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Political Liberalism for Muslim Majority Societies

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Commonweal, a Liberal Catholic Magazine: In *A Theory of Justice*, religion is not listed in the index. But in your recent work, *Political Liberalism* and “The Idea of Public Reason Revisited”, religion has become, if not the central theme, at least a major focus. You have had a turn in your interests. What is this coming from? What’s the motivation for this new focus?

John Rawls: Well, that is a good question. I think the basic explanation is that I am concerned about the survival, historically, of constitutional democracy. I live in a country where 95 or 90 percent of the people profess to be religious....Religious faith is an important aspect of American culture and a fact of American political life. So the question is: in a constitutional democracy, how can religious and secular doctrines of all kinds get on together and cooperate in running a reasonably just and effective government?

Collected Papers, 616, 1998

Some have thought that my working out the ideas of political liberalism meant giving up the egalitarian conception of *Theory* [*A Theory of Justice*]. I am not aware of any revisions that imply such a change and think the surmise has no basis.

Political Liberalism, 7 n, 1993

Acknowledgments

In writing this dissertation I owe to many people. My serious involvement with Rawls is particularly indebted to Sebastiano Maffettone, and the Rawlsian international network of scholars he provided for us as the PhD students of political theory, at the Center for Ethics and Global Politics in Luiss University of Rome. Thanks to Maffettone's efforts, Luiss can be regarded as one of the most favorable intellectual environments in Italy for a person who is interested to work on Rawls's philosophy.

Furthermore, particularly the encouragements and supports of Daniele Santoro and Aakash Singh among the faculty were of significant importance in the progress of this work. Ingrid Salvatore kindly and carefully read all the early draft of this dissertation and gave very learning and brilliant comments on it. I also need to mention the courses we had in Luiss University with Gianfranco Pellegrino, Raffaella Marchetti, and others. Indeed I am indebted to all the professors in the graduate program. Also the company of all the political theory PhD students in Luiss was important in development of my thoughts. Among others I specifically need to mention Saamaan Mobasher and Domenico Melidoro. To this I also need to add my friends in Queens' University in Kingston whose company made me feel at home.

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impressed with his great morality and intellectually innovative character. Through working with Kymlicka, I gained the confidence to elaborate my own interpretation of Rawls, which is now present in this thesis. Not only Kymlicka gave us, as his students, fish but also he taught us how to do fishing. He read the draft of this thesis and provided me with very useful and precious comments.

In my research period in Canada, I also benefited from advising of Mohammad Fadel in the department of Law in the University of Toronto. As it is obvious from the dissertation, Fadel's knowledge in Islamic law and theology, and his contribution to Rawls and Islam debate, was very illustrating for my work. I do not forget how his two articles on Public Reason and Islam, and his enlightening comments on my work, removed my doubts in the appropriateness of a dissertation on Rawls and Islam in the initial stages of my research in Canada. In addition to these scholars I need to mention Rahim Nobahar in the faculty of Law in Iran's Shahid Beheshti University. Without Rahim Nobahars' consult I would not be able to overcome the difficulties in understanding the political ideas of Mehdi Haeri Yazdi, as discussed in chapter V.

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Abbreviation of John Rawls's Works

A Theory of Justice (1971)	TJ
Kantian Constructivism in Moral Theory (1980)	KCMT
Political Liberalism [as the book] (1993)	PL
Political Liberalism [as the idea] (1993).....	political liberalism
The Idea of Public Reason Revisited (1997)	PRR
The Law of Peoples (1999)	LoP
Collected Papers (1999)	CP
Lectures on the History of Moral Philosophy (2000)	LHMM
Justice as Fairness: A Restatement (2001)	JRF
Lectures on the History of Political Philosophy (2007)	LHPP
<i>A Brief Inquiry into the Meaning of Sin and Faith</i> (2009)	BIMSF

ABSTRACT

Political liberalism is the main theory of John Rawls in the last period of his intellectual life. Since the theory was developed by Rawls in a book with the same name (referred as PL in this book), an extensive body of literature were created to analyze the different dimensions of this theory. Particularly speaking, the book and the theory have found a large audience in liberalism and religion debates. However, only a few number of works which are only produced in the last years, focus on the relationship between political liberalism and Islam, and far less address this subject within the context of Muslim majority societies. On the other hand, among the extensive literature which are produced on Islam and democracy issue in the recent years, very little number of them look towards this subject from an analytic political philosophy framework. This dissertation tries to fill this gap in the literature. This dissertation can be regarded as an application of Rawls's theory of political liberalism to Muslim majority societies. However, many arguments of this dissertation are applicable to all nonwestern societies, regardless of whether they are Muslim or nonMuslim. Furthermore, it should be added that our reading of Rawls in this dissertation presumes the continuity between Rawls's main works, that is *A Theory of Justice* (1971), *Political Liberalism* (1993), and *the Law of Peoples* (1997).

This thesis contains five chapters. The first chapter can be regarded as an introduction to whole the work. Justifying the major question of this dissertation, in the first chapter we have tried to answer some of the main the possible objections which may be pointed towards this type of research. Then, the rest of the thesis is divided into two parts: part one on justification and part two on stability. Each of these parts contains two chapters. These two parts are correspondent to two stages of Rawls's political philosophy. In the part one we have tried to develop a universal reading of Rawls by focusing on the ideas of the reflective equilibrium

(chapter II) and the original position (chapter III). In chapter two we have argued that all deliberating persons in the world, no matter in which society they live, can get involved with a dialogue with Rawls and his constructivist argument for justice as fairness via the reflective equilibrium as justificatory tool which is available in political liberalism. In chapter three we have claimed that political constructivism and particularly speaking the idea of the original position, models reasonable and rational individuals who hold reasonable comprehensive doctrines, no matter in which part of the global civil society they live. In addition, we implement that only specific conceptions of society and person, that is the conceptions of society as a fair system of cooperation and the persons as free and equal citizens, are modeled in political constructivism as part of the idea of the reasonable.

The second part of the dissertation is concerned with the stability of justice as fairness within the context of Muslim majority societies. Explaining overlapping consensus as the most reasonable basis of social unity and the main account of stability in political liberalism, in chapter IV we discuss how a constitutional consensus, based on a *modus vivendi*, develops into an overlapping consensus, when a democracy is established for the first time in a Muslim majority country. Living under just institutions, in addition to justificatory ethics, has a major role in shifting the comprehensive doctrines of citizens in this process. Defining justificatory ethics as declaration plus conjecture, we also argue that political liberalism is not indifferent to the role of religious arguments in stability of justice as fairness in a religious society.

Chapter V is a work of justificatory ethics in favor of an Islamic full justification for the political conception of justice as fairness in the Muslim majority context, based on Mehdi Haeri Yazdi's *Philosophy and Government*. This chapter demonstrates that Islamic philosophical and legal tradition may include the fundamental ideas of persons as free and equal citizens and

society as affair system of cooperation, as the primary and necessary ideas in constructivist justification for justice as fairness. In the first section of this final chapter I explain what this thing called Islamic philosophy is. In second part of this chapter I will explain guardianship of the jurist doctrine (*velayat-e faqih*). As the main basis for contemporary Shiite version of the idea of an Islamic state, this idea is much criticized by Haeri Yazdi as an unreasonable account of Islamic political theory. In the third part of chapter V we give an account of Haeri Yazdi's argument for priority of Islamic philosophy to Islamic jurisprudence. This section includes Haeri's counterarguments against guardianship of the jurist.

In the fourth section we explain how Haeri's Islamic contractarianism based upon the concepts of agency contract (*aqd-e vekalat*) and joint ownership (*malekiyat-e musha*)—already available in Islamic private law and philosophy—paves the way for full Islamic justification for the political conception. The fifth section is concerned with a linguistic analysis of the notion of community, based on the distinction already made in Islamic philosophy between universal (*kolli*) and whole (*kol*). This section can be read as an argument in favor of individualism. The sixth and final section includes an Islamic declaration on the incompatibility of the voluntary nature of Sharia, with the coercive and oppressive nature of state power. As a complement to the ideas of Haeri Yazdi in this regard, I also mention Mohamad Fadel's view on *hudud* Islamic penalties. Being complementary to each other, these six sections of chapter V constitute a full Islamic justification for the possibility of overlapping consensus between Shiite Islam and justice as fairness.

Keywords: Political Liberalism, John Rawls, Muslim Majority Societies, Shiite Islam, Constructivism, Overlapping Consensus, Mehdi Haeri Yazdi

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CHAPTER I— INTRODUCTION: The Relevance of Constitutional Democracy for Muslim Majority Societies

1- General Question: Political Liberalism as Defense of Reasonable Faith in Democracy

Iran is a religious society which is ruled by a theocratic state since the 1979 Revolution, so the question of the relationship between religion and politics has concerned me strongly for the time being, like many persons from my generation. When I got admission from Luiss University to do a PhD in political theory, I chose Islam and political liberalism as the subject of my research. In the spring of 2009, at the end of the first year of my PhD in Luiss University of Rome, I when had just submitted the proposal, some of the colleagues introduced me a book which was written more or less on the same issue which I intended to work on. The name of the book was *Liberalism and Islam: Practical Reconciliation between the Liberal State and Shiite Muslims* (2008)¹ by Hamid Hadji Haidar. Being an Iranian, from the name on the book cover I noticed that me and the author are from the same counties. Thus, I decided to review the book in order to start my PhD research on Islam and political liberalism.

¹ Hadji Haidar, Hamid. *Liberalism and Islam: Practical Reconciliation Between the Liberal State and Shiite Muslims*, Palgrave Macmillan, 2008.

² See LoP, “the Second Part of Ideal Theory”, pp. 59-88.

³ Apart from other problems which will come as follows, the methodology of Hadji Haidar concerning the meaning

The main argument of the book was disappointing. There Hadji Haidar argues that this is an advantage of Rawls's political philosophy, against the universalism of liberal philosophers such as Kant and Mill, which is disengaging its major arguments from Muslim majority societies which have a different culture. The notion of decent hierarchical societies is enough for Muslim majority societies to have a reasonable basic structure. Indeed, part of Rawls's concern in his lifetime project has been the articulation of a particular theory of decency for non-liberal societies, including Shiite Iran. Thus, the law of peoples provides a space where Muslim majority societies can construct the decent basic structure of their own without caring about liberalism. Hadji Haidar, as a clergyman from Iran's religious capital Qom, seems to be happy concluding that political liberalism is free from any action guiding standard for Muslim societies:

As opposed to Mill, the subject of Rawls's theorization is only the basic structure of liberal democratic societies. Hence, by restricting his theorization to the political domain, Rawls has provided a space in which religious people find themselves free to choose whatever transcendent principles they find convincing.[...] Rawls would accept the decency of religious democracy, which Shiite political theory intends to justify for Shiite Muslim societies (Hadji Haidar, *Islam* 104).

Put another way, "Shiite Islam appreciates Rawls's theory of decency, which potentially confirms the establishment of religious democracy for Shiite Muslim societies" (Hadji Haidar, *Islam* 132). The conclusion is that the search for an overlapping consensus between Islam and political liberalism within the context of Muslim majority countries is irrelevant. This is a conclusion from the fact that in PL political constructivism is limited to the

present liberal democracies. Hadji Haidar even claims that in LoP Rawls justifies a just theocracy for Muslim societies with different political culture from that of the West (Hadji Haidar, *Islam* 103-104).

It is obvious throughout the book that “by Shiite Islam” the author “refers to the theory that justifies the Islamic Republic of Iran in its ideal form” (ibid 6). Hadji Haidar is not denying that Muslims living in liberal states ought to tolerate those states on grounds of reciprocity; since liberalism tolerates Muslim minorities and provides them with services, Muslims have to tolerate those states vice versa.

As a young Iranian who was born two years after the Islamic Revolution of 1979, Hadji Haidar’s arguments are not fitting to my personal intuitions of the political demands and the everyday experience of the younger generation in Iran. The claim that Iranian people only want a decent regime who protects a minimalist human rights and imposes a *bona fide* moral duties and obligations on all its members, without regarding themselves as free and equal persons², seemed only (maybe) compatible with the experience of my parents’ generation who participated in 1979 revolution to overthrow Shah’s dictator regime. In the understanding of the daily life of my generation, however, the story seems to be different. We will come to this point later in this chapter, in a more argumentative form.³

² See LoP, “the Second Part of Ideal Theory”, pp. 59-88.

³ Apart from other problems which will come as follows, the methodology of Hadji Haidar concerning the meaning of Islam in his research is unclear. In other words, it is not obvious whether by Islam he means Islamic substantive law (*feqh*), Islamic theology (*kalam*), the principles of Islamic jurisprudence (*usul*), Islamic philosophy, Islamic mysticism (*erfan*), and so on. In one of the few occasions he refers to his methodology in studying Islam, Hadji Haidar writes: “It should be noted that by Shiite Islam this book refers to the theory that justifies the Islamic Republic of Iran in its ideal form. There are, however, many basic principles and values that are characteristic to all

The June of 2009, when I was reviewing Hadji Haidar's aforementioned book for one of Luiss University courses, was coincident with the electoral campaigns for a presidential election in which Mahmoud Ahmadinejad, the candidate for hardline conservatives, Mohsen Rezai, the candidate for moderate conservatives, and Mir Hossein Mousavi and Mehdi Karubi, representing reformist side, were competing. Before the election nobody was anticipating that 12 June (22 *Khordad* 1388) election will turn into one of the most crucial turning moments of the contemporary history of Iranian politics, an event which might be only comparable with the constitutional revolution of 1905-197, the CIA & MI6 led coup d'état against the democratic prime minister Mohammad Mosaddegh in August 1953 (Persian Calendar: 28 *Mordad* 1332) and 1979 revolution of Iran. As a reaction to the results of the election, the strongest contemporary Iranian pro-democratic coalition, called the Green Movement, was born.

Twelver Shiite Muslims throughout the world. Yet, in controversial and sensitive cases, this book constructs its arguments largely on views and ideas developed by Imam Khomeini (1902–1989), the political theorist and founding leader of the Islamic Republic of Iran, established in 1979. In addition, in many cases a reference will be made to the views and ideas developed by Mohammad Hussein Tabatabai (1903–1981), the most prominent philosopher and the greatest interpreter of the Qur'an in the contemporary Shiite world. Finally, where necessary, I also resort to views and ideas developed by the students of Imam Khomeini and Tabatabai who have supported and developed the political theory of the Islamic Republic of Iran. Therefore, what is introduced in this book as Shiite Islam can be definitely regarded as the political theory of the Islamic Republic of Iran, as interpreted and developed by the author." (p. 6) Both Khomeini and Tabatabai have works on different areas of Islamic sciences. Tabatabaei has written extensively in Islamic philosophy, law, theology and mysticism, Khomeini, similarly, has works in different areas of Islamic sciences, particularly substantive law and mysticism. It is not clear that Hadji Haidar bases his arguments on which of these sciences and which kind of balance between them.

Having just participated in a historic election, in 15 June almost three millions of Iranians who were baffled, angry, and heartbroken with the official results of the presidential campaign of 12 June election came to streets to present their protest about the results of the election. There were perfectly legitimate reasons to question the validity of the official results that have declared Mahmoud Ahmadinejad as the clear winner of this election.”⁴

The assumption of the election having been rigged is now a social fact. However, just couple of weeks after the election, and the violent behaviors of the Basij and other security forces with the demonstrators in the protests which lasted for 8 months, it was no longer a question whether or not the election was rigged and how much vote Ahmadinejad or Mousavi did own. At least 200 people were killed during the protests, and much more injured and jailed. However, until the moment I am writing these lines, Islamic Republic has not put any single step back to accept the legitimacy of protests. Now many pro-democracy activists believe that Islamic Republic wants to turn Iran into an Islamic North Korea. It is exactly one year that the reformist leaders of the Green movement, Mousavi and Karoubi, are house arrest and do not have any contact with the external world and their supporters. Thus, after thirty years’ experience of clerical rule, the majority of nation intuitively finds the constitution of Islamic Republic in which a medieval *vali-e motlaqe-ye faqih* (absolute guardian jurist) can veto all the decisions which are made by the majority, as highly problematic and paternalistic. To quote from Nikzadfar:

⁴ For a fuller account of the rise of Green Movement see Dabashi, Hamid. *Iran’s Green Movement*, 2010, particularly chapter 1.

To many, the eruption of mass street protests appears to be an impulsive explosion of collective dissent against a tainted election per se; nevertheless, the fact is that the Green Movement is a natural consequence of an epistemic change in postrevolutionary Iranian society—a society with two major experiences of secular and Islamist authoritarianism *which is increasingly turning into a post-Islamist, postideological pluralist society*. This is a society that prioritizes life over death and yet it recalcitrant against suppression, humiliation, and powerlessness. It is a movement for restoring power back to the people—whatever they are and whatever their aspirations may be (Nikzadfar, “Green Movement” 12 emphasis added).

Iranian society now experiences pluralism. By the rise of Green Movement, it seems that we are in the “post-ideological” situation. The age of ideological convictions in which *all people* were supposed and suggested to believe in a particular comprehensive doctrine, either Islamism, Marxism, or any other religious or secular conviction, is over in Iran, at least for the majority of younger generation. As Dabashi argues the new generation of Iranians is a postideological generation.⁵ They do not care about their parents’ political hang-ups. They demand their human, civil, and women's rights, “through a grassroots, innate, and entirely legitimate uprising”, called Green Movement. This generation is cured of the most traumatic memories of its parental generation, from the CIA-sponsored coup of 1953 to the Revolutionary zeal of 1979, though does not forget those events in its historical political memory. The dominant political parameters of Third World Socialism, anticolonial nationalism, and militant

⁵ Indeed, starting as early as 1997, when Mohammad Khatami was chosen as the reformist president of Iran, called reformist period (*doreye eslaaat*) many people in my generation had started to distance themselves from the ideological discourse of Islamic Republic.

Islamism that divided the past generation of Iranians seem to have lost their validity, being replaced by trends towards universal human rights and the very idea of democracy. Indeed this postideological situation in Iran is marked by a massive generational gap and a specific demographic disposition in which 72-million population of the country is characterized with 80% of it under 40, 70% under 35, and 50% under 25 (Dabashi, "Green Movement" 53-68).

Add to this the so called Arab Spring or Arabic revolutions in Tunisia, Egypt, Libya, Yemen, Syria and other Middle Eastern countries against post-colonial dictators; as a result of all these world's image of Muslim identity is now shifting from September eleven attacks to Tahrir square protests. Islamic fundamentalism is gradually shading away in favor of a more democratic understanding of Islam in in the Muslim societies. However, the democratic movements in Middle Eastern countries face considerable opposition from the pro-autocratic sides of the past regimes of their countries. This thesis is based on the assumption that Rawlsian political theory can contribute in the democratization process of Muslim countries, at least in the cases that sufficient background culture and civil society discourse exists. I am particularly concerned with the transition to the democracy Muslim countries (Iran), and then those Muslim majority societies which already have liberal democratic institutions (Turkey and Indonesia). In addition, this dissertation is not indifferent to those societies which the number of their Muslim inhabitants is comparable to the Muslim majority societies (India). I believe that the Rawslain effort to formulate the most reasonable conception of justice as the moral basis for a constitutional democracy can contribute in the democratization process of the Muslim world. In other words, this dissertation aims to formulate a Rawlsian theory of constitutional democracy for Muslim majority societies with strong contemporary democratic movements.

In his eminent work *Political Liberalism*--- referred in this thesis as PL— Rawls openly utters that: “Political philosophy assumes the role Kant gave to philosophy generally: *the defense of reasonable faith*....In our case this becomes *the defense of reasonable faith in the possibility of a just constitutional regime*”⁶ (Rawls, PL 172 emphasis added). Our justifiable and reasonable faith in democracy affects our thoughts and attitudes in actual politics and the way we confront anti-democratic forces. Rawls gives the example of Germany before the World War II. A cause of the fall of Weimar’s constitutional regime in 1932 which ended up with the taking power by Adolf Hitler, Rawls argues, was that the traditional elites of Germany did not support liberal constitution of Weimar enthusiastically and no longer believed a democratic parliamentary state was possible (PL lix-lx).

To achieve such aim, as we will see in *Part One* of this dissertation, we need a universal reading of political liberalism and the notion of justification which exists in it. One might argue we need to put more emphasis on the Kantian elements of political liberalism and develop a more Kantian interpretation of justice as fairness. Interestingly, the roles Rawls attributes to political philosophy in his later works still have strong Kantian elements which help us in developing our universalist reading. We will see this in the next chapters, particularly *Part One*.

2- Why John Rawls? Why Political Liberalism?

⁶ Rawls uses the terms “democratic society”, “constitutional democracy”, “democratic regime” and “constitutional regime” in the same meaning. (PL 11) In this dissertation by democracy I mean constitutional democracy unless otherwise is mentioned. We may use each of these equivalents interchangeably.

But, one may ask, what is the reason that this dissertation has selected Rawls for its debate on liberal democracy in Muslim-majority societies? Why political liberalism and not another democratic doctrine instead? In this section I want to explain my reasons for choosing Rawls and focusing on political liberalism.

First, Rawls is a theorist of justice and the crisis about the correct meaning of justice seems to be one of the main sources of conflict in Muslim majority societies. The problems similar to those which caused Rawls to develop his theory seem to be existent in many contemporary Muslim societies. As it is famous, at the opening of TJ Rawls says: “Justice is the first virtue of social institutions, as truth is of systems of thought” (TJ 3). He continues that laws and institutions of a particular society, no matter how much efficient and well-arranged they are, must be abandoned or reformed if they are compatible with a reasonable standard of justice.⁷ The two principles of “justice as fairness” are as follows:

- a. Each person has an equal claim to fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair values.
- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of

⁷ Rawls adds this is similar to what we do in science. A scientific theory, however elegant appears to be, should be abolished or revised if it comes to be untrue.

opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (PL 5-6).⁸

Justice as fairness denies that the loss of freedom for some is made legitimate by a greater good shared by others (TJ 3). This means that justice does not allow that the state outweigh the sacrifices enforced on a few by the larger advantages enjoyed by many. Yet, the corrupt elites who usually have been or are ruling Muslim countries, usually sacrifice the freedom and social welfare for some, for the benefits of a small privileged group. The dictators which were overthrown in the Arab spring during the Tunisian, Egyptian and Libyan revolutions are good examples in this regard. One might argue this is also the case for Syria and Iran who are ruled by some privileged elites.

Similarly, one of the problems which modern Muslim majority societies face, one might argue, is to reconcile between freedom and equality. Iran's 1979 revolution, one might suggest, ended up in sacrificing liberty for equality. At least in prima facie look, the post-revolutionary state might appear to be fairer in distribution of wealth and income—though many educated Iranians may object even to this—but I think it is clear that there is no sufficient freedom in Islamic Republic of Iran, neither social (for instance compulsory headscarf for women, even for religious minorities) nor political (undemocratic or rigged elections which 2009 events was a clear example). I conjecture different degrees of the same problem be true in the cases of other Muslim majority societies.

Rawls's theory of justice as fairness offers a reasonable solution for this problem of reconciliation between liberty and equality.⁹ Justice as fairness tries to reconcile between the

⁸ These two principles, with small differences, are repeated in TJ, p. 53.

deeply contested conflict of the tradition of democratic thought in the last two centuries, between the tradition associated with Locke in one hand and the tradition associated with Rousseau on the other hand. Lockean tradition, called “the liberty of moderns”, gives greater value to liberty and freedom of consciences, basic rights of the person and of property, and the rule of law, whereas the Rousseauian tradition, called “the liberty of ancients” gives greater weight to equality and the values of public life. Rawlsian philosophy adjudicates between these conflicting traditions first by proposing two principles of justice as fairness to serve as a guideline for how basic structure is to realize liberty and equality together, and second, by suggesting a point of view—the original position— from which these two principles are justified as the more (most) appropriate principles of justice (PL 4-5). This reconciliation seems to be an urgent and relevant need in many contemporary Muslim majority societies as well.

The third reason for why Rawls’s philosophy seems to be appealing from a Muslim majority perspective with strong prodemocracy and civil society movements is the idea of public reason. Particularly Rawls’s latest account of this idea as developed in PRR, is widely seen as providing a workable framework to reconcile between religious and nonreligious citizens in

⁹ For Rawls, the first of two fundamental question of political liberalism is “what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal?”(PL 3) To this one might object that even in theocratic Muslim states such as Islamic Republic of Iran persons are regarded as citizens, in the sense that they have a passport, there receive particular services from the government because they are born in the particular territory of that country, there is a system of insurance, free public education and taxation, etc. The answer is that still the notion of citizenship in Islamic Republic or similar states has some important differences from liberal citizenship which regards individuals as free and equal. Thus, in order of avoid any confusion this dissertation prefers to use the term person instead of citizen. Thus the Rawlsian question is reformulated this way: what is the most reasonable conception of justice for determining the fair terms of social cooperation between reasonable persons regarded as free and equal?

public political debates. Indeed, Rawls's question at the beginning of the section on "Religion and Public Reason in Democracy" in PRR, is very relevant to the situation of at least some of the Muslim societies where the debate over secularism and its limits in a democratic framework is prevailing among intellectuals:

How is it possible for those holding religious doctrines, some based on religious authority, for example, the Church or the Bible, to hold at the same time a reasonable political conception that supports a reasonable constitutional democratic regime? Can these doctrines still be compatible for the right reasons with a liberal political conception? How is it possible for citizens of faith to be wholehearted members of a democratic society who endorse society's intrinsic political ideals and values and do not simply acquiesce in the balance of political and social forces? (PRR 780-781)

To explain this problem better we need to have a look to the available literature on Islam and democracy. Indeed, in the last two decades, particularly as a reaction to September the 11th, a substantial body of scholarly literature has emerged on the relationship between Islam and democracy, produced by African, Middle Eastern, Asian, European and North American scholars. However, most of these works are indifferent to the concept of public reason. On the other hand, on the part of the large body of literature which has produced on public reason since Rawls published this idea in political liberalism, only a small, though significant, part of the works address Islam. The recent works of Andrew March, Abdullah An-Naim, Mehmet Bilgin, Hamid Hadji Haidar and Mohammad Fadel are perhaps the best and best-known works on this area. Yet, the existent literature on Islam and public reason seems to be incomplete in some

important respects. First of all, with the exception of the work of Mehmet Bilgin and Abdullah An-Naim , the available works only limit the scope of their question to the case of Muslims living in Western liberal democracies, and do not address the case of Muslim-majority societies of the Middle East. This seems to be an important shortage. Furthermore, the available researches on public reason are mostly concerned with Sunni Islam, mostly neglecting the case of Shiites (the religion of the majority of Muslims in Iran, Iraq and probably Lebanon). This dissertation is aimed to fill these gaps.

Finally, as the fourth reason, we need to address the superiority of political liberalism to comprehensive liberalism in ‘Islam and Liberalism’ debate within the context of Muslim majority societies. As it is famous, for Rawls his later account of liberalism, political liberalism, is more compatible with the diversity of religious and secular views and this makes his later theory more stable than his earlier account of justice. Rawls believes that in TJ justice as fairness is expressed in comprehensive terms, whereas in PL it is regarded as a political conception. According to Rawls, to understand the nature of the differences between TJ and PL, one must see political liberalism as arising to overcome the problem internal to TJ. According to later Rawls, the account of stability in part III of TJ is not consistent with justice as fairness as a whole. “I believe all the differences are the consequences of removing that inconsistency. Otherwise these lectures [*Political Liberalism*] take the structure and content of *Theory* to remain substantially the same” (PL xvi). This revision in the account of stability led to later Rawls’s demarcation between comprehensive and political liberalism. Here it would be a good idea to have a look on Mohammad Fadel and Andrew March’s views on the implications of this distinction on Islam and liberal democracy debate.

2-1- Fadel and March on the Advantage of Political Liberalism in Islam and Democracy Debate

As two scholars who have significantly contributed to Islam and political liberalism debate, both Fadel and March argue that political liberalism's approach to the Islam/liberalism dichotomy is more feasible, and thus superior, as compared to the comprehensive liberalism.¹⁰ Although March and Fadel have argued within the context of Muslim minorities who live in European and North American states, their arguments seem to be applicable to Islam and liberalism debates within the context of Muslim majority societies.

I start with Fadel. Mohamad Fadel argues political liberalism has produced a model of liberalism which clearly assumes the vitality of non-liberal moral doctrines, including religious views. The framework developed by Rawls in his political liberalism, especially if we take into account the idea of public reason, will allow Muslims and liberals to explore in a systematic fashion the possibility of compatibility between Islam and liberalism. That is because political liberalism suggests that the philosophical incompatibility of Islam with liberalism is insufficient to conclude that believing Muslims cannot engage in a fair social cooperation with other citizens. Fadel adds that "given Rawls's status among liberals, his analysis represents a plausible starting point for a systematic analysis of the relationship of fundamental Islamic theological, ethical and legal concepts to those of modern liberalism" (Fadel, "True" 7).

Furthermore, since political conception is political and freestanding, rather than moral or metaphysical, individuals are not required to affirm controversial metaphysical doctrines (from an Islamic perspective) in order to participate in social cooperation in good faith.

¹⁰ Bilgin has a more or less similar view on this issue to those of March and Fadel. See: Mehmet Fevzi Bilgin, "Political Liberalism and the Inclusion of Religion", *Rutgers Journal of Law and Religion*, Vo. 7, No. 2, 2006.

The superiority of political liberalism over a comprehensive liberalism is that in the former a believing Muslim can be assured that her theological premises need not be revised so long as she is otherwise a “reasonable” citizen (Fadel, “True” 9).

The final point which privilege political to comprehensive liberalism in Fadel’s view is that the scope of political liberalism, according to the first feature of the political conception (PL 11-13), is limited to the basic structure; the fact that in political liberalism political conception is only applicable to the basic structure and no other domains of life is an advantage in arguing for an overlapping consensus. As Fadel’s inquiry on political liberalism and Islamic family law shows, limiting the scope of political conception to the basic structure makes Rawlsian liberalism more tolerant towards the traditional Islamic conception of family law. Put in other terms, orthodox Muslims seem to endorse politically liberal family law more willingly as compared to comprehensive liberalism’s attitude toward family pluralism:

Despite orthodox Muslims’ religiously-grounded understanding of marriage, a politically liberal family law along the lines espoused by Rawls, because of its neutrality with respect to metaphysical conceptions of the family, and its commitment to provide a qualified form of autonomy for the family, is entitled to the support of orthodox Muslims, even if it would exclude as impermissible certain norms of the family that orthodox Muslims would deem morally permissible or even just (Fadel, “Family Law” 6).

Similarly, Andrew March finds political liberalism superior to comprehensive liberalism in Islam and democratic citizenship debate. March conjectures that Muslims are more

willing toward citizenship in a politically liberal state than in any other non-Muslim regime (March, “Foundations” 250-251). In his recent book and couple of other articles, March provides sophisticated arguments for the plausibility of an overlapping consensus between Sunni Islamic jurisprudence and the conception of justice as interpreted politically by Rawls. In his works March argues that culturally authentic Islamic values exist which can ground Islamically a social contract between Muslims and a non-Muslim state.

Similar to Fadel, March remarks that the whole project of political liberalism aims to avoid basing liberalism on the public affirmation of controversial truth-claims. Exactly this is the advantage of political liberalism because for many Muslim jurists the rhetoric employed by a liberal state is crucial in their approach to liberal democracy. Political liberalism does not ask Muslims to profess something contrary to Islam. This is precisely because of political liberalism’s “epistemic abstinence”—to borrow the term from Raz.¹¹ In Islam and democracy debate, Political liberalism is to those political theories which demand religious citizens to endorse philosophically-incompatible-with-Islam views. To quote March:

[A traditionalist Muslim] might look at his authoritative sources and decide that there is a crucial difference between what a Marxist non-Muslim state or another militantly secular republic would demand of him and what a politically liberal regime demands. This distinction may very well determine whether the Muslim feels that he can in good conscience contribute to that society’s security and well-being (March, “Foundations” 249-250).

¹¹ Joseph Raz, “Facing Diversity: The Case of Epistemic Abstinence”, *Philosophy and Public Affairs*, Vo. 19, No. 1, 1990.

All in all, as Fadel and March demonstrate, in renouncing any claim to metaphysical truth as the basis for social cooperation, in requiring of individuals no controversial moral or secular views in order to participate in constitutional politics—as is the case with perfectionist states—and in limiting the scope of justice to the basic structure of the society, political liberalism seems to be superior to the traditional comprehensive liberalism in Islam and democracy debate.

In the next part, I will discuss “the fact of post-colonialism” in Muslim societies. Such addressing might be helpful in answering some of the possible objections which might be addressed toward our research. In the final part I will answer some of the possible objections to a research on Islam and liberal democracy in the Muslim majority context.

3- The Fact of (Post) Colonialism in Muslim Societies

As we know, John Rawls puts much emphasis on Reformation and the wars of religion, as the significant historical root of liberalism in Europe and North America. Rawls regards that the Reformation and its aftermath caused for five facts about the public political culture of a European or North American constitutional democracy. One may call them first the fact of reasonable pluralism, second the fact of oppression, third the fact of popularity, fourth the fact of liberal political culture, and fifth the fact of divergent judgments.¹² The deep influence of Reformation was

¹² For the first to third facts see PL 36-38. For the fourth fact see PL 38n, and for the fifth see PL 58. The naming of the first two is for Rawls himself. The rest are named by us based on their content.

fragmentation of the religious unity of the middle Ages and unintentional religious pluralism which followed it. Religious pluralism paved the way for pluralisms of other kinds in later centuries and thus pluralism became a permanent feature of the European culture by the end of the eighteenth century.

The second development which led to modern situation was the rise of modern state and its central administration ruled by monarchs with enormous and absolute powers. In the later centuries, however, the power of absolute monarchs became limited by appropriate principles of constitutional design protecting the rights and duties of individuals. And finally we need to address the development of modern science in seventeenth century, accompanied with the advent of modern astronomy with Copernicus and Kepler, and modern mechanical physics and mathematical analysis by Newton and Leibnitz. These events had important political effects by weakening the authority of the medieval Catholic Church in owning the whole truth and thus had significant influence on the rise of liberalism (PL xxii-xxvi).

In the case of Muslim Majority countries, however, it seems the only event which is comparable to the European wars of religion in the depth and influence is colonialism. Inspired by Rawlsian terminology in PL and LoP, we can speak of “the fact of post-colonialism¹³” in Muslim countries. As William Shepard puts “the dominating fact of life for the Islamic world”—has been “Western imperialism in its various dimensions, military, political, economic and cultural” (Shepard, “Diversity” 61). The 2003 American-Anglo invasion and occupation of Iraq is just the latest chapter in a long series of interventions that has drastically shaped the political and moral context of the Middle East. Similarly, as Mohammad Khalid Masud has noted

¹³ As we will see in the text, this concept should not to be confused with the Indian school of post-colonial theory which is inspired by Foucault and Said and is different from our work which is based on the Rawlsian framework.

“Muslim thinkers found it very difficult to understand new ideas like secularism in isolation from Christian (Western colonial) supremacy” (Masud, “Construction” 364).

This dissertation is based on the idea that the only event in the Muslim world which is comparable to the European wars of religion, in the depth and permanence of the influence on Muslim inhabitants, is colonialism. Similar to John Rawls who argues that in studying the origins of liberalism in Europe and North America one cannot neglect the Wars of religion, one may argue that in developing a theory of liberal democracy for Muslim majority societies, one cannot neglect the facts of colonialism and post colonialism in those environments.

Early sixteenth century, when Martin Luther launched his protest against the sale of indulgences by the Catholic Church which resulted in the fragmentation of Christianity, exactly was coincident with the age of colonialism in Muslim world and many other parts of the globe. In other words, colonialism started exactly at the same period which the Reformation and Counter-Reformation engulfed Europe, dividing the continent both religiously and politically.

In Europe, the emergence of a wide range of new technologies paved the way for the beginning of the new era of colonialism. Scientific discoveries prepared the way for overseas exploration and changed the equilibrium of the power which more or less existed between the West and the East until that time, in the advantage of the former and the loss of the latter. Before the age of scientific discoveries and technological inventions, neither the Muslim Sultans, nor the European Emperors could have an upper hand in colonial battles with each other. The Crusades lasted more than two centuries without any definite victory. But the modern technology totally changed the results of wars.

