Wolin contends that Rawls gives political participation less importance compared to private liberties. While conceding that Rawls advocates a redistribution of wealth for the fair value of political liberties, Wolin says that this redistribution is contingent on the development of political virtues of the rich, which is not promoted by the corporate culture and competitive society. Thus, Wolin claims that rather than criticizing structural features of liberal societies that reproduce inequalities, Rawls limits himself to the demand of controlling campaign financing.

I argue that Wolin's claim that Rawls restricts democratic politics of social and economic equality through imposing to the society the principles of justice chosen in the original position suffers from the same misreading of Rawls's ideal theory as an account of existing liberal societies. To re-emphasize, as Rawls states, the original position models the ideal of a well-ordered society, and '[a]s a device of representation the idea of the original position serves as a means of public reflection and self-clarification' (Rawls 1996, p. 26) for us. Thus, for the citizens of existing liberal democracies, the original position is a normative idea for identifying which forms of economic or social inequalities are legitimate from the standpoint of political justice.

In this context, I do not think that Wolin is justified in his criticisms of Rawls that he does not question whether economic inequalities in a liberal society are structural and that given structural economic inequalities generated by late modern capitalism he should have highlighted the need for the political activities of disadvantaged classes. Wolin seems to demand from Rawls a political sociology of existing liberal capitalist societies. Rawls does not negate the need for a political sociology. However, Rawls's concern is to develop a general point of view through which we can identify organizing principles of a just society in order to judge the justness of organizing principles of existing societies. In this respect, it does not assume the inevitability of any form of economic organization. To the extent that the

principles of justice justified by the original position demands radical structural institutional changes, this becomes a matter of democratic politics of social and economic equality by the disadvantaged classes (Williamson 2013).

In this regard, it is not true that Rawls views political participation as secondary to private liberties. Therefore, it is not the case that Rawls views the issue from the point of view of the rich. When Wolin notes that Rawls's support for the redistribution of the wealth in order to secure the fair value of political liberties depends on the political virtues of the rich, which are counteracted by the corporate culture and extremely competitive society, he implies that Rawls advocates his redistributive principles within the parameters of current institutional structures of competitive capitalism. However, according to Rawls, fair transactions between free and equal citizens occur within the context of institutional rules of background justice, and redistributive principles are a necessary constituent of these institutional rules. The totality of the institutional rules of background justice is given by reasonable liberal political conceptions of justice.

Income and wealth, which are to be redistributed according to the principles of a political conception of justice, are 'all-purpose means necessary for [citizens] to take intelligent and effective advantage of their basic freedoms' (Rawls 1996, p. xxxix). They constitute a part of primary goods and each liberal political conception of justice has to provide a fair share of income and wealth through institutional redistributive arrangements. The extent of economic and social inequalities to be allowed within a reasonably just society is subject to the condition that each citizen can effectively exercise their basic liberties including political liberties. To the extent that inequalities in existing liberal societies of what Wolin calls late modern capitalism exceed permissible limits given by a reasonable political conception, it is the task of democratic politics of equality to reform the existing institutional economic and political structures. Therefore, in contrast to Wolin's claim, Rawls views the

issue of inequalities and their relation to the basic liberties from the perspective of all citizens'

effective exercise of their basic liberties. In this respect, regarding the fair value of political

liberties, Rawls's advocacy of public campaign financing does not mean to shy away from a

criticism of existing powerful economic structures as obstacles to insuring the fair value of

political liberties, as Wolin implies by claiming that 'instead of addressing the structures that

historically have perpetuated inequalities . . . Rawls falls back on a remedy of controlling

campaign financing as though that were a cause rather than an effect' (Wolin 1996, p. 101).

Campaign financing is emphasized due to the primary role of political decision-making in

determining the organization of the basic structure whose function is to maintain the freedom

and equality of citizens. All citizens regardless of their social positions have to be able to

participate in the exercise of political power at the constitutional and legislative stages of

determination and application of the fundamental principles of justice regulating the basic

structure. However, Rawls is aware of the fact that public financing of political participation

is not enough to guarantee the fair value of political liberties. While Rawls does not explicitly

express in his *Political Liberalism*, he is in agreement with Wolin that the concentration of

capital in a few hands together with extreme income inequalities makes possible for a small

part of society to control the economy and indirectly, political life as well. Rawls argues that

this is unacceptable from the point of his view of democratic equality. Therefore, preventing

the concentration and centralization of capital and wealth in a few hands is a primary

constituent of Rawls's justice as fairness, i.e. property-owning democracy: 'The background

institutions of property-owning democracy work to disperse the ownership of wealth and

capital' (Rawls 2001, p. 139), as Rawls notes. Why Rawls does not highlight this issue in

relation to the fair value of political liberties in *Political Liberalism* is that his objective in this

work is not to develop a full theory of political justice, which was already done in his *A

Theory of Justice*. Rather, his objective is to address the question of stability of justice as

fairness in the face of the recognition of reasonable pluralism. According to Rawls, justice as fairness is the most reasonable political conception of justice, and existing societies must be reformed on the basis of the principles of justice as fairness, if these societies are going to realize fully the ideals of freedom and equality. However, given the fact of reasonable disagreement, Rawls accepts that there may be political conceptions of justice that we need to accept as reasonable, though not fully just, unless they violate the minimum conditions of reciprocity given by the idea of equal right to freedom. Wolin overlooks the fact that campaign financing is only one of these minimum conditions of reciprocity for a just social cooperation. One can contest Rawls that those conceptions of justice that do not include a principle of egalitarian distribution of capital and wealth must not be accepted as reasonable. In this respect, it may be that justice as fairness or a far more radical conception may be the only reasonable conception of justice. However, there is no point in criticizing Rawls that his perspective is the perspective of the rich. Democratic politics of equality to realize a fully just society is a necessary implication of Rawls's thought (Chambers 2006).

5.1.3

Wolin's ignorance of Rawls's commitment to democratic equality is reflected in his interpretation of Rawls's idea of public reason. Wolin claims that citizens can be bound to the moral duty of public reason due to the suppression of the discussion of the topic of social and economic inequalities (Wolin 1996, p. 102). However, Wolin ignores that the idea of public reason applies to not only the issues related to the constitutional essentials but also to the basic questions of justice, and the topic of social and economic inequalities are what the basic questions of justice are primarily about. Wolin seems to read Rawls's ruling out of the difference principle from the domain of constitutional essentials, as if the difference principle is also ruled out of the domain of application in the idea of public reason. However, as Rawls states, 'Political discussions of the reasons for and against fair opportunity and the difference

principle, though they are not constitutional essentials, fall under questions of basic justice and so are to be decided by the political values of public reason' (Rawls 1996, p. 229, n10).

Wolin claims that the idea of public reason functions as a repressive instrument that prevents the articulation of real political issues of justice. According to Wolin, the repression of such issues stems from the abstract nature of Rawls's theory. The idea of public reason can be realized, only if citizens become reasonable persons, and Rawls defines reasonableness as an ideal. Wolin thinks that to define reasonableness as an ideal means

> either to say that it is politically problematic or to give a shocking response to the "real" pluralism of ghettoized population, . . . and to the remnants of the working class who see no place for themselves in a society where the liberal boast is that all are "in". To impose the bland ideal of reasonableness and to posit a "nonhistorical" original position from which to stipulate basic principles is to lobotomize the historical grievances of the desperate. (Wolin 1996, p. 106)

Against such claims of Wolin, in the previous sections, I have already argued that the original position whose constraints are defined by the ideal standpoint of reasonable persons gives us a general point of view that integrates 'the historical grievances of the desperate' in order to judge existing societies. In this regard, the ideal of reasonableness is not an imposition to the excluded lower classes that demands from them accepting the political justifications of unjust practices to be within the limits of reasonable disagreement. Rather, the members of disadvantaged classes can expose the unreasonableness of the conditions they are subjected to, when they conceive themselves as reasonable citizens who aim to arrive at a fair system of social cooperation.