In contrast to Europe, the rise of modern state in Muslim societies was more or less a result of colonialism and its aftermath.¹⁴ Prior to the 1950s, most of the Middle East were either formal colonies (for example Algeria, Libya) or were ruled by regimes that were put in place by imperial powers (for instance Egypt, Iran¹⁵, Iraq). Decolonization involved a sustained and institutionalized collective effort, largely complete by the 1970s. The process of decolonization coincided with the rise of the highly centralized, and authoritarian modern post-colonial states in Middle Eastern countries. The post-colonial state is characterized by a centralized and bureaucratically organized administrative and legal order run by an administrative staff, binding authority over what occurs within its area of jurisdiction, a territorial basis and a monopoly of the use of force. All Muslims today live under what is commonly referred to as the nation state, which is based on European models that in many cases have been established around the world through colonialism and its aftermath. The establishment of the modern post-colonial nation state had so profound and deep influences on all aspects of economic activities, political processes, social life, and communal relations that any change and development towards liberal democracy can be sought or realized only through the concepts and institutions of this domestic postcolonial reality (An-Naim, *Secular State* 121-125).

Although by the second half of the twentieth century the era of colonialism formally ended in all Muslim countries, the social psychological effects of the long periods of colonialism

¹⁴ The same logic applies to the advent of modern sciences in Muslim societies, starting from 18th century.

¹⁵ “While Iran was never formally colonized, it has been referred to in the scholarly literature as a “semicolony.” The description is a fitting one considering the long history of foreign intervention and periodic military occupations of Iran, particularly during the first half of the twentieth century” (Hashemi, *Secularism* 138). What Nader Hashemi says in the case of Iran seems to be partially relevant in the case of the First World War Turkey as well.

still profoundly existed in Muslim majority societies. The rise of Islamic fundamentalism can be regarded as an emotional reaction towards the fact of colonialism. The specific domestic and foreign policy positions adopted by prominent Western liberal democracies, for example USA's full-fledged support of Israel policies against an independent Palestine, also have had a negative impact on Muslim sensibilities in this regard. As a result, as Abou El-Fadl puts in his analysis of the origins of fundamentalism "Muslims have become preoccupied with the attempt to remedy a collective feeling of powerlessness and a frustrating sense of political defeat, often by engaging in sensational acts of power symbolism" (Abou El Fadl, "Orphans" 10).¹⁶

A Rawlsian theory of constitutional democracy for Muslim democracies cannot be blind to the fact of post-colonial situation in Muslim societies. It should be noted that Rawls himself is quite sensitive about the fact of colonialism. One of the main reasons Rawls argued for the toleration of decent societies by the liberal people in LoP is exactly rejecting any imperialistic and paternalistic attitude by liberal states towards non liberal (Muslim and non-Muslim) societies. Rejecting the idea that liberal nation should force non-liberal societies to become liberal, by economic sanctions or military intervention (like what Bush did in Iraq) in an anti-colonialist tone Rawls argues all peoples are not required to be liberal. This follows, in fact,

¹⁶ This is in spite of the fact that Islamic fundamentalism does not treat the normative imperatives of the Islamic tradition with the analytic rigor they deserve, but renders them subservient to symbolic displays of power (Abou el Fadl, *ibid*). Regardless of this, Hashemi argues that the rise of Islamic fundamentalism might have long term and unintentional positive effects in the Muslim countries for the development of liberal democracy. He justifies this by appealing to Michael Walzer's thesis on the revolutionary Puritan "saint" as a modernizing agent in a traditional society (Hashemi, *Secularism* 46-66).

from the principle of toleration of a liberal Law of Peoples and its idea of public reason which is worked out within the second original position in LoP. To quote Rawls:

If it should be asked whether liberal societies are, morally speaking, better than decent hierarchical and other decent societies, and therefore whether the world would be a better place if all societies were required to be liberal, those holding a liberal view might think that the answer would be yes. *But this answer overlooks the great importance of maintaining mutual respect between peoples and of each people maintaining its self-respect, not lapsing into contempt for the other, on one side, and bitterness and resentment, on the other.* For these reasons the Law of Peoples recognizes decent peoples as members of that larger society (LoP 122 emphasis added).

According to the Law of Peoples, which for Rawls is the international equivalence for the domestic justice as fairness, decent and liberal societies cannot be colonial. Colonialism is obviously contradicting the respect which is embedded in the Law of Peoples and colonial powers are not well-ordered and just according to Rawls. According to the Law of Peoples liberal and decent societies respect “freedom and independence” of other reasonable nations and regard them as “equal”. In addition, liberal and decent peoples necessarily observe “treaties and undertakings”, “a duty of non-intervention”, “certain specified restrictions in the conduct of war”, and honor “human rights”. They also have a “duty to assist other peoples living under unfavorable conditions”. They have no right to wage war “for reasons other than self-defense”

(LoP 37). Obviously the European and North American colonial powers which occupied the Muslim territories in the sixteenth, seventeenth, eighteenth, nineteenth and twentieth centuries have been violating the Law of Peoples and have to be regarded as unreasonable and in many cases outlaw, which in the latter case should not be tolerated according to the law of people (See Part III of LoP, “Non Ideal Theory”). Reasonable liberal and decent peoples are never involved in “empire building” like the European colonial powers of colonialism era. To quote from Rawls:

Nations that are now established constitutional democracies have in the past engaged in empire building. A number of European nations did so in the eighteenth and nineteenth centuries.... an explanation of the events of these centuries... would involve examining the class structure of these nations over time, and how that structure affected the desire of England and France for colonies as early as the seventeenth century, as well as the role of the armed forces in supporting this desire (LoP 53-54).

For Rawls colonial powers are not liberal democracies. If their basic structure is reasonable, that is to say if it is regulated according to the criterion of reciprocity, and prevents social and economic inequalities from becoming excessive, states do not get involved in colonialism. Colonialism is a sign of the domestic injustice in the case of colonial power. Thus, the imperialist powers are involved in exploitation of other societies to overcome their own shortcomings (LoP 49-54). This also counts in many cases of USA interventions in Middle East and South America. Indeed, given the great shortcomings of allegedly actual constitutional

regimes, it is no surprise that they intervene in weaker countries, including those with some aspects of a democracy, or that they engage in unreasonable expansionist colonial wars:

As for the first situation, the United States overturned the democracies of Allende in Chile, Arbenz in Guatemala, Mossadegh in Iran, and, some would add, the Sandanistas in Nicaragua. Whatever the merits of these regimes, covert operations against them were carried out by a government prompted by monopolistic and oligarchic interests without the knowledge or criticism of the public (LoP 53).

In this paragraph Rawls is referring to the 1953 joint CIA-MI6 coup d'état against the charismatic liberal-democratic Prime Minister Mohammad Mossadegh that restored Mohammad Reza Pahlavi king to power and returned Iran to the orbit of pro-Western allies in the Middle East. The main reason for the joint USA-British coup d'état against Mossadegh was the nationalization of the British-controlled Iranian oil industry under his leadership, coupled with fears of a communist takeover in Iran. This was a key event in the contemporary history of Iran, which finally led to 1979 Islamic revolution. In the period between the 1953 coup d'état and 1979 revolution all independent political forces, from the communist left to the religious right, were crushed, and a powerful centralized pro-Western state was trying to establish its hegemony over the Iranian society. Mohammad Reza Pahlavi's state which was supported by the colonial West was an autocratic modernizing secular state, which oppressed secular civil society. This forced oppositional activity into the mosques, where clerics had a lot of influence, and thus contributed to the rise of political Islam with the leadership of Ayatollah Khomeini. Within "the

context of superpower rivalry”, the manipulation of the domestic national security allowed the USA and Britain to consider the democratic government of Mossadegh, and other similar weak democracies in south America, as danger, which was obviously an illusion, though in fact they were moved by “economic interests behind the scenes”. (LoP 53) This is obviously rejected by the Law of Peoples as unreasonable.

So far it became clear that the Rawlsian political philosophy is quite sensitive to the fact of colonialism in Muslim societies. Now we are ready to answer to some of the common objections which may be addressed against a research similar to ours. In the following part I address five common objections which may be pointed to this research.

4- Objections to a Rawlsian Theory of Democracy for Muslim Societies

4-1- Liberalism as Hegemony

Objection: Muslims have horrible memories of the state-imposed secularism in their societies by pro-Western elites. Rawlsian liberalism, like all forms of secularism, is equal to forceful unveiling of Muslim women, oppressing religious believers, and closing down the mosques. Muslims are fed with the rule of corrupt secular Westernized politicians. As a historical fact Muslim political activists who have experienced oppression at the hands of secular national governments logically believe that secularism is an ideology of repression. This observation applies to Iran

Tunisia, Algeria, Egypt, Syria, Iraq, Yemen, Turkey, and many other Muslim majority countries.¹⁷

This dissertation totally agrees that unlike in Europe, where it was largely an indigenous and organic process, in Muslim societies, modernization began as a direct result of the colonial encounter with Europe and up to down process. Indeed, with a few exceptions, modernization in Muslim majority societies has been synonymous with dictatorship, repression, and corruption and this is one of the reasons for failure of political secularism in many Muslim majority societies in contrast to Western democracies. To quote Hashemi:

In the West, the now harmonious accommodation between religion, secularism and liberal democracy was arrived at via *an indigenous process* of social transformation that took several centuries to work itself out. Sometimes this process was bloody, often times it was violent. ... [However,] *it was not imported from the outside or imposed by force from above but rather it emerged organically from the bottom up....* In Muslim societies, by contrast, the political manifestation of secularism was imposed from the outside via Western hegemony in the form of colonialism and imperialism and kept alive by local elites who lived their lives alienated from the religious sentiment of the masses. (Hashemi, *Secularism* 137 emphasis added)

¹⁷ See Hashemi, *Secularism* 140.

This means that in order to be successful, Rawlsian liberal democracy, or any other form of liberalism, needs to emerge in a bottom-up process via an organic connection and negotiation within the civil society. In this dissertation we argue for an indigenous theory of liberalism, contributing to political secularism and democratization in a bottom–up manner via getting involved in the philosophical debates of civil society. This is very different from the up-down methods of state secularization which have provided “resentment”, “bitterness”, and “contempt” among Muslims (To use Rawls’s terms in when he speaks about the necessity of toleration of decent societies by liberal people, LoP 62). Indeed the type of political philosophy this dissertation is concerned with, as an activity belonging to the civil society, is totally bottom-up. (To make this point clear, and to consider how political philosophy texts may influence the society, see chapter II.)

As we will see in chapter II, because the authority of political philosophy is the authority of human reason and this authority becomes meaningful only if freely and voluntarily accepted, a research similar to this dissertation cannot be regarded as an imposition of liberal values, in a top-down manner, to those people whose values are different from the theorist. Particularly add to this the fact that the contribution of political philosophy, as Rawls argues, is limited to the background culture or what is called civil society.

4-2- Islamic State

Objection: Islam has its own authentic model of government which is the idea of Islamic state (in contemporary Shiite formulation: guardianship of the jurist).

Rawlsian account of constitutional democracy, like other forms of Western democracy, is incompatible with Islam and the form of the government it offers to believing Muslims.

A long and sophisticated answer to this objection comes in chapter V of this thesis, when I deliberate on Mehdi Haeri Yazdi's Islamic refutation of the theory of *velayat-e faqih* (guardianship of the jurist). Here I point few further remarks.

The notion of an Islamic state is a postcolonial innovation based on a European model of nation-state. This is clearly argued for by Abdullah An-Naim in chapters II and III of his profound book on *Islam and Secular State*. There An-Naim argues that the idea of Islamic state as an instrument of social control by the ruling elites does not have sufficient background in medieval and pre-colonial Islamic law. Although the states that historically ruled over Muslim societies did seek Islamic legitimacy in variety of ways, they were not claimed to be "Islamic states." The very notion of a state which enforces of Sharia as the official law and policy-maker of a particular Muslim country is a post-colonial interpretation of Islam. Indeed most of premodern Muslim governments were ruled by politicians who, even though they were Muslims, for the most part did not claim religious legitimacy. Pre-colonial Muslim state was not a direct expression of Islam, but a secular institution whose duty was to uphold and protect Islam.

Similarly, the Muslim rulers of the precolonial era used to negotiate with the religious scholars regarding the role of the Sharia in the governance. The Islamic scholars maintained their independence from the state believing that this distance from power was necessary for them in order to be able to act as an effective check against the tendency of rulers

to abuse their powers¹⁸. The separation between state and religion (not to be confused with the separation between politics and religion which was clearly rejected¹⁹) wins indirect, inferred acceptance through the work of medieval Muslim scholars like al-Baqillani (died 1013), al-Mawardi (died 1058), and Ibn Taymiyyah. An-Naim's argument seems to be the case for example for Seljuk and Ottoman states in Turkey, Safavid and Qajar states in Iran, and Fatimid and Mamluk governments in Egypt. Finally, it should be noted that An-Naim's reading of the separation of state and religious institutions in the histories of Islamic societies does not imply that the pre-colonial Muslim state was secular in the modern sense of the term. To quote An-Naim:

The states under which Muslims lived in the past were never religious, regardless of occasional claims to the contrary..... Islamic history supports the proposal I am making in the sense that the state was never Islamic, but not in the affirmative sense of the religious neutrality of the state (An-Naim, *Secular State* 46).

¹⁸ Indeed this narration is quite compatible with our story about the relationship between Shiite jurists and the monarchs in Iran prior to 1979 Islamic revolution which established as Islamic state according to Khomeini's guardianship of the jurist theory. See chapter V

¹⁹ In his book An-Naim suggests a differentiation between state and politics in which the religious institutions of the civil society are able (or even suggested from an Islamic perspective) to be active.

Indeed, there are important differences between the traditional “minimal” imperial state of the past, like for example Ottoman Empire, and the centralized and bureaucratic modern secular state.

4-3- Lack of Pluralism

Objection: Political liberalism is relevant only in those societies whose pluralism can be accounted for by the burdens of judgment. Islamic societies are either not pluralist at all, or do not have the kind of pluralism which politically liberal justification demands.

According to this, contrary to the experience of Europe and North America, the Muslim encounter with modernity did not lead to the kind of political and social conflicts that resulted in the burdens of judgment as the most reasonable account of reasonable pluralism for political culture of the contemporary European and North American societies. This is the reason why Rawls in PL and LoP restricted the domain of his liberalism to those societies which already have a strong democratic tradition. According to this objection, either Muslim majority societies do not meet sociological diversity, or the type of pluralism which exists in them seems to be different from the kind of pluralism which is accounted for by the burdens of judgment. Mohammad Fadel appears to be referring to this kind of objection when he limits his inquiry on the compatibility of the Rawlsian conception of public reason with Islamic theology (*kalam*) only to the liberal democratic states of Europe and North America. To quote Fadel:

The absence of actual pluralism in most Muslim majority societies, especially Middle Eastern countries.... makes it unlikely, at least under current circumstances, that providing a theological account of pluralism (other than intra-Muslim pluralism)[compatible with the idea of the burdens of judgment] would be high on the list of the political priorities of these [Muslim majority] polities or their citizenry (Fadel, “True” 19).

Although a comprehensive answer to this objection needs an independent research, here I only mention some of the possible replies. First of all, it seems possible if we keep the first condition of reasonableness in political liberalism (willingness to getting involved in social cooperation provided that others do the same), though excluding the second one (the burdens of judgment).²⁰ We may consider that willingness to suggest fair terms of cooperation and abiding by them provided that others do the same, is both necessary and sufficient criterion of reasonableness. Thus, the burdens of judgment can be discarded without resulting in a significant problem for maintaining the main ideas of political liberalism such as public reason, the original position, the reflective equilibrium, and overlapping consensus. As Wenar argues there seems to be no strong argument showing that abandonment of the burdens of judgment is fatal for the entire Rawlsian project.²¹ Finally, the burdens of judgment seems to be incompatible with firm religious belief and it seems that excluding the burdens of judgments from the criterion of reasonableness is one recommended step in application of political liberalism to religious societies, including Muslim ones.

²⁰ See PL 48-66.

²¹ See Leif Wenar, “Political Liberalism: an Internal Critique”, 1995, particularly parts II and IV.

Indeed this is what Wenar suggests in his criticism of Rawls. Wenar argues that the burdens of judgment are not acceptable for many liberal religious believers, for example Catholics. Similarly, based on empirical evaluation Gaus argues that many adult Americans are absolutist about their beliefs which seems to be contradicting with the burdens of judgment.²² Similarly, in *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, March seems to argue that to base “political liberalism’s normativity” on the burdens of judgment, may make genuine overlapping consensus between orthodox Islamic law and political liberalism questionable. There is a genuine puzzle, particularly for religious doctrines, to base their idea of toleration on the recognition of the burdens of judgment. To quote from the “Conclusion” chapter of March’s book:

A number of topics were raised in this book without being addressed remotely exhaustively. For instance, the question of moral pluralism is a puzzle for political liberalism and Islam both. Political liberalism’s normativity is often held to rest on the idea that disagreement about moral truth and the good inherently reasonable because of the burdens of judgment. [...] The question then is whether all citizens—to be reasonable—must have this specific account of the fact of reasonable pluralism (based on the burdens of judgment) or whether other accounts of why humans disagree (read: why some fail to accept truth) can result in an acceptance not only of toleration but also of neutrality and public reason. This is a complex question (March, *Liberal Citizenship* 272-73).

²² See Gerald. F. Gaus, *Justificatory Liberalism: An Essay on Epistemology and Political Theory*, Oxford University Press, 1996.

March implements that establishing the liberal idea of toleration, as embedded in the Rawlsian notion of reasonable, on the recognition of the burdens of judgment might be problematic from the point of view of a significant number of orthodox Muslims. In his long and well-done argument for the possibility of an overlapping consensus between politically liberal citizenship and traditional Islamic law (*feqh*), March avoids giving a significant weight to the recognition of the burdens of judgment. Although March has limited his research on the Muslims who live as minorities in Western liberal states, his point seems to affirm the idea that an overlapping consensus between orthodox Muslims and justice as fairness would be more plausible if we put aside the notion of the burdens of judgment from Rawls's reasonableness.

Furthermore, if the burdens of judgment and the fact of reasonable pluralism be interpreted as excluding from political constructivism many religious persons or doctrines as unreasonable, one might object that then what is the point of political liberalism's being political rather than comprehensive? As we mentioned earlier later Rawls was frequently emphasizing that the superiority of political liberalism to the comprehensive liberalism is that the former accommodates nonliberal religious or nonreligious doctrines, while the latter did not. Political liberalism is "not a form of Enlightenment liberalism, that is, a comprehensive liberal and often secular doctrine founded on reason and viewed as suitable for the modern age now that the religious authority of Christian ages is said to be no longer dominant" (PL xxxviii). However, if the idea of the burdens of judgment is excluding many non-liberal religious doctrines as unreasonable from the domain of liberalism, what would be the point in differentiation between political and comprehensive liberalisms?

The other answer to the above objection is that there is no strong argument proving that Muslim societies do not have *any* kind of pluralism which is necessary for liberal institutions. There are strong empirical evidences which implement that at least a decent degree of pluralism, which is not only limited to the interfaith pluralism, exists for example in twenty first century India²³, Turkey, Indonesia and Iran. Indeed the burdens of judgment are not the only theory of reasonable disagreement which is available to liberals to explain diversity. It seems difficult to prove that the burdens of judgment are the only account of reasonable pluralism compatible with political liberalism.

Here, as a conjecture, I introduce another theory of reasonable disagreement. Although my main concern is a Muslim majority society, this theory seems to explain some of religious diversity in other religious societies as well; here I have in mind Abdolkarim Soroush's thesis of contraction and expansion of religious knowledge (*qabzo baste teorik-e shariat*) as an alternative account of reasonable disagreement. This theory on the sources of pluralism tries to answer the question "why different interpreters disagree on the meaning of a given text" (Soroush, *Reason* 7). Soroush proposes the fundamental openness of a sacred text and defends the multitude of interpretations and justifies a plurality of readings from all religions, particularly Islam.

Soroush's thesis applies the insights that all phenomena, to paraphrase philosophers of science, are theory laden, to religious studies. His theory is the outcome of the generalization of viewing science as a competitive and collective process to the field of religious studies.

²³ Although India is not a Muslim majority country, it concludes one of the largest numbers of Muslim population in the world and is among the countries which this dissertation addresses.

Philosophers of science have argued that we view the world through theoretical lenses, and there is no such thing as a “naked event” or a “brute fact”. When we dislike one interpretation of an event in science, we inevitably replace it with another. The same is the case with religion; religiosity is people's understanding of divinity just as science is their understanding of nature (Soroush, *Reason* 16).

By distinguishing between the religious texts such as Quran and the religious knowledge which results from their interpretation, the thesis of expansion and contraction of religious knowledge casts religion as a kind of human knowledge, subject to the collectivity and competitiveness of the human reason. This also explains the sources of disagreement between early modern scientists such as Galileo and the Roman Catholic Church on interpreting the bible; the event which as we argued before is one of the sources of liberalism, according to Rawls. It also results that religious knowledge is susceptible to some kind of gradual and slow change. Thus, the expansion and contraction of religious knowledge is a theory of social epistemology of religious knowledge.

This theory is influenced by Harvard philosopher Quine's holism in epistemology. Thus, it is based on the idea that all parts of our knowledge, in addition to all our values, constitute a whole, which is interconnected and its parts should not contradict each other. Thus, according to Soroush's theory of reasonable disagreement religious knowledge is subject to all the attributes of episteme:

Religious knowledge is a variety of human knowledge, subject to change, exchange, contraction, and expansion. Once we look at the scene from above, that is, from a

second-order vantage point [rather than to look to the issue simply as a believing person], we will see believers with a variety of ideas, but religious knowledge as a whole would appear as a mixture of right, wrong, old, and new that floats on like a vast river (Soroush, *Reason* 16).

This concludes that religious knowledge (not to be confused with religion itself which believers regard as infallible and unchanging) is human, fallible, and gradually evolving. Most important of all it is constantly in the process of exchange with other forms of knowledge, such as social and natural sciences. As a result, religious reason's inevitable transformations mirror the possible transformations in science and other human domains of reason such as moral philosophy, pure science, and politics.

All in all, Soroush's thesis on expansion and contraction of religious knowledge and his account for the sources of reasonable disagreement seems to be fully compatible with Rawls's account of reasonable comprehensive doctrines and their gradual evolution (PL 58-60& PL 159-171). Pluralism is an obvious requirement as well as a direct outcome of the contraction and expansion of knowledge. Soroush calls the ideologization of religion that binds religion to a single interpretation and generates a class of "official" interpreters as unreasonable. Ideologization of religion is what Soroush attributes to Islamic Republic's approach to Islam. Similarly, Soroush's rejection of the idea of the guardianship of the jurist, and the relationship between clergy and state in post-revolutionary Iran²⁴, is the direct consequence of his theory of reasonable disagreement (Soroush, *Reason*18-19). This theory meets the fact of oppression.

²⁴ Soroush's view on clergy, as developed in Soroush's "Gallantry and the Clergy" and "The Roof of Livelihood

Generally speaking—rather than in all details—it seems that for Rawls any liberal theory of reasonable disagreement needs to explain what he calls “the fact of oppression”.²⁵ According to the fact of oppression: “a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power” (PL 37). For Rawls any explanation for the sources of reasonable disagreement has to conclude that it is immoral to repress the pluralism of comprehensive doctrines by the state power. All liberals share the view that inquisition is unreasonable and the way, for example, the Catholic Church used to do with heretics in mediaeval period, or the way Islamic Republic

On the Pillar of Religion”, provoked intensive opposition, criticism, and acrimony against him from the side of conservatives in Iran (ibid). Contrary to the official view Soroush argued that the clergy are not defined by their erudition or their virtue, but by their dependency on religion for their livelihood.

²⁵ I say generally speaking rather than in all details because it seems that Rawls’s description of the fact of oppression is based on some unrealistic assumptions about comprehensive liberalism which is again related to the burdens of judgment. Rawls argues that even Kant and Mills liberalism might be oppressive, demanding that all the people of the particular society they address believe in utilitarianism or Kantian morality. I think it is a problematic reading of Mill and Kant. Rawls writes: “A society united on a reasonable form of utilitarianism, or on the reasonable liberalisms of Kant or Mill would likewise require the sanctions of state power to remain so” (PL 37). Finding that his answer might not be satisfactory, in the footnote he adds: “This statement may seem paradoxical. If one objects that, consistent with Kant’s or Mill’s doctrine, the sanctions of state power cannot be used, I quite agree. But this does not contradict the text, which says that a society in which everyone affirms a reasonable liberal doctrine if by hypothesis it should exist cannot long endure” (PL 38-39 n). It seems that Rawls’s answer is not satisfactory because the very existence of such a society seems to be incompatible with the liberalisms of Kant and Mill.

encounters with the dissidents of Islamic state, is morally unacceptable.²⁶ As explained above, Soroush's thesis of expansion and contraction of religious knowledge provides a perfect explanation for the fact of oppression.

Finally I should add that looking for alternative does not imply that the burdens of judgment are a problematic theory *per se*. Still we might regard it as a highly inspiring liberal doctrine which individuals may use in their public political debates, but only voluntarily, not as a precondition for reasonableness of their comprehensive views.

4-4- Communitarianism vs. Liberalism

The fourth important objection towards a research similar to this dissertation is the communitarian objection to liberalism. According to this objection as applied to the context of Muslim majority societies:

Rawlsian political philosophy is part of an alien liberal culture, which is very different from "our" Middle Eastern identity and style of life. In Muslim societies we need a political theory which is based on the traditional values of our own "communities". Original position, public reason, and similar Rawlsian concepts are

²⁶ Empirical evidence appears to be able to demonstrate that as the outcome of the experience of the violent oppression of dissident view, after the Green Movement many Iranians started to believe that the repression of the diversity through the power of state is highly immoral.

simply liberal concepts which are foreign to “our” decent authentic Muslim culture, and thus should be discarded as non-applicable to “our” societies.

As part of my reaction to this objection, in chapters IV I will show how the Rawlsian conception of justificatory ethics, or conjecture plus declaration, provides us with the opportunity to fully justify justice as fairness on the traditional Islamic values which already exist within the Muslim community. Also in chapter V I will develop a counter argument against communitarian objection based on Haeri Yazdi’s reading of the distinction between whole and universal in Muslim logic. Apart from these, here I add few points.

First of all, as An-Naim truly asserts Muslim intellectuals should not be worried about using and borrowing political philosophy concepts and terminologies which are not originated in “our” own culture. Arguing that Western concepts should be avoided because they will offend Muslim readers who do not regard that type of political terminology as part of “our” tradition, is a not a relevant argument from An-Naim’s Islamic point of view²⁷. In theorizing on political theory we should study each concept or institution in terms of its relevance and utility for the argument we are making, “regardless of the presumed origin or alleged pedigree.” Furthermore, it is misleading to speak of a politically or philosophically monolithic “West”, as it is misguiding to speak about a monolithic homogenous Islamic world. Rather, it would be better if we deemphasize ideological dichotomies between so-called Western and Islamic concepts and

²⁷ An-Naim’s concept of civic reason, for example, has some important similarities with and the Rawlsian conception of public reason, at least in the terminological level. However, he argues this similarity with a Western notion is not sufficient ground at all to discard this concept or not to use it.

institutions as much as we are able to do so. An-Naim's conclusion is extremely important in our research: "Contextual factors and political differences are extremely important but should not be allowed to override the commonalities of the human condition" (An-Naim, *Secular State* 97).

Secondly, one can add to this a further historical argument of the so called Golden Age of Islamic civilization; if borrowing political philosophical concepts from foreign traditions is anti-Islamic and non-useful, we would not have many branches of science and art which are now considered as part of Islamic heritage, simply because they are not existent in Quran or hadith, but rather are taken from Hellenic, Persian, Roman, or Indian sources. Indeed, maybe it is the case for any culture that many values which later become part of "our" worldview, at some historical point have been external to that culture. The best example in this regard is Islamic philosophy. If Muslims would not show strong interest in the values which at some point were not part of "their own" culture, how "Muslim Philosophy" or "Muslim logic", which nowadays is regarded as a significant part of Islamic heritage, would even emerge? For more illustration, here I give the example of al-Farabi.

There is more or less consensus among historians that one of the most significant Islamic political philosophers was al-Farabi. Al-Farabi was so distinguished a thinker that, unparalleled to any scholar, Muslims named Aristotle as the first master (*moallem-e avval*), and Farabi as the second one (*moallem-e sani*). Al-Farabi's political philosophy is partly an amalgamation of the idea of *madinatu-annabi* (prophet's city), which in history of Islam initially referred to Medina whose lawmaker for thirteen years was the Prophet of Islam, with Plato's idea of philosopher-king. Doing so, Al-Farabi contextualized Greek political philosophy within the Islamic culture. Here the observation of Mohsen Mahdi, one of the most known Farabi scholars, deserves attention. Mahdi argues that since both the ruler-prophet of Islamic *madinatu-annabi*

and the ruler-philosopher of Greek polis offered solutions to the same question of the realization of the best regime, Farabi regarded the functions of both similar. Therefore Al-Farabi combined the ruler-prophet with the ruler-philosopher within his own theory of Virtuous City (*madine-ye fadele*), without feeling any contradiction (Mahdi, “al-Farabi” 212).²⁸ Considering these historical examples, one might conclude that it was good that early Muslim scholars, particularly those living in the Muslim Golden Age (almost 850-1250 A.D), were not preoccupied with such communitarian concerns of authenticity and freely interacted with, and endorsed ideas from, other intellectual traditions. (See also our debate on Islamic philosophy in chapter V)

To this one might add that our occupation with “our” problems of the social life, does not conclude that we can be indifferent to the immoral aspects of the values of our community, unless we want to yield to relativism (with which, following Islamic philosophers, this dissertation opposes).

4-5- Islamic Orthodoxy

The final objection I try to answer be formulated this way:

Your account of Islam, particularly Shiite Islam (see chapter V), is unorthodox. In arguing on the reconciliation between Islam and political liberalism one needs to avoid reliance on modernist accounts of Islam. Only premodern interpretations of

²⁸ Here I put aside the question whether Farabi or Plato’s theories can be interpreted as compatible with democracy or not.

Sharia can be regarded as orthodox for traditional Muslim believers. Your reliance on modernist resources, and the way you reject the idea of Islamic guardianship (see final chapter), are rejected by traditionalist Shiite orthodoxy.

This is an objection addressed by Mohammad Fadel in his definition of Islamic orthodoxy.²⁹ Fadel argues that a reasonable Islamic comprehensive doctrine must be “plausible” from the internal perspective of Islamic comprehensive doctrine. The plausibility requirement is necessary to demonstrate that the claim for possibility of an overlapping consensus between Islam and political conception avoids the risk that one's declared commitments either to Islam is viewed as insincere. This is because liberal Muslim intellectuals are sometimes accused of being hypocritical in their claims to develop authentic Islamic arguments. Attempting to solve this problem Fadel suggests one should abstain from reliance on novel or revivalist interpretations of revelation which belong to the modern Islamic era and thus would better limit herself to those theological, ethical and legal resources that were hegemonic in the Islamic pre-19th century (Fadel, “True” 14 & 14 n).

In his debate with Abdullah An-Naim on the idea of a secular state in Muslim majority societies, Fadel appears to repeat the same objection. He argues the fact that Muslims historically did not establish states which fused state and religion does not have any strong normative implication that they should not do so in the modern era from an orthodox Islamic point of view. He addresses Abdullah An-Naim's argument that before the colonialism no claim for Islamic state existed in the Islamic world (Remember Islamic state objection). Fadel's does

²⁹ Andrew March seems to have a similar view/objection on Islamic orthodoxy. See the second chapter of his *Islam and Liberal Citizenship*, pp. 80-87.

not find An-Naim's historical argument against the idea of Islamic state as satisfactory from an Islamic orthodoxy point of view. While "orthodox Sunni Muslims" would find An-Naim's historical argument against post-colonial Islamic state as unpersuasive, "Orthodox Shi'i Muslims" would "categorically" reject it as unacceptable. As Fadel puts:

It is hard to imagine an *orthodox* Shi'i Muslim's reaction to Na'im's historical evidence other than "What further proof is needed for a divinely-inspired Imam?" According to *orthodox* Shi'a theology, the need for an infallible imam is not something derived in the first instance from experience. Rather, the infallible Imamate is a part of their doctrine of theodicy, i.e., that God's justice and goodness makes it inconceivable that He would not provide human beings an infallible source of religious guidance and justice. Accordingly, even a relatively positive history of the institutional separation of religion and the state might not be relevant to an orthodox Shi'i Muslim (Fadel, "Coexist" 201 emphasis added).

Following this, Fadel regards An-Naim's historical argument as an example of "is/ought fallacy", from a religious perspective. For him, raw historical experience does not have normative force if we do not propose an Islamic argument in favor of it. According to Fadel's objection the fact that 'Muslims historically have established more or less secular states but allowed religion to play a role in politics' does not provide sufficient logical grounds that Muslims should continue to do so in the post-colonial era. One may imagine an *orthodox* Sunni follower of Sayyid Qutb or Abu al-A'la al-Mawdudi, or an *orthodox* Shiite follower of ayatollah

Khomeini who reject the separation of religion and state.³⁰ In other terms, an Islamist Muslim such as Qutb, Mawdudi, or Khomeini may regard the historical practice of pre-contemporary Muslim polities as a failure resulting from insufficient commitment to Islamic ideals rather than as evidence of an Islamic position in favor of the secular state³¹(Fadel, “Coexist” 201).

As my response to the above objection, this dissertation finds such ahistorical and fixed definition of Islamic orthodoxy as problematic and questionable. As the post-revolutionary experience of Shiism in Iran demonstrates clearly³², the meaning of orthodoxy cannot be regarded as independent from the daily life and experience of living Muslims. Islamic political theory, like any type of political philosophy, should not be viewed independently from its influence on the daily life of the individuals in the society. To put in Rawlsian terms, an Islamic political theory cannot be so occupied with abstract theological definitions in the cost of ignoring the different influences of just or oppressive basic structures on the daily life and well-being of individuals.

Contrary to the fixed view of orthodoxy, one might argue, via the deep influences of historical experiences and through gradual transformation in the mentality and psychology of individuals, the concept of religious orthodoxy changes. While analyzing Rawls’s conjecture on

³⁰ Fadel only mentions the examples of Sayyid Qutb and Abu al-A'la al-Mawdudi. Following our debate in the last chapter of this dissertation on guardianship of the jurist I added Khomeini.

³¹ Similarly, Fadel’s critique of Khaled Abou El Fadl’s thesis on Islam and liberal democracy is based on his interpretation of Islamic orthodoxy. See: Mohammad Fadel, “Too Far From Tradition” in *Islam and the Challenge of Democracy*, Khaled Abou El Fadl (ed. Joshua Cohen and Debrah Chasman), Princeton University Press, pp. 81-86, 2004.

³² In this regard in addition to what was mentioned earlier in this chapter see chapter V.

how a *modus vivendi* turns into an overlapping consensus, we will address this point in more detail (view chapter IV). According to Rawls, “although stable over time, and not subject to sudden and unexplained changes”, a comprehensive doctrine “tends to evolve slowly in the light of what, from its point of view, it sees as good and sufficient reasons” (PL 59).

An orthodox comprehensive doctrine, for example Shiite Islam, normally belongs to a tradition of thought and thus is not subject to sudden, unexplained, and random changes, particularly from outside. However, it does not conclude that it is not prone to gradual evolution. Indeed, as Scanlon interprets Rawls’s definition of reasonable comprehensive doctrines, a comprehensive doctrine tends to evolve in the light of what, from the point of view of its adherents, is conceived as persuading and sufficient grounds (Scanlon, “Justification” 164). The gradual and slow change of comprehensive doctrines is a result of sophisticated sociological and historical mechanism³³. Here I give the example of Catholicism and the change in the meaning of orthodoxy within this religion from sixteenth century until the Vatican II Council. I follow Rawls’s account of this transformation. According to Rawls medieval Catholicism was characterized by five features:

- a- It tended towards being an authoritarian religion. The Church headed by the papacy was institutional and almost absolute.
- b- It was a religion of salvation. Salvation required true belief as the celestial authorities educated.