Rawls argues that 'Desires and wants, however intense, are not in themselves reasons in matters of constitutional essentials and basic justice' (Rawls 1996, p. 190). Wolin thinks that this quotation shows the insensitiveness of Rawls to the experiences of disadvantaged classes. According to Wolin, Rawls does not consider that such desires and wants 'might be directly related on the part of those social classes and groups for whom the rhetoric and processes of "reasonable pluralism" have been least responsive' (Wolin 1996, p. 107).

However, even if the causes of some desires and wants can be social and economic injustices, these desires and want cannot in themselves give us the principles of justice. Experiences of the disadvantaged classes do not spontaneously result in the political articulation of demands of democratic equality. Feelings of exclusion become easily channelled into racist or nationalist authoritarian politics. For the sake of economic justice, some disadvantaged groups may accept to trade off their basic liberties including political liberties. In this regard, desires and wants cannot be reasons for the resolution of questions of political justice. The issue is how to organize a just society, and only from the standpoint of reasonableness the disadvantaged classes can develop legitimate claims of justice that conform to the ideals of freedom and equality for all citizens.

Wolin's misinterpretation regarding Rawls's egalitarianism becomes evident, when he interprets Rawls's difference principle as 'an updated version of philanthropy and no more democratic' (Wolin 1996, p. 109). Wolin claims that the difference principle conceives the least advantaged as 'passive recipients who will have their material lot eased, not because they have won some political advantage but because a redistributive mechanism acceptable to the "haves" is in place' (Wolin 1996, p. 109).

Given that Rawls advocates that the basic structure can permit significant social and economic inequalities, Wolin reaches to the conclusion that 'for the Rawlsian liberal, it is not rational to plot a society in which inequality is continuously attacked and concentrations of power and privilege are actively discouraged' (Wolin 1996, p.110). Thus, according to Wolin, Rawls's political equality functions only as a legitimization of social and political inequalities, given the unequal powers the historically disadvantaged classes have.

I have already addressed Wolin's criticisms that Rawls's political equality legitimizes social and economic inequalities in my discussion of the fair value of political liberties. To

explicate a little more Rawls's difference principle may allow us to see clearly the inaccuracy of Wolin's reading of Rawls's position on the social and economic inequalities.

Conceiving Rawls's difference principle as a version of philanthropy and welfarism is a clear indication that Wolin reads Rawls as if Rawls assumes the contemporary liberal capitalist economic organization and the difference principle operates within the limits of this context. However, in his *Justice as Fairness: A Restatement*, Rawls differentiates his conception of justice as fairness from the welfare-state capitalism and he rejects the welfare-state capitalism on the basis of similar egalitarian reasons that Wolin advocates. Rawls notes that the welfare-state capitalism is based on the near monopolization of the means of production by a small class, and 'In welfare-state capitalism the aim is that none should fall below a decent minimum standard of life, one in which their basic needs are met' (Rawls 2001, p. 139). He states that this is not compatible with the notion of democratic equality which characterizes his understanding of justice as fairness as property-owning democracy. As Rawls makes it clear, the redistributive principles of justice as fairness is not simply a principle of redistribution after the production of wealth under the control of a small section of the society who owns the means of production. Rather, the aim of justice as fairness is 'to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality' (Rawls 2001, p. 139). Thus, justice as fairness works

> not by the redistribution of income to those with less at the end of each period, so to speak, but rather by ensuring the widespread ownership of assets and human capital (that is, education and trained skills) at the beginning of each period, all this against a background of fair equality of opportunity. (Rawls 2001, p. 139)

Under justice as fairness, the democratization of capital ownership defines the range of social and economic inequalities permitted by the basic structure. The inequalities that exist under justice as fairness are not the inequalities between a small group of productive capital owners and a great majority of working class, as Wolin claims. Rather, they are inequalities between the owners of productive capital, and the upper limit of the inequalities permitted is

given by the level of inequalities that works for the benefit of the least advantaged. Thus, in contrast to Wolin's claim that Rawls's difference principle is a kind of philanthropy and conceives the least advantages as passive recipients, Rawls advocates a conception of democratic equality in which all citizens are active productive members of social cooperation. As Rawls argues against philanthropic understandings of justice, '[t]he least advantaged are not, if all goes well, the unfortunate and unlucky – objects of our charity and compassion, much less our pity – but those to whom reciprocity is owed as a matter of political justice among those who are free and equal citizens along with everyone else' (Rawls 2001, p. 139).

In this context, it is not true that Rawls is against a society in which inequalities and concentrations of power and privileges are continuously attacked, as Wolin asserts. On the contrary, a society in which the redistributive principles aim to democratize the ownership of capital including human capital is just such a form of society that Rawls advocates. As Rawls argues

> In property-owning democracy . . . the aim is to realize in the basic institutions the idea of society as a fair system of cooperation between citizens regarded as free and equal. To do this, those institutions must, from the outset, put in the hands of citizens generally, and not only of a few, sufficient productive means for them to be fully cooperating members of society on a footing of equality. Among these means is human as well as real capital, that is, knowledge and an understanding of institutions, educated abilities and trained skills. Only in this way can the basic structure realize pure background procedural justice from one generation to the next. (Rawls 2001, p. 140)

However, one may argue against Rawls's difference principle properly understood for not being egalitarian enough. In contrast to Wolin's criticisms, this is a legitimate criticism. Rawls is clear that the equal division of primary goods including income and wealth is the benchmark for the free and equal citizens of a fair social cooperation. However, given the requirements of economic organization and efficiency, he thinks that deviations from the benchmark of equal division are fair on the condition that such deviations benefit the least advantaged. It may be debatable whether Rawls is right in his acceptance of the facts of economic efficiency and organization or incentives as reasons for the deviations from the

benchmark of equal division. Rawls's understanding of the original position is open to re-evaluation of the general facts that the parties consider in their deliberations. However, given that the starting point of Rawls is the equal division of primary goods, such reconsiderations would not be a substantial revision of justice as fairness but only make Rawls's democratic egalitarianism stronger.

Wolin reads Rawls's prioritization of equal rights of political participation over the difference principle as a legitimization of social and economic inequalities, given that Rawls argues that the difference principle should not be a constitutional essential. Wolin also claims that Rawls states that economic rights are less significant and not to be included in basic constitutional principles.

While it is true that Rawls is against the constitutionalization of difference principle, Wolin is not exactly right in saying that there is no place to economic rights in the constitution. According to Rawls, a social minimum which meets the basic needs of citizens is a constitutional essential. Rawls even argues that a social minimum is 'a lexically prior principle . . . necessary for citizens to understand and to be able fruitfully to exercise [their equal basic rights and liberties]' (Rawls 1996, p. 7). Also, as I have argued, the subordinate position of the difference principle does not imply any advocacy of legitimacy of social and economic inequalities abstracted from the framework of basic structure of justice as fairness. Moreover, the lexical priority of basic liberties over the difference principle is actually a reflection of Rawls's deep commitment to the equal freedom of all citizens. The lexical prioritization of basic liberties stems from the peculiar nature of questions of social and economic justice. The domains of social status and economic class permit their instrumentalization to restrict or abolish the basic liberties for the sake of maximizing the benefits that come from these domains of status and class. As Rawls states,

> To explain the priority of the first principle over the second: this priority rules out exchanges . . . between the basic rights and liberties covered by the first principle and the social and

economic advantages regulated by the difference principle. For example, the equal political liberties cannot be denied to certain groups on the grounds that their having these liberties may enable them to block policies needed for economic growth and efficiency. (Rawls 2001, pp. 46-7)

Thus, rather than serving to a legitimation of social and economic inequalities, this conception of relationship between the basic liberties and the difference principle provides to the disadvantaged classes of existing societies a unitary perspective through which they can justify both their right to political liberties and social and economic equality. The priority of political liberties only means that such liberties cannot be conditional upon some claims of social and economic benefits (even equally to the whole society), but this does not imply that the disadvantaged groups should accept their unequal social positions, if these social positions are illegitimate, from the standpoint of equal freedom and difference principle. Actually, Wolin should have celebrated the lexical priority of political liberties, as it is a common policy of the dominant classes in the existing societies to ask from the lower classes to accept the restriction of their basic liberties for the sake of economic betterment.

Wolin's misreading of Rawls's position on the questions of social and economic justice is reflected in his misconception of Rawls's focus on the question of stability in his *Political Liberalism*. Wolin thinks that Rawls rules out class conflicts as a reason that threatens the stability of democracies and instead he locates the question of stability in 'a pluralism of incompatible yet reasonable doctrines' and finds the answer in a 'stable cooperative society around the reasonable principles acceptable to all ("overlapping consensus")' (Wolin 1996, p. 115). Thus, Wolin contends that Rawls's political conception of justice functions as a means of overriding or neutralizing conflicts, as it prioritizes the ideal of 'a fair system of cooperation over time'. Wolin argues that 'In the age of vast concentrations of corporate and governmental power, the desperate problem of democracy is not to develop better ways of cooperation but to develop a fairer system of contestation over time, especially hard times' (Wolin 1996, p. 115).

However, as I have argued in the previous sections, Wolin errs in attributing Rawls a conception of justice that values social cooperation in the face of existing deep class conflicts. To reiterate, Rawls's well-ordered society that represents a fair system of social cooperation is an ideal constitutional democracy in which social and economic inequalities are regulated by justice as fairness or similar reasonable conceptions of political justice. Rawls discusses the question of stability in terms of the reasonable pluralism of comprehensive doctrines, because he assumes that when the difference principle regulates the inequalities, either there would not be class conflicts or these conflicts would be mitigated enough not to threaten a great majority of citizens' reasonable acceptance of the principles of justice. In this regard, Rawls leaves aside the question of class conflicts in his elaboration of the question of stability. Rawls thinks that even in the case of the absence of class conflicts, the reproduction of justice as fairness is not guaranteed, because of citizens' adherence to conflicting and irreconcilable reasonable comprehensive doctrines. In this context, Rawls develops his argument for the need of a political conception capable of being the object of an overlapping consensus in the well-ordered society.

5.2

Rawls's notion of the overlapping consensus is also seen problematic for democratic politics in general. In this respect, Mouffe challenges his understanding of reasonable pluralism and the overlapping consensus and she criticizes Rawls for eliminating politics in the well-ordered society.

Mouffe's agonistic democracy is one of the democratic theories of the political, which claims that pluralism and conflict through power struggles are constitutive of democratic political orders. She presents her view of agonistic democracy in a critical dialogue with what she calls rationalist and moralist conceptions of democracy expressed in Rawls's political liberalism and Habermas's deliberative democracy.

Mouffe's fundamental critique of such rationalist and moralist conceptions of democracy is that such conceptions prioritize rational consensus over conflict or even they ignore conflict. For Mouffe, underestimating or ignoring conflict is one of the main reasons for contemporary democracies' inability to understand and cope with the current existence of fundamentalisms or anti-immigrant, racist right-wing populist movements and violent protests that threaten democracies.

In this section, after presenting Mouffe's conception of agonist democracy and main points of her critique of Rawls, I will argue that Rawlsian conception of democracy is capable of confronting political challenges posed by anti-democratic politics to democratic societies, and then I will advocate Rawlsian conception of justice against Mouffe's agonistic democracy. I contend that Rawlsian conception of democracy does not necessarily exclude political conflicts but it presents a different notion of conflict.

5.2.1

Mouffe conceives modern democratic order as a symbolic ordering of social relations through the articulation of values of political traditions of liberalism and democracy. In Mouffe's reading, liberal values are expressed in the rule of law and individual liberties, and democratic values refer to the idea of political equality expressed in the sovereignty of people.

Mouffe argues that as a specific political articulation of liberalism and democracy, modern democracy is differentiated by previous forms of democracy and political orders in the acceptance of pluralism as its constitutive feature. She states that pluralism is the recognition of dissolution of ideas of a single conception of the good life on the basis of which a political community has to be organized. She claims that the recognition of pluralism as the constitutive feature of modern democracy is missed in other accounts of democracy such as Rawls's, when it is understood simply as a fact (Mouffe 2000, p. 18). Mouffe claims that modern democracy is not differentiated from other political orders by virtue of empirical

presence of plurality of conceptions of the good. Rather, she argues that the difference is at 'the symbolic level . . . [which is manifested in] the legitimation of conflict and division, the emergence of individual liberty and the assertion of equal liberty for all' (Mouffe 2000, p. 19).

Assuming that pluralism is constitutive of modern democracy, Mouffe argues that we can best understand the nature of modern democratic politics from an anti-essentialist theoretical perspective that sees 'difference' as the ontological basis. In this respect, she states that pluralism is 'an axiological principle. It is taken to be constitutive at the conceptual level of the very nature of modern democracy and considered as something that we should celebrate and enhance' (Mouffe 2000, p. 10).

However, Mouffe argues that a democratic order has to allow limits to pluralism, if the possibility of contesting relations of subordination is to be politically open for a democratic politics. She claims that when pluralism is not restricted and all differences are equally recognized, then some differences that exist become naturalized and left unchallenged, even though these differences are expressions of relations of subordination and therefore should not exist (Mouffe 2000, p. 20).

Mouffe claims that we can recognize the nature and limits of pluralism in a democratic society, only if we comprehend that power and antagonism are constitutive of social relations and therefore ineradicable. Referring to her work with Laclau in *Hegemony and Socialist Strategy*, she contends that 'any social objectivity is constituted through acts of power' (Mouffe 2000, p. 21). Therefore, any social objectivity is a particular sedimentation of power relations, indicating necessary exclusion of claims of objectivity other than itself. Thus, identities as markers of social objectivity are not self-contained objects confronting other identities, and power is not a reflection of external influence of identities over each other. Identities are not self-present to themselves. Rather, difference is inscribed through the acts of

power in the constitution of identities as relational subject positions, and the constitution of a particular identity or social objectivity by the acts of power is identified as an expression of a particular hegemony.

In this context, Mouffe argues that a democratic order can exist, only if no political actor claims to represent the totality of social relations as the subject of realization of a harmonious society. Thus, Mouffe asserts that '[t]he main question of democratic politics becomes then not how to eliminate power, but how to constitute forms of power which are compatible with democratic values' (Mouffe 2000, p. 22). She contends that if the question of modern democracy is conceived as the establishment of a rational society that aims to negate power and antagonism, then, constitutiveness of violence in the hegemonic institution and reproduction of a democratic order is not recognized. According to Mouffe, this is the real threat to democracy.

Taking for granted the political values of freedom and equality characterizing liberal democracies, Mouffe develops her conception of agonistic democracy as the proper understanding of democratic politics in order to propose answers to contemporary problems existing democracies confront in the first place.

In this context, she introduces the notions of 'the political' and 'politics' to theorize the nature of democratic political orders. She states that the distinction between 'the political' and 'politics' refer to the distinction between the ontological and the ontic, respectively. In her conception, 'the political' is ontologically constitutive of human social relations, and it is identified with power, conflict and antagonism. 'Politics' corresponds to the organization of human coexistence in the context of antagonism (Mouffe 2005a, p. 9).