³³ Of course this does not mean that religious doctrines experience any kind of change. Indeed, always there seems to be a balance between the fix and changing, from an internal religious perspective.

- c- It was a doctrinal religion with confession.
- d- Priests had a central role in dispensing the means of salvation.
- e- It was an expansionist religion with no territorial limits (PL xxi- xxiv).

However, the Reformation of Luther and Calvin in the sixteenth century, and the wars of religion between Catholics and Protestants which followed after the fragmentation of Christianity, deeply transformed both Catholic and Protestant comprehensive doctrines in the period between sixteenth and twentieth centuries.³⁴ After the war, Catholic orthodoxy endorsed the religious toleration as a *modus vivendi* at the beginning. However, by time and during centuries, and especially by Vatican II Council of 1965, Catholics started to endorse religious toleration as part of their true Christian doctrine. This happened through Vatican II's Religious Freedom document (*Dignitatis Humanae*) in which for the first time Catholic Church declared its commitment to the principle of religious freedom as found in a constitutional democratic regime. (PRR 796.n) This document contains a political doctrine with respect to the limits of government in religious matters and a theological doctrine of the freedom of the Church in its relations to the political and social world. It declares all persons, whatever their faith was, as having the right of religious liberty on the same terms. According to this declaration:

³⁴ As Rawls argues, at the beginning and during the wars, neither Catholics nor Protestants were in doubt about the nature of the truth. By time, however, something similar to this question was raised in their minds: what is the basis of religious toleration? At first, for many religious toleration seemed impossible, because it was equal to the accommodation of heresy and destroying the true religion's unity. Only toleration was accepted by principle (PL xxiv).

This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.³⁵

Thus, Catholicism accepted liberal constitutionalism not as a sudden act, but after centuries of struggle in which the Church initially was denying the equal freedom of conscience for all individuals. As a result of four centuries of gradual transformation, there is now a significant difference between the Catholic orthodoxy as conceived from the perspective of the Roman Catholic Church of the sixteenth and the twenty first century Vatican. To conclude, historical experiences of a religious community are important forces in its perception of the meaning of its orthodoxy. As the Catholic case demonstrates the meaning of religious orthodoxy might gradually change by historical experience of a religious community and thus should not be defined in fixed terms.

Similarly, historical experiences may gradually evolve—and indeed has gradually evolved— both orthodox Sunny and Shiite convictions of Islamic orthodoxy. As we mentioned earlier, in the case of postrevolutionary Iranian Twelver Shiism it is more or less sensible. As explained in our remarks on Iran’s Green Movement, as an outcome of the experience of an

³⁵To see the whole document visit: “Dignitatis Humanae: Declaration On Religious Freedom, On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious Promulgated by His Holiness, Pope Paul VI, December 7,1965”, online at: http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

oppressive state which imposes Sharia via the force of state power upon all individuals with all comprehensive views, and as a result of the theory of the guardianship of the jurist (View chapter V), we face an orthodoxy crisis in contemporary Iran. The experience of theocracy has had deep influences on Shiite mentality about the notion of Imamate and the way it can be reconciled with the secular state. Thus, the Shiite idea of Imamate does not necessarily lead orthodox Shiites to reject liberal democracy and does not force them to rebel against a secular state as anti-religious. This is what we will see in the final chapter, while analyzing Mehdi Haeri Yazdi's *Philosophy and Government*.

PART ONE – JUSTIFICATION: CONSTRUCTIVISM

Introduction to PART ONE

Part One of this dissertation focuses on justification. *Part Two* deals with stability. The logic of this division is explained in the introduction to *Part Two*. In chapter I (Introduction), we said that the project of formulating a Rawlsian model of constitutional democracy for Muslim societies is a legitimate and defensible one, at least in the case of those Muslim countries which have longer pro-democracy intellectual traditions. We implemented that our research aims to provide a Rawlsian defense of reconciliation between liberty and equality in a democratic framework for Muslim majority societies.

We mentioned that for Rawls one of the main roles of political philosophy is the defense of reasonable faith in democracy. Here I elaborate on this idea. In spite of all horrible war events of human history, Rawlsian political philosophy still tries to keep faithful to the Kantian tradition via assuming human beings as having a moral nature that can be reasonably moved by justice (PL lx; LoP 128). Only via this view of human nature we may regard a reasonably just and stable constitutional democracy in the domestic case achievable.³⁶ Otherwise, Rawls asserts, if “people are largely amoral, if not incurably cynical and self-centered, one might ask with Kant whether it is worthwhile for human beings to live on the earth?” (PL lx) To quote the phrase of Kant which is referred by Rawls, “if justice perishes, then

³⁶ Similar is the case with a well-ordered Society of Peoples in the international domain.

it is no longer worthwhile for men to live upon the earth” (*Rechtslehre*, in remark E following section 49 quoted in PL lx n). Thus, following the Kantian tradition, for Rawls a reasonably just constitutional democracy is a realistic utopia.³⁷ One of the main roles of political philosophy is to extend what we ordinarily assume to be the limits of our practical possibility and thus reconcile us to our social world. Political theory is thus concerned about the future of our societies both domestically and internationally (LoP 11).

Indeed political philosophy, according to Rawls, needs to “calm our frustration and rage against our society and its history by showing us the way in which its institutions...are rational” (LHPP 10). Our answer to the question whether a just democracy is achievable affects our thoughts about the world as a whole and our attitudes when we come to actual politics.³⁸ The belief in the possibility of a just and reasonable democratic society in the future, Rawls argues, connects with our deep tendencies and inclinations towards the social world. This means that:

So long as we believe for good reasons that a self-sustaining and reasonably just political and social order both at home and abroad is possible, we can reasonably hope that we or others will someday, somewhere, achieve it; and we can then do something toward this achievement. This alone, quite apart from our success or failure, suffices to banish the dangers of resignation and cynicism (LoP 128).

³⁷ Of course, as we will see in chapter IV, we need to make distinction between unrealistic utopia and a realistic one.

³⁸ The same is the case with a reasonable, just, and stable Society of Peoples in the international domain. For Rawls the belief in the possibility of a peaceful Society of Peoples is very important. Rawls regards the fire-bombing of Japanese cities beginning in the spring of 1945 and the later atomic bombing of Hiroshima on August 6 as “very great wrongs” which occurred in violation of the doctrine of just war as part of the just Law of Peoples (CP “Hiroshima” 565).

For the sake of illustration let us give an example. At particular moments of history it might happen that a group of people be trapped by a dictatorial system. At least during two World Wars of the twentieth century many European and nonEuropean nations had experienced such drastic moments. Is it irrelevant or unreasonable if a reasonable person who lives under such condition looks for Rawlsian political philosophy as presenting her a “defense of reasonable faith in the possibility of a just constitutional regime”? (PL 172) The answer seems to be no. Individuals all round the world, and not only those who live in established liberal democratic regimes, may legitimately ask themselves “what would a just democratic society be like under reasonably favorable but still possible historical conditions, conditions allowed by the laws and tendencies of the social world? What ideals and principles would such a society try to realize?” (LHPP 11)

A Kantian political philosophy of constitutional democracy, as Rawls seems to adhere, needs to have strong universal elements. It seems that by showing how a just and well-ordered realistic utopia of constitutional democracy may be realized, political liberalism provides a universal long-term goal of political endeavor, and therefore gives meaning to what pro-democracy political activists, for example the members of Iran’s Green Movement, do in confronting with despotic trends of the non-democratic regime of their country. Put in other words, Rawlsian political philosophy sounds to be action-guiding for prodemocracy persons who hope a better future of their particular societies and thus seems to affect actual democratic politics in a nondemocratic (the same as democratic) context. It may inspire how pro-democracy political activists take part in democratic movements and helps them to avoid nihilism and frustration.

Nevertheless, most of the available literature on Rawls refers to one important problem regarding the universal application of his political liberalism to non-western societies, including Muslim ones. Many commentators of Rawls have argued that the kind of justification which supports justice as fairness in political liberalism is limited in its scope: political constructivism only justifies the principles of justice within the scope of those societies which already have liberal constitutions with long “political tradition” of democracy. Those societies, to use Rawls’s own ambiguous terms, already have certain “public traditions” of interpreting liberal public law and a substantive amount of democratic “historic texts and documents” that are now part of the “common knowledge” of their citizens (PL 13-14). Thus, the objection goes, Rawlsian justification is silent about many societies which have weaker democratic traditions. Put another way, later Rawls addresses only modern democratic societies at a certain historical moment. Political liberalism appears to presuppose a society in which liberal values are already well entrenched. This turns political liberalism into an apologetic, rather than progressive, account of political philosophy.

Thus, the scope of validity for the major conceptions of Rawls’s later liberalism, such as public reason and overlapping consensus, are only limited to the countries which have a long lasting experience of liberal institutions and public debates about democracy. Obviously this causes justice as fairness with its main ideas of priority of liberty to equality, difference principle and the equality of opportunity—which as I demonstrated are very relevant to the contemporary situation of many Muslim majority societies— inapplicable to them. Here I give the example of Scheffler’s critique of the kind of justification political liberalism offers.

In “The Appeal of Political Liberalism” Scheffler argues that “it is not clear that political liberalism provides any reason for establishing liberal institutions in societies that do not

have already liberal traditions.... it is not clear that political liberalism could ever provide the original justification for a society's liberal institutions (Scheffler, "Appeal" 20). Thus, we should be concerned about whether political liberalism has any justification to offer to "aspiring democracies" which do not have liberal traditions and whose public political cultures therefore lack the implicit ideas to which Rawls appeals. However, if this is the case and if political liberalism has nothing to offer to aspiring democracies in developing countries, then Rawls's defense of liberal principles of justice and institutions "may seem intolerably weak." "In renouncing any universalistic ambitions Rawls may now seem to have gone too far in the other direction". It seems that later Rawls has produced a version of liberalism (which he names political liberalism) that is very historically specific and so dependent on a prior context of liberal institutions which makes it irrelevant in those societies where the justification of liberalism matters most: that is "where liberalism is confronted by, and must engage with", societies whose practices are not liberal enough (Scheffler, "Appeal" 21). It seems that Rawls has very little to offer to those societies that are not yet a constitutional democracy, but look to liberal political philosophy's moral support.

If we extend the debate to LoP the challenges which Rawls is facing becomes even more obvious. Kok Chor Tan argues, "the problem of the toleration in in the law of peoples is not a problem of application but is an accentuation of a problem inherent in political liberalism itself" (Tan, "Toleration" 38). Specially, Rawls's assumption in his theory of international relations that a nonliberal society may nevertheless be well ordered, and just, raises a lot of questions. The law of peoples "appears to confirm the suspicion that Rawls's justification of liberal institutions is limited in certain striking ways" (Scheffler, "Appeal" 21). The problem is that Rawls seems to regard this abstinence as a virtue, in part because he is sensitive to the

charge that more ambitious universalist liberal claims represent a form of western ethnocentrism and imperialism. It seems that neither LoP nor PL does aspire to the kind of universality that some liberals are looking for. We probably need more Kant in PL and LoP.

Similarly Kukathas claims that Rawls “has abandoned his search for universal moral principles and recast his theory of justice as an attempt to articulate the principles of political justice....appropriate only for modern democratic societies such as United State” (Kukathas, “Explaining” 2). And finally, Thomas Pogge asserts that although TJ has been criticized by pro-relativists such as Gutman, among others, for being antirealist, it seems that the Rawls of political liberalism has now “come around to Gutman’s view, for he has dramatically shrunk, since TJ, the domain of social system to which he takes his conception to be applicable.”³⁹ (Pogge, *Realizing* 213 n) Some commentators, however, are sympathetic with the attitude of the later Rawls. Maffettone regards it as a sign of the “modesty”. He asserts that for Rawls political philosophy, as part of the civil society of an open society, “starts from the shared culture of a liberal-democratic society”. Put another way, for Rawls justification is rooted in the moral and metaphysical bases of a specific culture (Maffettone, *Rawls* 25-26, 38).⁴⁰

The story sounds to be complicated and multi-dimensional. It seems that there is a consensus on the need to a reinterpretation and reformulation in the work of later Rawls in order to make it applicable to nonwestern societies, particularly Muslim majority ones. To overcome

³⁹ Pogge contrasts Rawls’s position in TJ in which Rawls believed that “a theory of justice must work out from its own point of view how to treat those who dissent from it” (TJ 370), with that of justification in PL.

⁴⁰ My references to the page numbers of Sebastiano Maffettone’s *Rawls: An Introduction* is based on the pdf version distributed among the political theory PhD students of Luiss University of Rome during the course on the philosophy of Rawls. This was before the publication of book by Polity Press in 2010.

this problem we need to demonstrate that political constructivism does not presuppose the actualization of liberal citizenship or a well-orderedness in a particular society in order to be relevant there.

Chapters II and III of *Part One* focus on the reflective equilibrium (II) and the original position (III). *Part One* of this thesis disagrees with the idea that strong liberal traditions and institutions must already exist in order to create the conditions that make reflective equilibrium and the original position possible. In chapters II and III we argue that reflective equilibrium and the original position are not limited to East or West. We will argue that PL — particularly if interpreted as a continuation of TJ and LoP— has enough materials to give *reasonable* individuals living in nonwestern countries strong reasons in defense of justice as fairness as a candidate for the most reasonable basis of democracy. In contrast to the dominant interpretation, we will see that later Rawls still has something to offer to those individuals who live in the societies that are not yet a constitutional democracy, but look to political philosophy's moral support.

Put in other words *Part One*, focused on justification, demonstrates that political constructivism can be interpreted in a way that justifies justice as fairness outside the societies with strong democratic public political culture. Chapters II and III argues that the scopes of the reflective equilibrium and the original position, as Rawls's two interrelated methods of justification for justice as fairness, are not simply limited to the persons who live in Western democracies, but rather have much more broader global audience. We will argue so first by showing that the reflective equilibrium and the original position address primarily *individuals* with particular comprehensive doctrines, rather than particular *countries*. Secondly we will induce that political liberalism only addresses reasonable persons, which is persons who grasp

the ideas of society as a fair system of cooperation and liberal democratic citizenship in their comprehensive doctrines. We will show that the idea of reasonable is closely tied to the ideas of free and equal democratic citizenship, and fair social cooperation.

Referring to Rawls -Habermas debate on the role of political philosophy in political discourse, in chapter II I will show how the reflective equilibrium is mainly limited to the civil society. In chapter II it will be asserted that the civil society or background culture (as Rawls refers) as the sphere of endless political and philosophical debates is not limited to the Western countries. Put it clearer, in the contemporary age of globalization and internet, all individuals in all civil societies of the world can benefit from TJ, PL and LoP by entering into a critical reflection with Rawls's works. Limiting the role of political philosophy to the civil society is also complementary answer to the liberalism as hegemony objection which was addressed in the first chapter (I: 4-1). Thus, chapter II is an argument for that political liberalism *does have* important things to offer to persons who live under non-liberal or even theocratic states, if they enter into a dialogue with justice as fairness—or the Law of Peoples in the case of international law of justice—in a reflective equilibrium.

In chapter III, as the second section of the *Part One*, I demonstrate that only those who reject the idea of reasonable and the conceptions of person and society which come with it—for any religious, philosophical, or moral reason—will not find political constructivism as offering persuading arguments for basic justice. Thus, the fundamental concepts such as public reason and overlapping consensus address the reasonable individuals in all societies, even those which have dictatorial regimes for the time being. All in all, in chapter III I argue that only if the conceptions of a well-ordered society and of citizens as free and equal are grasped by one's comprehensive doctrine, she may find reflective equilibrium and the original position (let us call

them together as political constructivism) as persuading arguments for justice. Thus, political constructivism, as the main justificatory apparatus of political liberalism, does not model decent or unreasonable comprehensive doctrines.

CHAPTER II— Global Status of the Reflective Equilibrium

1- The Reflective Equilibrium and the Global Status of Rawlsian Political Philosophy

As we saw in the introduction to *Part One*, one of the main objections to political liberalism is that its scope of justification is limited to particular societies and that political liberalism has not a justificatory force beyond those societies which do not have an already established liberal democracy, with a long tradition. This chapter is aimed to rebut the dominant reading of political liberalism in part it assumes later Rawls has nothing to offer to those societies which are willing to establish liberal democracy only for the first time. As Scanlon puts: “Rawls offers what might be seen as three ideas of justification: the method of reflective equilibrium, the derivation of principles in the original position, and the idea of public reason” (Scanlon, “Justification” 139). In this chapter, I will argue that the reflective equilibrium as one of the three significant justificatory tools which are available in political liberalism, has a universal status. The next chapter deals with the original position and political constructivism. In this dissertation I will not focus on the public reason despite few remarks in chapter IV.

For Rawls political philosophy studies political questions at many different levels of generality and abstractness, all valuable and important. The questions of how a just democratic regime is achievable in the domestic level, and how a reasonable Society of Peoples is possible in the international level, are two significant questions for Rawls. Both of these questions may be answered on due reflection (another term Rawls uses for the reflective equilibrium) and each has its own model of the original position (LoP 30-35).

Reflective equilibrium has a significant role in Rawls's view of political philosophy as a critical enterprise. Among others, Habermas also admits this point.⁴¹ The reflective equilibrium has a significant role in matching our considered judgments with the political conception. For Rawls, both in PL and TJ, political philosophy is primarily aimed to figure out a conception of justice which "best approximates our considered judgments of justice and constitutes the most appropriate moral basis for a democratic society"(TJ xviii). But how the reflective equilibrium is modeled in Rawlsian political philosophy?

In PL Rawls argues that in discussing his philosophy we should be careful to distinguish between three points of views: that of "the parties in the original position"(hereafter v1), that of "citizens in a well-ordered society"(hereafter v2), and finally that of "ourselves-of you and me who are elaborating justice as fairness and examining it as a political conception of justice"(hereafter v3) (PL 28).⁴² It is the third point of view (v3) with which reflective equilibrium is concerned. As we will see in the next chapter, the original position deals with the first (v1) and second views (v2). V3 belongs to *you and me, here and now* who are involved in the reflective equilibrium. As will see, all individuals in all civil societies of the world are able to enter into a dialogue which Rawlsian philosophy (particularly speaking his notion of justice as fairness) via the wide reflective equilibrium and are able to be the audiences of the main arguments of TJ, PL and LoP. Put in other words, this is v3 where real and living individuals throughout the world may get involved in the justification for justice as fairness in a reflective equilibrium. To quote Rawls, "the third point of view—that of you and me—is that from which

⁴¹ View: Jurgen Habermas, "Reasonable versus True or Morality of Worldviews", in the *Inclusion of the Other: Studies in Political Theory*", pp. 75-104, Cambridge, Massachusetts: The MIT Press, 1998, 97ff.

⁴² The same category is available in KCMT.

justice as fairness, and indeed any other political conception, is to be assessed” (PL 28). Reflecting “the reflective equilibrium”, v3 exemplifies the philosophical deliberations of me and you, here and now, as members of the global civil society. The reflective equilibrium is a test to see how justice as fairness, regarded as a whole, articulates one’s more firm considered convictions of political justice, “at all levels of generality, after the examinations, once all adjustments and revisions that seem compelling have been made” (PL 28). A conception of justice that meets this test is the conception that, so far as we can ascertain, is “the one most reasonable” for the person who is involved in the process.

The reflective equilibrium is not a paternalistic way; rather it is a method of philosophical deliberation. Still, it provides the critical moral support of the political philosopher for those individuals who are struggling against dictatorship. Via the reflective equilibrium liberal political theory offers a critical way of thinking and justifying justice to the pro-democracy persons in societies which are frustrated with the theocratic or dictatorial institutions (See Introduction to *Part One*), as it proposes a critical way of thinking to citizens of liberal societies. The method of reflective equilibrium extends the Rawlsian justifications for constitutional democracy to include Muslim majority and other nonwestern societies, even in case they do not have a democratic constitution for the moment. Considering the method of wide reflective equilibrium, the justification Rawls proposes for justice as fairness has a global status.

According to the reflective equilibrium, no justification for a political conception of justice, and no setting for original position, is valid unless it is able to put in order what Rawls calls our considered judgments of justice at all levels of generality. In wide reflective equilibrium we have to take into account the view of other individuals with whom we live in the same country, even though we disagree with them. We continue this until we reach to the most

reasonable account of justice and the most reasonable setting for the original position: “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” (PL 45).

Furthermore, the method of reflective equilibrium connects the abstract dimensions of the original position to the living world and avoids political philosophy to be detached from the society and the world. The debate between Rawls and Walzer on the meaning and role of political philosophy is illustrating here. As one of distinguished communitarian critiques of Rawls, Walzer interpreted the original position as arguing in a “great distance from the social world”. Rawls, Walzer claimed, walks “out of the cave”, leaves “the city”, climbs “the mountain” and fashions for himself “an objective and universal standpoint” that “can never be fashioned for ordinary men and women”. “Then he describes the terrain of everyday life from far away, so that it loses its particular contours and takes on a general shape.” Pointing to Rawls’s the original position Walzer argued that “Justice and equality can conceivably be worked out as philosophical artifacts, but a just or an egalitarian society cannot be. If such a society isn’t already here—hidden, as it were, in our concepts of categories—we will never know it concertededly or realize it in fact.” For Walzer political philosophy is “radically particularist” and the political philosopher interprets to her fellow citizens the world of meanings that they share in that particular community (Walzer, *Spheres* xiv).

The last session of the first lecture of PL, called “On the Use of Abstract Conceptions”, is indeed Rawls’s respond to Walzer in particular, and communitarianism in general. Rawls asserts that political philosophy especially becomes important in the times of

transition and crisis, which are characterized by deep conflicts. We appeal to philosophical deliberation when we are in two minds about our ideas:

We turn to political philosophy when our shared political understandings, as Walzer might say, break down, and equally when we are torn within ourselves. We recognize this if we imagine Alexander Stephens rejecting Lincoln's appeal to the abstractness of natural right and replying to him by saying: the North must respect the South's shared political understandings on the slavery question. Surely the reply to this would lead into political philosophy (PL 44-45).

If political philosophy is simply as uncritical interpretation of shared political understandings of a particular community, Rawls argues, Alexander Stephens and others who supported slavery in South would be justified in their claims. Slavery was the shared political understanding of the South in the famous South-North division before American civil war in 19th century. Of course we have to reject slavery even if it is part of "our" shared values. In the process of the reflective equilibrium, we may reaffirm our more firm judgments and shared understandings, modifying the proposed conception of justice, or may do vice versa. We continue this process until our judgments at all levels of generality are in line on due reflection (PL 45). Thus, the reflective equilibrium provides a deep connection between the abstract notion of the original position and our everyday, though firm, intuitions about justice (considered convictions). Thus the reflective equilibrium does not occur in vacuum, in isolation from the society and the world. In addition, the reflective equilibrium connects the original position (as the more abstract dimension of justification) and our considered judgments (as the more intuitive

part) so that they complement each other in “a coherent view of justification for the political conception” (PL 45). To conclude, political philosophy is not indifferent to the social world and the context. The notions of reflective equilibrium and considered judgments, among other conceptions, exemplify a deep connection between the abstract dimensions of justice as fairness, and the real situation of external world.

2- The Wide Reflective Equilibrium and the Global Civil Society

For Rawls all the debates of political philosophy, except few historical exceptions, belong to the global civil society or what he calls background culture plus nonpublic political culture. The background culture includes “the culture of churches and associations of all kinds, and institutions of learning at all levels, especially universities and professional schools, scientific and other societies” (PRR 768 n). The background culture is the culture of multiple and diverse nonpublic agencies and associations with their internal life.⁴³ The nonpublic political culture mediates between the public political culture (the culture which is the basis of public reason) and the background culture, and comprises all forms of media including newspapers, reviews and magazines, TV and radio, and internet. Background cultures plus nonpublic political culture, or the culture of civil society, is comparable with Habermas's account of the public sphere. Similar to the view of Habermas, for Rawls in a democracy the background and the nonpublic political cultures are not guided by any one central idea or principle, whether political or religious.

⁴³ For Rawls, “the idea of public reason does not apply to the background culture with its many forms of nonpublic reason nor to media of any kind. Sometimes those who appear to reject the idea of public reason actually mean to assert the need for full and open discussion in the background culture. With this political liberalism fully agrees” (PRR 768).

For Rawls political philosophy has no authority. The only type of authority political philosophy has is the authority of human reason which has a universal status, apart from where and in which civil society we are living. The power of philosophy is the shared power of reasoned thought, judgment, and inference as exercised by any normal adult person beyond the age of reason. Seeking the authority of human reason means presenting our views and arguments in a sound manner to the others so that they may judge them intelligently. For Rawls it is very important to note that whether a text in political philosophy is successful in making appeal to the authority of human reason is a collective judgment of the persons in the civil society of a particular country, made over time. If individual members of that society find a political philosophy text worthy of study and reflection, then political philosophy may be authoritative philosophically speaking. Apart from this political philosophy has no authority at all.

According to Rawls the political philosopher does not ascertain the truth about justice and the common good, irrespective of whether that truth is freely accepted. Rawls's political philosopher cannot be "Plato's philosopher king" or "Lenin's revolutionary vanguard", whose knowledge of the truth authorizes her to control the outcome of politics (LHPP 3-4). Rawls puts this very clear in his reply to Habermas:

There are no experts: philosopher has no more authority than other citizens. Those who study political philosophy may sometimes know more about some things, but so may anyone else. Everyone appeals equally to the authority of human reason present in society. *So far as other citizens pay attention to it, what is written may become*

part of the ongoing public discussion—A Theory of Justice along with the rest—until it eventually disappears (PL 383-384 emphasis added).

The argument means that as an activity in the civil society, political philosophy is not distinguished from any kind of reasoned discussion and the political philosopher has not any privileged position. Except for few historical cases certain political philosophy texts may turn into being classic and become part of the public political culture and a deposit of basic political ideas of a constitutional democracy⁴⁴, in the rest political philosophy only contributes to the debates and the deliberations of the civil society.

As a free and equal citizen, philosopher simply speaks conscientiously in addressing other free and equal citizens about political questions she finds more important or appealing (LHPP 2). She does it for example through her books, via conference lectures in which she presents her ideas, through her undergraduate and graduate university courses, and via professional and academic journals in which he publishes her articles. To give an example, only if TJ or PL are translated into Persian or Arabic, and only if some decent philosophical literature are available in Persian or Arabic on Rawls, the interested Iranian and Arab reader may enter in a process of dialogue with Rawls via wide (rather than narrow) reflective equilibrium.

Reflective equilibrium is a test for the viability of the design of the original position. For Rawls a political conception of justice, to be acceptable, must accord with our considered convictions, “at all levels of generality, on due reflection”. This is what he calls “reflective equilibrium”” (PL 8). The considered convictions are provisional fixed points that our

⁴⁴ Like the role of the some of the texts which belong to the founding fathers of the United states in the constitutional court of the United States.

conception of justice must account for. Political constructivism (which we will discuss in the next chapter) formulates our considered convictions about justice in a systematic and coherent way. In the reflective equilibrium we move back and forth between our considered judgments as provisional fixed points and the principles of justice as formulated by the original position. Wide reflective equilibrium, as opposed to narrow reflective equilibrium which is not philosophically appealing, is defined as follows. “Wide reflective equilibrium (in the case of one citizen) is the reflective equilibrium reached when that citizen has carefully considered alternative conceptions of justice and force of various arguments for them.” To put more specific, “the citizen has considered the leading conceptions of political justice found in our philosophical tradition (including views critically of the conception of justice itself) and has weighted the force of the different philosophical and other reasons for them” (PL 384 n). Rawls supposes that 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” (PL 384 n). The difference between narrow and wide reflective equilibriums is that in the former the person is presented only with conceptions of political justice which match more or less her existing judgments except for minor differences, whereas in the latter the deliberating person considers all possible conceptions of justice favoured by other individuals in her particular society, together with all relevant philosophical arguments for them. To quote Rawls “in the first case we would be describing a person’s sense of justice more or less as it is although allowing for the smoothing out of certain irregularities; in the second case a person’s sense of justice may or may not undergo a radical shift” (TJ 43). Of course the second kind of reflective equilibrium is intended as philosophically important for

Rawls.⁴⁵ If wide reflective equilibrium is achieved, we have reached a fully intersubjective status: “each citizen has taken into account the reasoning and arguments of every other citizen” (PL 385 n). It seems that dominant religious accounts of justice also need to be evaluated in a wide reflective equilibrium, at least in a religious society like Muslim majority ones.

Consider that in wide reflective equilibrium we do not need to consider the conceptions of justice of all individuals throughout the world. That would be a very burdensome, if not impossible, task. We only need to take into account the major philosophical traditions which are present in our own society, and critically study them together with the original position. The global status which we attribute to the reflective equilibrium should not be regarded in contrast to the notion of nation-state which is presumed in all major works of Rawls. In wide reflective equilibrium we are primarily considering the conceptions of justice which are prevalent within the borders of the particular nation-state to which we belong. (Like what Rawls

⁴⁵ Apart from this, Scanlon makes distinction between descriptive and deliberative reflective equilibriums, arguing that the former is not a method of justification at all: “the aims of the method of reflective equilibrium can be understood in either of two ways. According to the descriptive interpretation it aims at characterizing the conception of justice held by a certain person or group. By contrast, according to what I will call the deliberative interpretation, it is a method for figuring out what to believe about justice. These two ways of understanding the method lead to two different rationales for its structure. On the deliberative interpretation, the rationale for concentrating on considered judgments is that these are the most likely to be correct judgments about their subject matter (morality, or justice). On the descriptive interpretation, the rationale is rather that these judgments are the most accurate representation of the “moral sensibility” of the person whose conception is being described. As Rawls says in *Theory*, they are “those judgments in which our moral capacities are most likely to be displayed without distortion” (TJ, p. 47/42 rev.). As this brings out, in the descriptive interpretation, the method of reflective equilibrium does not seem to be a method of justification (or a search for justification) at all, especially when it is applied to other people’s considered judgments” (Scanlon, “Justification” 142-143).

did in the case of Utilitarianism as the dominant philosophical tradition in Anglo-American tradition the time TJ was published.)⁴⁶ We are not prescribing for justice in other societies. In TJ Rawls is trying to formulate a conception of justice “for the basic structure of society conceived for the time being as a closed system isolated from other societies” (TJ 7). Similarly in PL he assumes the basic structure as that of “a closed society”: “we are to regard it as self-contained and as having no relations with other societies” (PL 12). Rawls is always Kantian within the borders of a particular society. This might be followed by the idea that depending on the number of nation-states in the world, we might imagine domestic original positions in which individuals deliberate on justice via wide reflective equilibrium. Although borders are mostly arbitrary from a historical perspective, they are not absolutely morally irrelevant for Rawls:

It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified. On the contrary, to fix on their arbitrariness is to fix on the wrong thing. In the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances (LoP 39 emphasis original).

There is no contradiction between that we should take borders somehow seriously with the global status of wide reflective equilibrium as a method of justification. These two together mean that any political philosophy reader who reads and reflects on the works of

⁴⁶ As he puts in the preface to the revised edition of TJ, explaining the intentions of writing his book: “I wanted to work out a conception of justice that provides a reasonably systematic alternative to utilitarianism, which in one form or another has long dominated the Anglo-Saxon tradition of political thought.” (TJ xi)

Rawlsian political philosophy (TJ, PL, LoP, and so on), no matter where she lives—Turkey, Egypt, Italy, Canada, and so on—enters into the reflective selection among justice as fairness and other conceptions of justice which are dominant in the philosophical tradition of her own nation-state.

The wide reflective equilibrium belongs to the civil society, where *you and me* deliberate and discuss to each other. *I and you, here and now*, deliberate on TJ, PL and LoP by reading them, while *me and you, here and now*, might be living under a nondemocratic regime. The only requirement is that we have access to PL, TJ, or LoP in a language which we are able to read. Dividing the types of world societies into liberals, decents, burdened societies, benevolent absolutisms and outlaw states following Rawls's LoP (LoP 4; 63), one might argue that a person who lives in any of these five type of societies, which for Rawls cover all the globe, may enter into a reflective dialogue with Rawls provided that she reads and thinks about his books or articles. Put in other words, to do so we do not need to be living in a well-ordered European or North American society which has a long tradition of liberal institutions.

Rawls's idea of wide reflective equilibrium is similar to Habermas's ideal discourse situation. "The primary aim" of justice as fairness, as Rawls asserts in his reply to Habermas, is "to be presented and understood by the audience *in civil society*" for the individuals to consider (PL 384 emphasis added). The test for this, he continues the argument, is wide reflective equilibrium by reasonable individuals in the background culture. This background culture, considered as companioned with the nonpublic political culture, should not be regarded as being limited to the civil society of already established modern western democracies. By civil society the reflective equilibrium addresses global civil society. That is because human reason and

philosophy does not have any territorial border.⁴⁷ Both reflective equilibrium and Habermas's ideal discourse situation are "*a point at infinity we can never reach, though we may get closer to it* in the sense that through discussion, our ideals, principles and judgments seem more reasonable to us and we regard them as better founded than they were before" (PL 385 emphasis added).

In both cases individuals freely debate over accepting or rejecting the particular conceptions of justice Rawls and other philosophers such as Habermas propose, in the global civil society. As a result, the original position and political constructivism too need to be regarded as dialogical rather than monological, as sometimes critiques of Rawls such as Habermas claim.⁴⁸ Indeed, all the debates which TJ, PL and LoP cause, including discussions over justice as fairness, eight principles of international justice (LoP 37), the domestic and global original positions (LoP 30-34), domestic and global public reasons, overlapping consensus, and so on are from the point of view of the civil society or what Habermas calls *the public sphere*. As argued before, there is no point in limiting the debates over justice as fairness, Habermas's political theory, or any other Western style of political philosophy to the civil societies of Western countries.

Since *I and you, here and now*, have human reason and powers of inference and judgment, no matter where we live, *I and you, here and now*, are able to judge the merits of

⁴⁷ This does not contradict the fact that, as we will show in the next chapter on the original position, only those individuals who hold reasonable comprehensive doctrines will find Rawls's constructivism as convincing.

⁴⁸ Although Rawls hopes that all reasonable individuals will find his justice as fairness as the most reasonable principle of justice on due reflection, that might not necessarily happen and on due reflection reasonable individual may endorse another reasonable political conception, for example a Kantian, Habermasian or Utilitarian one. This point is very clear in PRR.

Rawls's original position, Habermas's theory of communicative action, or any other type of "Western" political philosophy, and accept or reject them. We can do it singly, or in association with others with whom we feel affinity and solidarity (our friends in Mosque, church, etc.) This can happen in the civil society of Iran, Turkey, or any other Muslim majority or nonwestern society. As we will see in the next chapter, as far as we hold reasonable comprehensive doctrines, we are more prone to find the arguments of justice as fairness as convincing. The point of civil society and the reflective equilibrium includes all reasonable persons in all societies, not only the citizens of particular liberal democratic countries. That is because what Rawls calls two moral powers of reasonableness and rationality are common among all reasonable persons, regardless of their status and particular society to which they belong. Any nonwestern society which has spirit and vitality is open to endless philosophical discussions on justice. Of course nonwestern societies with weaker civil societies will have lesser amount of political and philosophical discussions and deliberations.

Today, many Muslim societies, especially those with longer democratic history, own civil societies which contain "comprehensive doctrines of all kinds that are taught, explained, debated one against another, and argued about—indefinitely without end"(PL 383). Many Muslim majority countries have a more or less decent background culture "with its many associations", "universities" and religious schools (*madrassa*), "learned and scientific societies", where more or less "endless political discussions of ideas and doctrines" (PL 383) might occur. In the age of internet and social networks, they also mostly have a decent nonpublic political culture (remember the role of social networks in Iran's Green Movement or Egypt's revolution). Not all civil societies of the world need to be liberal in order to be able to understand and debate on the political philosophy texts of any kind in a wide reflective equilibrium. This is particularly

the case for those societies which have more active pro-democratic civil societies where many educated people are active in.

Finally, remembering the holism versus individualism debate in philosophy of social science, we need to emphasize that reflective equilibrium is not a holistic method. For instance we cannot say “France” as a country with 674,843 km² territory endorses justice as fairness in a wide reflective equilibrium, whereas Saudi Arabia with 2,149,690 km² is unable to do so. Obviously this is a wrong way of putting the arguments. Only individuals in the civil society of any particular country find the design of Rawls’s original position as convincing or may reject it as not being the most reasonable on due reflection. The reflective equilibrium only applies to the individuals rather than the societies.