Mouffe claims that the unrecognition of distinction between the political and politics, as she described, is the fundamental reason behind the problems of democratic politics. She asserts that to enable democratic politics confront its problems, the dominance of liberalism in

democratic theory and politics must be challenged, as liberalism negates the constitutiveness of antagonism, the ontological level of the political.

Mouffe bases her critique of liberalism on Carl Schmitt's work. She notes that Schmitt argues that liberalism cannot be a political conception, given that liberalism is an individualist thought. However, for Schmitt, the political is defined by the friend/enemy distinction, and it is a distinction between collective forms of identifications that are characterized by conflict and antagonism rather than free rational discussion. As the realm of antagonism, a particular organization of the political is necessarily exclusionary; therefore, a political order cannot be based on a universal rational consensus. Thus, affirming Schmitt, Mouffe contends that liberalism as a conception of universal rational consensus cannot grasp and has to negate the political. According to Schmitt, the political cannot be eradicated, because, 'every religious, moral, economic, ethical or other antithesis transforms itself into a political one if it is sufficiently strong to group human beings effectively according to friend and enemy' (Schmitt cited in Mouffe 2005a, p. 12).

However, in Mouffe's reading, Schmitt wrongly rejects pluralism within a democratic political community. Mouffe claims that rejecting individualism and rationalism of liberalism does not necessarily require negating pluralist politics within a democratic political order (Mouffe 2005a, p. 14) and Schmitt's conception of the political as the relation of friend/enemy can be reinterpreted in developing an understanding of pluralist democratic politics.

In her reinterpretation of Schmitt's notion of the political for pluralist democratic politics, she employs Derrida's notion of 'constitutive outside'. The notion of 'constitutive outside' refers to the inscription of difference in every identity. This understanding of identity implies Schmitt's notion of the political as the ever present possibility of antagonism between collective identities of the 'we' and 'they', when the 'they' is perceived as a threat to the

existence of the identity of the 'we'. However, in contrast to Schmitt, Mouffe claims that the we/they distinctions do not need to be friend/enemy relations and they can exist within a particular democratic political order, even though they always involve the possibility of turning into antagonistic relations (Mouffe 2005a, p. 16).

In this context, Mouffe argues that collective political identities can coexist within a political association, if they relate to each other as adversaries rather than enemies, 'belonging to the same political association, as sharing a common symbolic space within which the conflict takes place' (Mouffe 2005a, p. 20). Mouffe identifies such forms of political relations of we/they as 'agonism'. According to Mouffe, agonism is constitutive of democracy and expresses a 'tamed' form of antagonism. Then, for Mouffe, given the ever present possibility of antagonism, the question of democratic politics becomes how to transform antagonism into agonism and sustain agonistic democracy. Mouffe's answer is the mobilization of passions for agonistic collective identifications, as she relates the potentiality of antagonism between collective identities to the psychological constitution of human beings. She claims that human beings 'want to become part of crowd to lose themselves in a moment of fusion with the masses' (Mouffe 2005a, p. 23). Thus, for Mouffe, human beings are passionately attached to their collective identities, and therefore, pluralist democracy requires collective political identifications that can mobilize passions to be chanelled into agonistic confrontation (Mouffe 2005a, p. 28).

5.2.2

Mouffe sees Rawls's conception of political liberalism as a representation of rationalist approaches to democracy and therefore dangerous for the democratic politics. In this respect, Mouffe challenges his understanding of reasonable pluralism and the overlapping consensus, and she criticizes Rawls's notion of well-ordered just society as giving no place to democratic politics.

Mouffe is critical of Rawls's distinction between simple and reasonable pluralism. She claims that Rawls aimed to show that the overlapping consensus is a moral idea and therefore the exclusion of unreasonable doctrines is a requirement of morality. However, according to Mouffe, Rawls presents what is in fact a political decision as a moral requirement. Reasonable doctrines are held by reasonable persons and Mouffe notes that Rawls defines reasonable persons as persons 'who have realized their two moral powers to a degree sufficient to be free and equal citizens in a constitutional regime, and who have an enduring desire to honor fair terms of cooperation and to be fully cooperating members of society' (Rawls cited in Mouffe 2000, p. 24). Mouffe argues that Rawls's definition of reasonable persons in this way implies that his distinction between 'reasonable' and 'unreasonable' functions as drawing a political boundary between 'the doctrines that accept the liberal principles and the ones that oppose them' (Mouffe 2000, p. 24).

Mouffe is in agreement with Rawls that there is a requirement to draw a distinction between the views that accept the liberal principles and the ones that reject the liberal principles. However, she is critical of presenting such a requirement as a moral requirement rather than a political decision. She argues that this is a political decision 'because antagonistic principles of legitimacy cannot coexist within the same political association without putting in question the political reality of the state' (Mouffe 2000, p. 25).

To understand the question of the political boundaries of pluralism, Mouffe argues, we need to have a conception of the political as constitutive of the society. However, according to Mouffe, because Rawls lacks such a conception of the political, he moralizes the distinction and cannot justify his distinction between reasonable pluralism and simple pluralism. Thus, Mouffe asserts that Rawls 'gets caught in a circular form of argumentation: political liberalism can provide a consensus among reasonable persons who, by definition, are persons who accept the principles of political liberalism' (Mouffe 2000, p. 26).

Mouffe claims that Rawls's lack of an understanding of the constitutiveness of the political is reflected in his notion of the overlapping consensus of reasonable comprehensive doctrines over the political conception of justice. Mouffe emphasizes that Rawls again claims that the overlapping consensus is a moral idea rather than a kind of political compromise, and it is a deeper consensus on the principles of political justice than a mere constitutional consensus. Thus, Mouffe argues that Rawls conceives a kind of consensus that 'implies that when a well-ordered has been achieved, those who take part in the overlapping consensus should have no right to question the existing arrangements, since they embody the principles of justice' (Mouffe 2000, p. 28). She contends that the realization of such a well-ordered society will eliminate politics and restrict the conflicting conceptions of comprehensive doctrines to the private sphere in order to prevent their involvement in the public sphere. According to Mouffe, the result will be the elimination of 'the democratic struggle among 'adversaries'', that is, those who share the allegiance to the liberal-democratic principles, but while defending different interpretations of what liberty and equality should mean and to which kind of social relations and institutions they should apply' (Mouffe 2000, p. 30).

Mouffe claims that Rawls's elimination of democratic politics stems from his adherence to a rationalist understanding of politics as a mere rational allocation of some primary goods to citizens. According to Mouffe, such a conception of politics ignores '"the political" in its dimension of power, antagonism and relationships of forces' (Mouffe 2000, p. 31). By justifying his exclusions of the 'unreasonable' from the political domain on the basis of rationality and morality, Mouffe contends that Rawls can present his well-ordered society free from antagonism, violence, power and repression.

However, Mouffe argues that one cannot simply eliminate politics from the real world by eliminating it in a theory. She claims that if there will not be a place for the manifestation of potential antagonisms as agonistic struggles within a liberal-democratic framework, what

would happen will be a war between enemies. Therefore, Mouffe argues for a conflictual consensus over the principles of liberty and equality for all, which accepts the 'possibility of serious dissent about their interpretation, a dissent that can never be overcome thanks to rational procedures' (Mouffe 2005b, p. 228).