CHAPTER III— Political Constructivism and Universal Inclusion of the Reasonable

In chapter II I argued that Rawlsian political philosophy may still have an important role in endless debates of the civil societies of Muslim countries and other non-western societies. Continuing this debate, in this chapter I argue that in spite of mainstream reading which was referred in the introduction to *Part One*, political liberalism includes an account of practical reasoning which is universal and not limited in its audience to liberal democratic Western societies. In contrast to the common Rawlsology literature, this chapter claims that political liberalism can be interpreted as an action-guiding model for all pro-democracy (reasonable) persons in different countries of the world. As we demonstrate this is the result of the universal dimension we find in later Rawls's account of the reasonable. We will argue that all reasonable comprehensive doctrines, no matter they belong to inhabitants of what country in which part of the globe, share the values of society as a fair system of cooperation and persons as free and equal as modeled in the original position, as one of Rawls's significant methods of justification for justice as fairness.

1- Original Position as the Model of Construction

Rawls defines political constructivism as a view about the content and structure of justice as fairness. According to political constructivism, once reflective equilibrium is reached, “the principles of political justice (content) may be represented as the outcome of a certain procedure of construction (structure)” (PL 89-90). This procedure of construction is modeled by *the*

original position in which rational agents, as representatives of real individuals, and subject to restraints of the veil of ignorance, select two principles of justice to regulate the basic structure of their society. Thus, the guiding idea of Rawls's constructivism is that the principles of justice for the basic structure of society are the object of the original agreement (TJ 10).

For Rawls the original position corresponds to the state of nature in the traditional theory of the social contract. As he famously puts, the original position generalizes and carries to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant (TJ xviii). Among the essential features of the original position is that no one knows his place in society, his class or social status, his fortune in the distribution of natural assets and abilities, his intelligence, strength, and so on. Furthermore the parties do not know their conceptions of the good—their comprehensive doctrines— or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This is designed to make sure that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or social circumstances. Since all parties are similarly situated and no one is able to promote principles to favor his particular condition, the principles of justice as fairness, Rawls argues, are the result of a quite fair bargain. Given the symmetry of parties' relations to each other, this initial situation is fair between individuals as moral persons (TJ 11).

The original position is introduced as a very useful device to elaborate a political conception of justice for the basic structure from the idea of society as a fair system of cooperation between persons regarded as free and equal (PL26). The original position models the fair conditions under which the representatives of "free and equal citizens"—or as we will argue reasonable persons— are to specify the terms of social cooperation in the case of the basic structure of a democratic society. Via the veil of ignorance it models the reasonable restrictions

on reasons available to the parties for favoring one political conception for justice over another. As we will see, the idea of the original position presumes particular conceptions of society and person. Furthermore, the conditions imposed on the parties along with the description of their deliberations model rationality and reasonableness of individuals.

The parties who represent real persons in the original position are depicted as rationally autonomous, and thus free to agree to whatever principles of justice they think most to the advantage of their trustees (PL 75). The rational individual who is modeled in the original position is regarded as free within the limits of political justice to pursue her conception of the good. The parties in the original position select those principles of justice which secure the primary goods—the goods which are essential to realize the higher order interests of the person for whom each party acts as a representative—more than others. The primary goods include the basic rights and liberties, freedom of movement, and free choice of occupation protected by fair equality of opportunity, income and wealth, and the social bases of self-respect. Rawls assumes that reasonable and rational persons care about their basic liberties and opportunities in order to develop and exercise their moral powers and pursue their conception of the good (PL 77).

Furthermore, free and equal citizens are considered as fully autonomous by the original position. This full autonomy is modeled by how parties are situated with respect to one another in the original position and by the limits on the information to which their deliberations are subject via the veil of ignorance. We should consider that it is not the artificial parties who inhabit our device of representation but real reasonable persons in their public life that are assumed to be fully autonomous. The original position models those individuals who, as fully autonomous⁴⁹, comply with the principles of justice in their political conduct and publicly

⁴⁹ Rawls's Kantianism in PL is obvious from his idea of full political autonomy.

recognize the application of those principles in constitutional essentials and matters of basic justice. Full autonomy “is realized by citizens when they act from principles of justice that specify the fair terms of cooperation they would give to themselves when fairly represented as free and equal persons” (PL 77). Full political autonomy as represented in the original position is distinct from moral autonomy as a purely ethical value. In contrast to the full political autonomy as a value of political life in political liberalism, full moral autonomy, as expressed by the comprehensive liberalisms of Kant and Mill, may apply to the whole of human life, both social and individual. Justice as fairness emphasizes this contrast, affirming political autonomy for all citizens but leaving the weight of ethical autonomy to be decided by several individuals in light of their comprehensive doctrines (PL 78).

Later Rawls emphasizes that the original position does not suppose a particular metaphysical conception of the person. The veil of ignorance “has no specific metaphysical implications concerning the nature of the self” (PL 27). Indeed, one of the main communitarian objections to the constructivist argument Rawls develops in his TJ has been that Rawls’s characterization of the person in the original position is biased and would contest Rawls’s claim that his original position is equally valuable to all ways of life. Communitarian and some other critiques claimed that the original position reflects a western, metaphysically liberal understanding of “human life” which is incompatible with some religious and communal values. For example, Sandel argued that the original position “introduces assumptions that are not universally shared, that it is implicated too deeply in the contingent preferences of, say, Western liberal bourgeois life plans” (Sandel, *Limits* 127). Sandel argued that the original position exemplifies a prior commitment to a metaphysically liberal conception of the person. He concluded that the original position’s account of the ‘deontological self,’ embodying a

conception of liberal autonomy, is controversial from the point of non-liberal ways of life. This liberal conception of the person contradicts and rules out alternative intersubjective, social or communal accounts of the self and its relationship to its ends and the broader community. Sandel claimed that ‘implicit in Rawls’s theory of justice is a conception of the moral subject. . . .Rawls’ main discussion tends to take the nature of the moral subject as given and argue through the original position to the principles of justice’ (Sandel, *Limits* 49).⁵⁰

According to Rawls Sandel’s critique is mostly a misunderstanding of the original position as device of representation. We may enter the original position as a device of representation at any time “simply by reasoning for principles of justice in accordance with the enumerated restrictions on information” (PL 27). While doing so our reasoning no more commits us to a particular metaphysical conception of person and self than one’s acting a part in play, for example of Macbeth or Lady Macbeth, commits her to really being a king or a queen engaged in a desperate struggle for political power, as William Shakespeare’s play exemplifies (PL 27). What we do in the original position is simply to show how the idea of society as a fair system of social cooperation and citizens as free and equal can be elaborated so as to find principles specifying the most appropriate principles of justice to regulate the basic structure of a democratic regime.

Many misunderstanding of the original position are the outcome of confusions between the three views which were referred in the previous chapter. In chapter II we saw that Rawls importantly distinguishes between three points of views: “that of the parties in the original

⁵⁰ See Michael. J. Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, 1982. In PL 27 n Rawls finds Will Kymlicka’s answer to Sandel in chapter 4 of his book as one of the best liberal answers to the communitarian objection on the notion of the self, if formulated in a political way. See Will Kymlicka, *Liberalism, Community and Culture*, Oxford University Press, 1989.

position [v1], that of citizens in a well-ordered society[v2], and finally, that of ourselves—of you and me who are elaborating justice as fairness and examining it as a political conception of justice [v3].” (PL 28) In chapter II we argued that the reflective equilibrium is mainly concerned with v3. In KCMP Rawls calls v1 and v2 as “model conceptions” (KCMP 533). Here we need to add that the original position deals with v1 and v2.

V1 or the parties who determine the fair terms of social cooperation are simply artificial inhabitants of the original position as a device of representation. Original position is set up *me and you*, as reasonable individuals, to conjecture the most reasonable political conception. The nature of the parties (v1) is up to us (v3) who are involved in the reflective equilibrium. Distinguishing between v1 in one hand and v2 and v3 on the other hand demonstrates that the original position attributes no account of the moral psychology to actual reasonable persons. (PL 28) In contrast to v2 and v3, v1 does not exist in the external world at all. It is only an inhabitant of our minds as part of a thought experiment. V1 simply models v2 (and thus v3). In the rest of this chapter I will argue that v2 are individuals with reasonable comprehensive doctrines, no matter in which society they live. Put in other words, v1 demonstrate how individuals with reasonable comprehensive doctrines (v2) may formulate a constructivist argument for justice as fairness.

2- The Role of Conceptions of Society and Person

Original position as the procedure of construction represents all the relevant requirements of practical reason and demonstrates “how the principles of justice follow from the principles of practical reason in union with conceptions of society and person, themselves ideas of practical reason” (PL 90 emphasis added). In political constructivism, justice as fairness does not proceed

from practical reason alone, but is developed from the union of practical reason with particular conceptions of society and person which are modeled in the original position.

Rawls asserts that just as the principles of logic and inference would not be used if the persons who could think and infer did not exist, the rules of practical reason those not work without appropriate conceptions of society and person. The conceptions of person and society exemplify the agents who reason and characterize the context for the problems and questions to which practical reason applies. Indeed, Rawls concludes that the conceptions of society and person are themselves conceptions of practical reason (PL 107). Put in other words, “without conceptions of society and person, the principles of practical reason would have no point, use and application” (PL 108). As Roberts explains political constructivism:

Rawls’s constructivism is a procedure whereby we link practical reason with appropriate conceptions of society and person. If this constructivism is to issue in a variety of outcomes, the obvious point at which constructions would vary is in the specification of appropriate conceptions of society and person.... although the basic principles of practical reason appear to remain invariant in Rawls’s notion of justification, perhaps different conceptions of society and person will be appropriate in different contexts and for different subjects (Roberts, *Constructivism* 64).

Roberts concludes that despite accusations of particularism in the mainstream interpretation of Rawls, when Rawls argues that constructivist justification involves principles of practical reasoning in union with conceptions of society and person, he is not advancing a local conception of practical reasoning. Later Rawls’s account of practical reason still has strong

universal elements. In Robert's interpretation, if principles of justice as fairness are identified by a construction involving the principles of practical reason in union with the fundamental ideas of society and person—since practical reasoning is always more or less unchanging—then variety must enter with the appropriate conceptions of society and the person. As his comparison between PL and LoP shows, different conceptions of society and person can be attributed to a liberal or communitarian theory of justice. In a democratic context that is the prime focus of PL, political constructivism takes the conceptions of society as a fair system of cooperation and of the person as free and equal citizen. However, in a decent hierarchical society—which is the focus of part II of LoP—instead of free and equal citizens, in a communitarian manner, persons are regarded as responsible members of society and of different groups. Yet, they can recognize their moral duties and obligations and “play their part in social life” (Roberts, *Constructivism* 67-68; LoP 66). One might argue that particular conceptions of society and person were presupposed in Rawlsian constructivism from the beginning. Nevertheless, clarification about the role of the concepts of society and person in Rawls's account of practical reasoning might be regarded as a reaction to the communitarian critiques of the original position as formulated in TJ.⁵¹

Political constructivism is impossible without addressing the common ground between the philosopher, who offers the constructivism as a method justification, and the audience, who is probably supposed to evaluate the argument within a reflective equilibrium.

⁵¹ Indeed, as we saw earlier in the critiques of Sandel (this chapter) and Walzer (chapter II), one of the main communitarian objections to the constructivist argument Rawls develops in his TJ has been that his characterization of the person in the original position is biased and would contest Rawls's claim that his original position is equally valuable to all ways of life. It is claimed that the original position reflects a western, liberal understanding of human life which is incompatible with orthodox religious and communal values.

Particular conceptions of society and person are the common points upon which constructivism are built. That is why on his debate on political constructivism Rawls asserts that:

Since justification is addressed to others, it proceeds from what is, or can be, held in common; and so we began from shared fundamental ideas implicit in the public political culture in the hope of developing from them a political conception that can gain free and reasoned agreement in judgment (PL100-101).

Rawls adds that the agreement which is achieved via political constructivism becomes stable by gaining “the support of an overlapping consensus of reasonable comprehensive doctrines” (PL 101). Indeed, as we will argue, the shared fundamental ideas of society and person which are implicit in the public political culture of democratic society are also inherent in reasonable comprehensive doctrines. They are the ideas of society as a fair system of cooperation and persons as free and equal citizens.

From the beginning Rawls regarded constructivism available when there are some common grounds upon which the procedure of construction can be built. In TJ he uttered that constructivism is an argument addressed to “those who disagree with us, or to ourselves when we are of two minds.” As a form of justification constructivism “presumes a clash of views between persons or within one person”, and seeks to convince others or ourselves. “Being designed to reconcile by reason, justification proceeds from what all parties to the discussion hold in common”. To justify justice as fairness to someone is to give her a proof from premises that we both accept and to show her that justice as fairness match her considered judgments. Thus proof is not justification. A proof simply exhibits logical relations between propositions. A proof

becomes justification once the starting points are mutually recognized. In other words, political constructivism, as a form of justification for the principles of justice as fairness, should proceed from a consensus (TJ 508-509). In this regard PL and TJ are quite similar.

So far we argued that political constructivism starts from particular shared ideas of society and person and tries to develop them into the political conception of justice via the power of practical reason. Now we can understand better the famous phrase by Rawls which is usually misinterpreted as a sign of his particularism and localism. In the first chapter of PL Rawls utters that the content of political conception of justice “is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society.”⁵² These fundamental ideas are particularly three: first, the idea of “society as a fair system of cooperation over time, from one generation to the next”, second “the idea of citizens (those engaged in cooperation) as free and equal persons”, and finally third “the idea of a well-ordered society as a society effectively regulated by political conception of justice” (PL 14). In our understanding, these three can be reduced to two: appropriate conceptions of *society* and *person*. In other words, the three aforementioned fundamental ideas cover different aspects of the fundamental conceptions of society and person which are embedded in the original position, and thus the political constructivism. In contrast to the mainstream interpretation which concludes from the above phrases that political constructivism only addresses long established liberal democratic states, in our interpretation, the above phrases implement that only those comprehensive doctrines which include the appropriate and required conceptions of society and person are

⁵² As Rawls puts: “This public political culture comprises the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge.... justice as fairness starts from within a certain political tradition” (PL 13-14).

addressed by political constructivism, no matter in which society of the world the persons who hold them live. As we will see in the next sections, only reasonable comprehensive doctrines share these fundamental ideas and thus might find justice as fairness convincing. Put in other words, I will argue that particular conceptions of person and society are taken for granted in the idea of the reasonable. As we will see, “the political conception of citizens as cooperating in well-ordered society”, as part of the idea of the reasonable, “shapes the content of political right and justice” (PL 103). In the next section, we elaborate by detail the particular conceptions of society and person which are engaged in Rawls’s particular account of constructivism, as his primary tool to justify justice as fairness.

3- Society as a Fair System of Cooperation and Persons as Citizens

First of all we should remind that both the conceptions of society and person, as characterized in political constructivism, are normative conceptions. They are both political (moral) conceptions. Given the aims of justice as fairness, they are conceptions suitable for the basis of democratic citizenship. As normative conceptions, they have to be distinguished from accounts of human nature and society described by natural and social sciences (PL 18 n). For further explanations, I pick up the idea of society.

Political constructivism perceives society as a fair system of cooperation over time, from one generation to the next. This conception of society is incompatible with viewing “the social order as a fixed natural order, or as institutional hierarchy justified by religious or aristocratic values” (PL15). The specific conception of society which is embedded in constructivism is distinct from regarding society simply as a system of coordinated activity, for example, set by orders issued by some central authority. In addition, it is very important that

cooperation be fair. Indeed this conception of society requires some specific standards that each party may accept, provided that others do the same. Two principles of justice as fairness characterize the fair terms of cooperation (PL 16). In other words, the two principles of justice, including the difference principle with its reference to the benchmark of equal division of advantages, formulate such standard.

This idea of society includes an idea of each participant's good, or rational advantage. The conception of good specifies what those who are engaged in cooperation, whether individuals, families, associations, or even a federation, are trying to achieve (As we will see this conception of good is part of each person, family or association's comprehensive doctrine).

The idea of society which exists in political constructivism includes the idea of reciprocity (As we will see in the next section, the idea of reciprocity is one of central element of reasonableness). "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"(PL 16). The idea of reciprocity lies between the idea of impartiality and the idea of mutual advantage. In other words, reciprocity is located between altruism and egoism (PL 50). The conception of society in political constructivism is a well-ordered society, defined as a society in which "everyone accepts and knows that the others accept the same principles of justice, and the basic social institutions satisfy and are known to satisfy these principles" (TJ 397). Reciprocity, as part of the ideal of society in political liberalism, is the assumed relation between individuals in a well-ordered society (PL 17).

We mentioned that the second conception which the principles of practical reason work with is the idea of person. Because of the fact that justice as fairness conceives society as a fair system of cooperation over time between generations, political constructivism adopts a particular conception of person which goes with this idea. Following the ancient, modern, and even medieval traditions of philosophy and law, political constructivism embodies an idea of person who takes part, or plays a role, in social life. Thus, justice as fairness conceives a person as “someone who can be a citizen, that is, a normal and fully cooperating member of society over complete life” (PL 18). Furthermore, political constructivism thinks of citizens as free and equal.

Since we begin from the idea of society as fair system of cooperation, Rawls assumes that “persons as citizens have all the capacities that enable them to be cooperating members of society” (PL 20). Conceiving of persons as full participants in a fair system of social cooperation, political constructivism ascribes to them two moral powers connected with different elements of the fundamental idea of society: First a capacity for a sense of justice and second, a capacity for a conception of the good. A sense of justice is the capacity to understand, to apply, and to act from the public conception of justice. It also expresses a willingness to act in relation to others on terms that they also publicly can endorse. The sense of justice is part of the idea of reasonableness. On the other hand, “the capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue a conception of one’s rational advantage or good” (PL 19). (Political constructivism also assumes that participants have the powers of reason (powers of judgment, thought, and inference) to a requisite minimum degree.)

Thus the original position models persons who at any time have a determinate conception of the good that they try to achieve. Such a conception covers an understanding of what is valuable in life. It also includes the scheme of final ends. The conception of good is part

of a person's comprehensive doctrine—religious, philosophical, or moral—by reference to which the value of one person's ends and attachments are understood. It is important to notice that in the political constructivism persons' conception of the good are not fixed but develops as they mature, and may change even radically over one's life-time (PL19-20). That is why, as we argued in our answer to the Islamic orthodoxy objection (objection 5) in chapter I, Rawls defines reasonable comprehensive doctrines as not totally fixed during the time. All in all, in political liberalism "persons" are

regarded as free and equal persons in virtue of their possessing to the requisite degree the two moral powers of moral personality.... These powers are associated with two main elements of the idea of cooperation, the idea of fair terms of cooperation, and the idea of each participant's rational advantage, or good (PL 34).

It needs to be emphasized the conception of person which is embedded in the political constructivism is a political conception of person (PL 29). This means that if we look at the presentation of justice as fairness and note how it is set up, no particular metaphysical doctrine about the nature of persons—such as Cartesian, Leibnizian, or Kantian; realist, idealist, or materialist —, appear among its premises, or if metaphysical presuppositions are involved, they are so general that they would not distinguish between the metaphysical views which mentioned (PL 29 n.).

The original position models persons who think of themselves as free in three respects. In the first sense of freedom the original position regards individuals as having the moral power to form, revise and rationally pursue a conception of good. For example, when a

person converts from one religion to another, or no longer affirm an established religious faith, political constructivism does not regard the converted individual as losing some of its constitutional rights. The converted person is regarded as still having the same basic rights and duties, owning the same property and is able to make the same claims as before, except in the case of those claims that are connected with her previous religious faith. (PL 30) A society “in which basic rights and recognized claims depend on religious affiliation and social class....has a different political conception of the person.” Such conception of society, from which history has many examples, lacks a conception of free and equal citizenship.⁵³ (PL 30), and as we will see later, in the extreme cases like the slave system, might lack any idea of the person.

The second respect in which political constructivism conceives persons as free is regarding them as self-authenticating sources of valid claims. Constructivism respects persons “as being entitled to make claims on their institutions so as to advance their conception of the good” (PL 32). This sense of freedom becomes more understandable if we compare it with the contrast view, the concept of person in slave system. Slaves are not counted as sources of claims. They are not counted as capable of having moral duties and obligations. Slavery lacks

⁵³ Rawls emphasized that one should avoid confusing non-institutional or moral identity, with the political or institutional identity. Citizens usually have both political and non-political commitments and identities. In political liberalism, the freedom is only concerned with the former rather than the latter. Indeed, political liberalism is totally compatible with the fact that some individuals, as part of their non-political identity, “may regard it as simply unthinkable to view themselves apart from certain religious, philosophical, and moral convictions, or from certain enduring attachments and loyalties.” However, these two aspects of individuals’ moral identity must reconcile. “On the road to Damascus Saul of Tarsus becomes Paul the Apostle. Yet such a conversion implies no change in our public or institutional identity” (PL 31).

any idea of the person. “Slaves are, so to speak, socially dead: *they are not recognized as persons at all*” (PL 33 emphasis added).

Finally, the third aspect in which persons are viewed as free is to regard them “as capable of taking responsibility for their ends” (PL 33). Political constructivism thinks of persons as capable of restricting their claims to the kinds of things the principles of justice allow. In our understanding, this idea of responsibility for ends is implicit in the idea of reasonable comprehensive doctrines. A political conception of the person articulates this idea of persons as responsible agents and “fits it into the idea of society as a fair system of cooperation” (PL 34).

So far we argued that political constructivism is developed from (1) the fundamental idea of society as a fair system of cooperation over generations in conjunction with (2) the idea of citizens as free and equal persons, and (3) the idea of a well-ordered society. We argued that these three ideas are parts of the particular conceptions of *society* and *person* which are taken for granted in the construction of the original position. Here we need to explain the link between the idea of a well-ordered society and two aforementioned ideas. Indeed, the idea of a well-ordered society seems to be a specific reformulation of what mentioned so far as the liberal democratic conceptions of society and person. In other words, the idea of the well-ordered society adds nothing new to political liberalism’s conceptions of society and person. As Rawls defines it from the beginning (TJ) a well-ordered society is one “designed to advance the good of its members and effectively regulated by a public conception of justice” (TJ 397). In PL Rawls asserts that to say a society is well-ordered means that that society has three features: “first ...it is a society in which everyone accepts, and knows that everyone else accepts, the very same principles of

justice; and second... its basic structure⁵⁴is publicly known, or with good reason believed, to satisfy these principles. And third, its citizens have a normally effective sense of justice and so they generally comply with society's basic institutions, which they regard as just" (PL 35). These three aspects of the idea of a well-ordered society in fact seem to be different aspects of the specific conceptions of society and person which political constructivism adopts. Rawls sounds clear regarding this when he says a well-ordered society is "a fair system of cooperation between reasonable and rational citizens regarded as free and equal" (PL 103).

From what argued so far it concludes that political constructivism seems to model only those individuals who endorse the fundamental conception of society as a fair system of cooperation and persons as free and equal citizens. Thus, political liberalism seems to be persuading only for those individuals who share these ideas. In the next section I will argue that only reasonable religious, moral or philosophical comprehensive doctrines share these understandings of society and person. I will clarify this point via analyzing the central role of the notions of reasonable and rational in justification of political liberalism. The argument is that these two moral powers cover the fundamental ideas of society and person which are modeled in political constructivism.

4- Reasonableness and Inclusion of Democratic Conceptions of Society and Person

Reasonableness is very significant part of political liberalism's conception of society. Put another way, the concept of reasonableness is closely tied with a particular conception of society, which is the idea of society as fair system of cooperation. Reasonable the rational seem to cover

⁵⁴ As we know, the basic structure is defined as the main political and social institutions of the society and how they fit together as one unified system of cooperation through generations (PL 11).

basic aspects of the idea of society as a well-ordered and fair system of cooperation and persons as free and equal citizens as modeled in political constructivism.

In fact, the structure of the original position and its particular features, are drawn from those democratic conceptions of society and person which are related with reasonableness and rationality. We noted that political constructivism attributes two moral powers to citizens. The first is a capacity for a sense of justice that enables them to understand, apply, and to act from justice as fairness. The sense of justice is connected to the idea of the reasonable. The second moral power is a capacity for a conception of the good. The capacity for the good is connected to idea of the rational. Reasonableness and rationality are two fundamental powers the original position ascribes to free and equal citizens in a well-ordered society.

The distinction between the “reasonable” and “rational” goes back to Kant, and it finds its particular form in Rawls. This distinction is expressed in the Kantian separation between the “categorical” imperative and “hypothetical” imperative (PL 48 n). For Rawls the reasonable and the rational are complementary to each other. They are closely tied to the two moral powers of persons in constructivism: rationality is connected to persons’ capacity to determine and revise their conception of good. Reasonableness is connected to their sense of justice that is their capacity to understand, apply, and act from justice (PL 108). Reasonableness means being “ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so”⁵⁵(PL 49). Rawls asserts very clearly that the

⁵⁵ In this dissertation I put aside the idea of the burdens of judgment from the conditions of the reasonable. According to this idea, the recognition of which is the second criteria of reasonable for Rawls, the more obvious sources of reasonable disagreement among individuals are: (1) The evidence bearing on the case is conflicting and complex. (2) Even where we agree fully about the kinds of consideration that are relevant, we may disagree about their weight. (3) Our concepts are vague we must rely on judgment and interpretation. (4)The way we assess

reasonable is part of the conception of the society as a fair system of cooperation: “*The reasonable is an element of the idea of society as a system of fair cooperation*” (PL 49- 50 emphasis added).

Reasonable person desires a social world in which all free and equal citizens can cooperate with one another on terms all can endorse. In a reasonable society all persons have their own rational ends they hope to advance and since everyone does their own part all persons

evidence and weight moral and political values is shaped by our total experience of life in a modern society citizens’ total experiences are disparate enough for their judgment to diverge. (5) There are different kinds of normative considerations on both sides of an issue. (6) Any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values (PL 56-57).

In the first chapter I briefly argued why within the context of Muslim majority societies we do not need an account of the burdens of judgment to explain pluralism. We argued that although Rawls claims that the burdens of judgment avoid skepticism (PL 62-63), some commentators have argued that the idea seems to suggest that we should not be certain about our moral, religious or philosophical beliefs. For example Gerald Gaus argues that accepting the burdens of judgment is incompatible with being ‘absolutist’ about your beliefs, something which based on experimental evidence most adult Americans are. See Gaus, *Justificatory Liberalism*, 134ff. Rawls’s theory of the burdens of judgments appears to be saying that reasonable persons must be skeptical about the ability of human reason to yield conclusive answers about the good. The burdens of judgment put important demands on religious doctrines to be reasonable. For example it seems that the burdens of judgment results in regarding all accounts of orthodox Shiite which believe in the idea of the just government of the Twelve Imam Mahdi at the end of the day as unreasonable. Thus viewed, the burdens of judgment exclude many traditional orthodox Shias from overlapping consensus. This seems to be incompatible with Rawls’s own view that the idea of a well-ordered society of justice as fairness needs to be compatible with the fact of plurality of reasonable but incommensurable comprehensive doctrines in the modern era. For such reasons, and similar to critiques such as Wenar, this dissertation puts aside the burdens of judgment from the criteria of reasonableness. See Leif Wenar, “Political Liberalism: an Internal Critique”, *Ethics*, 106, 1995.

benefit the social cooperation. A reasonable well-ordered society “is neither a society of saints nor a society of self-centered” (PL 54). Reasonable persons offer the fair standards which they view as justifiable to other reasonable persons, as the basis of social cooperation. Similarly, they are ready to discuss the fair terms other reasonable persons propose. The fact that a reasonable person offers fair terms which are reasonable for all to accept is part of the idea of reciprocity (PL 50). In other words, a reasonable person takes into account the consequences of her actions on others’ well-being.

To be reasonable “is related to the disposition to act morally” (PL 49 n). Although reasonableness is not the whole of moral sensibility, Rawls argues, “it includes the part that connects with the idea of fair social cooperation” (PL 51). It is by reasonableness that we enter the “public world” of others and stand ready to proposed, or to accept, fair terms of cooperation which determine the rules of public discourse. Thanks to reasonableness we respect the limits of public reason. The reasonable, is public whereas the rational is only private (PL 54). It is important to note that reasonableness is modeled in the original position by the fair and symmetrical setting of parties and the restrictions imposed on the information in which no one has superior bargaining position over others (PL 52-53). Put another way, persons’ capacity for a sense of justice is modeled within the original position by the conditions of symmetry (or equality) in which their representatives are suited as well as by limits of information imposed by the veil of ignorance. Furthermore, the capacity for a sense of justice, or reasonableness, is also modeled by the procedure of original position as a whole (PL 103-104).⁵⁶

⁵⁶ It is important to emphasize that the parties in the original position as artificial persons inhabiting a device of representation—the original position—are merely rational. In contrast to them, the persons that they represent are assumed to be both reasonable and rational (PL 104).

The rational is distinct from the reasonable. Rational is guided by familiar principles such as choosing the most effective means to an end, or selecting the more probable among alternatives. Rational agents lack the form of moral sensibility that supports the capacity to be reasonable. In other words, simple rationality lacks what Kant calls “the predisposition to moral personality” (PL 51n). However, rationality is not limited to means-ends reasoning. Rationality also expresses “a scheme of final ends and attachments together with a comprehensive doctrine in the light of which those elements are interpreted” (PL 108). Rationality applies to how one’s ends are given priority, and how they cohere with each other over the whole course of life. Neither rational is solely self-interested nor is every interest in benefits to the self which has it. Indeed “rational agents may have all kinds of affections for persons and attachments to communities and places, including love of country and nature” (PL 51). The same as reasonableness, rationality is modeled in the original position.

According to the idea of rationality persons are conceived as free in three senses (also mentioned earlier): “first, as having the moral power to form, to revise, and rationally to pursue a conception of the good; second, as being self-authenticating sources of valid claims; and third as capable of taking responsibility for their aims” (PL 72). These three senses of freedom, and the idea of rationality as a whole, are modeled in the original position by rational autonomy which attributed to the parties (v1).⁵⁷ In other words, the moral power of rationality is modeled by rational autonomy of the parties which inhabit the original position as a device of representation.

⁵⁷ Rational autonomy should not be confused with full moral autonomy, as a comprehensive view, which exists in Kant or Mill’s comprehensive liberalism. Full ethical autonomy is not taken for granted in political liberalism.

All in all, since Rawls regards free and equal citizens –reasonable persons in all societies—as both rational and reasonable, he ascribes to the parties in the original position two corresponding higher order interests so that their trustees to be able to develop and exercise their rationality and reasonableness (PL 74). Someone who has not developed and cannot exercise the two powers of reasonable and rational to the minimum requisite degree cannot be a normal and fully cooperating member of society over a complete life (PL 74), and thus is not modeled in political constructivism. Furthermore it we need to add that in Rawls’s account of practical reasoning, the reasonable cannot be stemmed from the rational. Probably this is one of the roots of the idea that for Rawls, neither in PL nor in LoP, stability can be reduced to a simply rational and Hobbesian modus vivendi (PL 52-53).

Connected to reasonable and rational is the idea of reasonable comprehensive doctrine. Reasonable comprehensive doctrine is a comprehensive doctrine which is affirmed by reasonable and rational persons (PL 59).⁵⁸ To argue that— joint with the conceptions of citizen as free and equal and of a well-ordered society— rational and reasonable are embedded in, or modeled by the original position, is equal to assert that reasonable comprehensive doctrines are embedded or modeled by political constructivism. A reasonable comprehensive doctrine exemplifies the two moral powers of reasonable persons. A comprehensive doctrine has three features.

First, a reasonable comprehensive doctrine is an exercise of theoretical reasoning: it covers the major religious, philosophical, and moral aspect of human life—the domain of values—in a (more or less) consistent and coherent manner. It includes conceptions of what is of

⁵⁸ Similarly, as we will see, one might argue that unreasonable and decent individuals affirm unreasonable and decent comprehensive views. See the final section of this chapter.

value in human life, as well as the ideals of personal virtue, that are to cover much of our nonpolitical conduct (PL 175). A comprehensive doctrine produces an intelligible view of the world for the person who believes in it (PL 59). Second, a comprehensive doctrine determines which values to count as having more weight and balances among values of the person when they conflict. In so doing a comprehensive doctrine is also an exercise of practical reason.

Thirdly, a comprehensive doctrine normally belongs to, or is an extension of, a tradition of thought with a specific history and intellectual movement. Thus, a comprehensive doctrine is not subject to sudden, unexplained, and random changes, particularly from outside. However, a comprehensive doctrine mostly tends to evolve in the light of what, from the point of view of its adherents, is conceived as persuading and sufficient grounds (PL 59).⁵⁹

As a result, the account of practical reasoning which is present in political constructivism addresses those individuals who hold reasonable comprehensive doctrines, no matter in which part of the globe, or in which society, they live. Thus all main conceptions of political liberalism which are dependent on justice as fairness, particularly those of overlapping consensus and public reason, address simply individuals who hold a *reasonable* religious, moral, or philosophical comprehensive doctrines throughout all countries of the world. Nevertheless, we need to clarify that only reasonable persons, neither decent⁶⁰ nor unreasonable individuals, are

⁵⁹We should avoid interpreting reasonableness of a comprehensive doctrine in an exclusive and tight manner. Rawls seems to count all familiar and traditional religious doctrines—Islam, Judaism, Buddhism, Christianity, Hinduism, Confucianism, etc.—either as reasonable or decent. Add to this the familiar secular views (PL 59-60). Furthermore, it is possible in some particular cases an unreasonable person affirms a reasonable doctrine in an unreasonable way. This does not make that doctrine unreasonable (PL 60 n).

⁶⁰ The idea of decent comprehensive doctrines is inspired by Rawls's debates in the part II of the ideal theory of LoP.

modeled in the original position. Indeed, only those comprehensive doctrines are modeled by the original position which already endorse, as a consequence of reasonableness, the democratic idea of religious toleration or reject slavery and religious persecution as “inherently unjust”. Political constructivism collects such settled democratic considered convictions of justice and tries to organize them—as exemplified within particular conceptions of society and person—into a coherent political conception, called by Rawls justice as fairness (PL 8).

That the fundamental democratic ideas of political liberalism are endorsed by any reasonable comprehensive doctrine in any part of the world is a point which is usually neglected in the mainstream literature on Rawls. In contrast to what is argued commonly, the validity of the arguments presented in political liberalism is not dependant on the pre-existence of particular liberal societies. Rather, political constructivism addresses those readers who already endorse the value of free and equal citizenship and democratic participation in general terms. Even a vague and common sense endorsement of these ideas is enough to be addressed by political liberalism. Peoples with many different views may reasonably embody the idea of free and equal citizenship in their comprehensive doctrines and hope for a just and democratic society based on fair cooperation. Political constructivism—and particularly speaking the original position—addresses all those individuals, no matter in which part of the globe they are located. Accordingly, to apply this conclusion to the case of Muslim world, political liberalism addresses democrat individuals from all Muslim societies rather than simply inhabitants of long established western liberal democracies.

Furthermore, it seems problematic to say political constructivism address or does not address for example Iran, Turkey, Italy, Canada, or Saudi Arabia, as countries. Countries *per se* cannot reject or endorse a political philosophical justification. Rather, it is more meaningful to

say *individuals* who live in Iran, Turkey, Italy, Canada, or Saudi Arabia may endorse or reject justice as fairness on due reflection and interpretation. The original position addresses reasonable persons who live under a theocracy, democracy, monarchy, Republic, or communist society. To use Rawls's division of countries in LoP into liberal democracy, decent hierarchical societies, burdens societies, benevolent absolutism, and the outlaw states, political constructivism addresses the reasonable individuals who hold the fundamental democratic ideas of society as a fair system of cooperation and persons as free and equal citizens in any of these countries. The original position models those individuals who, as part of their reasonableness, endorse the ideal of full political autonomy for their present or future well-ordered society.⁶¹ To quote Rawls, political constructivism exemplifies "an ideal description of what a democratic society would be like" (PL 70).