5.2.3

I argue that Mouffe merely asserts that Schmittian notion of the political as the ever-present possibility of antagonism is constitutive of human social relations. She does not demonstrate the impossibility of constituting rational or moral political orders. Factual occurrences of violent conflicts in all political associations, the presence of severe injustices in constitutional democracies, the presence of anti-democrats, and the need to politically exclude anti-democrats to protect democratic regimes do not in themselves demonstrate the unjustifiability of political principles of freedom and equality to common human reason. These facts do not show the lack of universal human moral capacity to act justly or at least they do not show the impossibility of having motivations to act in accordance with justice. What a normative conception of just democracy such as Rawls's aims to show is that despite the severity and prevalence of conflicts and injustices, human beings have a moral nature and under reasonable circumstances they can develop and realize their moral capacities to coexist peacefully in a just political society.

In this respect, Mouffe's evaluation of moral or rational conceptions of democracy is problematic. She claims that such conceptions of democracy are not capable of confronting contemporary problems of democracy such as fundamentalism, racist, far-right movements, terrorism and exclusionary views, which threaten the very existence of democratic political orders. She sees rational conceptions of democracy as responsible for the incapability of democratic orders to defend themselves and to make room for the contestation relations of subordination in order to deepen democratic values of freedom and equality. According to

her, 'to present the institutions of liberal democracy as the outcome of a pure deliberative rationality is to reify them and make them impossible to transform' (Mouffe 1993, p. 146). Mouffe conceives Rawlsian conception of democracy among such understandings of democracy. However, as an ideal conception of political justice, Rawlsian conception does not reify existing institutions of liberal democracy. By identifying conditions of justice, it presents a normative standpoint on the basis of which existing institutional structures should be changed towards a fully just democratic political society.

According to Rawlsian conception, unjust conditions are the fundamental reason behind the public support for anti-democratic movements and views. To challenge anti-democratic political views that threaten democracies, unjust conditions have to be contested. Therefore, under actual democracies, Rawlsian conception of justice conceives itself in political conflict with those conceptions of democracy that reduce it to a procedure of representing economic and political interests of individuals or groups within a legal framework of equal liberties. Thus, Mouffe is not right in her claim that moral-rational conceptions of democracy such as Rawls's do not present an alternative political view to confront anti-democratic politics.

From Rawlsian perspective, the lack of social conditions of self-respect is primarily what underlies those violent movements of fundamentalism, terrorism and far-right movements. Conditions of self-respect require full application of basic rights to equal freedom together with some form of economic justice and fair value of equal political liberties, which are lacking in actual democratic societies. According to Rawls, '[s]elf-respect is rooted in our self-confidence as a fully cooperating member of society capable of pursuing a worthwhile conception of the good over a complete life' (Rawls 1996, p. 318). A fully just democratic society requires the satisfaction of social conditions of self-respect.

Ferdinand Sutterlüty's (2014) analysis of 2005 French and 2011 English riots show the primary role of lack of conditions of self-respect in the development of violent riots in France and England. He notes that '[t]he rioters invoked, for the most part implicitly but occasionally explicitly, their demand for equality and equal treatment as citizens' (Sutterlüty 2014, p. 46). One of the slogans of the French rioters was 'Liberty, equality, fraternity, but not on the outskirts!' (Sutterlüty 2014, p. 46). Primary targets of French rioters were police and school. The rioters were feeling humiliated by the unequal and disrespectful treatment of the police in the banlieues. Sutterlüty notes that 'We demand respect!' was one of the demands of those in the banlieues. Also, they were marginalized by the education system, which discriminates those from the banlieues, and even with good school records, they fail to find employment. Together with the lack of their political representation, these conditions formed the basis for the violent riots.

In this context, it is not the lack of agonistic democracy that led to the violent riots. It is not that violent riots emerged due to the lack of political outlets for those antagonists to democratic order or due to the antagonism between various identities (Mouffe 2013, ch6). Rather, as Sutterlüty states, participants to the riots have internalized at least political values of equal freedom and fair equality of opportunity, and they expressed their commitment to these political values by means of their riots. Thus, the lack of impartial and complete application of minimum basic legal rights to equal freedom and fair equality of opportunity paved the way for violent riots, facilitated by the lack of effective political representation. The conditions whose lack formed the basis for the riots are minimum conditions of a just political society, advocated by Rawlsian conception of democracy. The basic motives behind the riots also show that even those members of democratic society who are excluded and treated unjustly by political orders they belong to may have developed an implicit self-conception of free and equal citizenship, guided by their higher-order interests in developing and exercising

their two moral powers, a capacity for a sense of justice and a capacity for a conception of the good. Individuals' implicit motivation to be guided by their higher-order interests in the realization of their moral capacities even under unjust conditions demonstrates the plausibility of Rawls's assumption in developing a conception of a just and stable democracy on the basis of presupposing reasonableness and rationality of free and equal citizens.

To discern an implicit commitment to political values of freedom and democracy in the French and British riots does not mean that every expression of violent, anti-democratic, fundamentalist, far-right populist or racist movement is an implicit demand for justice. However, most of the political support to such movements can be related to the prevalence of injustice, not merely in the sense of economic deprivation but more importantly the lack of full realization of conditions of self-respect for everyone regardless of one's economic position under the circumstances of precarious life conditions.

However, it is reasonable to acknowledge that every actual just democratic society will normally contain numerous anti-democratic unreasonable doctrines, as Rawls also notes. But, contrary to what Mouffe argues, the presence of these unreasonable doctrines is not an expression of necessarily exclusive nature of the organization of political order. As Rawls says,

> [t]heir existence sets a limit to the aim of fully realizing a reasonable democratic society with its ideal of public reason and the idea of legitimate law. This fact is not a defect or failure of the idea of public reason, but rather it indicates that there are limits to what public reason can accomplish. (Rawls 1997, p. 806)

Such unreasonable doctrines as threats to democracy have to be politically excluded but the essential point is on what grounds they have to be excluded. This is the point of contention between Mouffe and Rawls. For Mouffe, legitimacy is not a normative idea, and it is the mere existence of a hegemonic political power that which confers legitimacy on the exclusions. Political decisions of hegemonic political forces on the basis of their threat perceptions determine those to be excluded. And to minimize exclusions in order to protect

and deepen democratic order, Mouffe suggests productions of collective democratic identifications to which antagonists may develop passionate attachments and decide to restrict their struggles on the reinterpretation of what Mouffe calls ethico-political principles of democracy, liberty and equality for all. Mouffe proposes the organization of agonistic conflict around the division of political contestation into the right and left in order to provide political outlets for the transformation of antagonists into agonists.

However, it is doubtful that agonistic democracy can be successful in transforming antagonists into agonists. Moreover, we can claim that agonistic democracy cannot even prevent the canalization of those committed to democratic values to anti-democratic political forces. Mouffe thinks that a leftist democratic political alternative that advocates welfare rights and social justice can provide hope for citizens to maintain their democratic commitments in the face of far-right populist movements. However, I argue that if anti-democratic political forces are perceived to be offering greater economic material security and political protection against perceived threats in the face of economic and political crisis, then, there is no reason that when those citizens committed to democratic values feel insecure, they may not be open to be moved by such anti-democratic politics. Citizens can take the risk of possible violent antagonism for the sake of a relatively practically stable non-democratic political order with a guarantee of economic security, and such anti-democratic movements can be received as hopeful alternatives. Rather than having an agonistic democratic political order which permits vacillations between social democratic welfarist politics, conservative pro-market or far-right statist or pro-market populist politics, a political order which is characterized by very precarious provision of minimal justice open to be removed by the hegemony of rightist politics, citizens can conceive an anti-democratic political order with secure and better conditions of welfare as a representation of a viable, hopeful future. In contrast to Mouffe's claim, therefore, there is no necessary relationship between rightist

populist movements and their mobilization of passions of fear. An anti-democratic political alternative also requires mobilizations of passions of hope to be conceived as a realizable political project.