If political constructivism had modeled only individuals who live in long-standing liberal societies, it would have no justificatory force beyond the Western democracies. However, as a result of the universalism which is embedded in the crucial notion of reasonableness, that is not the case. Original position represents all reasonable comprehensive doctrines. The mainstream interpretation is problematic when it says political constructivism presume the existence democratic citizenship or a well ordered society in the external world in order to be applicable. On the contrary, political liberalism is not dependant on the external existence of well-established liberal institutions to have a justificatory force.

⁶¹ As Rawls implements many societies in the world, most of them indeed, are non-well-ordered in the strict sense of the term and very few of them, if any, satisfy the ideal of citizenship as presented in justice as fairness. As he puts "existing societies are of course seldom well-ordered in this sense, for what is just and unjust is usually in dispute" (TJ 5).

To complete our argument, in the final section I compare the conceptions of society and person connected to reasonableness, with those which are part of the idea of decency.

5- Decent Conceptions of Person and Society

Our interpretation of the role of the reasonable in the original position becomes clearer if we compare reasonableness with decency. The concept of decency is of significant importance for Rawls's theory of international relations. Indeed both reasonableness and decency are significant parts of the later Rawls's account of practical reasoning. Roberts induces that later Rawls develops two accounts of practical reason: one based on the reasonable and the other based on the idea of decency (Roberts, *Constructivism* chapter II). In fact each of these concepts includes particular ideas of person and society. Whereas the conceptions of person and society embedded in idea of the reasonable are free and equal citizens who are involved in a fair cooperation to regulate the basic structure of a well-ordered society, the conceptions of person and society embedded in the idea of decency are different.

Although what Rawls attributes to decency in LoP is primarily concerned with the people, rather than the individuals, a further excavation of LoP shows that decency is a normative idea of social cooperation, similar to reasonableness, though weaker than it. To quote Rawls "*I think of decency as a normative idea of the same kind as reasonableness, though weaker*", "*that is, it covers less than reasonableness does*" (LoP 67 emphasis added).

The decent view of society is "associationist". The decent perceives society as a decent hierarchical community, and regards persons as member of different religious (or nonreligious) communities, rather than free and equal citizens (LoP 64). The decent view of society is "associationist". The decent perceives society as a decent hierarchical community, and

regards persons as member of different religious (or nonreligious) communities, rather than free and equal citizens (LoP 64). Both reasonableness and decency result in a particular conception of justice: Reasonableness concludes justice as fairness (or another reasonable conception of justice which satisfies three criteria of the family of reasonable conceptions of justice), and decency results in a common good, or associationist idea of justice. In other words, the decent endorses a common good idea of justice rather than justice as fairness.

In LoP a *decent* people honors the Laws of People. A decent system of law respects *human rights* and imposes duties and obligations on all *persons* in its territory. A decent system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of each person in the society. In addition, there must be a sincere conviction on the part of judges and other officials of a decent society that the law needs to be guided by a common good idea of justice.

Conceiving decency as a normative idea which is weaker from reasonableness—though from the same family—one can speak of reasonable and decent individuals similar to liberal and decent peoples. We argued that reasonable persons only affirm reasonable comprehensive doctrines. Similarly we may assume that decent persons hold only decent comprehensive doctrines. Besides, both decent and reasonable persons, similar to decent and liberal peoples, are rational in the meanwhile. In other words, both decency and reasonableness regard persons as owning two moral powers. Both the decent and the reasonable are rational. To quote Rawls: “in an appropriate original position (at the second level) with a veil of ignorance, the parties representing these decent hierarchical peoples are fairly situated, *rational*, and moved by appropriate reasons” (LoP 63 emphasis added). Similar to reasonableness and as part of a moral ideal, decency is not derived from rationality. The same as the reasonables, decent and

rational persons are responsible members of their society and play a part in social life and cooperation (LoP 66). Comparable to the fact that reasonableness views society as a fair system of cooperation, decent individuals view society as a decent hierarchical system. If one considers society as a decent hierarchical system, she presumes persons as members of corporations, associations, or groups rather than free and equal citizens. A decent conception of society lacks the democratic idea of citizenship, according to which one person has one vote (LoP 73). Furthermore, reasonable persons are already decent, but decent persons are not necessarily reasonable.

As a result, decency includes weaker form of the more or less same families of society and person as compared to reasonableness. That is because decency is correspondent with the minimum requirements of justice as necessary if we are to have a society which imposes genuine obligations on its members, rather than a society that merely coerces its subjects who are unable to resist state orders. For Rawls, “definite [minimum] conceptions of society and person are essential elements of any conception of justice” and community (PL 109-110). Rawls argues that all the countries and political communities need to satisfy something similar to what Hart calls minimum content of natural law. Those legal systems which are neither reasonable nor decent, lacking the minimum standard of social cooperation become slave system or something close to it. That is why Rawls argues that every society must honor certain human rights if it is to give rise to morally binding obligations and not merely coercion. Human rights determine the minimum benchmark of social cooperation which is morally required from all individuals through the world.

Human rights which are part of the idea of decency contain a minimum set of universal rights including the right to life (means of survival and security), to liberty (freedom

from slavery, and coerced occupation, and a sufficient measure of liberty of conscience to ensure freedom of religion), to personal property, and to formal equality before law as expressed by Hart's conception of natural justice (that similar cases be dealt with similarly). This conception of human rights, as part of the idea of decent, cannot be rejected as liberal or Western (LoP 65).

In our understanding, as a result of the universal conceptions of decency and human rights considered together, it seems that all the individuals in all countries of the world (including Muslim societies) have the moral duty, on their own part, to transform their society into decent one, in case it is for not decent yet. For example if an individual is living in an outlaw state, a society burdened by unfavorable conditions, a benevolent absolutist state, or any other kind of non-decent society, have the moral obligation to turn their society into a decent one. This moral obligation does not depend on the type of comprehensive doctrine they own and is universal. For Rawls a non-decent state is illegitimate, no matter whether it is supported by the majority or minority and every individual has the moral duty to change the non-decent political system by reform or revolution. "It is characteristic of liberal and decent peoples that they seek a world in which all peoples have a well-ordered regime" (LoP 113).

In addition, being absolutely universal, those rights determine the limits of pluralism among cultures for political liberalism (LoP 80). In other words, any normative conception of society and person, to remain valid, needs to meet this minimalist understanding of human rights. "Otherwise we may not have a society but something else" (PL 109-110 n), like a slave system. According to Rawls, "a slave society...lacks the idea of social cooperation" (LoP 65). It lacks a decent system of law, and its economics is driven by commands imposed by mere force and exploitation. Nor we have any idea of person in slave system. For Rawls slaves are socially dead. "They are not recognized as persons at all" (PL 33). From this we can conclude that a doctrine is

unreasonable when it lacks the minimum amount of social cooperation which is universally binding for all doctrines according to Rawls. In other words, unreasonable comprehensive doctrines, such as the guardianship of the jurist (see chapter V), do not have any conception of society and person.

6- Political Constructivism and Exclusion of Decent and Unreasonable

We what asserted we may conclude that the decent and unreasonable comprehensive doctrines are excluded from political constructivism as a form of justification. Put another way, the original position neither addresses the decent, which has different and minimalist conceptions of person and society, nor does it address the unreasonable, which does not have a conception of society and person at all. Nevertheless, one might ask, is being so a problem or shortage for political liberalism?

As reaction to this objection, first of all I need to say that political liberalism *does* have other methods of justification which primarily address decent and unreasonable, rather than reasonable, individuals. This method which is extensively discussed in *Part Two* of this dissertation is called justificatory ethics or declaration plus conjecture. Secondly, I would add that not addressing the decent or the unreasonable is not a fault of political constructivism *per se*. Indeed, as we mentioned earlier, we have to start justification from a shared ground. In political liberalism this shared ground is provided by the idea of the reasonable. All reasonable comprehensive doctrines implicitly or explicitly affirm the three fundamental democratic ideas of “society as a fair system of cooperation”, of “citizens as free and equal”, and of “a well-ordered society” as a common ground. Political constructivism collects such shared ideas from reasonable comprehensive doctrines, regardless of which country those doctrines belong to, and

elaborates them into justice as fairness as a candidate for the most reasonable conception of justice. If there is not any common ground, how we can start constructivism at all?

Finally, I want to put a note on reasonable religious doctrines that are addressed by political constructivism. In chapter V I will demonstrate how Mehdi Haeri Yazdi develops a reasonable account of Shiism via defending social contract against alternative interpretations of Shiism which are invoked to support the Islamic guardianship. Another typical example which might be mentioned here is Locke's doctrine of free faith as illustrated in his *A Letter Concerning Toleration*. There Lock regards religious toleration as part of the comprehensive doctrine of Christianity. Locke argued that no man has given authority over another by God. No man can abandon the care of his own salvation to the care of another person, for example the clerics. For Locke the understanding and knowledge cannot be compelled by force. Locke regarded church as a voluntary association and regarded no man as bound to any particular church. In other words, the persons should be able to choose membership to churches freely and voluntarily. For Locke excommunication does not affect civil rights and relationships. "Only faith and inward sincerity gain our salvation and acceptance with God." (Lock, *Toleration* 129-154⁶²) Locke interpreted Christianity in a reasonable way and reconciled it with democratic constitutionalism. Similar accounts of free faith are existent in all major religions.

We conclude our debates in this chapter by asserting that only reasonable interpretations of Islam (for example Islam as interpreted by Haeri Yazdi , Fadel⁶³, or An-

⁶² John Locke, *Two Treatises of Government with A Letter on Toleration*, Oxford: Basil Blackwell, 1956; quoted in Rawls; PL 145 n.

⁶³ Mohammad Fadel, "The True, the Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law", *Canadian Journal of Law and Jurisprudence*, Vol. 21, No. 1, 2008.

Naim⁶⁴) are addressed by political constructivism. Neither the decent Islam (for instance Islam of Hadji Haidar⁶⁵ or the Ottoman Rulers⁶⁶), nor the unreasonable understanding of the religion (for example guardianship of the jurist theory⁶⁷ or Sayyed Qotb⁶⁸) are modeled by the original position. Indeed this is the same for all religious and secular comprehensive views. Within the context of Muslim majority societies, depending on their interpretation of Islam or any other comprehensive view, individuals may regard justice as fairness as persuading and reasonable, or might reject it. However, according to what explained above, whoever rejects political constructivism is not necessarily unreasonable. Decent persons, which are much respected for Rawls, high probably, will reject constructivism in favor of a common good idea of justice based on decent understandings of person and social cooperation. Decent persons need to be tolerated according to Rawls.

⁶⁴ Abdullah Ahmad An-Naim, *Islam and the Secular State; Negotiating the Future of Sharia* , Harvard University Press, 2008.

⁶⁵ See the first session of first chapter.

⁶⁶ See LoP, Second part of Ideal Theory, Kazanistan example, 75ff.

⁶⁷ See Chapter V

⁶⁸ See for example Roxanne.L Euben, *Enemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationalism*, Princeton University Press, 1999, 53f.

PART TWO—STABILITY: OVERLAPPING CONSENSUS

Introduction to PART TWO

In *Part One*, we investigated about the justification of justice as fairness in non-western societies. In *Part Two*, we will consider how justice as fairness can be stable in non-western societies, particularly speaking of Muslim majority ones. This division of political theory into two parts is inspired by Rawls himself.

In Rawls's major political philosophy works, starting from his early liberal theory in TJ, to his later account in PL— which is the main focus of this dissertation—and even his theory of international relations as developed in LoP, principles of justice are presented in two main stages: in the first stage the most reasonable principles of justice—either for the domestic or international case— are selected from among a list of rival principles, without taking into account stability. Particularly the effects of the special psychologies such as envy, self and class interests and so on are neglected. In political liberalism the political conception of justice which is worked out for the basic structure of society as the outcome of a certain procedure of construction in the first stage needs to be presented as freestanding.

In the second stage, however, we check whether the society regulated by the principles selected in the first stage is stable. *Part Two* of this dissertation is concerned with the second stage of Rawls's philosophy. Both in the case of domestic and international, the argument

for the principles of justice is incomplete unless we have these two stages and unless we are able to show the political conception selected in the first level is sufficiently stable in the second level. The second level is more realistic than the first. These two parts of the argument for justice are complementary to each other. Unless one is successful, the other is not fully complete. This means that the reflective equilibrium and the original position, as discussed in the chapters II and III of this dissertation as two main methods of justification for justice as fairness, are incomplete without an account of stability for right reasons. For later Rawls the most reasonable account of stability—what he refers as stability for rights reasons—is what he famously calls an overlapping consensus. An ideal account of stability needs to be grounded on an overlapping consensus, rather than a strategic and purely rational balance of power and self-interest called a *modus vivendi*, to be fully legitimate. This last point is emphasized by Rawls a lot. Thus, Joshua Cohen interprets the Rawlsian two part argument for justice this way:

The aim of the first stage is, roughly, to show that the content of a conception is attractive—that is, organizes a set of fundamental political values in a plausible way. The aim of the second stage is to determine whether a conception of justice that is in other respects attractive is also *realistic*—in particular,that different people, brought up within and attracted to different traditions of moral thought might each affirm the conception as the correct account of justice. (Cohen, “Pluralism” 273 emphasis added)

Sometimes Rawls adds one intermediate institutional stage to the two levels mentioned above. After that in the first stage the principles of justice are argued for by the

symmetrically situated parties⁶⁹ who are to select the most reasonable principles of justice under the reasonable constraint of a veil of ignorance⁷⁰, in the second intermediating part of the argument, the sorts of institutions that justice as fairness advises, and the kinds of duties and obligations it imposes on individuals are examined. In the intermediate level we see the practical and institutional consequences of justice as fairness in the basic structure of the society which is regulated by it.⁷¹ As Rawls puts in TJ, these three parts of justice as fairness are intended to make a unified whole and are supporting one another (TJ 507). In this dissertation we have not discussed the intermediate stage of Rawlsian theory within the context of Muslim societies.

In PL, corresponding to these two levels Rawls attributes two fundamental questions to political liberalism. In each of the two parts of this dissertation we have tried to answer each of these two questions within the context of Muslim majority societies. The first question, as Rawls puts, concerns “what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?” (PL 3) The second fundamental question which political liberalism refers to is the possibility of an account of stability which is compatible with reasonable pluralism of modern democracies: “what are the grounds of toleration....given the fact of reasonable pluralism as the inevitable outcome of the

⁶⁹As we saw before in PL Rawls adds that in the original position the constraints of the veil of ignorance and the symmetrical pose of parties exemplify two moral powers of real persons: their capacity for a sense of justice, or their being reasonable, and their capacity for a conception of good, or their being rational.

⁷⁰This stage of the argument for justice as fairness is correspondent with the first part of TJ.

⁷¹This stage corresponds with the second part of TJ. Although not as bold as TJ, this part also exists in PL, particularly if we consider the least debated part three of PL, entitled “institutional framework”.

free institutions?⁷²” (PL 3-4) The chapters of this dissertation are arranged according to our conjectural answer to these two stages/questions of Rawlsian political philosophy within a Muslim majority context. We can combine these two fundamental questions within our specific context by asking: “how is it possible for there to exist over time a just and stable democratic society of free and equal citizens, within the context of Muslim majority societies with strong pro-democracy movements, which remains divided by different comprehensive religious and moral doctrines?” Indeed this is the central question this dissertation tries to answer from a Rawlsian perspective.

In *Part One* (chapters II and III) we dealt with the justification of the justice as fairness in Muslim societies. There we investigated how two main justificatory tools of political liberalism, that is reflective equilibrium and political constructivism, justify justice as fairness within the context of non-western societies, including Muslim majority ones. The conception of justice which is selected in the first stage of our political theory needs to be presented as freestanding, without being based on any nonpolitical, metaphysical, religious or moral doctrine. Since this is hopefully done and—to follow Rawls (PL lx) — a candidate for the most reasonable principles of justice is in hand as a result of the justifications presented in the first stage (chapters II and III), we are ready to get involved with the second stage in *Part Two* to check whether our political conception is sufficiently stable within our particular context of non-western countries.

As a result, the subject of *Part Two* of this dissertation is stability of the justice as fairness within the context of Muslim societies. The same as *Part One*, the chapters of *Part Two* are divided into two. In chapter IV we develop our own interpretation of the later Rawls’s account of stability, particularly his idea of an overlapping consensus. Another central

⁷² This part of the argument in PL is partly (not totally) correspondent to the third part of TJ.

conception which is introduced in this chapter, as a complement to the idea of an overlapping consensus particularly within the context of religious societies, is the idea of justificatory ethics, or declaration plus conjecture. In chapter IV we argue that in contrary to many objections to later Rawls, political liberalism does have justificatory tools which primarily address religious citizens. This justificatory tool is justificatory ethics.

Finally in chapter V, as a work of justificatory ethics and as an example of full Islamic justification for justice as fairness, I demonstrate how in *Philosophy and Government* Mehdi Haeri Yazdi develops an account of Islamic political theory which includes the appropriate democratic conceptions of society and person, as discussed in chapter III as the fundamental ideas and input of political constructivism. Furthermore, chapter V is part of the idea of stability of justice as fairness in Muslim countries because of its reliance to Islamic resources which is central in the idea of justificatory ethics. The final chapter can be considered as an argument for an overlapping consensus within the Muslim majority context by showing how Shiite doctrine is a reasonable comprehensive doctrine.

CHAPTER IV— Stability of Justice as Fairness in Muslim Majority Societies

1- The Idea of an Overlapping Consensus

From the beginning stability has been a major philosophical concern for Rawls. TJ starts by this famous utterance that justice is the first virtue of social institutions, as truth is the most significant virtue of systems of thought (TJ 3). However, couple of pages later Rawls adds that also justice has a significant priority, a conception of justice is incomplete unless it is regularly complied with and its basic rules are acted upon by a significant number of citizens. In other words, justice is incomplete unless it is stable: “When infractions occur, stabilizing forces should exist that prevent further violations and tend to restore the [just] arrangement” (TJ 5-6).

In political liberalism stability includes two questions: the first question is whether persons who grew up under just institutions of a society regulated by the political conception over time obtain a sufficient sense of justice to comply with just institutions. The second question is that whether the political conception can be the object of an overlapping consensus among comprehensive doctrines within that particular society. For Rawls overlapping consensus is the most reasonable basis of social unity available to citizens of a modern constitutional democracy. In an overlapping consensus, a reasonable conception of justice needs to “be embedded in various ways—or mapped, or inserted as a module—into different doctrines citizens affirm” (PL 387). Later we will elaborate this point further. To borrow the term from Joshua Cohen, overlapping consensus is a pluralist consensus test; the political conception that would not be supported by at least some of the doctrines that persist within a society regulated by

it, and so could not be the focus of an overlapping consensus, fails to meet the pluralist consensus test and is, to that extent unacceptable (Cohen, “Pluralism” 270-271).

Particularly it is important to see whether those doctrines which are likely to persist and have a lot of adherents endorse justice as fairness. For example, within the context of Muslim majority societies, we might check whether justice as fairness can gain the support of the orthodox and popular account of Islam. If we are able to show that the traditional and orthodox Islam within that particular Muslim community endorses justice as fairness, then we can be almost sure that the more liberal interpretations of Islamic doctrine also will support liberal constitutionalism⁷³. Thus the overlapping consensus will be strong. Yet, it is important to note that the content of political conception should not be influenced by any religious, moral, or metaphysical doctrine. As Rawls argues, “a political conception of justice is not dependant on any particular comprehensive doctrine, including even agnostic ones” (PL 387). Thus, Islam as a comprehensive doctrine of good would not affect the content of an overlapping consensus.

Indeed, overlapping consensus is the most reasonable basis of stability in PL. Later Rawls noticed that stability of justice as fairness for right reasons is not possible unless the doctrines which are affirmed by the majority of society’s politically active citizens are not in conflict with political conception of justice. Thus, he introduced the idea of overlapping consensus in which the doctrines endorse the political conception each from its own view (PL 134). However, an overlapping consensus is only achievable among reasonable comprehensive doctrines. Unreasonable doctrines exclude themselves from the overlapping consensus by rejecting the idea of fair social cooperation. It is left to reasonable citizens individually, or as a

⁷³ For this point I am indebted to Andrew March, *Islam and Liberal Citizenship*, pp. 80-87.

member of an association, to settle how they think the values of the political justice are related to their nonpolitical values in their comprehensive doctrine.

Overlapping consensus is tied with the liberal principle of legitimacy. According to this liberal principle: “Our exercise of political power is proper and fully justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational.” (PL 217) According to the liberal principle of legitimacy, in a constitutional democracy, the coercive power of state which citizens may impose over each other while voting, or in case they are a member of one of the three parts of public political forum (PL 213-216) is legitimate only when the individual members of that particular society already have endorsed the fundamental ideas of justice and liberal constitutionalism from within their comprehensive doctrine.

PL regards it as “unreasonable or worse to want to use the sanctions of state power to correct, or to punish, those who disagree with us” (PL 138). As a result the conception of justice which is supposed to serve as a common ground for the coercive power of state is needed to be endorsed by all citizens with different comprehensive views (PL 137; PL 216-217). In other words, this is part of the ideal of legitimacy that the principles of justice which are justified in constructivism also need to be embedded in various ways into different doctrines individuals affirm. As we will see, the liberal principle of legitimacy is an ideal, a realistic utopia, which a constitutional democracy needs to get closer to it, though may never reach it thoroughly and completely.

Overlapping consensus, or the liberal ideal of legitimacy, is based on the dialectics between justification and legitimation. As Maffettone argues justification and legitimation are two terms which are sometimes confused in the Rawlsology literature, however, we should distinguish between them. Justification looks for the best theoretical argument, goes top-down, and is rooted in the moral and metaphysical bases of a specific culture. Legitimation, on the other hand, is normally based on an institutional and legal practice, concerns mainly with the political process, goes bottom up, and does not directly appeal to the moral and metaphysical roots of a culture. Justification and legitimation must be regarded as complementary, as exemplified in the idea of an overlapping consensus (Maffettone, *Rawls* 38; also see chapter 9 of Maffettone's book on Rawls).

An overlapping consensus includes a particular kind of justification from the side of each citizen in the civil society, which Rawls calls full justification.⁷⁴ Full justification is carried out by individual citizens as members of background culture or within their non-public political debates.⁷⁵ The political conception of justice works as a module in full justification by individuals. As part of the second stage of the two levels of Rawlsian political theory, full justification is left without orientation if, in our thesis, we do not have the first stage which provides a political constructivist argument for the principles of justice as fairness (remember *Part One* of this dissertation). In other words, full justification, as part of the stage of stability (*Part Two*), comes to the scene only as a complement to the constructivist justification as modeled in the original position and reflective equilibrium (*Part One*). In full justification the individual accepts a political conception and fills out its justification by embedding it into her

⁷⁴ For further explanation on the definition of full justification see PL, 385f.

⁷⁵ For the moment we neglect the idea of *proviso* in our debate.

comprehensive doctrine as either true or reasonable. Similar to the justification in the original position and the reflective equilibrium, in full justification we do not suspend the acceptance of the principles of justice in case other persons reject them as unacceptable. Put in other terms, in full justification we do not look to the content of the doctrines of other individuals (PL 386).

Overlapping consensus is part of the idea of a “realistic utopia” of a just and well-ordered constitutional democracy, as developed in the first part of the ideal theory in LoP (LoP 11f). Speaking about domestic justice in a liberal democracy, one of the main roles Rawls attributes to political philosophy there is to probe the limits of our practicable political possibility and reconciles us to our social world.⁷⁶ This happens through the idea of political philosophy as a realistic utopia. According to Rawls political philosophy is realistically utopian when it extends what is ordinarily thought to be the limits of practicable political possibility. In doing so, political theory reconciles us to our political and social condition. For Rawls “our hope for the future of our society rests on the belief that the social world allows a reasonably just constitutional democracy existing as a member of a reasonably just Society of Peoples” (LoP11).

One might argue that overlapping consensus as a realistic utopia of stability for right reasons is an ideal theory. From the beginning Rawls was primarily occupied with ideal theory, rather than nonideal one, in his work. In the first chapter of TJ he declares that his book primarily addresses ideal situation. In both TJ and PL the limitation on Rawls’s discussion on justice is that for the most part he examines the principles of justice that regulate a well-ordered society, rather than a nonwell-ordered one. In ideal theory we assume that everyone acts more or less justly and firmly upholds just institutions. Here, we more or less put aside the fact that the individuals in the real world are for example cautious, jealous, self and class-interested and rather ask what a

⁷⁶ View also LHPP 10f and JFR 1f.

perfectly just society would be like. In ideal theory we consider primarily what Rawls in TJ calls “strict compliance” theory, as opposed to “partial compliance” theory in which we study the principles that govern our dealing with injustice, such as the theory of punishment, the doctrine of just war, and civil disobedience. Rawls justifies reliance primarily on ideal rather than non-ideal situation this way:

Obviously the problems of partial compliance theory are the pressing and urgent matters. These are the things that we are faced with everyday life. The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems..... At least, I shall assume that a deeper understanding can be gained in no other way (TJ 7-8).

The same seems to be the case with the almost ideal situation overlapping consensus addresses. As Rawls puts in political liberalism, without addressing the ideal theory as the most desirable situation regarding the legitimacy and justice “the desire for change lacks an aim” (PL 285). Thus, one might argue that overlapping consensus shows our aim from social reform, without fully addressing the requirements of justice in what is called the transition period, when the society is moving from a unjust to a more or less (though not perfectly) just and ideal destination. Overlapping consensus is an attempt to model the conditions in which justice, as opposed to *modus vivendi*, is possible (Stemplowska, “Ideal Theory” 337). In this interpretation, overlapping consensus determines vision of what is the best that can be hoped for concerning stability (Wenar, “Rawls” Stanford Encyclopedia), and constitutes Rawls’s “solution to the

venerable problem of characterizing the relationship between philosophical theory and political practice”(Simons, “Ideal” 6).⁷⁷

However, for Rawls it is very important not to confuse the idea of *an unrealistic utopia* with that of *a realistic utopia*. Rawls openly disagrees with the idea that overlapping consensus is utopian, in the sense that there are not sufficient sociological or psychological forces either to create an overlapping consensus (when one does not exist), or to yield one stable (when it exists) (PL 158). To the aforementioned objection which says that stability for right reasons is a real utopia rather than realistic one Rawls answers that if that was the case, political philosophy could not provide us “a long-term goal of political endeavor” that gives meaning to our actions. Thus we would be trapped by hopelessness and nihilism. But this is not the way Rawls views human nature. For Rawls, following Kant, human beings are moral creatures. If a democratic regime cannot be stable for right reasons, and if overlapping consensus is simply an unrealistic utopia, and if human beings are largely amoral creatures who may coordinate with each other in the most optimistic case only as a *modus vivendi*, similar to Kant one might ask “whether it is worthwhile for human beings to live on the earth” (LoP 128).

The idea of overlapping consensus works in conjunction with four ideas: the idea of public justification, the idea of stability for the right reasons, and the liberal principle of legitimacy, and the wide and general reflective equilibrium. Thus, public justification happens when all the reasonable members of a political society achieve a full justification of the political conception by embedding it in their reasonable comprehensive doctrines. Put another way, in public justification all reasonable citizens “taken collectively” are held in general and wide

⁷⁷ All the quotations from Stemplowska, Wenar and Simmons are on Rawls’s general distinction between ideal and nonideal theory. I applied them to our debate over overlapping consensus.

reflective equilibrium in affirming the political conception of justice (PL 388). This may happen only when there is an overlapping consensus in a particular society in which all politically active members of the society are involved. Indeed there is no public justification without a reasonable overlapping consensus. In a public justification individuals give weight to the considered convictions of other reasonable citizens in a general and wide reflective equilibrium. Granting this, for Rawls public justification is the best justification of the political conception that we can have at any time in a particular society (PL 388).

In chapter II we discussed that wide reflective equilibrium is dialogue rather than a monologue. Here it should be added that public justification is also a dialogue, rather than monologue, in spite of some critiques accusation. This is so because in a public justification individuals are involved in a wide and general reflective equilibrium in which they take into account the considered convictions of other citizens. If in a particular society each citizen endorses the political conception on due reflection we have a well-ordered and ideal society. In a well-ordered society which is regulated by political conception we have a wide and general reflective equilibrium. In such ideal situation, the same political conception is affirmed in every person's considered judgments (PL 384 n). Thus, an overlapping consensus is achieved after both wide and general, or what Rawls calls "full reflective equilibrium" by almost all citizens. In other words, an overlapping consensus is carried out in a society when there is a public point of view which is mutually recognized by all individuals in full reflective equilibrium. The wide reflective equilibrium in PL has no significant difference with the wide reflective equilibrium as presented in TJ, although the idea of an overlapping consensus is absent in the latter. We should remember that wide and general reflective equilibrium belongs to the background culture and non-public political discourse (what Habermas calls public sphere), rather than public political

discourse. All in all, for Rawls the basis of social unity is the most reasonable if all the citizens are in wide and general reflective equilibrium about the most reasonable conception of justice from their own point of view.

Later Rawls agrees that there are different reasonable political conceptions and thus we have many forms of political liberalisms, among which justice as fairness is only one (PRR 744). According to him each member of the family of reasonable liberal conceptions of justice, and thus the basis of each political liberalisms has three characteristic principles: first a political conception needs to contain a list of basic rights and liberties of the kind familiar in a constitutional regime. The second it needs to assign these rights, liberties, and opportunities a special priority with respect to the claims of the general good, economic equality, and perfectionism values. The third a reasonable political conception, among which justice as fairness is only one, assures for all citizens the requisite primary goods to enable them to make intelligent and effective use of their freedoms. This list of the primary goods also demands a principle of distributive justice (LoP 14).

Rawls asserts that a society which has achieved an overlapping consensus satisfies these three characteristics:

- a. Its basic structure of society is effectively regulated by one of a family of reasonable liberal conceptions of justice (or a mix of them), which contains the most reasonable conception. For Rawls the most reasonable political conception is justice as fairness.
- b. According to Rawls all comprehensive doctrines in a well-ordered society endorse some member of this family of reasonable conceptions (for example justice as

fairness), and citizens affirming these doctrines are in an enduring majority with respect to those unreasonable doctrines rejecting *each of that family*.

c. Public political discourse, when constitutional essentials and matters of basic justice are at stake, is decidable on the basis of reasons specified by one of a family of reasonable liberal conceptions of justice, one of which is for each citizen the most (more) reasonable. This is the ideal of public reason (PL xlvii-xlviii).

Finally it should be emphasized that overlapping consensus should not be confused with empirical consensus, as is the case for Walzer's moral minimalism⁷⁸, for instance. This means that an overlapping consensus is not the empirical intersection of the existing religious, moral, and philosophical doctrines in a particular society, when we have taken their content as fixed and given. Rawls considers confusion between these two ideas of consensus as "fatal" in understanding PL (PL 389). Joshua Cohen also emphasized on the distinction between empirical consensus and overlapping consensus (Cohen, "Minimalism" 200). Overlapping consensus is not a kind of overlap which is already existing in a particular society—even a liberal one with a more or less long tradition like United States—which only needs to be articulated as a coalition of ideas.

As a result, the fact that political liberalism regards the political conception of justice as the subject of overlapping consensus among different reasonable comprehensive religious, philosophical and moral views does not mean that overlapping consensus is the same as empirical consensus. In other words, to find a reasonable political conception we do not look at

⁷⁸ See Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, University of Notre Dame Press, 1994.

known comprehensive doctrines in our society with the aim of striking a balance or average between them. Overlapping consensus is not a compromise among a sufficient number of the doctrines actually available in our society by tailoring the political conception to fit those doctrines. “Doing that appeals to the wrong idea of consensus and makes the political conception political in the wrong way” (PL xlv).

Only in an exceptional case when we have a fully just and well-ordered society empirical consensus and overlapping consensus would coincide. In other words only when, if ever, the realistic utopia is achieved these two ideas of consensus would be the same. Apart from that we should be careful to avoid considering the political conception as freestanding in the wrong way by confusion between overlapping consensus and empirical consensus.

2- What if Public Justification Fails?

Here one might reasonably ask: what Rawls’s sophisticated account of stability does offer to those nonwestern societies, for example Middle Eastern ones, which are attempting to develop liberal institutions for the first time, however lack a strong public liberal democratic culture? Going back to the fundamental question of this dissertation how is it possible to establish a constitutional democracy in a Muslim majority society, or any other kind of society, which is divided among reasonable, decent and unreasonable individuals, rather than constituting only of reasonable persons? In other words, what if public justification or full reflective equilibrium, or full overlapping consensus, fails in a society? As Ferrara argues, this situation is not only the

case with non-western societies. Many Western European societies are also divided among reasonable, decent and unreasonable doctrines (Ferrara, “Hyperpluralism” 1-4).⁷⁹

This point might seem challenging especially if we consider that according to the liberal principle of legitimacy a constitutional democracy is not fully legitimate unless it has achieved a public justification or full (wide and general) reflective equilibrium. Put in another way, it seems that unless all the members of a political society carry out a justification of the political conception by embedding it in their own comprehensive doctrines, we do not have a fully legitimate liberal regime. As argued earlier, overlapping consensus is a test for full liberal legitimacy of a constitutional regime: if the full overlapping consensus, in conjunction with the general and wide reflective equilibrium and public justification, fail in a particular society, regulation of that society’s basic institutions according to justice as fairness would not be legitimate from a the perspective of the liberal principle of legitimacy. Thus, it seems that the liberal principle of legitimacy is a demanding criterion for legitimacy whose achievement needs a fully just situation. Put aside the younger or to be established ones in Muslim majority countries which are the focus of this research, this situation, as Ferrara argues, is not present in many established European liberal democracies.

Part of the answer to all these questions was mentioned earlier in our interpretation of Rawls’s account of stability for right reasons; here I mean that overlapping consensus, public justification, full reflective equilibrium (all different demonstrations of the liberal principle of legitimacy) are *the ideals of stability and legitimacy* for a just constitutional regime. They do not point the place from which we start. Rather, the liberal principle of legitimacy as Rawls’s

⁷⁹ My references to Ferrara’s article are to the draft version which was presented at the Istanbul Seminars, 2011. The page numbers would be different I the forthcoming published version.

account of social unity is an ideal goal which a democratic regime might get closer to after the formation of liberal institutions, though hardly may be fully achieved. Rawls admits that his account of liberal legitimacy and social unity is not so easily achievable when he says: “PL is concerned with the most reasonable basis of social unity available to the citizens of a modern liberal democracy, *although this concern is not pursued as far as it might be*” (PL xlvii emphasis added).

3- From Constitutional Consensus to an Overlapping Consensus

In lecture IV of PL Rawls outlines the overlapping consensus as arising through two steps. The overlapping consensus is the second step, built from a prior constitutional consensus (PL 158-168). At this first step, a constitutional consensus is predicted on general liberal principles, accepted simply as what we may call them all together *modus vivendi* reasons.

So far we have used the term *modus vivendi* without explaining it. Here we clarify this term. In international relations, the term *modus vivendi* is used to characterize a treaty between two states whose national aims and interests put them at odds. *Modus vivendi* implies a treaty in which “each state would be wise and prudent to make sure that the agreement proposed represents an equilibrium point”, and “the terms and conditions of the treaty are drawn up in such a way that it isnot advantageous for either state to violate it” (PL 147). In political liberalism *modus vivendi* is used to address the cases in which two parties adopt the principle of toleration out of prudential reasons. In PL *modus vivendi* is an unsatisfactory basis for stability because it grounds respect simply on the balance of power between prudent parties. This is different from an overlapping consensus which theorizes political tolerance as a significant moral virtue based on the notion of respect.

In other words, in an overlapping consensus those who affirm different comprehensive views support the political conception of justice for its own sake, or on its own merits, whereas the stability of *modus vivendi* depends on luck and a balance of relative forces. We may test whether stability is a *modus vivendi* or an overlapping consensus by examining whether the consensus is stable with respect to change in the distribution of power among parties.

A significant example of toleration grounded on *modus vivendi* is the situation of Catholics and Protestants in Europe, immediately after the brutal religious wars of the sixteenth century. At that time, Rawls argues, there was not any principled moral idea of toleration between two sects. Both faiths were theocrats, that is, they held that it was the duty of the ruler to uphold the true religion and to repress the spread of heresy and false doctrine. Each considered the other's religion as heretic. In such circumstances, if either case would be dominant, tolerance would no longer be followed (PL 148). As a result of the terrific horrors of war Catholics and Protestants eventually reluctantly came to accept the principles of liberty and equality. Many Catholics and Protestants thought the division of Christendom was a terrible disaster; nevertheless toleration seemed better than unending civil war and the destruction of society. However, the situation changed over generations in Europe. Decades after the wars of religion ceased, later generations gradually came to endorse principles of liberty and equality on their own merits; According to Rawls it is a common that early generations endorse principles and institutions for different reasons than the reasons that those coming later have for accepting them. Principled toleration does not advance another way (LHPP 240-241). As Rawls asserts:

Religious toleration has historically first appeared as a *modus vivendi* between hostile faiths, later becoming a moral principle shared by civilized peoples and recognized by their leading religions. The same is true of the abolition of slavery and serfdom, the rule of law, the right to war only in self-defense, and the guarantee of human rights. These become ideals and principles of liberal and decent civilizations, and principles of the Law of all civilized Peoples (LoP 113).

A very similar process happens when a newly established constitutional democracy progresses from a constitutional consensus (step 1) towards an overlapping consensus (step 2). At a certain time, “because of various historical events and contingencies”, certain liberal principles are accepted as a mere *modus vivendi*, and are incorporated into existing political institutions pragmatically (PL 159). The constitutional consensus is neither deep nor wide in scope, focused solely on the democratic political procedures and a formal democratic state. Although constitutional consensus starts with prudential reasoning, over time citizens may recognize the good those constitutional principles provide for them, their family, and society at large. Thus, they come to affirm liberalism on its own merit. To quote Rawls:

Many if not most citizens come to affirm the principles of justice incorporated into their constitution and political practice without seeing any particular connection, one way or another, between those principles and their other views. It is possible for citizens first to appreciate the good those principles accomplish both for themselves

and those they care for, as well as for society at large, and then to affirm them on this basis (PL 160).

At the stage of the constitutional consensus, there might be some conflict between the constitutional values and the comprehensive doctrines of citizens. However, citizens' comprehensive doctrines are shifted from affirmation of liberal principles out of pure self or class interests, custom and traditional attitudes, desire to conform to what is normally expected by the society, to affirming liberal principles of justice in a deeper manner in which justice is valued in itself. Initial allegiance to political conception may lead to later adjustment or revision of the comprehensive doctrine in case some inconsistencies happen (PL 160 n). Particularly, those persons who hold looser, more flexible, and not fully comprehensive doctrines are more prone to this gradual shift (PL 159). This is one of the main elements of the political sociology of an overlapping consensus.

In this regard, Scheffler's analysis is illustrating. Scheffler argues that there is a difference between the reasons why liberal institutions take root in a society for the first time and the public justification for such institutions that become available at the later stage as an overlapping consensus. Liberal institutions initially may be set up for variety of pragmatic reasons such as the collapse of alternative institutional schemes, the desire to follow the economic success of existing liberal democracies, and so on. Nevertheless, when a society lives under just liberal institutions for quite a long time it develops a tradition of toleration, some commitment to the political virtues of liberal citizenship, and an attitude of reasonableness and

reciprocity. These things “are resources that can help to stabilize liberal institutions by making an overlapping consensus on liberal values and principles possible” (Scheffler, “Appeal” 22).

As Roberts puts, a constitutional consensus on political conception of justice at the first step would be pushed, by the need to elaborate its consequences in the face of crises, ongoing public debate during various historical events, and the political conception’s success in solving some important problems, towards deepening, broadening and converting into an overlapping consensus. The development from *modus vivendi* towards overlapping consensus, however, is slow, gradual and time taking. It needs reasonably favorable conditions. It cannot simply drop of a philosophical argument. To quote Roberts, Rawls “has opened our eyes to the possibility of a different kind of consensus and stability for the right reasons. But for the notion of overlapping consensus to clinch justification, far more is needed; the historical process described above has to be carried out by real people” (Roberts, *Constructivism* 57). Nevertheless, as Scheffler puts, once overlapping consensus happens, the democratic society is able to flourish despite the deep disagreements that persist among its members. This is “the more encouraging message of Political Liberalism” (Scheffler, “Appeal” 22).

Although Rawls calls his narration of the historical development of an overlapping consensus as an “educated conjectures”, (PL 15) he is optimistic about the realization of this process. As explained earlier, this optimism is part of Rawls’s view about human moral nature, particularly under the influence of free institutions.⁸⁰

⁸⁰ Alessandro Ferrara, “When Conjecture Fails; Hyper-Pluralism and the Multivariate Polity”, *Reset-Dialogue Istanbul Seminars: Istanbul Bilgi University*, May 2011.

Finally I need to add one further point to avoid a misunderstanding. The fact that an overlapping consensus is not existent in many Muslim majority societies at the moment does not mean that these societies are problematic as compared to the West. As Ferrara truly suggests, even in the case of most of the real liberal democracies of the world stability is a mixture of overlapping consensus and *modus vivendi*, rather than a mere overlapping consensus. Ferrara draws upon the Law of People where Rawls divides the states of world into five. There Rawls argues liberal and decent states cooperate with each other as an overlapping consensus, but cohabit with outlaw state, burdened societies and the benevolent despotism as a *modus vivendi* (Ferrara, “Hyperpluralism” 7-9). From this we may conclude that even in the case of many Western societies overlapping consensus is an ideal, towards which we need to get closer. That ideal may not be prevalent in the society at the moment; this is both the case with the Western and Muslim majority societies.

Earlier we briefly noted how citizens’ comprehensive doctrines may be gradually shifted and adjusted in a democracy. In the rest of this section we put further remarks on that transformation under the influence of just institutions.

4- Influence of Just Institutions

Rawls always has been an institutionalist philosopher. In the first chapter of TJ he introduces the primary subject of justice as being the basic structure of society, or more clearly, “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (TJ 6). Similarly in PL he asserts that the political conception is worked out only for the “basic structure of the society” (PL 11).

Thus, any account of stability in Rawls's philosophy would be incomplete if we do not take into account the influence of the basic structure on citizens' sense of justice and in shaping their comprehensive doctrines. According to Rawls constitutional democracy must have political and social institutions that lead its citizens "to acquire the appropriate sense of justice as they grow up and take part in society" (LoP 15). If this happens, individuals will then be able to understand the principles of justice and to interpret and apply them to cases they are facing with. In other words, Rawls conjectures that persons growing under just and reasonable institutions will normally be moved to act from justice because of acquiring a sense of justice under those institutions.

This is because by having a role in the social cooperation, individuals learn reasonable ways to make a balance between the general domain of their values and the values of political conception. Put in another way, a person living in a society whose institutions are regulated by a political conception apparently more easily flourishes her sense of justice as compared to others who lack this advantage. In a just society, a reasonable and effective political conception may bend comprehensive doctrines toward itself, shaping them from unreasonable to reasonable (PL 246). However, it is important to remember that even considering this tendency, political liberalism itself cannot argue that comprehensive doctrines *should* find political values always within their doctrine. Going that far seems to be over-demanding.

In any rate, to see how the basic structure may adjust comprehensive doctrines, it is good to remember from the previous chapters (I and III) what comprehensive doctrine means for Rawls. Already we argued that although stable over time, comprehensive doctrines tend to

evolve slowly in the light of what their adherents see as sufficient reasons to reform.⁸¹ As Rawls puts, the principles of moral psychology have an important role in shaping the comprehensive doctrines of the citizens, and thus in shifting from a constitutional consensus to an overlapping consensus. Among these principles are: a- persons have a capacity to accept reasonable political principles of justice and a desire to act on these principles. b- When persons believe that political institutions are just, they are ready to cooperate in those arrangements provided that others do the same. c- If persons do their part, other persons tend to develop trust in them. d- This trust becomes stronger as success of arrangements is experienced in long run (PL 163).

This is the moral psychology of social cooperation. As a result of these psychological principles, under the influence of a basic structure which is regulated by the principles of justice, the initial acquiesces in a constitution satisfying liberal principles of justice—which is called constitutional consensus—develop into an overlapping consensus.

5- Justificatory Ethics and Stability

5-1- Alfred Stepan's Objection to Rawls

Justificatory ethics is part of the idea of the stability of justice as fairness in non-western societies, particularly Muslim majority ones. I start with a predominant misunderstanding in the political science literature concerning the role of religion in stability of a democracy from Rawls's perspective. In his famous article called "Religion, Democracy, and Twin Tolerations" (2000), Alfred Stepan argues that political liberalism gives huge weight to liberal arguing, but almost no weight to democratic bargaining. Rawls's major recommendation in his theory of

⁸¹ See PL 59; also Scanlon "Justification" 164.

public reason, as interpreted by Stepan, is that in constitutional essentials and matters of basic justice individuals have to advance their arguments only by using a freestanding conception of justice that is not rooted in any of the comprehensive but opposing doctrines found in the society.

In his interpretation, Rawls's idea of public reason concludes that public arguments about the place of religion are appropriate only if they employ a freestanding conception of political justice. Stepan accuses Rawls of "take[ing] religion off the political agenda." While being both powerful and consistent, he continues, the idea of public reason is developed in ignorance about how in the modern democracies actual political secularism have democratically become part of public political culture through negotiation about the role of religion in politics. Politics is about conflict, and democratic politics requires offering procedures to manage deep conflicts. In many Western and non-western countries that are now longstanding democracies, the major conflict for a long period was over the place of religion in the polity. In the European and North American cases this conflict was politically resolved only after long public arguments and negotiations in which "religion was the dominant item on the political agenda" (Stepan, "Twin" 45).

As the history of the Western democracies shows, achieving a social agreement on taking religion off the political agenda requires debate within the major religious comprehensive doctrines. The proponents of the democratic bargain are often able to win over their fellow believers only by using arguments that are not freestanding but deeply embedded in their religious community's comprehensive view. According to Stepan, in polities where a considerable portion of individuals may be under the authority of a doctrinally based nonliberal religious view, one of the major tasks of political and spiritual leaders who wish to strengthen democratic political values in their religious community will be to advance theologically

persuading public arguments about the authentic multivocality of their religion. In Stepan's interpretation, such arguments would violate Rawls's requirement for freestanding public reasoning. However, such arguments which are based on non-political values are vital to the success of democratization in a country divided over the appropriateness of democracy:

Liberal arguing has a place in democracy, but it would empty meaning and history out of political philosophy if we did not leave room for democratic bargaining and the nonliberal public argument within religious communities that it sometimes requires (Stepan, "Twin" 45-46).

Following Stepan, Hashemi addresses the same "serious flaw" in political liberalism (Hashemi, *Secularism* 25). He appears to argue that in spite of what Rawls's idea of public reason suggests, a secular consensus often emerges as a result of an engagement with and a transformation of religious ideas towards politics. Hashemi particularly emphasizes that in developing countries where religion is a key marker of identity, in order for religious groups to reconcile themselves with liberalism, a religious-based justification for liberalism is required. "This is especially important in the context of advancing a liberal-democratic theory for Muslim societies, given that religion is a key marker of identity for a significant percentage of the population" (Hashemi, *Secularism* 2). According to Stepan and Hashemi, the intimate relationship between religious reformation and political development is ignored by political liberalism. "The first typically precedes the second" (Hashemi, *Secularism* 3; also "Twin"). This means that democratization and liberalization do not necessarily require a rejection or privatization of religion, but what they do require is a reinterpretation of religious ideas with

respect to the moral basis of liberalism. Other commentators might have similar objections to political liberalism.

In this chapter I argue that these criticisms of political liberalism are based on incomplete and inadequate reading of the work of Rawls, particularly his PRR. In PRR Rawls introduces two kinds of nonpublic reasons, named “declaration” and “conjecture”, or as we prefer to call “justificatory ethics”. In the rest of this chapter I will explain the role of the idea of justificatory ethics in an overlapping consensus. This idea is usually neglected in the readings of Stepan, Hashemi and other critiques of Rawls. Justificatory ethics is part of the idea of stability for the right reasons. Before starting the next section I need to clarify some points on the term justificatory ethics.

With small modifications, I have borrowed the term justificatory ethics from Andrew March. In the first chapter of his *Islam and Liberal Citizenship*, March introduces his work this way: “The purpose of this book is to examine the possibilities for an Islamic full justification of liberal citizenship, and thus I characterize this project as a work of “justificatory comparative political theory” (March, *Citizenship* 28). March uses the terms “conjecture”, “reasoning from conjecture”, “justificatory comparative political theory” and “justificatory comparative ethics”, instead of each other. As we will see, my use of the term justificatory ethics is broader than March to include declaration as well. This chapter uses the term conjecture only as one of the two types of justificatory ethics. We do not use the term “comparative” because of the same problem, that it is only applicable to reasoning from conjecture rather than what Rawls calls declaration. Finally, I would add that we prefer to use the term comparative ethics rather than comparative political theory, following the way Rawls uses the term political in PL as a conception which is only applicable to the domain of political rather than metaphysical. Since

declaration and conjecture are two types of comprehensive and full justification, as we will see, we prefer not to use justificatory political theory.

5-2- Answer to Stepan's Objection: Justificatory Ethics and the Inclusion of Religion

Justificatory ethics has an important role in strengthening individuals' sense of justice in a religious society. The problem of stability of political liberalism—particularly in the context of nonwestern religious societies— is twofold: first, political liberalism itself does not publicly offer full justification for itself and thus does not provide unreasonable or decent persons—who as we defined hold unreasonable and decent comprehensive views— with a complete metaphysical account of how liberal principles fit into the larger domain of non-political or comprehensive life-values. On the other hand, many religious or even non-religious citizens might be motivated to oppose political liberalism in the name of what they believe to be true, good, or the most rational. Because political liberalism is a thin theory which does not provide for individuals with orientations to fit their private purposes—originated in their comprehensive doctrines— with the purposes of public institutions in a democratic society, social unity of political liberalism might be fragile, particularly in a religious context. Andrew March calls this a justificatory gap in political liberalism:

Because some citizens might have no deep, compelling reasons to regard thin, freestanding political principles as outweighing the political principles derived from their deep and purposeful religious and philosophical beliefs, there might exist what we could call a “justificatory gap” (March, *Citizenship* 28).

Rawls have designed justificatory ethics to fill what March refers as the justificatory gap of political liberalism. We need to emphasize that this gap is particularly relevant in the case of decent or unreasonable comprehensive views. Indeed, one of the main threats to the stability of justice as fairness in a nonwestern society, particularly a Muslim majority society, might be the impact of undemocratic comprehensive doctrines who grant that their true beliefs ought to inform the basic structure of the society. The idea of justificatory ethics functions as a way of showing how stability is possible under such situations. In justificatory ethics, as John Rawls says, “we argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons” (PRR 786).

There is a link between what might be called Rawls’s fact of popularity and the ideas of declaration and conjecture. According to this idea liberal institutions are more stable when a persistent majority of persons do not hold comprehensive doctrines that declare those institutions as illegitimate. As Rawls puts: “an enduring and secure democratic regime, one not divided into contending doctrinal confessions and hostile social classes, must be willingly and freely supported by at least a substantial majority of its politically active citizens” (PL 38). In a society marked by powerful religious identity, for example Muslim societies where Islam has a major role in the belief of some people, justificatory ethics is necessary as part of the idea of a stability for right reasons, instead of a *modus vivendi*, or pragmatic peace.

In justificatory ethics one aims to develop reasonable convincing arguments in favor of liberal conception based on an unreasonable or decent comprehensive view. Justificatory ethics aims to demonstrate how nonpublic and comprehensive reasons of a certain

comprehensive views may support the values of political conception, including those of public reason.⁸² Justificatory ethics is a kind of full justification which admits that comprehensive doctrines play a central role in providing their adherents sufficient arguments to support liberal institutions. Furthermore, we might be interested in justificatory ethics in the case of any particular comprehensive doctrine, not only the religious ones. If a doctrine endorses the political conception for reasons its adherents find authoritative, they are motivated to support the political conception. As March puts, “unless one believes that religious or philosophical doctrines never provide their adherents with motivations for action,....one has no reason to be indifferent to an investigation of their capacity to support or oppose liberal conceptions of justice or citizenship” (March, *Citizenship* 25). As March argues, we might be interested in studying the way existing doctrines in our society relate to the political conception of justice because of that: (1) it matters to holders of comprehensive views how their doctrine relates to the conception of justice; (2) individuals’ judgments on (1) have an important effect on social order, trust, harmony, efficiency, integration, and legitimacy; and (3) liberals take seriously the goods listed in (2) (March, *Citizenship* 33).

The idea of justificatory ethics is specifically developed in PRR. PRR includes Rawls’s recent version of political liberalism. Since 2005 edition, PRR is being published as the final section of PL. As the editor’s introduction to PRR, added to PL in 2005 edition, shows John Rawls had been working on a revision of political liberalism before his final illness preventing him from completing the project. PRR was supposed to be “the starting point for many of revisions” (PL 437). The idea of justificatory ethics might be one of these revisions.

⁸² Consider that for Rawls “guidelines of inquiry” (the principles of public reason) are the second part of the political conception. The first part is two principles of justice as fairness (PL 223-224).

In a clear format and a necessary complement for the whole idea of political liberalism in PRR, justificatory ethics appears under the name of two discourses: the first, declaration and the second conjecture. Declaration is a full justification⁸³ as developed by a believer who addresses a comprehensive doctrine which she believes in to demonstrate how it is compatible with the political conception. Conjecture is a full justification for political conception of justice as sincerely and sympathetically developed by a non-believer.

Nevertheless, the ideas of declaration and conjecture existed even in the earlier version of PL (1993), when Rawls argues how the idea of public reason becomes part of public culture of a religious country. The 1993 version of PL also finds justificatory ethics important in the in the context of religious societies which are establishing liberal democratic institutions for the first time. In such societies, Rawls argues, justificatory ethics is necessary in order to strengthen the ideal of public reason.⁸⁴ In other words, Rawls asserts that comprehensive arguments in favour of liberal principles are absolutely necessary within the context of a young democracy in a religious society.

This is so because a non-political religious argument “encourages citizens to honor the ideal of public reason and secures its social conditions in the longer run” (PL 248). Rawls explains that justificatory ethics is important particularly in a society which is characterized by “a profound division about constitutional essentials” (PL 249). The example is United States in eighteenth and nineteenth centuries, divided between pro-slavery and the abolitionists. In arguing against the antebellum South the abolitionists, such as Lincoln, used to argue that South’s institution of slavery was contrary to God’s law, and thus unjust. In other words, in agitating for

⁸³ For the definition of full justification see PL 385 f.

⁸⁴ See the debate on “the limits of public reason”, PL 247f.

the immediate, uncompensated, and universal emancipation of the slaves, abolitionists based their arguments on religious grounds. For example they used to argue that a man cannot be property in the sight of God, because he is created in God's image as a rational, moral and immortal being. Man is created by God to unfold godlike faculties, and to govern himself by a Divine Law written on his heart, and republished in bible. From this, as the author of *Anti-Slavery Argument* puts, follows that:

To seize him is to offer an insult to his Maker, and to inflict aggravated social wrong. Into every human being God has breathed an immortal spirit, more precious than the whole outward creation. ...Did God create such a being to be owned as a tree or a brute? (*Antislavery* 115f; quoted in PL 249 n)

Another example of justificatory ethics is Martin Luther King's discourse in the civil rights movement in twentieth century America. Religious doctrines were significant in King's appeals. Expressed in general and comprehensive terms, King's Christian arguments fully supported constitutional values and accorded with public reason (PL 250 n).

As the examples of abolitionists and Luther King shows, justificatory ethics is one of the important ways Rawls suggests to bring about a well-ordered society in which the ideal of public reason could eventually be honored, particularly in a society where religion has a significant role in public identity (PL 241). Given that the comprehensive doctrine abolitionists and King held was Christianity, the same as most of the people in the American society of their time, invoking comprehensive religious arguments in order to justify the values of political liberalism—justificatory ethics— was a necessary step of the stability of constitutional

democracy. For a well-ordered society to come about in which public discussion is based on the appeal to political values, prior historical conditions are required. Comprehensive reasons, which are provided by comprehensive doctrines, may be invoked to strengthen those values. As Rawls puts: “This seems more likely when there are but a few and strongly held yet in some ways similar 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 public culture and remains unknown” (PL 251 n).

In other words, without prior historical conditions in which religious arguments are commonly proposed in favour of the idea of public reason, a well-ordered society in which the idea of public reason is respected by the majority of persons cannot easily come about. In the contemporary Muslim world, like in the case of the abolitionists and King, there are what Rawls refers as “a few and strongly held yet in some ways similar” Islamic doctrines which justificatory ethics needs to address to stabilize justice as fairness and strengthen public reason in political culture. Although belonging to the civil society and non-public political discourse, justificatory ethics may have a role in public political discourse as well.

Another way to see the importance of justificatory ethics is to consider the shortcomings of *pro tanto* justification in a religious society. According to the idea of *pro tanto* justification “in public reason the justification of the political conception takes into account only political values” (PL 386). Rawls admits that there might be cases in which there is a conflict between *pro tanto* justification and some citizens’ nonpolitical values: *pro tanto* justification “may be overridden by citizens’ comprehensive doctrines once all values are tallied up”. In the *prima facie* reading, one might argue that political liberalism has no way to adjudicate such

conflicts and cannot explain why citizens should adhere to the constraints of public reason when these are at odds with their comprehensive views in such situations.

As Schwartzman argues, justificatory ethics is a form of nonpublic reason which helps Rawls to answer this objection. One of the functions of justificatory ethics is to demonstrate that the *pro tanto* justification of a particular question person M is facing with, contrary to what M thinks, is fully justified according to her comprehensive view. Put another way, being a kind of full justification, justificatory ethics is aimed to demonstrate that M's comprehensive view, when properly understood, is compatible with the outcome of public reasoning. As Schwartzman puts:

Engagement with comprehensive views may play a limited but significant role in defending a commitment to public reason....*reasoning from conjecture*....opens up a potentially significant domain of nonpublic justifications for promoting the ideal of public reason (Schwartzman, "Conjecture" 3 emphasis added).

Similar to Schwartzman⁸⁵, March⁸⁶, and Ferrara⁸⁷ also consider reasoning from conjecture an important justificatory force in PL which is usually neglected in Rawls literature. However, all these three commentators apparently have neglected the justificatory force of

⁸⁵ Micah Schwartzman, "The Ethics of Reasoning from Conjecture", Proceeding of the Conference on 'Between Rawls and Religion: Liberalism in a Postsecular World' at LUISS and John Cabot University, 2010, forthcoming.

⁸⁶ Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, Oxford University Press, 2009, chapters I and II.

⁸⁷ Alessandro Ferrara, "When conjecture fails; Hyper-pluralism and the multivariate polity": Reset-Dialogue Istanbul Seminars, Istanbul Bilgi University, May 2011.

declaration. In spite of this neglect, this dissertation sees declaration and conjecture as complementary and closely tied to each other. This is the case especially within the context of Muslim majority societies where Islamic declaration seems to be even more persuading and powerful than Islamic conjectural reasoning. That is because declaration is uttered by a believer from the same community, whereas conjecture in the most cases is developed by persons who are looking to that religious society from the outside. What comes in the following is the difference between arguing as declaration and reasoning from conjecture in more detail.

In fact, in declaration a reasonable citizen declares how her own comprehensive doctrine endorses political conception consistently. This she does not expect others to share. Rather, to quote Rawls: “each of us shows how, from our own doctrines, we can and do endorse a reasonable public political conception of justice with its principles and ideals.” The aim of declaration is to assure others who affirm different reasonable comprehensive doctrines that we also endorse a political conception belonging to the family of reasonable conceptions of justice. “In this way citizens who hold different doctrines are reassured, and this strengthens the ties of civic friendship” (PRR 786). In conjecture, nevertheless, “we argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis of public reasons” (PRR 786). Both declaration and conjecture support the ideals of overlapping consensus and public reason, particularly in a non-western context.

One main example Rawls gives for conjecture is Abdullah An-Naim’s theory of Islam and secular state. According to Rawls’s footnote in PRR, An-Naim’s *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (1990) is a perfect example of conjecture (PRR 782-783 n). Following the late Sudanese author Ustadh Mahmud Mohamed

Taha, An-Naim divides Islam to Islams of Mecca and Medina arguing that in a true interpretation of their religion, Muslims might give priority to the parts of Qu'arn revealed to Mohammad in Mecca as the eternal and fundamental message of Islam. There An-Naim interprets Sharia in a way that supports constitutional democracy. Quoting a phrase from An-Naim Rawls counts his work as a “perfect example of overlapping consensus”:

An Islamic justification and support for constitutionalism is important and relevant for Muslims. Non-Muslims may have their own secular or other justifications. As long as all are agreed on the principle and specific rules of constitutionalism, including complete equality and non-discrimination on grounds of gender or religion, each may have his or her own reasons for coming to that agreement”...Id at 100. This is a perfect example of overlapping consensus (PRR 783).⁸⁸

On the other hand, the the main example Rawls provides for declaration is the Vatican II Council's Religious Freedom document (*Dignitatis Humanae*) through which the Catholic Church declared its commitment to the principle of religious freedom as found in a constitutional democratic regime. This document declared all persons, whatever their faith was, as having the right of religious liberty on the same terms (PRR 796 n) (See our answer to the last objection in chapter I in which Catholicism is referred as an example).⁸⁹

⁸⁸ When Rawls was writing these lines, An-Naim's recent book, which is a recent development of his *Toward an Islamic Reformation*, was not published yet. Already in chapter I I referred to some parts of that book.

⁸⁹For the full Catholic declaration see “Dignitatis Humanae: Declaration On Religious Freedom, On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious Promulgated by His Holiness, Pope Paul VI, December 7,1965”, online at:

Rawls's examples of conjecture and declaration show that these discourses are two sides of the same coin. The difference between them depends on subject: while in declaration the subject is a faithful individual who is declaring her comprehensive view in the civil society, in conjecture the subject is a non-believer who is yet highly respectful and sympathetic to the comprehensive doctrine under question. If An-Naim's argument is uttered or quoted by Rawls as a non-Muslim who is sympathetic towards this religion, it becomes a conjecture. However, if the same argument is put by An-Naim himself, it is a declaration. The same is the case with Vatican II Council's document on human dignity which depending on whether the subject is a Catholic or a nonCatholic it oscillates between being a declaration or a conjecture. However, both declaration and conjecture are nonpublic full justifications, occurring privately or in communities of shared moral and religious values in the civil society or the background culture.⁹⁰ None of them is regarded as proving a public justification binding on any other citizen.

Another point which needs to be added here is that, following what was argued in chapters II and III, political liberalism itself does not propose any justification for the individuals who are decent or unreasonable. Connecting this to our debate on justificatory ethics, one might argue that declaration and conjecture in one hand and reflective equilibrium and the original position on the other hand (also referred to together as political constructivism), are complementary to each other: the latter is more persuading in the case of persons who already have reasonable comprehensive doctrines and already share democratic idea of citizenship and

http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

⁹⁰ For the sake of simplification here let us put aside the idea of *proviso* according to which citizens are morally allowed to enter comprehensive arguments into public political discussions provided that they introduce political arguments at the same time. See PRR 783f.

society as a system of fair cooperation, whereas justificatory ethics—declaration plus conjecture— is absolutely urgent in the case of persons who have decent (not fully reasonable) or unreasonable comprehensive views which lack those fundamental ideas as the starting point of political constructivism. Put another way, whereas the reflective equilibrium and the original position justify the most reasonable principles of constitutional democracy for those who hold reasonable comprehensive doctrines, justificatory ethics primarily addresses decent or unreasonable persons, arguing that they are able to adopt a reasonable account of justice in spite of what might appear to them in the prima facie look.

One might argue that justificatory ethics is not something that Rawls had invented. Many recent political theorists, particularly those who are more sympathetic with the possible positive roles of religion in public political debates, appeal to this idea, without using Rawlsian jargons of conjecture and declaration. In all of these discourses, we are looking to the same thing from different angles: Persuading other citizens, with more traditional word views, that they can endorse political principles of justice and still remain committed to their faith. Regarding this, justificatory ethics is part of what Stepan calls the hypothesis of multivocality, according to which “all great religious civilizations are multivocal” (Stepan, “Twin” 48).

According to this idea, we should beware of the fallacy of assuming that any particular religious doctrine is univocally prodemocratic or antidemocratic. Western Christianity certainly been multivocal concerning democracy. At certain times in its history, Catholic doctrine has strongly opposed toleration and liberal democracy. The most obvious example is Inquisition. In the name of Catholicism, the Inquisition committed massive violations of human rights. Similarly John Calvin and Martin Luther were intolerant. For more than 300 years, Lutheranism, particularly in Northern Germany, accepted a “caesaropapist” state control of

religion. Later spiritual and political activists of both Catholicism and Protestantism found and mobilized doctrinal elements within their own religions to endorse and support of a liberal democracy. The famous example is the 1965 Catholic declaration of human dignity we debated earlier in this chapter and chapter I.

As Stepan asserts, “The warning we should take away from this brief discussion is obvious. When we consider the question of non-Western religions and their relationship to democracy, it would seem appropriate not to assume univocality but to explore whether these doctrines contain multivocal components that are usable for (or at least compatible with) the political construction of the twin tolerations [and liberal democracy]” (Stepan, “Twin” 44). Rawls’s theory of justificatory ethics totally admits this point. In addition, Rawls’s idea of reasonable comprehensive doctrines admits multivocal reading of religion. This point is clear in this phrase by Rawls: “the history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political as specified by the political conception of justice” (PL 140). The optimism of Rawls regarding the reasonableness of all great historical religions of the world – Islam, Christianity, Judaism, Confucianism, Hinduism, and so on—is rooted in his endorsement of the hypothesis of multivocality concerning these traditions. This is despite unreasonable interpretations which are sometimes developed out of these doctrines by some of their unreasonable fundamentalist adherents.

Finally, one might draw a link between justificatory ethics and the liberal principle of legitimacy. Assume that we are living in a society—a society in which Muslims are majority—which has a liberal constitution, but citizens are divided among reasonable, decent and

unreasonable individuals. How can liberalism be legitimate under such conditions? Here we develop a particular interpretation of the duty of civility as mentioned in PL by Rawls.⁹¹

As mentioned earlier, for Rawls political power is always coercive power backed by the state. Only the state has the authority to use force in law sanctions. In a democracy, however, the political power is the power of public—the power of free and equal citizens as a collective body. If some of the citizens—holding decent or unreasonable comprehensive doctrines— do not accept “the reasons widely said to justify” the liberal constitution, the liberal principle of legitimacy concludes that the democratic constitution is not fully legitimate (PL 136).⁹² This might lead to a legitimacy crisis for the democratic constitution in that (Muslim majority) society. Here, the democratic ideal of citizenship imposes a moral⁹³ duty, called by Rawls “the duty of civility”, upon reasonable citizens to appeal to justificatory ethics on the questions which are related to the constitutional essentials and matters of basic justice. Thus, to have legitimate constitutional legislations reasonable citizens need to persuade decent and unreasonable citizens that the decisions made for example by the constitutional court is compatible with their comprehensive doctrine. Appealing to the power of sincere and honest rational persuasion through declaration and conjecture, the reasonable citizens hope to convince the decent and unreasonable citizens to interpret their own comprehensive doctrines in a more democratic way.

⁹¹ For this I am indebted to a private conversation with David Rasmussen during the Reset political theory Seminars in Istanbul, May 2011.

⁹² As we mentioned earlier in this chapter, the liberal principle of legitimacy is defined this way: “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason” (PL 137).

⁹³ The duty of civility is only moral, not legal (PL 217).

Of course this needs to be done by respecting what we may call the ethics of justificatory ethics (For this see the works of March⁹⁴ and Schwartzman⁹⁵).

⁹⁴ Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, Oxford University Press, 2009, chapter II: “Methods: The Ethics of Comparative Ethics”, pp. 65-96.

⁹⁵ Micah Schwartzman, “The Ethics of Reasoning from Conjecture”, Proceeding of the Conference on ‘Between Rawls and Religion: Liberalism in a Postsecular World’ at LUISS and John Cabot University, 2010, forthcoming.

CHAPTER V— Government as Agency of Joint Owners: A Full Islamic Justification for Justice as Fairness

This chapter is a work of justificatory ethics, which is an Islamic justification for justice as fairness in the Muslim majority context. As we saw in chapter IV, justificatory ethics is part of the idea of stability in political liberalism. Thus, being a work of justificatory ethics, this chapter is aimed to develop a full justification for the political conception based on Shiite Islamic tradition. Here we will demonstrate how Shiite Islam can be regarded as a reasonable comprehensive doctrine of good. Hence, this chapter is also a continuation of our long debates on the notion of reasonableness in chapter III.

Our arguments are mainly based on our interpretation of the political theory and ideas of the renown Muslim thinker Mehdi Haeri Yazdi, as expressed in his main work in Islamic political philosophy named *Hekmat va Hokumat (Philosophy and Government)*(1995). Mehdi Haeri Yazdi (1923-1999) was the son of the renowned Grand Ayatollah Abdulkarim Haeri Yazdi, one of main Shiite authorities (*maraja*) in his time and the one who made Qom the main major of Shiite studies inside Iran. At the age of 28 Haeri received his ordination as exegesis (*mujtahid*) –the highest degree in traditional Islamic sciences particularly Islamic law (*feqh*) –from Grand Ayatollah Boroujerdi, the main Shiite authority after the death of his father.

In 1952 Tehran University considered Haeri's *ijtihad* degree as equivalent to a doctorate degree in theology and he became a faculty member of Tehran University's theology department. Later he became enrolled in PhD program at the University of Toronto, where he received another doctorate in 1979.⁹⁶ In 1979 he returned to Iran to resume his post as professor of Islamic philosophy at Tehran University and his association with the Iranian Academy of Philosophy. He deceased in Tehran at the July of 1999, in the age of 76. Apart from *Philosophy and Government*, Haeri left us with almost ten books as his intellectual legacy in Islamic philosophy. Other than one exception, all books of Haeri, including his political philosophy work, are written in Persian.⁹⁷

Haeri's political theory ideas can be considered as an extension of the works of traditional Islamic philosophers, particularly those of Ibn Sina and Mulla Sadra, as reinterpreted under the light of modern political philosophy, especially Rousseauian tradition of social contract. The importance of *Philosophy and Government* is that it sets up the idea of social contract on the notion of agency (*aqd-e vekalat*) which already existed in Muslim law for centuries. Furthermore, the book includes as extensive critic of the idea of the guardianship of the jurist which was theorized and favored by Ayatollah Khomeini, the leader of Iran's revolution and Haeri Yazdi's former tutor.

⁹⁶ Haeri's doctorate dissertation was *on knowledge by presence* in Islamic philosophy. In 1992 this dissertation was published as a book: Mehdi Haeri Yazdi, *The Principles of Epistemology in Islamic Philosophy; Knowledge by Presence*, Foreword by Seyyed Hossein Nasr. State University of New York Press, 1992.

⁹⁷ The content of Haeri's books roughly can be divided into four main categories in Islamic philosophy: (1) Deontology/epistemology/philosophy of language, (2) Legal theory (*usul-e feqh*) (3) Moral philosophy, and (4) political philosophy. *Philosophy and Government* is written in Persian.

Our debates in this chapter should be regarded as a continuation of the problems of stability (chapter IV) and justification (chapter III) of justice as fairness in the Muslim majority societies. As we saw in chapter IV (See also PL 140; PL 386-387) full justification means to demonstrate how a particular comprehensive doctrine is either congruent with, or supportive of, a reasonable political conception of justice. However, as a conclusion of our debates on political constructivism in chapter III, in the case of justice as fairness this happens only via showing how two fundamental ideas of society as a fair system of cooperation and persons as free and equal citizens exist in a particular comprehensive doctrine. Of course this is not possible unless we regard the original position and justice as fairness as valid and persuading arguments for justice as fairness. Thus, argument in this chapter can easily be misunderstood if we do not consider the debates in chapter III and IV.

In other words, in this chapter I will try *only* to show how two fundamental ideas of society as fair system of cooperation and citizens as free and equal persons are available in Islamic philosophical and legal tradition (*hekmat*). Taking for granted that political constructivism is a quite valid argument for justice as fairness (chapter III), these fundamental ideas (as the input) in a procedure of construction (the original position) give out justice as fairness as the most reasonable political conception of justice as the output. Therefore, this chapter will not deal with difference principle and fair distributive justice unless indirectly. Fairness is injected in our argument via taking for granted the validity of the original position argument as the procedure of construction. Thus, unless a reader already finds the original position as a convincing and consistent argument, this chapter cannot necessarily lead her to the *fair* distribution of social goods.