The case of Nazism is a good instance of such mobilizations of hope in conjunction with the mobilization of fear by anti-democratic movements in the face of a deep crisis of a constitutional democratic regime. According to Götz Aly (2014), most of the young Germans saw Nazism as a movement for freedom and adventure. Young Germans became attracted to Nazism, as the young saw the possibility of actualizing their desire for self-realization in the idea of struggling for and in actually creating a racial collectivity of equals through a war of racial extermination inside and outside Germany. For Aly, what led most Germans to Nazism were material conflicts that generated feelings of envy. Jewish higher achievement in German society from economy to education compared to the majority of Germans generated feelings of envy. Feelings of envy were fostered by individual and collective self-conceptions of insecure German national identity, which was supported by international and domestic circumstances of establishment and maintenance of German nation-state. As Aly states, feeling insecure and driven by envy, the vast majority of Germans feared individual freedom and 'tended to associate personal liberty with feelings of discomfort, uncertainty, and helplessness, whereas equality signified for them protection, financial security, and minimal individual risk' (Aly 2014, p. 8), and they were moved by an ideal of material equality to be secured by the state by excluding other groups. In this context, Nazism provided the majority of Germans a way of identifying themselves as members of a superior collective, and Nazism secured its popular support by realizing what it promised: the realization of the welfare state by constantly increasing living standards of the whole German population.

Aly's account of how Nazism became a very popular movement and retained the support of most of Germans overlaps with Rawls's argument that '[s]trong or inordinate

desires for primary goods on the part of individuals and groups, particularly a desire for greater income and wealth and prerogatives of position, spring from insecurity and anxiety' (Rawls 1975, p. 564). Thus, a just democratic society of free and equal citizens has to secure the social bases of self-respect in order to preclude the emergence of favorable conditions in which those whose social positions insecure consider trading equal freedom with increased material welfare. To the extent that actual democratic societies fail to secure the social bases of self-respect, those anti-democratic movements continue to widen their popular support and threaten constitutional democracies.

5.2.4

Regarding the place of democratic politics in the well-ordered democratic society which is governed by fully just institutions, Mouffe's claim that Rawls denies democratic politics in the well-ordered society is a reflection of her rejection of moral capacities of human beings to live together in a system of fair social cooperation. For Mouffe, non-violent conflict is not an available option for human beings. According to her, conflict can only be expressed through violence, by imposing one's values over others through excluding them. Her agonistic democracy is less violent than an antagonistic conflict only in the sense that agonists accept not to physically annihilate each other. She cannot conceive that human beings can engage in conflicts over their irreconcilable worldviews peacefully without considering imposing their own values over others.

Thus, for Mouffe, Rawls's introduction of reasonable pluralism and simple pluralism can only be a political decision devoid of any normative content, which is introduced to exclude those who reject a democratic society. However, Rawls does not introduce the idea of reasonable pluralism to politically legitimate the exclusion of unreasonable views for the sake of liberal hegemonic order, as Mouffe claims. Her identification of the idea of reasonable pluralism with a political decision implies that Rawls's concern is about how to maintain the

stability of a liberal-democratic order in the face of unreasonable comprehensive doctrines

striving for the seizure of political power. However, from Rawls's perspective, this is a trivial

problem, as it is a matter of fact that any actual political order has to protect itself from the

enemies that aim to overthrow it. Rawls's question of stability has a different subject, and it is

not about the legitimacy of excluding unreasonable views. As Rawls states,

> . . . the problem of stability is not that of bringing others who reject a conception to share it, or
> to act in accordance with it, by workable sanctions, if necessary, as if the task were to find
> ways to impose that conception once we are convinced it is sound. Rather, justice as fairness is
> not reasonable in the first place unless in a suitable way it can win its support by addressing
> each citizen's reason, as explained within its own framework. Only so is it an account of the
> legitimacy of political authority as opposed to an account of how those who hold political
> power can satisfy themselves, and not citizens generally, that they are acting properly. (Rawls
> 1996, p. 143)

In this context, Rawls discusses the idea of reasonable pluralism. The stability of

political justice becomes a trouble, because even if a democratic society consists of only

reasonable citizens and they are committed to the principles of political justice, these

reasonable citizens may not adhere to the principles of justice, given the fact of reasonable

pluralism. In this regard, in contrast to Mouffe's claim, there is no circularity in Rawls's

assumption of reasonable persons as the subject of justification of liberal principles. The idea

of reasonable pluralism is not introduced to politically define reasonable and unreasonable

citizens. Rather, reasonable pluralism is an internal constituent of a just democratic free

society. As I argued throughout the preceding chapters, even if we assume that all persons

become reasonable and no unreasonable doctrines persist in a well-ordered democratic

society, the fact of reasonable pluralism will remain as a constitutive aspect of the well-

ordered society, and the stability of political justice would still be a problem that has to be

addressed. The fact of reasonable pluralism is a persistent fact of a just democratic society,

because it is 'the normal result of the exercise of human reason within the framework of the

free institutions of a constitutional democratic regime' (Rawls 1996, p. xvi).

Mouffe emphasizes the exercise of human reason in Rawls's argument for the reasonable pluralism. She claims that the idea of reasonable pluralism functions as a means of concealing antagonism, power and repression in the well-ordered society, because the exclusion of the unreasonable doctrines are justified as a requirement of the exercise of reason. However, rather than the exercise of reason, the emphasis must be on the free institutions of a democratic regime. Reasonable pluralism is a fact of a just democracy that secures equal right to freedom for all. Rawls assumes that in the ideal world of a well-ordered democratic society, the institutional arrangements of political justice can make possible the emergence of a consensus over the principles of justice, while it also provides the conditions for the development of irreconcilable and conflicting reasonable comprehensive doctrines. Thus, reasonable pluralism is not a product of human rationality regardless of the political society. In this respect, it may even be argued that unreasonable doctrines are rational from their own point of views, and therefore, unreasonable doctrines are not excluded due to their irrationality. Rather, their exclusion is justified by the moral idea of reasonableness expressed in the principles of political justice. To the extent that unreasonable doctrines that aim to use state power to oppress citizens emerge and continue to exist in an actual well-ordered society, these doctrines will be contained by the exercise of political power. One may call these exclusions as the expressions of the existence of antagonism, power and repression in the well-ordered society. Rawls does not deny that such instances of exclusions may exist in the well-ordered just society. Thus, the idea of reasonable pluralism does not conceal such instances of power conflicts. The idea of political conception of justice is an ideal normative conception publicly available to all members of the well-ordered society, and in its public justification of political exclusions, it openly declares that those excluded are excluded due to their violation of fair terms of social cooperation, regardless of how rational their political worldviews may be.

Regarding the place of legitimate politics in the well-ordered democratic society, according to Mouffe, Rawls does not give any place to politics that may legitimately contest the principles of justice in a well-ordered democratic society. She argues that the overlapping consensus on the principles of justice leads to the elimination of legitimate politics within the framework of liberal democratic order, because it is a deep consensus that exceeds the agreement on the constitutional principles of liberty and equality, and the overlapping consensus assumes the resolution of conflicts over the interpretation of constitutional essentials. However, according to Mouffe, 'It is the tension between consensus on the principles and dissensus about their interpretation which constitutes the very dynamics of pluralist democracy' (Mouffe 2005b, p. 228). Thus, she contends that the overlapping consensus aims to close 'the gap between justice and law that is a constitutive space of democracy' (Mouffe 2000, p. 32). Therefore, Mouffe argues that to prevent the closure of democratic space, agonistic political contestation of the liberal-democratic principles must be permitted.