Our debates in this chapter also demonstrate multivocality of Shiite Islam as a reasonable comprehensive doctrine in the Rawlsian sense of the term. In his *Islam and Liberal Citizenship: The Search for Overlapping Consensus* Andrew March has developed an extensive and rich literature on justificatory ethics by arguing for multivocality of Islamic law. In the previous chapters I referred to different aspects of March's work. Here, it seems a good idea to put brief remarks on the difference between his approach and that of Mehdi Haeri Yazdi in *Philosophy and Government*.

First of all, March's work on Islamic justification for liberalism is an example of what Rawls calls conjecture, whereas Haeri's *Philosophy and Government* is a work of declaration. In the previous chapter I briefly clarified the difference between conjecture and declaration. The other difference between March's approach and the one belonging to Haeri is that the former is limited to the Muslims who live in Western democracies as minorities, while the latter is mostly occupied with Muslim majority situation. The second main difference is that among Islamic sciences March has limited his arguments only to Islamic jurisprudence (*feqh*), whereas Haeri's focus is on Islamic philosophy and its priority to jurisprudence. All in all, March has provided a very rich and innovative treatment on Islam and overlapping consensus literature. However, one might be sympathetic with An-Naim's critique that without dealing with the problem of overlapping consensus within the context of Muslim majority countries, March's argument for overlapping consensus between Islam and liberalism would be incomplete or even futile (An-Naim, "Review" [of March's *Islam and Liberal Citizenship*] 696-697). Indeed, there is a huge potential in March's methodology to be applied to the problem of constitutional democracy in Muslim majority countries, if revisited according to this new context.

1- Place of Islamic Philosophy in Islamic Tradition

Islamic philosophy is a much referred term by Haeri Yazdi in his argument for an overlapping consensus—to put in the Rawlsian terms— between Islam and liberal democracy. Thus, we need to clarify our definition of this term. Islamic philosophy (*hekmat*) is a type of philosophy which is initially developed and produced by the interpretations, translations and commentaries of Al-Farabi, Ibn Sina (in Latin Avicenna), Ibn Rushd (in Latin Averroes), Shahab addin Suhrawardi (Sheykh-e Eshraq), and Sadruddin Shirazi (Mulla Sadra) and other Islamic thinkers. This type of philosophy can be regarded as part of the culture of many of those countries which historically belong to Islamic civilization. Originally it was initiated when some major Greek philosophy texts, for example those of Aristotle and Plato, were translated into Arabic. Thus, this type of philosophy at the beginning was influenced by the works of Greek, Hellenic, Pre-Islamic Persian thinkers, and so on. However, by time Islamic philosophy became a significant part of Muslim culture.

Starting from 11th century, however, Islamic philosophy experienced a decline within parts of the Islamic world, particularly some of those with majority of Sunni population. Among the different historical reasons for this were the attacks of famous theologian, mystic and jurist, Abu Hamed Al-Ghazali, to Islamic philosophers and labeling them as heretics. By the rise of Islamic revivalist movement of Jamaluddin Afghani and other anti-colonial Muslim thinkers in the 19th century, however, Islamic philosophy started to be an important subject of the intellectual debates in many Muslim societies (Omran & Leman, “al-Afghani” 1998; Euben, *Enemy in the Mirror*, 93-122).

One of the areas of the Islamic world which continued forcefully the Islamic tradition in philosophy after the earlier decline was undoubtedly Persia. Within the later medieval period

of Persia, the main emphasis in philosophy has been on the thought of Mulla Sadra and al-Suhrawardi. In contemporary Iran, Islamic philosophy is moved from the madrasa system (traditional schools) and became an important part of the University curriculum; especially the influence of pre-modern Islamic philosophers such as Mulla Sadra and al-Suhrawardi has remained strong in both universities and traditional schools. The influence of Suhrawardi can be seen in the works of Henry Corbin and Seyyed Hossein Nasr; whereas Mulla Sadra has exercised an influence over figures such as Mahdi Haeri Yazdi and the members of Qom School, for example Ayatollah Khomeini. Mohammad Hossein Tabatabaei was another *Sadraian* Islamic philosopher whose students mostly represent this type of philosophy in post-revolutionary Iran. Abdolkarim Soroush, whom we referred to briefly in the first chapter in our debate on pluralism, is another Islamic philosopher who has introduced a number of concepts from contemporary Western philosophy into Iran (Morawedg& Leman, “Modern Islamic Philosophy”, 1998).

In Shia seminary schools, Islamic philosophy, particularly practical branch of it, also has been developed within debates of the scholars of the science of *the Principles of Shia Jurisprudence (usul-e feqh)*. This point is generally neglected by the mainstream academic literature of Islamic philosophy which is mostly familiar with judicial traditions of Sunni Islamic world. The roots of this flourish goes back to the triumph of *Principlists (usuliyun)* over *Scriptualists (akhbariyun)* at the end of 18th century in the debates concerning the foundations of Shia jurisprudence.⁹⁸ In the recent centuries, Shia legal theory scholars contributed to practical philosophy, for example through the works of Qaravi Esfehani (famous as Kompani).

⁹⁸ Put it oversimplified, one might say the *Usulis* were the followers of reason, though the *Akhbaris* were followers of the text. However, there are a lot of important details here are avoided.

The other contributor to Islamic philosophy within traditional Shiite sciences is theology (*kalam*). Historically speaking, Shiite theology is a rationalist school inspired by the philosophical school of Mutazila according to which moral right and wrong are understood by human reason. In Shiite and Mutazila *kalam*, when it comes to the debate on justice of divine acts, human reason is regarded as being able to recognize right and wrong without reference to the religious texts. In apparently intuitionist metaethical view of Shiite and Mutazilia theologians, good and evil are objective and can be discernible by rationality. In other words, they assume that human reason can recognize moral right and wrong in God's deeds. For example, Shiite and Mutazila believe that God never punishes an innocent person. Thus regarded, God's justice is not beyond the human reason's judgment.⁹⁹ Applying the rationalist theological principles of Shiite and Mutazila to the matters of political and public life would have many innovative practical and legal consequences, but in this research we do not enter into such debate.¹⁰⁰

Yet there are different interpretations of the relationship between Islam as a comprehensive doctrine and "Islamic philosophy" as a tradition of philosophy which was flourished in the culture of at least some of the Muslim societies starting from the 9th century (in the common era calendar). Adopting different approaches concerning the relationship between Islamic philosophy (both theoretical and practical) and Islam, Islamic Philosophy can be defined in two different ways. In the first definition, Islamic philosophy like other branches of philosophy which are taught in many Western departments is independent of religion. Supporting this view of Islamic philosophy, Leman believes that the term "Islamic" in Islamic

⁹⁹ For such reasons, Shiite and Mutazile School of theology is also called *adliyye*, meaning the followers of justice.

¹⁰⁰ For a comprehensive account of such debate see Anver. M Emon, *Islamic Natural Law Theories*, Oxford University Press, 2010.

philosophy simply refers to the style of philosophy produced within the framework of Islamic culture and civilization, without having any necessary and inherent connection with Islam as a comprehensive religion. Accordingly Islamic philosophy can be best defined as the tradition of philosophy which arose out of Islamic culture, with the latter term understood in its widest sense (Leman, "Concept of Philosophy in Islam" 1998; Leman, "Islamic Philosophy" 1998; Haeri, *Essays*¹⁰¹ 411-26). Further, the term "Islamic" does not suggest that this type of philosophy is exclusively produced by Muslim, because some Islamic scholars have been deist, Zoroastrian, Jewish, Christian, or even materialist (Zakariyya Razi and Ibn Moqaffa?).¹⁰²

In the second interpretation, Islamic philosophy is an essential part of Islam. In his book *Us and the History of Islamic Philosophy (Ma va Tarikh-e Falsafeye Eslami)*, the well-known Iranian Islamic philosophy scholar, Reza Davari Ardakani, supports this view, extensively arguing that Islamic philosophy should be regarded as a part of historical Islamic identity and doctrine (Davari Ardakani, *Us and the History*).¹⁰³ Another good example in this regard is Khomeini's famous letter to Gorbachev, the last leader of USSR. In that letter Khomeini mentioned the names of some Islamic philosophers such as Ibn Sina and Suhrawardi, assuming that the works of those philosophers provides sufficient Islamic counterarguments against communist materialism. Khomeini called Gorbachov to study Islam, "not because Islam and Muslims may need" him "but because Islam has exalted universal values which can bring

¹⁰¹ This work is the collection of papers and interviews by Haeri specially in the later years of his life.

¹⁰² Leman adds that any attempt to develop a central agenda which everyone who can be called an Islamic philosopher must share has the difficulty of fitting everything in Islamic philosophy into that framework, and ultimately tends to fail (Leman, "Concept of Philosophy in Islam" in Routledge Encyclopedia of Philosophy).

¹⁰³ Reza Davari Ardakani, *Ma va Tarikh-e Falsafe-ye Eslami [Us and the History of Islamic Philosophy]*, Tehran: Pajouheshgah Fargango Andishe-ye Eslami, 2010, pp. 19-563.

comfort and salvation to all nations and remove the basic problems of mankind.” In that letter Khomeini suggested Gorbachov to send a number of Soviet scholars to Qum, in order to receive education in Islamic philosophy. Khomeini suggested Soviet scholars to study the writings of Peripatetic Islamic philosophers such as al-Farabi and Avicenna, in addition to the Israqi theosophy of Suhrawardi and Transcendental philosophy of Mulla Sadra. He also mentioned the works of mystics, in particular Muhyid-Din ibn-e-Arabi. In Khomeini’s idea, doing this the Soviet scholars may come to acknowledge that the nature of knowledge is different from the nature of matter, and that intellect, far removed from matter, cannot be restricted by the materialist laws. In this view, to put in Khomeini’s words, Islamic philosophy is an Islamic demonstration of “the delicate stages of gnosis” (“Khomeini’s Letter to Mikhail Gorbachev”, online).¹⁰⁴

No matter we adopt which of these two models of the relationship between Islam and Islamic philosophy the majority of contemporary Muslims, at least starting from revivalist movement in Islamic countries in 19th century, consider Islamic philosophy as part of their Muslim identity. In other words, many contemporary Muslims consider Islamic philosophy as part of their comprehensive doctrine, regardless of the question what the origins of Islamic philosophy historically speaking are. It seems that there good empirical evidence showing that a significant number of contemporary Muslims regard Islamic philosophy as part of their Islamic identity and heritage. This assumption seems to be true at least in the case of many Muslims in Persia, India, Pakistan, Turkey and many Arabic countries (This point is in parallel to the communitarian objection in chapter I). Therefore, showing the compatibility of political Islamic philosophy, as interpreted by Haeri Yazdi, with the liberal conceptions of society as a fair system

¹⁰⁴ See <http://www.ghadeer.org/english/imam/letter%20Imam/callto/notes.html>.

of cooperation and persons as free and equal citizens, as this chapter aims to do, will probably contribute to an overlapping consensus between Islam and political conception of justice.

To endorse Haeri's argument for reasonableness of Islam as a comprehensive doctrine, understanding the theory of the guardianship of the jurist is quite necessary. In Haeri Yazdi's reasonable understanding of Islam, guardianship of the jurist is an unreasonable doctrine. In the next section, we will overview Khomeini's theory briefly.

2- The Idea of the Guardianship of the Jurist (*Velayat-e Faqih*)

The theory of guardianship of the jurist is closely tied to a particular understanding of Shiite doctrine of Imamate. Imamate is a highly significant part of the Shiite theology. As the fourth principle among the Five Principles of Belief (*usul-e din*) in Twelver Shiite theology, Imamate has a significant role in orthodox Shiism. According to orthodox Shiite, God appointed Mohammad as the leader of Muslim community, and following His order, Mohammad appointed twelve infallible Shiite Imams after him as the guidance of Islamic society. Although Mohammad is the last messenger of God, orthodox Twelver Shiites regard the Imamate as a continuation of his prophecy, since they believe humans should not be abandoned without divine guidance. The Imam is in charge of the affairs of the Shiite community as relates to both this world and the next, until the end of days.

An Imam is both a political leader and a saint who occupies an ontological place in the existence of the world. In other words, orthodox Twelver Shiites mostly regard the Imams both as their spiritual and political leaders. They believe that Mahdi, the Muslim savior and the Twelfth Imam who is also called Hidden Imam, will return before the end of time and will

establish a just global government. The idea is that at the end of the world, when Mahdi arrives, all people of the world will convert to the true religion, which is Islam. For orthodox Shiites Mahdi was born in 868 AD as the Twelfth Imam, and went into minor occultation (*qeybat-e soqra*) for nearly seventy years and then into major occultation (*qeybat-e kobra*), which lasts until today and will end only until God decides to make Mahdi appear.

Most of the orthodox Shiites are not supporters of the idea of Islamic state whose role is to enforce Sharia upon the society through state coercion. Indeed, following the traditional account of Shiism which was dominant until 1979 revolution, a significant number of Shiites regarded any attempt to establish a religious government before the return of the Hidden Imam, Mahdi, as heretical. In the traditional paradigm only hidden Imam had the Islamic right to rule. Thus, during the period of major occultation (nearly 940- present time) many Shiites regarded establishing an Islamic state as not necessary, rather illegitimate, in the absence of the hidden Imam.¹⁰⁵ Iran's 1979 Islamic revolution, under the leadership of Ayatollah Khomeini and his theory of guardianship of the jurist, resulted in a crisis in the meaning of orthodoxy in Shiite political thought by rejecting this traditional view of Imamate.

Until 1979 revolution, many Shiite jurists (*faqih*s) believed that guardianship in probate affairs (*umur-e hasbiye*) and jurisdiction (*qezavat*) are two essential duties transferred to Twelver Shiite jurists by the hidden Imam. Traditionally speaking Shiite jurists regarded the guardianship of the jurist in probate affairs limited to exercising religious judgment (*fatva*), Friday prayer, Islamic punishment (*huhud*), to bid what is lawful and forbid what is unlawful (*amr bil ma'ruf and nahy anil munkar*), collecting religious taxes (*zakat*), and custodianship of

¹⁰⁵ For a more complete account of Shiite view of Mahdi see Mehdi Khalaji, *Apocalyptic Politics: On the Rationality of Iranian Policy*, the Washington Institute for Near East Policy, 2008.

the invalid and minor (*velayat-e saqir*) and similar issues. However, always there was a controversy among Shiite community about the limits and boundaries of these duties. The famous debate between Sheykh Fazlollah Nuri and Akhund Khorasani during Iran's constitutional revolution period (1906) can be studied from this perspective. Both Nuri and Khorasani were two distinguished Shiite jurists of their time.¹⁰⁶

However, regardless of few exceptions, orthodox Shiite jurisprudence never regarded the essential duties of jurists as part of a theory of Islamic state. From the rise of Safavid Empire in 16th century, who tried to uphold Twelver Shiism throughout Persia, until 1979 Iran's revolution, there always has been a division of labor between the monarchs and the jurists. The administration of the state, unless exceptionally, was never regarded as part of the role Shiite jurists occupied. However, the formation of Islamic state in 1979 Iran unintentionally changed the meaning of many of theological terms in Shiite political mentality. This was a result of the theory of the guardianship of the jurist. This theory extends the traditional concept of guardianship of the jurist in probate affairs beyond its traditional borders.¹⁰⁷ According to this view, guardianship of the jurist holds that *vali faqih*'s (jurist guardian's) authority is invested in him by twelfth Shia Imam, Mahdi. Furthermore, political obligation is subsumed under religious

¹⁰⁶ Even today this debate remains a matter of controversy among the supporters of the Green movement particularly and the Iranian opposition generally, in one hand, and the supporters of the Islamic Republic on the other hand.

¹⁰⁷ For a more or less comprehensive account of Shiite jurists' political theories see: Mohsen Kadivar. *Nazariyehaye Dovlat dar Feqh-e Shie* [The Theories of State in the Shiite Jurisprudence], Tehran: Ney Publishing House, 1997. For a covering account of the theory of guardianship of the jurist see Mohsen Kadivar. *Hokumat-e Velaei* [State as Guardianship of the jurist], Tehran: Nashr-e Ney, 1999.

obligation. In other words, the basis of our political obligation towards Islamic state lays in our obligation to obey God absolutely.

The formation of Islamic state has caused what I call *the orthodoxy crisis in contemporary Shiite view of politics*. The transformation of the meaning of Shiite orthodoxy is an unintentional result of the theory of absolute guardianship of the jurist, as embedded in post-revolutionary Iran's constitution (This point completes our answer to Islamic orthodoxy objection by Mohammad Fadel as addressed in chapter I of this dissertation). According to the Article 5 of Iran's current constitution, during the occultation of the Vali al-'Asr or the Hidden Imam, the leadership of the *Ummah* or Islamic community devolves upon the just and pious jurist, who is fully aware of the circumstances of his age, courageous, resourceful, and possessed of administrative ability, to uphold the office of the supreme leader (*vali faqih*).¹⁰⁸

According to the Article 110 of Islamic Republic of Iran's constitution among the duties and powers of the supreme guardianship or the leadership are: Delineation of the general policies of the Islamic Republic of Iran Issuing decrees for national referenda... Assuming

¹⁰⁸ Article 107 of Islamic Republic of Iran's constitution declares the way the supreme leader is elected: "After the demise of Imam Khomeini, the task of appointing the Leader shall be vested with the experts elected by the people. The experts will review and consult among themselves concerning all the religious men possessing the qualifications specified in Articles 5 and 109. In the event they find one of them better versed in Islamic regulations or in political and social issues, or possessing general popularity or special prominence for any of the qualifications mentioned in Article 109, they shall elect him as the Leader. Otherwise, in the absence of such a superiority, they shall elect and declare one of them as the Leader. The Leader thus elected by the Assembly of Experts shall assume all the powers of the religious leader and all the responsibilities arising therefrom. The Leader is equal with the rest of the people of the country in the eyes of law." For full version of Islamic Republic of Iran's constitution see: <http://www.princeton.edu/lisd/projects/PORDIR/research/Iran%20Constitution.pdf>.

supreme command of the Armed Forces....Declaration of war and peace and the mobilization of the Armed Forces....Appointment, dismissal, and resignation of: a. the religious men on the Guardian Council, b. the supreme judicial authority of the country, c. the head of the radio and television network of the Islamic Republic of Iran, d. the chief of the joint staff, e. the chief commander of the Islamic Revolution Guards Corps, and f. the supreme commanders of the Armed Forces... Signing the decree formalizing the election of the President of the Republic by the people...Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty.¹⁰⁹

The idea of the guardianship of the jurist, as a very powerful principle was embedded in Iran's constitution through the efforts of ayatollah Ruhollah Khomeini (1902-1989) and the group of clerics and non-clerics who followed his ideas, during the first year after the revolution. Although before Khomeini a few number of Shiite jurists, such as Mulla Ahmad Naraghi (19th century) believed in the right of jurists to rule, in Shiite history only after the 1979 revolution this theory found such a powerful legal and administrative status. Before Khomeini, even those like Mulla Ahmad Naraghi in practice were willing to cooperate with the monarchs as the symbol of state power. In the post-colonial atmosphere of 1970th, Khomeini, as opposed to the majority of past traditional jurists, argued that Muslims have to fight with Shah in order to establish an Islamic state in their country. This was partly based on Khomeini's postcolonial interpretation of the principle of *amro bil Maruf vannahyu anelmunkar* (the duty of directing to religiously lawful and enjoining not to commit unlawful) in Islam.

¹⁰⁹ Ibid.

Khomeini's more or less systematic development of his thesis first appeared as a book published in the late 1960th in Najaf, when he was in exile. Being the outcome of Ayatollah Khomeini's Najaf lessons on Islamic law, the book later was named *Islamic Government (Hokumat-e Eslami)*.¹¹⁰ That book is one of the main bases of Khomeini's guardianship of the jurist theory. There Khomeini argues that the enactment of the Islamic law necessitates the formation of a government by the Prophet of Islam. He tries to make a linkage between the orthodox Shiite belief in the right of the Prophet and Twelve Imams to rule and the political authority of Muslim jurists. The Prophet Mohammad "designated a ruler to succeed him, in accordance with divine command." This, according to Khomeini, is an indication that Islamic state remains a necessity after the departure of the Prophet from this world (Khomeini, *Islamic*, online, "2- Necessity", para.4).¹¹¹

Thus, as history testifies Mohammad established an Islamic government. He engaged in the implementation of laws, the establishment of the ordinances of Islam, and the administration of society. He sent out governors to different regions; both sat in judgment himself and also appointed judges; dispatched emissaries to foreign state. The prophet concluded treaties and pacts; and took command in battle. "In short, he fulfilled all the functions of government" (Khomeini, *Islamic* "2- Necessity", para.4).

¹¹⁰ For a comparison between Khomeini and other Shiite jurists' theories of government see: Mohsen Kadivar, *Nazariyehaye Dovlat dar Feqh-e Shie* [Theories of Government in Shiite Jurisprudence], Tehran: Nashr-e Ney, 1997.

¹¹¹ All my references to the online version of the English translation: Ruhollah Khomeini, *Islamic Government [Hokumat-e Eslami]*, Najaf, 1971, available at: <http://imam-khomeini.com>.

Therefore, contrary to what is claimed by secular intellectuals in Muslim majority societies, Islamic state is part of the very idea of Muslimhood for Khomeini. The necessity for Islamic state is not confined or restricted to Prophet's time, but continue after his departure from this world. In Khomeini's interpretation of Quran, the ordinances of Islam and Shari'a are not limited to particular time or place; they were permanent and must be enacted until the end of time. "They were not revealed merely for the time of the Prophet, only to be abandoned thereafter" (Khomeini, *Islamic*, online, "2-Necessity"). The Islamic penal code (*hudud*) needed to be enacted, the taxes prescribed by Islam needed to be collected, and the defense of the lands and people of Islam need not to be suspended. All of these needed state to be acted upon. So Khomeini concluded that the claim that the laws of Islam may remain in suspension or were restricted to a particular time or place is contrary to the essentials of Islam. "Law is God's decree and command." The divine command of Islam has absolute authority over all individuals for all eternity (Khomeini, *Islamic* "3- Form", para. 4).

Since enactment of laws is necessary after the departure of the Prophet, and will remain so until the end of time, the formation of an Islamic government is always necessary in Islam. Without the formation of a government and the establishment of the institutions which ensure that Sharia law is enacted, chaos and anarchy will prevail and "social, intellectual and moral corruption will arise". The only way to prevent the emergence of anarchy and to protect society from corruption is to form a government (Khomeini, *Islamic* "2-Necessity", para.5). In Khomeini's view men are commanded to observe certain limits and not to transgress them in order to avoid the corruption. "This cannot be attained or established without there being appointed over them a trustee who will ensure that they remain within the limits of the licit and prevent them from casting themselves into the danger of transgression" (Khomeini, *Islamic* "2 :

Necessity”, para. 33). Khomeini suggests that the guardianship of the jurist is a rational matter. Guardianship of the jurist is “a type of appointment, like the appointment of a guardian for a minor.”

He goes as far arguing that “with respect to duty and position, there is indeed no difference between the guardian of a nation and the guardian of a minor.” That is because God has appointed the Prophet Mohammad as guardian (*vali*) over all the Muslims. After Prophet Mohammad’s death, his guardianship (*velayat*) extended to Ali, the first Imam of Shiites. This guardianship extended one by one, from the first to the second, from the second to the third, etc. until it was transferred to Mahdi, the hidden Imam. In the time of occultation, this guardianship is transferred from Mahdi to the most knowledgeable Shiite jurist who needs to be recognized by *ummah*. “The guardianship that the Prophet and the Imām (‘a) had in establishing a government, executing laws, and administering affairs, exists also for the Islamic jurist (*faqīh*)”(Khomeini, *Islamic “3-Form”*, para.28).

It is important to consider here the fundamental difference between Islamic government, on the one hand, and constitutional monarchies and republics, on the other: whereas the representatives of the people or the monarch in such regimes engage in legislation, in Islam the legislative power and competence to establish laws belongs exclusively to God. No one has the right to legislate and no law may be executed except the law of Divinity. “Sovereignty belongs to God alone” (Khomeini, *Islamic “3- Form”*, para.4).

Following An-Naim, one might argue that Khomeini’s theory of Islamic state is a post-colonial reaction to the fact of colonialism rather than a genuine interpretation of Islam. As we remember from chapter I, in this dissertation we are in agreement with Abdullah An-Naim’s

genealogy of the origins of the modern idea of Islamic state. Although An-Naim does not address directly contemporary Shiism, his argument on the relationship between the fact of colonialism and idea of Islamic state is much applicable to guardianship of the jurist thesis.¹¹² As a reaction to colonialism, Khomeini regarded the slogan of the separation between state and religion as being formulated and propagated by the imperialists who tried to exploit Muslim societies:

These slogans and claims have been advanced by the imperialists and their political agents in order to prevent religion from ordering the affairs of this world and shaping Muslim society, and at the same time to create a rift between the scholars of Islam, on the one hand, and the masses and those struggling for freedom and independence, on the other. They will thus been able to gain dominance over our people and plunder our resources, for such has always been their ultimate goal” (Ibid, “1-Introduction” para.5 from the end).

In Khomeini’s view only the followers of the hegemony of West rejected the idea of Islamic state. The religion and state were not separate in the time of the Prophet, in the time of the caliphs—even if Shiite does not regard them as legitimate—and in the time of the Imam Ali. As Hashemi argues, Khomeini’s theory of guardianship of the jurist theory constructs Muslim identity in relationship to, and in rejection of, the secular West (Hashemi, *Secularism* 144-147).

¹¹² See Abdullah Ahmad An-Naim, *Islam and the Secular State; Negotiating the Future of Sharia*, Harvard University Press, 2008.

In the next section I will evaluate the idea of the guardianship of the jurist from an Islamic point of view. Comparing the Haeri's doctrine of sovereignty as agency of joint owners with Khomeini's thesis, I will argue that the reasonable reading of Shiite Islam, as represented by Haeri, becomes possible by the specific way agency theory models the relationship between Islamic philosophy and Islamic jurisprudence.

3- Priority of Philosophy to Jurisprudence or Rejecting the Guardianship of the Jurist

In *Hekmat va Hokumat (Philosophy and Government)* Haeri demonstrates that the normative fundamental ideas of free and equal citizenship and society as a system of reciprocal cooperation exist in Islamic philosophical and legal traditions. The title (in Persian) is chosen with a lot of care, that is it corresponds with book's main arguments. *Hekmat* (philosophy) refers to Islamic practical philosophy, whereas *hokumat* (government) draws upon the notions of state and politics. In Islamic tradition, there are two words which usually refers to Islamic philosophy: *hikma* (Persian: *hekmat*) and *falsafa*. Some commentators believe that *hikma* has much wider meaning than *falsafa*. That is so because as we saw earlier on our debate on Islamic philosophy, a good deal of *kalam* (theology) would be classed as *hikma*, as would mysticism or Sufism. However, *falsafa* is defined simply as the knowledge of existents (*vuduj*). Haeri's position on this differentiation is ambiguous, but mostly he seems to consider *falsafa* and *hikma* as equivalent to each other. For example he writes: "In technical usage, *hekmat* is equivalent to *falsafa* which Aristotle divides it into theoretical and practical" (Haeri, *Essays* 411).

According to the thesis of the priority of Islamic philosophy to Islamic Jurisprudence, *hekmat* (Islamic practical philosophy) and *hokumat* (Government) are inherently

connected to each other. In other words, an Islamic political theory cannot be achieved without taking Islamic practical philosophy seriously. Considering Islamic jurisprudence *per se* is not enough. Giving priority to intellectual sciences in understanding Islamic political theory is parallel to the idea that government “is not a superior divine metaphysical reality” in the manner that guardianship of the jurist theory proposes. The phenomenon of government is simply an artifact and cannot come under the title of the immutable divine laws as proposed by guardianship of the jurist. The jurists are wrong in thinking that the administration of town lays within the orbit of pure Sharia. Following antecedent Islamic philosophers such as Ibn Sina and Mulla Sadra on “*hokumat* and its verbal meaning”, Haeri argues that:

Literally speaking, *hokm* and *hokumat* are derived from Arabic *hakama*, *yahkomo*, *hokman*. Both mean to order, to judge, to arbitrate, to settle in judgment. In political science terminology *hokumat* means the art of administration and thinking about how to rationally manage domestic and international affairs of the country. However, in Islamic philosophy and logic, *hokm* means to admit a predicative relation in a proposition, i.e. judgmental knowledge (*elm-e tasdiqi*) versus conceptual knowledge (*elm-e tasavori*).... *hokm* and *hokumat* has to be viewed as the judgmental knowledge of forming, directing, and administrating states, rather than [Islamic] guardianship (Haeri, *Philosophy and Government* 54-55).¹¹³

¹¹³ All translations of Haeri’s books from Persian into English are by the author of this dissertation.

This concludes that the Islamic model of just and legitimate government (*hokumat*) primarily has to be taken from Islamic practical philosophy (*hekmat*). *Hokumat*, as derived from *hekmat*, is incompatible with the very idea of guardianship of the jurist which justifies itself solely by appealing to Islamic positive law (*feqh*). Here Haeri appears to propose that in the cases of conflict between Islamic practical philosophy on one side and Islamic jurisprudence on the other side, the side has to be taken with practical philosophy, as reasonably interpreted. In other words, only a secondary role is given to jurisprudence (*feqh*) in political theory. In this interpretation, the science of the principles of Islamic jurisprudence (*usul*), next to Islamic philosophy theology (*kalam*), is regarded as a part of Islamic philosophy. Put in other words, one way to argue for a reasonable account of Islam is to give heavier weight to Islamic philosophy. Haeri's priority of Islamic philosophy to Islamic law thesis is partly similar to Fadel's approach to reconciliation between political liberalism and Islam, especially if we consider Islamic theology (*kalam*) as a sub-branch of Islamic philosophy (*hekmat*). In Fadel's argument the pre-modern doctrines of substantive law do not represent the highest order commitment of Islamic orthodoxy. In other words, Fadel suggests that the political commitments enshrined in the historical accounts of Islamic law (*feqh*) has to be considered as subordinate to, and carrying less moral weight within the normative Islam, than the commitments put forward in Islamic theology (*kalam*). In his view, Islamic tradition, particularly theology (*kalam*), provides rich resources out of which committed Muslims can contribute to a Rawlsian overlapping consensus. Fadel develops an interesting Islamic argument in order to show how Muslim citizens are able to freely endorse constitutional essentials of a political liberal state for reasons from within their Islamic comprehensive doctrine. For this aim he discusses by detail various pre 19th century Islamic theological, ethical and legal doctrines in order to demonstrate that the political commitments

implicit in those doctrines are consistent (or subject to reasonable interpretation can be made consistent) with constitutional essentials of a liberal regime, particularly the conception of the burdens of judgment (Fadel, “True” 6-69).¹¹⁴

To what mentioned earlier we need to add that there is a crucial linkage between Haeri’s theory of government and his Islamic criticism of the idea of guardianship of the jurist. Haeri regards any idea of Islamic government as unreasonable. His criticism of the idea of the guardianship of the jurist is based on the argument that guardianship is not compatible with social cooperation, even in the minimalist sense. Haeri, similar to Rawls (PL 109-110), argues that the idea of guardianship of the jurist, because of lacking the idea of social cooperation, in the extreme cases may turn into a slave system. Guardianship of the jurists, as Haeri asserts, is incompatible with the very idea of citizens as free and equal members of the society. *Velayat-e faqih* regards members of the society as invalid and minor by appointing over them a religious guardian (*vali*). This is obviously contrasting with the very idea of citizenship and equality, which has strong grounds in Islam. This is unIslamic from Haeri’s point of view. Here we need to consider his critique of guardianship of the jurist in more details. Haeri’s rejection of Khomeini’s divine theory of political obligation partly resembles Hobbes and Locke’s rejecting Sir Robert Filmer in his *Patriarcha or the Natural Power of Kings* (1680).

In the last two chapters of his *Philosophy and Government*, Haeri rejects the theory of *velayat-e faqih*. In the Islamic law, he argues, guardianship is only relevant in some “private law” cases where a minor, underage child or person of unsound mind is incompetent to protect her rights and property. In these cases, a guardian possesses the rights or property of the ward.

¹¹⁴ See Mohammad Fadel, “The True, the Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law”, *Canadian Journal of Law and Jurisprudence*, Vol. 21, No. 1, 2008.

Applying this model to state-individual relationship is totally misleading. This means depriving individuals from their rights and rejecting their personal autonomy. In other words, applying this case of private law to public law domain will lead to despotic rule of the state (Haeri, *Philosophy* 177-178, 61, 57).

It is wrong to equate sovereignty with guardianship, as the theorists of guardianship of the jurist do. In the classical Shiite jurisprudence, Haeri argues, guardianship is only meaningful in the private law, meaning a guardian's right to possess ward's specific properties and rights while "the ward is considered incompetent of to possess his properties; he might be a minor, invalid, person of unsound mind, etc.":

Velayat, in the meaning of guardianship, conceptually and essentially is different from government. Guardianship is the right of the guardian to possess the private property and rights of a ward, who for reasons such as immaturity, being of unsound mind, lunacy, and so on, is incompetent to take possession of his property and rights. However, government and statesmanship is equal to reasonable management of the affairs of a particular political and geographical territory [Greek police]. Statesmanship of government is a position which has to be transferred to a competent, rational and reasonable person or institution by the citizens who are the real owners of the city or country. Put another way, government is a hypothetical or real agency contract between citizens and their agents as some persons or institutions. Guardianship, which is equal to possession of all the rights of an incompetent or ward by a guardian, seems to be implausible in the social and public

affairs. Guardianship is essentially a private relationship which cannot be extended to the public life and relations (Haeri, *Philosophy* 177).

Similar to Rawls who argues that the basis of equality among citizens is their having moral powers (PL 79), here Haeri seems to implement that by equating persons with invalid, ward and incompetent, guardianship of the jurist deprives human beings from any moral capacity. Since *hokumat* (government) contradicts *velayat* (guardianship), the latter is unacceptable from a philosophical perspective. The reasons for undesirable, unjust and criminal behaviors created by dictatorships, including the religious, in the history has been confusing government with guardianship and neglecting the moral value of individuals (Haeri, *Philosophy* 57).

One of the foundations of the theory of the guardianship of the jurist is to implicitly or explicitly considering the supreme jurist/ leader/ guardian as the most knowledgeable person in the society. Thus, another argument Haeri develops against guardianship of the jurist is to reject this assumption based on an analysis of the conception of knowledge (*ilm*) in Islam. Following Mulla Sadra, Sheykh-e Ishraq, Ibn Sina (Avicenna) and other Islamic philosophers he argues that in spiritual Islam the highest kind of knowledge is the illuminative knowledge. This knowledge only belongs to the prophets, Imams and Saints, but not jurists. In other words, this type of the knowledge which is the most valuable from an Islamic point of view has nothing to do with legality and jurisprudence. Thus, in contrast to the theory of the guardianship of the jurist, jurists *per se* are not the most knowledgeable. This idea indeed seems to be an extension of Haeri's philosophy of mysticism as developed in his *Knowledge by Presence* (1992).

In his interpretation of the word *faqih* in hadiths¹¹⁵ such as “*faqihs* are havens of Islam¹¹⁶”, “*faqihs* are trustees of prophets¹¹⁷”, and so on, they equate *faqih* with jurists and try to religiously justify their theory. Mulla Sadra however has a different view. Literally speaking *faqih* means knowledgeable in Arabic. In his commentary on Kolehini’s *Usul-e Kafi* (a famous Shiite book of the hadiths by Shiite Imams and the prophet) Mulla Sadra interprets of the word *faqih* in such hadiths as the most knowledgeable in the Islamic mystical and spiritual sciences, rather than in Islamic jurisprudence (Quoted in Haeri *Philosophy*, 187). According to Mulla Sadra, equating the term *faqih* in such hadiths with formal legalism is a distortion from spiritual Islam and the truth of religion. Islamic salvation is not limited to the practice of the legal orders of jurists. Islamic salvation is results of getting involved with the mystical sciences which are related to hereafter (*akherat*). Religious illumination and knowledge does not conclude without purification of the soul. In contrast to this, the science of *faqih* is limited to this world (*dunya*) and this-worldly and secular legal practices. Assuming the jurists as the havens of Islam or trustees of the prophets is an obvious fallacy. Mulla Sadra here is following Abu Hamid Ghazzali, the famous medieval Muslim scholar, who in his the revival of religious sciences argues that jurisprudence is a this-worldly science, rather than a science of salvation. Dividing Islamic sciences into thisworldly and otherworldly sciences, both Ghazzali and Mulla Sadra believe that jurisprudence belongs to the category of the former. Since only otherworldly sciences are the sciences of salvation, being expert in Islamic jurisprudence does not necessarily result in spiritual salvation. Thus, jurists cannot be regarded as the most knowledgeable from an

¹¹⁵ In Islamic sciences the term hadith refers to words of prophets and Imams.