While Mouffe claims that Rawls denies the difference between justice and law, Rawls explicitly acknowledges the difference between justice and the law. As he states in his *A Theory of Justice* (1971)

> as citizens our legal duties and obligations are settled by what the law is, insofar as it can be ascertained. . . . Whether these requirements are connected with moral duties and obligations is a separate question. This is so even if the standards used by judges and others to interpret and to apply the law resemble the principles of right and justice, or are identical with them. (Rawls 1971, p. 349)

This is so even in a well-ordered just society. Justice is an ideal normative conception and it is the moral political duty of all citizens to make the laws fully conform to the principles of justice. Conformity of laws to the ideal conception of justice specifies the legitimacy of law, that is, the legitimacy of political power. This space between justice and the law is the basis of political conflict.

Given that actual democratic societies are unjust from the perspective of Rawlsian ideal conception of justice, political conflict in actual democracies is defined primarily as a political contestation between justice and injustice. And it depends on the political judgment of citizens that whether they should obey unjust and illegitimate laws and how they should response politically to injustice and unjust or illegitimate laws. Thus, in contrast to what Mouffe claims, at least for actual democracies, Rawlsian conception does not depend on the consensual resolution of political conflicts regarding political justice. Depending on the political judgment of citizens, assuming that citizens judge from the standpoint of their 'fidelity to law', regardless of the legality of their actions, from protests to civil disobedience to militant resistance are all legitimate forms of political contestation.

Also, in contrast to Mouffe's claims, in the fully just well-ordered society, neither the overlapping consensus on the same political conception of justice nor the fixation of constitutional essentials eliminate legitimate politics. Why Mouffe thinks that there is no place to politics in the well-ordered society is because of her misreading of the overlapping consensus as a form of rational consensus. Mouffe seems to assume that because the overlapping consensus is a rational consensus, there could not be any fundamental disagreement in the interpretation of the principles and every citizen should admit the result of political deliberation, and those who disagree will be deemed to be unreasonable. According to Mouffe, then, in Rawls's well-ordered society, the application of principles of justice is a mere technical issue, in which problems can be 'resolved smoothly through discussions within the framework of public reason' (Mouffe 2000, p. 29).

In this context, Mouffe can claim that Rawls closes the gap between justice and law in an ideally just society. However, even if all citizens can agree to the same political conception of justice, this does not mean that the application of the principles will operate smoothly. Rather, the application of the principles of justice requires political judgment, and political

judgment is characterized by reasonable disagreements over the interpretation of the principles of justice. There is no necessary relationship between agreeing on the same conception of justice and the elimination of democratic politics. Rawls is interested in the possibility of a stable just constitutional democracy, and his argument for the overlapping consensus aims to show that citizens can be stably committed to a common conception of justice even in cases of conflict between justice and their rational goods. In the context of a common acceptance of a conception of justice within their own reasonable comprehensive doctrines, citizens can regard their disagreements with the enforcement of public justice as legitimate.

Moreover, Rawls introduces his notions of public reason and legitimacy just to address the necessary gap between justice and law. The gap between justice and law is not merely an expression of reasonable disagreement in the application of the principles of justice. More significantly, some applications of political justice through the law may seriously conflict with the justice conceptions of reasonable comprehensive doctrines which are a part of the overlapping consensus. Thus, there is no denial of the conflict in the well-ordered society.

In this context, the overlapping consensus makes possible the acceptance of legitimacy of such laws that may deeply contradict citizens' comprehensive conceptions of justice. As citizens' consensus goes deeper than a mere acceptance of principles of political justice and they share the fundamental ideas of fair social cooperation and political conceptions of free and equal personhood, citizens affirm the idea of public reason as the embodiment of these fundamental ideas. Thus, citizens can accept such laws as legitimate to the extent that these laws are justified by the idea of public reason, even when they continue to disagree with such laws. However, the legitimacy of such laws does not mean that they cannot be contested politically by these citizens. However, these citizens should articulate their reasons through the idea of public reason, if they recognize the freedom and equality of all citizens. Rawls

argues for the exclusion of justifying laws on the basis of comprehensive doctrines, just because he takes the political power very seriously, in contrast to Mouffe's contention that he ignores power relations. Public reason legitimates the exercise of political power. Therefore, Rawls's idea of reasonable political consensus does not lead to the closure of the democratic space in the well-ordered society. Moreover, Rawls is explicit in his endorsement of conflict in the well-ordered society. As he says, 'the ideal of public reason does not often lead to general agreement of views, nor should it. Citizens learn and profit from conflict and argument, and when their arguments follow public reason, they instruct and deepen society's public culture' (Rawls 1996, p. Iv.).

To recapitulate, as I argued in the previous chapters, Rawls's idea of democratic politics is juridical in nature, though critical, regardless of the forms political activity may take from voting to civil disobedience to radical resistance. Therefore, we can say that there is no place to democratic politics in Rawls, as Wolin and Mouffe understand. However, that does not mean that Rawls's conception of political justice is complicit in the preservation of domination and injustice and his idea of public reason functions as a barrier to prevent the contestation of unjust power relations. Rawls's conception may not permit legal contestation of what Wolin and Mouffe would identify as social relations of domination. However, from the standpoint of political justice, the question is which forms of relations of power and domination should be the subject of legal and political contestation and which forms of relations of power should be the subject of contestation in the civil society through various forms of political activity within the limits of justice. In this respect, Rawls's ideal conception of justice specifies four forms of political conflict under two different conditions. Under non-ideal conditions, besides reasonable conflict over political judgments in applying the principles of justice, there is a fundamental conflict between political justice and injustice, and there is a conflict among private citizens in civil society over their conceptions of the good

articulated in social relations of power within the limits of justice. Under fully just conditions, though conflict among private citizens in civil society remain, conflict between political justice and injustice gives way to only reasonable conflict over political judgments in applying the principles of justice. Additionally, under both non-ideal and ideal conditions, there may be conflicts between political justice and justice conceptions of reasonable comprehensive doctrines, though the relevancy of such conflicts for political justice depends on the justification of comprehensive justice claims by the idea of public reason; otherwise, for political justice, they only concern the stability of justice, depending on the self-conceptions of holders of reasonable comprehensive doctrines.

Conclusion

The thesis defended Rawls's idea of public reason as a purely normative basis of critical political judgment against its various criticisms by democratic theories of justice from normative deliberative democracy to radical democracy. The thesis focused on the basic criticism of Rawls's idea of public reason as a legitimating basis of a conservative political doctrine that serves to perpetuate injustice and relations of domination. Criticisms of Rawls's idea of public reason are developed on the basis of an interpretation of Rawls's idea of stability in terms of a notion of political stability as concerned with the preservation of existing constitutionally guaranteed rights. Such criticisms argue that such a notion of political stability is the basic motivation of Rawls's development of a freestanding political conception that can be the basis of an overlapping consensus, and for those critiques, his idea of public reason functions as a regulative principle to secure political actors' claims of justice to be articulated within the limits of overlapping consensus over the existing political values. The thesis argued against such criticisms of Rawls's idea of public reason on the basis of reconstructing Rawls's political conception of justice in terms of Kantian political philosophy. The thesis argued that the basic contrast between critics of Rawls's political conception of justice and Rawls relies on their fundamental disagreement over the question of the subject of political justice. The thesis contended that critics of Rawls have a conception of political justice as collective self-determination of common ends of a political community. In contrast to such conceptions of democratic justice, the thesis argued that Kantian political philosophy conceives political justice as securing the conditions of co-existence of freedom of choice of individuals, and therefore, the ideal of equal freedom of external action regardless of the worth or ends of these actions is the regulative idea of political justice. In this context, the thesis showed that Rawls's political conception of justice conforms to Kantian idea of justice. Rawls's ideal theory of well-ordered just constitutional democracy is fully consistent with

Kant's ideal of a system of equal freedom under universal law. Therefore, the thesis argued that Rawls's idea of public reason should be seen in terms of Kant's idea of general united will as purely normative standpoint for judging and justifying public laws in accordance with the ideal of equal freedom. Both Kant and Rawls hold that political coercion is legitimate, only if it either secures the conditions of equal freedom of action or prevents and remedies the violations of equal right to freedom. This idea of legitimacy of coercion contrasts with those critical democratic conceptions of justice, whose primary concern is the self-determination of common ends of a political community that can then be coercively enforced. The thesis argued that the coercive imposition of common ends amounts to the subjection of individuals' free choices to other persons' purposes, even if each member of a political community agrees with those common ends politically enforced. In this regard, the thesis contended that there is a fundamental disagreement between Rawls's idea of democracy and his critics' conceptions of democracy. In contrast to conceptions of democracy as political self-determination of common ends, the thesis argued that Rawls's idea of democracy has to be understood in terms of Kantian idea of political authority as a vertical relationship between the rulers and the ruled. In this context, the thesis developed a justification of the necessity of democracy on the basis of each individual's right to political participation over deciding who the rulers should be. The thesis proposed that a democratic form of political authority is justifiable by virtue of each private citizen's epistemic uncertainty with the regard to the ruling of public authority in accordance with the idea of public reason. The thesis argued that assuming each private person's rational capacity of judgment on the basis of public reason, as public authority has final authority over private citizens, for each private citizen to recognize public rulers as fully legitimate, each citizen's right to participate in the exercise of political power has to be recognized in order to fully establish the non-arbitrariness of public political will. The thesis argued that a just society can be fully legitimate only if it is a constitutional democracy in this

respect. In this regard, the thesis maintained that Rawls's ideal theory conforms to a Kantian ideal of a fully legitimate and just constitutional democracy.

In this context, the thesis reformulated Rawls's idea of stability in terms of Kantian political philosophy. The thesis argued that the question of stability that interests Rawls is not a question of how actual constituents of a political order can maintain their allegiance to the existing social and political institutional structures of a polity. Therefore, the thesis contended that Rawls did not reformulate his ideal theory of justice in terms of a freestanding political conception of justice in his *Political Liberalism* in order to make existing constitutional political frameworks acceptable to those actual citizens. Rather, Rawls's idea of stability is a question of normative stability, as it emerges within the ideal theory of justice. The thesis argued that Rawls's idea of stability proposes an answer to the question of how individuals can be mutually assured that they all maintain the priority of justice over their good, when there is a conflict between justice and the good, given that justice refers to the coercive regulation of external freedom of actions and therefore the demands of justice is met, whenever individuals act in accordance with the demands of justice, regardless of whether they act on the basis of convergence of their rational interests with justice or on the basis of their moral commitments to the priority of justice. The thesis maintained that the only option available for showing the possibility of stability of political justice is to demonstrate the possibility of each person's recognition of the priority of justice within their conceptions of the good as specified by their reasonable comprehensive doctrines. In this respect, the thesis argued that Rawls's idea of overlapping consensus does not concern the justification of the content of political justice. Rather, the idea of overlapping consensus shows only the possibility of each citizen's acceptance of the priority of demands of justice as in accord with their reasonable comprehensive doctrines. In this regard, the thesis claimed that the purpose of Rawls's reformulation of his idea of public reason as freestanding is to secure each citizen's

commitment to the priority of justice by maintaining the neutrality of justice with respect to the grounds of motivation in order to make the emergence, extension and strengthening of a reasonable overlapping consensus over justice possible, as conceived in purely ideal theory.

In this context, the thesis argued that the normative content of Rawls's idea of public reason is not given by the existing political values over which there is an actual consensus, however widely shared it may be. Rather, the thesis claimed that the normative content of idea of public reason is specified on the basis of those principles of justice justifiable in the ideal theory of a fictional well-ordered society. Rawls's idea of public reason provides a critical standpoint of political judgment for both public officials and private citizens on the basis of which those existing political structures and their organizing principles can be judged and transformed. When conceived in terms of a coercive system of laws as guaranteeing reciprocal freedom of actions within ideal theory, the thesis argued that Rawls's idea of public reason cannot be criticized for being normatively deficient, indeterminate or politically impotent regarding the questions of political justice. The thesis claimed that those critiques stem from a conception of democratic politics of deciding common ends of a political community rather than creating and securing a system of equal freedom of choice. In this respect, the thesis particularly discussed historical movements of abolitionism in general and Frederick Douglass as its one of the foremost political representatives as an empirical illustration of the real possibility of how actual political actors can be guided by the idea of public reason in their political struggles for equal freedom. The thesis also argued that Rawls's political conception of justice with its idea of public reason is necessary for identifying actual instances of injustice. On this basis, the thesis showed that Rawls's idea of public reason is the normative ground on the basis of which political actors can judge whether both their own claims and public laws are justifiable by the ideal of equal freedom. Therefore, the thesis contended that Rawls's idea of public reason does not presume the existence of a

public consensus over particular political values in actual political orders. Rather, only if those actual political values and their institutional applications can be justified as specifications of the ideal principles of justice, then, a particular factual consensus over those political values can be regarded as acceptable from a normative point of view. In this respect, from the point of view of Rawlsian political conception, whether claims of justice are normatively justifiable is not determined by whether such political claims are in accord with a particular factual consensus. If justice requires radical transformation or confrontation both by practical political intervention and normative critique of certain practices, there is then the duty to justice to challenge those practices. Except for the reasons of political prudence which only concerns appropriate conditions of political intervention, the question of stability of political and social practices is irrelevant for justice. Moreover, justice may require challenging those aspects of religious or secular worldviews legitimizing such unjust practices. Rawls's idea of public reason does not demand respect for such beliefs. In this respect, Rawls's political conception of justice does not also ignore political conflict in actual societies.

The thesis therefore showed that Rawls's idea of public reason whose normative content is specified by the ideal theory of justice is a regulative principle of critical political practice and judgment. That Rawls's ideal theory of justice is a radical conception in ways similar to Adorno is granted by Arnold Farr (2011). However, following Charles W. Mills, he claims that '[s]ince the society in which we live has a history of oppression of various sorts, an ideal theory cannot help us create a fair and just society' (Farr 2011, p. 34). According to Farr (2011, p. 34), 'A conception of justice that views everyone as the same, in a society where gross inequalities exist, contributes to the smoothing over of these contradictions and perpetuates wrong life'. Thus, even though Farr sees the radical nature of Rawls's ideal theory, he still adheres to those critical democratic criticisms that Rawls's conception of

justice is politically impotent, if not conservative in itself. The thesis argued that if Rawls's ideal theory is conceived in terms of Kantian political philosophy and if the ideal theory is understood in purely normative terms as a theory of justification and legitimation of equal freedom, such criticisms of political impotency have no force against Rawls. As the thesis argued, human constituents of the ideal theory are fictional agents, and the interchangeability of fictional individuals cannot be translated into actual world. Thus, the thesis claimed that Rawls's ideal conception of justice does not neutralize unequal political and social positions by virtue of its commitment to the universal sameness of individuals with respect to their two moral powers. Rawls's ideal theory identifies only the conditions of a fully just society, and only on the basis of such an ideal normative point of view, actual actors can identify those practices that are wrong and how those practices can be transformed rightfully.

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Appendix

A shorter preliminary version of the second chapter was presented at the Australasian Society for Continental Philosophy Annual Conference held on December, 2013 at the University of Western Sydney.

A shorter preliminary version of the second section of the fifth chapter was presented at the Australasian Society for Continental Philosophy Annual Conference held on December, 2014 at the Australian Catholic University, Melbourne.