¹¹⁶ *Al-fuqaha husun al-Islam kahesne sura almadinato laha*, a hadith from the sixth Imam of Shiites, Imam Jafar Sadeq, *Usul-e Kafi*, (collected by Kolehini), “the Book of Reason and Ignorance” (*ketab-e aqlo jahl*).

¹¹⁷ *Al-fuqaha omana orrosol*, *ibid*.

Islamic point of view (Mulla Sadra, Commentary on *Usul-e Kafi*, Book of Reason and Ignorance, 205, quoted in Haeri, *Philosophy* 188-191).

Finally, I need to address one further question. The important problem an orthodox Shiite who rejects guardianship of the jurist may face is that how we can endorse political conception of justice and still remain faithful to the principle of Imamate? In the next paragraphs I will show how Haeri Yazdi develops an interpretation of the Shiite conception of Imamate which is compatible with the political liberalism.¹¹⁸

First of all the divine right for ruling is solely limited to infallibles. Only the prophet, here daughter Fatima and Twelve infallible Imams have the *velayat* and over the rest of believers. No infallible person, such a Muslim jurist, can claim for political leadership in any terms. Divine *velayat* does not belong to fallible. From this perspective, since guardianship of the jurist attributes the divine right of ruling to fallible persons (Muslim jurist, how much he is knowledgeable in jurisprudence does not matter as we saw above) it needs to be rejected as false doctrine.

Secondly, even though an infallible Imam or prophet potentially has the right of the leadership towards Muslim believers, this right only becomes actualized in case there is a consensus among believers. Put another way, only if the divine right of ruling of an Imam or prophet becomes coincident with the bottom-up popular legitimacy, an Imam or prophet is able to hold the political leadership (Haeri, *Philosophy* 142-143, 168-176). In other words, the potential right of political leadership for Imams, contrary to what guardianship of the jurist theory claims, becomes actualized only if the political leadership is transferred to an Imam or

¹¹⁸ Here I need to emphasize that this is only one possible solution for reconciliation between Imamate and political liberalism. Others may suggest other propositions.

prophet via believing people's consensus. In the history of Islam both Mohammad and Ali became political leaders in particular moments of their lives. Nevertheless, the fact that both the prophet and the first Imam of Shiites held political positions in specific periods of their lives was not regardless of the consensus of the governed. Although the infallible prophet or Imams are very talented for statesmanship, that skill does not become actualized unless peoples select the Imam to occupy statesmanship position. This is the reason that Ali, who was potentially the most talented and reasonable candidate for ruling the Muslim community after Mohammad deceased, stayed at home for twenty years and abstained any claim to political authority in the period Abu Bakr, Omar and Osman were Caliphate, until the peoples made a consensus on his leadership after the death of Osman and selected him as their leader. Revelation appoints an infallible prophet or Imam as the political leader, only in case people's consensus already exists. In Haeri's interpretation, this verse of Quran refers to this fact when Allah says to the Prophet:

Certainly was Allah pleased with the believers when they pledged allegiance to you, [O Mohammad], under the tree, and He knew what was in their hearts, so He sent down tranquility upon them and rewarded them with an imminent conquest (Quran 48:18).¹¹⁹

The same is the case of consensus between Ali and the Muslims of his time on the leadership. Although Ali (the same as Mohammad) was infallible, his political leadership became actualized only when the individuals of his time became mature enough to discover his

¹¹⁹ All the Arabic to English Quran translations are based on Sahih International translation of Quran, (for example) available at : <http://quran.com/>

particular talents and chose him as the ruler. The prophet and Imams are infallible from orthodox Shiite view. However, the fact that they were infallible and talented for politics does not mean that they have the right to rule without the consensus of the governed. Even this is only the case with the infallible Imams. Muslim jurists are like the rest of Muslims; they do not have any special ontological status in the creation, and do not have any access to the mystical and illuminationist knowledge about the reality and existence which the rest of people lack. They are not like Imams or the Prophet. Obviously they do not have any potential right to rule. The theory of guardianship of the jurist theory is absolutely rejected from a Shiite perspective.

All in all, as we saw in this section, according to Haeri guardianship of the jurist is an unreasonable doctrine, both philosophically and theologically. Here I would like to add that similarly from a Rawlsian perspective, guardianship of the jurist is unreasonable. For Rawls unreasonable persons, like reasonable and decent individuals, are rational. However, in contrast to reasonable and decent, they are unwilling to engage in any social cooperation unless there is a self-interest. Unreasonable comprehensive doctrines, such as the guardianship of the jurist, are unwilling to honor, or to propose, any standard or principle of justice for specifying the fair terms of cooperation. They do not engage in social cooperation except as a “public pretense”. If they find the opportunity they are ready to violate the terms of justice over social cooperation when doing so suits their interests (PL 50). They may accept the principles of toleration only as a Hobbesian *modus vivendi*. According to Rawls “fundamentalists of various religious or secular doctrines”, regard the society predicted by political liberalism as a nightmare of social fragmentation and false doctrines, or even absolutely evil (LoP 126). Unreasonable doctrines, or religious and secular fundamentalists, do not acknowledge the fact of pluralism within their societies. This definition apparently applies to the guardianship of the jurist theory.

Here I need to add one point regarding stability. According to Rawls's theory of stability liberal institutions are stable in a Muslim society even if doctrines such as guardianship of the jurist have adherents there, provided that the conduct of the adherents of such unreasonable doctrines is "outweighed by the appropriate conduct of a sufficient number of others" (LoP 15). Probably unless a state of a country is outlaw, unreasonable doctrines are not dominant in that society. Still, every society in the real world includes a number of unreasonable doctrines which are needed to be contained, so that they do not undermine the unity or justice (PL xvi-xvii). Thus, in so far as guardianship of the jurist or similar unreasonable interpretations of Islam are not so much popular in a Muslim society, they do not create a serious problem for the stability of justice as fairness in that country.

In the next section I will demonstrate how Haeri Yazdi's *government as agency of joint owners* thesis, enables us to see Shiism as a reasonable comprehensive doctrine of good which. Unlike guardianship of the jurist, this theory includes the main fundamental ideas which are modeled in political constructivism (chapter III).

4- Government as the Agency of Joint Owners or an Islamic Account of Social Contract

Government as the agency of joint owners is an Islamic account of social contract. This theory, as we will see, demonstrates how the fundamental democratic ideals of the society as a fair system of cooperation and citizens as free and equal persons, are available in Islamic traditions of jurisprudence and philosophy. Here we explain this theory.

According to this theory, before entering into the society and in what philosophers call the state of nature, the persons develop a sense of belonging to the particular place they have occupied. This sense of belonging is a result of human corporality and by time turns into the fact of ownership. The fact of being an inhabitant of a specific place is called *particular ownership*. Particular ownership is limited to a small and almost private space. Usually the initial private space is part of a larger penetrable common residential environment where persons live with their families and fellowmen (Haeri, *Philosophy* 101-102). Thus, at a more general level each person is the joint owner of this larger environment. By time, the persons, who live in a shared place jointly, turn into *joint owners* of the natural inhabitation (Haeri, *Philosophy* 97). Both of these ownerships are essentials of the life of humans in the state of nature. They are simply driven from the nature of men's corporal bodies.

Indeed the notion of natural ownership – not to be confused with the ownership which is constructed after entering the society in positive law – is achieved via excavating humans' sense of belonging to their inhabitation. It is based on a principle in Islamic legal theory which utters that “the precedent occupants of a space have propriety in its ownership”. This principle is inspired by a saying by Prophet: (In Arabic: *Man sabaqa ela ma lam yasbaq , fa'hova ahaqqo beh*).¹²⁰ However, regardless of the religion, it has a rational basis: natural joint inhabitants of a territory are its joint owners.

Furthermore, the concept of “joint ownership” already existed in Islamic legal theory tradition for centuries. In *usul-e feqh* (Islamic legal theory) a standard example concerning joint proprietorship was an immovable assigned to a number of heirs after the decease of the initial

¹²⁰ See *Vasaelo Al-shia* (hadiths collected by Horr-e Amoli) , vol.12, chapter 17, “*Aadab'o Al-tejaara*” (manners of commerce).

owner. Each heir had a joint share of the immovable, while ownerships were transmitted and penetrated into each other. Transmission and interpenetration of properties meant that no owner owns an exclusive portion of the immovable before the partition of property (Haeri, *Philosophy* 102-104). Although this and the previously mentioned principle are intrinsically extracted from sayings by the prophet and other Islamic sources, they are inherently rational and political. Put in other words, these two notions are constructed independently from any divine law or Sharia before entering the society (Haeri, *Philosophy* 97).

We may come into a situation where different occupants have conflicting claims about the ownership share of their joint residence. Under such situation, the principle that asserts “people are sovereigns of their properties” (*annaso musallituna ala amvalihim*) may guide us to resolve the conflict. This is a principle in the science of *Principles of Islamic Jurisprudence*. Thus, under the condition that competitions might arise between different occupants who claim for ownership of the joint territory, there should be a system through which occupants be protected from egoistic excesses of each other (Haeri, *Philosophy* 85). Joint occupants’ sense of justice, in addition to other powers they already had in the state of nature as human beings, called by Rawls moral powers of persons, lead individuals to construct a mechanism in order to distribute justly the joint residence. The fairest model of distribution is an equal division of shares among joint inhabitants. In order to achieve this aim, following their moral powers, joint occupants select a group of agents among themselves, as their representatives, in order to guarantee equal distribution of joint ownership. Here the conception of joint ownership is developed to the joint ownership of a city or country by its inhabitants (Haeri, *Philosophy* 108). In other words, if we enlarge the scale of our inquiry, the joint ownership of the shared space turns into joint ownership of a larger political territory. Persons are joint owners of their “city” or

“country” (Haeri, *Philosophy* 113). Here the notion of democratic citizenship is born based on the Islamic idea of agency contract (Persian: *aqd-e vekalat*).

Accordingly, the joint owners make an agency contract between themselves and one or a group of elected agents in order to put their affairs in order. The fact that the ownership is joint implies that the agents work for all the citizens in an equal and fair manner, not preferring one proprietor to others. In a parallel way, one may call the agents (the governors) as joint representatives. Here the joint owners transfer their power to their agents through an agency contract. Thus, government¹²¹ as agency of joint owners’ theory rejects the forms of government which are not grounded on the democratic consensus of people, for example the idea of Islamic state. Instead of grounding political obligation on the divine command, as the idea of Islamic state does, government as agency of joint owners bases political obligation on the consensus of the citizens as joint owners of the country. The duties of agents or governors/politicians are limited to what is transmitted to them by the owners. In addition to this, according to Haeri joint owners can one-sidedly abrogate the agreement at any time they find their agents violating the terms of the social contract. In other words, if agents commit breach of trust they will be deposed from their job automatically and immediately. This is compatible with what Shiite law implements in the case of private contracts (Haeri, *Philosophy* 120-121). This also explains the freedom of individuals in Haeri’s account of social contract. It also needs to be added that one main task of the agents of these joint owners, among others, is fair distribution of the benefits produced by social cooperation among all the joint members of the society.

¹²¹ Following the early modern writers of political philosophy such as Rousseau, Haeri uses the term civil society also as an equivalent to the term government. However, in order to avoid any kind of confusion with the contemporary meaning of the term civil society, as used in chapters I and II, I avoid using this term unless with due clarifications.

The theory of government as agency of joint owners implies mutual respect and toleration which are central values in political liberalism; all the joint owners have occupied their neighborhood, city, or country “equally” in the same level and with the same rights, so that none have priority to behave intolerantly towards others (Haeri, *Philosophy* 104). By grounding national government on the fact of natural joint ownership regardless of gender, religious belief, social status and race of the owners, government as agency of joint owners’ theory formulates a principled idea of democratic toleration which has significant weight in reasonableness of a comprehensive doctrine for Rawls. In Haeri’s political theory the state, which functions as the agent of the people, is not allowed to demonstrate intolerant behavior towards non-believers and non-Muslims, and peoples of minority groups. Since each citizen has the natural right of inhabitation equal to others, she has an equal and same status in law and should benefit the advantages of the agency contract without any discrimination. People are equals because they have equal shares of the agency contract regardless of their race and even religion.

In addition, the social construct of agency justifies the grounds of coercion by state and determines its limits. In fact, the constitution of each country can be regarded as the official document of the agency contract between the joint owners and the sovereign, which determines the limits of coercion by the state. In other words, this document determines the boundaries, conditions, limits, and quality of the power transferred to the just sovereign (Haeri, *Philosophy* 215-220).

As the foundations of the thesis of government as agency of joint owners, both the conceptions of *agency* and *joint ownership*, imply the idea of willingness to propose and abide by the principles of fair cooperation, provided others do the same. Obviously, this is for Rawls the main condition of reasonableness of a comprehensive doctrine, as explained in the previous

chapter. As a result, the model of Islam Haeri Yazdi proposes to us is fully reasonable from the perspective of political liberalism. Government as agency of joint owners contains the fundamental democratic ideas of society and person and can be considered as a source available to Muslims for the fundamental ideas of political constructivism (PL 49). Political liberalism fully addresses an Islamic comprehensive doctrine which embodies government as agency of joint owners' theory (as true or reasonable, depending on the case) within itself (Remember debates of chapter III on the idea of reasonableness).

We end this part of chapter V by one further clarification. Following Rawls's interpretation of contractarianism in LHPP, one may argue that we should not interpret the state of nature as explained above as an actual state. In other words, we should not interpret the social agency contract as an agreement that has taken place historically. We are not concerned with giving an historical account or explanation of how civil society—in the early modern sense—and its government came about. Haeri's social contract doctrine is best viewed, not as explaining the origin of the government and how it came to be, but rather as an attempt to give "*philosophical knowledge*" of civil society and the state of nature so that we can better understand our political obligations and the reasons for supporting an effective government when such a government exists.¹²² Here our aim is to see how civil society with its government *could be* generated and come about, given the State of Nature as described before. To quote Rawls, "on this interpretation, the idea of a Social Contract presents a way in which civil society *could* have been generated—not how it was actually generated, but how it could have been." So the idea is that we should view the social contract as a way of thinking about how the state of nature could

¹²² See John Rawls, *Lectures in History of Political*, 30f.

be transformed into civil society. Regarded this way, in government as agency of joint owners we explain and understand why the sovereign/state has to have the powers that he does by seeing why rational persons in a state of nature would agree to state/sovereign's having those powers. To follow Rawls's interpretation of classical social, "this is how we are to understand the properties of the state, from the process of its generation, and also understand why its powers are as they are" (Rawls, LHPP 31-32).

5- A Defense of Individualism based on Muslim Logic

As we saw in the previous section *Philosophy and Government* is a book of social contract. Yet, surprisingly the critique of Rousseau is one of the main themes of this book. The number of occasions where Haeri mentions and criticizes Rousseau in *Philosophy and Government* is so much that sometimes the reader feels as if Haeri is obsessed with Rousseau (Haeri, *Philosophy and Government* 61, 62, 85, 86, 87, 90, 91, 94, and 122). This is also the case with Haeri's political writings in *Philosophical Essays*. In most of the occasions Haeri justifies his criticism of Rousseau through linguistic analysis. He regards linguistic analysis as a major method of Islamic philosophy. In an autobiographical interview in the last years of his life, where the interviewer found Rousseau's *Social Contract* on Haeri's office table, he curiously asked what the difference between Haeri's view of social contract and that of Jean Jacques Rousseau was. Interestingly, Haeri answered:

My [contractarian] account is very different from that of Rousseau. In my view a plural name has [at least] two forms. In one hand we have summing plural which represents whole-part relationship. [...] On the other hand, we have encompassing

plural which reflects universal-individual relationship, instead of whole-part. [...] If we are going to endorse autonomy and independent character for individuals in community, we have to explain the relationship between the community and individual with universal—individual model, rather than whole-part one. Nevertheless, Rousseau studies the relation between community and individuals under the category of whole-part, afflicting his doctrine with many brutal problems.[...] This is not whole—part relationship, but rather universal-individual one, which explains a theory of democracy [...] These difficulties are inherited from Rousseau to Hegel, leading Hegel and his followers to the troubled notion of Spirit of community.[...] In my careful analysis, Hegel’s community spirit and the humanism attached to it are totally misleading and delusive (Haeri, *Essays* 381).

In this phrase it is obvious that Haeri puts Rousseau and Hegel in the same category, considering both as a proponent of methodological holism. In other words, Haeri’s critique of Rousseau is based on methodological individualism from a liberal standpoint. Thus, Haeri’s primary concern in dealing with Rousseau is to demonstrate the faults of holism and to develop an account of individualism based on Islamic philosophical tradition. A careful reading of Rousseau’s *Social Contract* may prove Haeri’s communitarian reading of Rousseau as problematic, ambiguous and unfaithful to the text. However, this is not what concerns us in this section. In my understanding, Haeri’s arguments reflect the universalist nature of Islamic philosophy in contrast to particularism of communitarian and post-modernist philosophers who find liberal democracy as incompatible with Muslim culture (See our answer to the communitarian objection in chapter I). Although most of the theories which are famous as

communitarianism in contemporary political theory do not fit exactly to what is called Communitarianism in this section, in the lack of a better word to describe what Haeri targets when he criticizes and (mis)reads Rousseau, we use the term Communitarianism.¹²³

Haeri argues that philosophy as linguistic analysis was an existent definition of philosophy in the Islamic intellectual traditions. At the first chapter of his *Analytic Philosophy and Theory of Knowledge in Islamic Philosophy*, he defined Islamic philosophy as either philosophical reductionism or logical analysis. The first chapters of Shiite legal theory (*usul-e feqh*) books, he asserts, contains linguistic philosophical debates (Haeri, *Analytic*, 24-29; 45-47). Thus, the main analytic device Haeri uses to attack Holism from a right-based liberal point of view is Islamic philosophers' linguistic distinction between "whole" (*koll*) and "universal" (*kolli*). In Muslim logic "whole" is the integral or collection of all components, whereas "universal" is a natural kind which includes all the members of an assumed class or group. The members of universal are called "individuals" while in the case of whole we use the term "parts". So whole has a connection to part, whereas universal is connected to individual. Unlike individual and universal relations, parts do not have all the characteristics of their whole.

For example, assume the name of my neighbor is Ali. "Ali" as a person is an individual member of the natural kind "human beings", having all the characteristics of "human" kind. Nevertheless, obviously Ali's finger does not have all the characteristics of Ali. In an appropriate theory of democracy we have to explain the relationship between political society and individuals with universal-individual model rather than whole-part one. Nevertheless, methodological holism, as favored by Rousseau and others, puts the relation between political

¹²³ I use Communitarianism and Communitarian terms with capital C, in order to avoid a relative distinction with the contemporary usage of the term as referred to the works of Sandel, Walzer and Macintyre.

society and persons under the category of whole-part explanation. This afflicts their doctrine with many brutal problems. “This is not whole-part relationship, but rather universal-individual one, which is compatible with [a right based] liberal democracy” (Haeri, *Essays* 382).

For instance consider the sentence “people are sovereign”.¹²⁴ In an appropriate theory of democracy, the term “people” is a universal rather than a whole. That is because right-based theories, for example political liberalism, regard every person in the society as autonomously free and equal, politically speaking. Holism and similar theories introduce the wrong notion of public person and equate that wrong notion with the people. In such a view, a set of fundamental rights which genuinely belong to persons, are attributed to the political society as a whole. As a result, persons are merely regarded as parts of the political community without having a politically autonomous status. In a reasonable theory of democracy we have to consider political society as a “universal”, whereas holism takes political community as a “whole”. Thus, confusing between universal and whole is the fundamental fault of a Communitarian view of the person. Being a holistic notion rather than a universalist one, Rousseau’s notion of public person is not compatible with the autonomous and equal status of real persons in the society (Haeri, *Philosophy* 111). In other words, a Communitarian theory mistakenly considers society as a supra-substance covering over and above all individuals changing the true persons into an unreal public personality and deprive her from “an independent and free existence” (Haeri, *Philosophy* 89-90). Such a theory fails to depict each person as a free, autonomous and equal member of the natural kind called human being.

¹²⁴ Haeri does not use this example. We have developed this example in order to clarify the distinction between whole and universal in Haeri’s political theory.

Government as agency of joint owners' conceptions of society and person include the fundamental ideas of society as a fair system of cooperation and persons as free and equal, as demanded in political constructivism. A true contractarian theory, Haeri asserts, tries to develop a notion of person where every individual is considered as free, equal, and politically autonomous, having all the rights belonging to the *human being per se*. Person's autonomy and equality is independent from the public notion of good, including state sponsored religion. In a right-based social contract, even revelation is not allowed to be publicly interpreted as violating the political autonomy, political freedom and equality of the persons (Haeri, *Philosophy* 87-89). Freedom of conscience is guaranteed in a right-based conception of justice. No common good can deprive people from their rights. Haeri gives the example of Soviet-like communist states as the example of those Communitarian states where the relationship between the sovereign and the persons is based upon whole—part model. State imposition of a common good to all citizens turns a state into an authoritarian one (Haeri, *Philosophy* 161). Islamic state (*velayat-e faqih*) is able to misuse Communitarian theories to impose a concept of good, for example a particular account of Islamic jurisprudence, upon all the individuals. Guardianship of the jurist characterizes persons as minors, underage children or persons of unsound mind and considers them as incompetent to obtain and develop an appropriate theory of good without the imposition by the state. This is depriving individuals from their rights and rejecting the idea of autonomy (Haeri, *Philosophy* 177-78, 61, 57). These phrases obviously demonstrate that government as agency of joint owners' theory contains the notions of the society and person which are modeled in Rawls's original position argument and thus Haeri's account of Islam is a purely reasonable one, in the Rawlsian sense (Remember chapter III).

In government as agency of joint owners' theory state power is transferred to the state only as a reflection of the power of joint owners of the country. Haeri emphasizes that joint owners of the country or citizens, are able to depose their agent (state) at any moment they wish, and appoint or elect a new agent or group of agents as the new governor. In cases there are some disagreements between the persons, the majority decision is the ultimate source of reconciliation and legislation. No anti-individualist notion of "public person", who might alienate persons from their identities by transferring them into a whole, is recognized as valid in this theory. *Philosophy and Government* tries to protect democratic participation and rights of every single citizen because it considers a democratic state as reflecting the power, wealth and glory of each member of the society (Haeri, *Philosophy* 76, 108-112; *Essays* 467-473).

Haeri argues that his criticism of Communitarianism based on the distinction between whole and universal is truly compatible with Quran. In the Quran, as he interprets as a Muslim scholar, man is placed as the deputy of God on the earth. Quran depicts human as the representative of God by considering his creation as essentially different from the all other creatures on the earth and the heavens: "Indeed, we offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed, he was unjust and ignorant" (Quran 33:72)¹²⁵

In Haeri's interpretation of this verse God has privileged human beings to be like Him; in this verse man is considered as unjust and ignorant not because he is considered as inferior. Contrarily this is so because he is usually unaware of the divine position God granted him. Another verse of Quran points to human dignity by implying the inferior nature of angles

¹²⁵Our English translations of Quran are based on Sahih international translation available at <http://quran.com/33>.

and heavenly creatures as compared to man; when God was creating Adam, He asked the angels to compete with man in revealing the secrets if they are able to do so:

And [mention, O Mohammad], when your Lord said to the angels, "Indeed, I will make upon the earth a successive authority." They said, "Will You place upon it one who [because of his nature] causes corruption therein and sheds blood, while we declare Your praise and sanctify You?" Allah said, "Indeed, I know that which you do not know. And He taught Adam the names - all of them. Then He showed them to the angels and said, "Inform Me of the names of these, if you are truthful. " They said, "Exalted are You; we have no knowledge except what You have taught us. Indeed, it is You who is the Knowing, the Wise." He said, "O Adam, inform them of their names." And when he had informed them of their names, He said, "Did I not tell you that I know the unseen [aspects] of the heavens and the earth? And I know what you reveal and what you have concealed" (Quran, 2: 30-33).

Allah knows the secrets in human creation. He taught the truth about his attributes only to Adam. Angels do not have access to the truth as man does. These verses of Quran are pointing out to a kind of natural human rights by considering human beings above the rest of creation, including angels and animals. In the ranking of existence in the universe, human lies in the secondary order of perfection only as compared to God. As a result, in Haeri's reading, Islam acknowledges personal autonomy (This is obviously a comprehensive, rather than political account of liberalism). Islam acknowledges that the same as being independence in existence, human individuals are autonomous in moral responsibility and religious duties. Haeri argues that

in the wholly Quran, *Sharia* commandments address simply individuals rather than a collective whole. As he mentions:

The terms such as *qovm* (ethnic group), *umma* (nation of Islam) [in Quran] are only referred to individual persons not their sum. Summing plural is a subjective, non-existing and irrational entity to which no responsibility can be attributed. [In my view,] only real individuals are able to bear the burden of responsibility. It is obvious that the logical foundation of this individual autonomy is the identification relationship which exists between the universal and the individual (Haeri, *Philosophy* 159).

Religious and moral responsibilities cannot be attributed to a person based on a whole-part model of analysis of religious language. In other words, responsibility is meaningless without freedom. However, freedom is not absolute. Man has to restrict her liberty within the boundaries of practical reasoning. Otherwise, liberty will turn into barbarianism and chaos. Therefore, liberty is also inconceivable without responsibility (Haeri, *Philosophy* 112).

6- Reconciliation between Sharia and Political Liberalism

As a complement to the above interpretation of an Islamic basis for social contract, we need to reinterpret and reformulate traditional account of *Sharia*. The followers of Islamic state, as we saw on our debate over guardianship of the jurist, argue that the commitment to this principle needs state apparatus. This interpretation of *Sharia* obviously violates the requirements of liberal principle of legitimacy and is incompatible with political liberalism. In other words, the doctrine

of the guardianship of the jurist is incompatible with the idea of society as a system social cooperation and persons as free and equal citizens. On the contrary, Haeri argues that the enforcement of Sharia via the coercive power of the state is self-contradictory. As we will see, this view of Sharia is totally reasonable from a Rawlsian perspective.

Haeri's reformulation of Sharia is partially based on his interpretation of the principle of justice (*adl*) in Shiite and Mutazila theology according to which in political and public realm, the ordinances of Sharia are only assist the orders of reason (Arabic: *Al-ahkamo al-shareiyya altaf'on fel'ahkam al-aqliya*).¹²⁶ As a result, human obligations and responsibilities proposed by Sharia in political realm are all originally rational. In other words, contrary to the theory of guardianship of the jurist, there is no irrational imposition by the divine legislator upon human life in public political issues. That is because according to the principle of justice (*adl*), as a significant principles among Shiite and Mutazila Principles of Faith (*usul-e din*), good and evil are objective. In political issues, Haeri appears to argue, the divine legislator of Islam simply guides us to act in accordance with obligations and duties which are rooted in practical reason (Haeri, *Philosophy* 138).¹²⁷ Being part of Islamic transactions (*muamalat*), political rules of

¹²⁶ This view of Haeri is partly similar to Khaled Abou El Fadl's account of the role of justice in Islamic law. See Khaled Abou El Fadl, *Islam and the Challenge of Democracy*, (ed. Joshua Cohen and Debrah Chasman), Princeton University Press, 2004, pp. 3-46.

¹²⁷ Haeri also tries to develop his argument in this section based on Muslim theologians' distinction between God's cosmic will (*eradeye takvibi*) and his revealed will (*eradeye tashrii*). Cosmic will is God's unbreakable laws in the nature, whereas revealed will, Sharia, is those God's law which needs to be acted upon voluntarily. See Haeri, *Philosophy* 127-129. However, I am not sure how much the aforementioned theological distinction leads to political reformulation of Sharia. That is why I avoid relying on it in this section.

Islam lie under the kingdom of practical reason rather than the permanent divine edicts (Haeri, *Essays* 430-53; Haeri, *Philosophy* 64).¹²⁸ Through this interpretation, Haeri reconciles the conception of Sharia law with the democratic principle of freedom of conscience.

Haeri's reading of Islam is compatible with the separation between state and church. One of the arguments which followers of the idea of Islamic state base their arguments upon is the principle of "to bid what is lawful and forbid what is unlawful" (*amr bil ma'ruf and nahy anil munkar*) in Islamic jurisprudence. In Haeri's reasonable account of Sharia, however, this interpretation of *amr bil ma'ruf* and *nahy anil munkar* principle is rejected in public political affairs. Thus, while implementing philosophical secularism as being quite incompatible with Islamic faith, Haeri regards political secularism as a requirement of Sharia. Put another way, Sharia cannot remain God's law if it is imposed by the state power upon all the individuals in the community; the enforcement of Sharia by the force of state is incompatible with the Islamic salvation. If Sharia regarded mandatory through the power of state, there the Islamic difference between a benefactor, a person who abides by God's law, and sinner, the one who violates it, is abdicated. In other words, if God's law is imposed by the state upon Muslims, the religious

¹²⁸ Generally speaking, for Haeri deriving religious injunctions and orders from the orders of reason is only justifiable in the cases of those religious rules concerned with the relation of men with men, rather than those aimed to set the relation between men and God. In the case of the latter there are many cases where good and evil cannot be discerned by human reason independently. In those cases, the Islamic worships (*ibadat*) are the best examples of them, an orthodox Muslim has to condescend and obey to the laws of God (Sharia) based on faith rather than the reason. In other words, worships are matters of the relation between man and God, whereas basic politics is a matter of the relationship among the men (Haeri, *Philosophy* 138-139).

reward and punishment in hereafter loses its logic. Salvation is compatible only with the voluntary and rational commitment to Sharia.

Thus, the notion of enforcing God's law is logically incoherent. State enforcement will transform Sharia into a purely secular law, with all the characters of secular ruling. When the law of Sharia is enforced coercively by the state, it is not the rule of God that is vindicated, but rather, the state's law ("Haeri's Response to Javadi Amoli" in *Essays* 324-325). God sent the Prophet Mohammad to people to call them to act voluntarily and rationally upon Sharia. That is why acting upon Sharia needs freedom of conscience. If Sharia is imposed by state power, persons will not be any more responsible for violating Sharia in the eyes of God. Guardianship of the jurist theory's claim to the religious necessity of an Islamic state to impose Sharia upon all members of the community is false from an Islamic perspective (Haeri, *Philosophy* 148-150& 166-168).

Haeri does not make clear what he means by the voluntary status of Islamic law from a political perspective. For example it is not clear whether Haeri's theory would permit or prohibit orthodox Muslims, in a Muslim majority society, to adhere to discriminatory parts of Sharia, such as *hudud* penalties. In fact, some parts of Islamic law are very challenging from the perspective of reconciliation between Islam and political liberalism. Among them one may mention *hudud* or Islamic punishments as the most controversial. The term *hudud* generally refers to the punishment for certain crimes mentioned in the Sharia, particularly robbery or theft (*sariqa*), drinking intoxicants (*shurb al-khamr*), false accusation of unchastity (*qadhf*), adultery or fornication (*zina*), and apostasy and blasphemy (*irtidad*). Although in traditional Islamic legal systems there were very exacting standards of proof that had to be met if *hudud* punishments were to be implemented, still there seems to be a deep incompatibility between political liberalism

and *hudud* penalties. Unfortunately, Haeri leaves this question unanswered on how he reconciles between *hudud* penalties and political liberalism. Even his solution based on the distinction between transactions (*muamilat*) and worships (*ibadat*) seems to be persuading in this regard. At least it is very general and unclear in this regard.

In my conjecture, however, Haeri's interpretation of *hudud* or other parts of Islamic law which are challenging from the perspective of reconciliation with political liberalism might be similar to Mohammad Fadel's interpretation of Islamic law in his debate on Islam and public reason. Fadel argues that political liberalism might be compatible with *hudud* if those punishments are regarded as totally voluntary actions. In Fadel's reading of Islamic law, the justification for the *hudud* penalties is religious, rather than secular, from an Islamic perspective. In other words, those penalties were established in Islam as a means for a believing sinner to compensate her sin. For this reason, non-Muslims were not subject to the *hudud* unless in cases the penalties used in connection with the *hudud* were also reckoned by a Muslim ruler to further a secular interest, for example, protecting property or security in the case of crimes such as highway robbery. This offers that Islamic jurisprudence recognizes an exemption from the *hudud* penalties for non-Muslims on the theory that non-Muslims obtain no spiritual benefit from having such penalties applied to them. On the contrary, it is rational for a committed orthodox Muslim to submit to a religious penalty because compensation of sin involves her salvation interest.¹²⁹

¹²⁹ Fadel gives the example of the punishment of lash for drinking wine. He argues that by yielding to the mandated penalty for drinking wine the orthodox believer seems to be rationally furthering her goal of obtaining salvation (ibid).

From this Fadel concludes that exempting dissident or disobedient Muslims who do not voluntarily submit to the *hudud* from those penalties should not raise any theological difficulties for orthodox Muslims. Similar to the case of non-Muslims, in this case also the application of the religiously motivated penalty does not further any interest of the individual under question, since the salvific benefits of the penalty are not achieved. In this interpretation, Islamic law should be able to countenance revising the scope of the *hudud* penalties so that they are applicable only to persons who specifically consent to the application of the *hudud* punishment. In other words, the application of the *hudud* penalty can not only be justified on prudential grounds as a means to further a secular interest (for example, the protection of property from thief). Islamic punishments are to be applied only to those persons who voluntarily consented to those penalties. One of the strongest arguments against the application of the *hudud* from a Muslim perspective, Fadel asserts, would be based on religious freedom, focusing on the absence of a religious benefit to the defendant in cases where she is a dissenter (Fadel, “Public” 16-20).

To this we need to add that if a Muslim majority state offers this option it would have to impose substantial procedural protections to ensure that the person is acting freely and is not under unwarranted pressure from other third parties.¹³⁰ Fadel admits that as a practical matter it

¹³⁰ Fadel admits that his solution requires a sophisticated mechanism through which state should learn the person under question is consented to the *hudud* penalty. Assuming these procedural requirements are satisfied, he argues, the *hudud* penalties that are limited to lashes should not raise any difficulties. However stoning is particularly problematic. Stoning is unique in this regard because the person subject to stoning, by virtue of the finality of the penalty, is essentially foreclosing her future self from questioning her present self’s commitments. Consider that in political liberalism persons are free in the sense that they are able to revise their conception of the good in their lives. Stoning, even voluntarily acted upon, contrasts with the liberal value of freedom and apparently should be

is highly improbable that a large number of Muslims would volunteer to have the *hudud* penalties applied to them (Fadel, “Public” 17-18 n).

Fadel’s reformulation of the idea of Islamic punishment seems to be compatible with Haeri’s idea of the voluntary status of Sharia and seems to be very consistent with the requirements of reasonableness in political liberalism. In other words, permitting the application of the *hudud* punishments, as one of the most challenging parts of Islamic law, only to particular class of faithful persons who voluntarily submit to it is compatible with the Rawlsian idea of reasonable. In this case state power is not used to coerce individuals with rules that are inconsistent with their conception of the good. Both Haeri and Fadel admit that this reformulation of Sharia would demand Islamist political movements to abandon the goal of establishing “perfectionist” Islamic states which seek to enforce Sharia and the Islamic conception of the good—in whole or in part—on individuals through the coercive power of state.

abolished. However, Fadel is not clear on this last point. In the case of amputation of the hand, he argues, although it results in a permanent disability, it does not ban the person from rationally revising her conception of the good in the future, and, consequentially, seems to be less problematic than stoning but more problematic than lashing (Fadel, “Public” 17-18 n).

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