AN INQUIRY ON JUSTICE:
BASES, BEARERS AND PRINCIPLES

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ABSTRACT

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One of the prevalent notions in the late twentieth century's political philosophy, justice lies at the heart of ethics, politics and jurisprudence. In this study, while I insist on the dominion of politics and the economic mode of production over morality and law, I consider the ethical realm to be also very important in justifying political movements and transformations. Defining the concept of justice plays a role more or less in the realization of justice on the Earth. I try to reveal the bases of justice in the second chapter. My attitude can be defined as foundationalism and realism molded with historical materialism. Subsequently, I attempt to deal with the bearers of justice; i.e., individuals, institutions, or structures. The contemporary political theories on justice pay attention to the notion of the individual and the faculty of rationality. Although I admit the role of

individuals in ensuring justice, social structures are the main bearers of justice. In the fourth chapter, I cover the main principles or pillars of justice, namely, equality, freedom, and rights. Equality can be classified as legal, political, social, economic and moral. I claim that economic equality is the principal one among others since economic inequality usually generates other inequalities. Economic equality can be satisfied through just production in which alienation and exploitation do not take place. Absence of exploitation is also required for realization of freedoms and human rights. Thus, I propose the principle of absence of exploitation as a primary justice principle, which is necessary but not sufficient to eradicate injustices in the world.

Keywords: Justice, Historical Materialism, Individualism, Equality, Principle of Absence of Exploitation

ÖZ

ADALETİN TEMELLERİ, TAŞIYICILARI VE İLKELERİ ÜZERİNE BİR ARAŞTIRMA

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Yirminci yüzyılın sonlarındaki siyaset felsefesinin yaygın kavramlarından birisi olan adalet kavramı, etik, siyaset ve hukuk alanlarının kalbinde yatmaktadır. Ben, bu çalışmada, siyasetin ve ekonomik üretim biçimlerinin, ahlak ve yasa üzerindeki hakimiyeti konusunda ısrarcı olsam da, siyasi hareketleri ve dönüşümleri temellendirmede ahlak alanının önemini teslim ediyorum. Bu doğrultuda, adalet kavramını tanımlamanın, fiili anlamda adaletin bu dünyada tesis edilebilmesinde öyle ya da böyle bir rolü olduğunu düşünüyorum. Çalışmanın ikinci bölümünde, adaletin temellerini serimlemeye çalışıyorum. Yaklaşımım, tarihsel maddecilikle dolayımlanmış temelcilik ve gerçekçilik olarak adlandırılabilir. Ardından üçüncü bölümde, adaletin taşıyıcıları, sorununu ele alıyorum. Çağdaş adalet kuramları,

genellikle, birey kavramını ve bireyin rasyonel yetilerini varsayarlar. Ancak, bu anlamıyla bir tür birey ve rasyonellik düşüncesi belli bir siyasi yönelimin sonucudur. Ben, her ne kadar, bireylerin adaletin sağlanmasındaki rollerini kabul etsem de, esas olarak toplumsal yapıları, adaletin temel taşıyıcıları olarak görüyorum. Dördüncü bölümde, adaletin ana ilkeleri veya ana dayanakları olarak tanımlayabileceğimiz, eşitlik, özgürlük ve haklar kavramlarını inceliyorum. Eşitlik, yasal, politik, sosyal, ekonomik ve ahlaki olarak sınıflandırılabilir. Ekonomik eşitlik, diğerleri arasında başat bir öneme sahiptir çünkü diğer türlerden eşitsizliklerin kaynağında da ekonomik eşitsizlik yatmaktadır. Yabancılaşmanın ve sömürünün olmadığı, adil bir üretim süreci, ekonomik eşitliği sağlayabilir. Özgürlük ve hakların gerçekleşmesi için de sömürünün ortadan kalkması gerekmektedir. Bu nedenle, sömürülmeme ilkesinin, adaletin temel ilkesi olarak benimsemesi gerektiğini iddia ediyorum. Sömürülmeme ilkesi, diğer adaletsizliklerin ortadan kalması için bir adım olarak düşünülmelidir. Diğer adaletsizliklerin ortadan kalkması için zorunlu ama yeterli değildir.

Anahtar Kelimeler: Adalet, Tarihsel Maddecilik, Bireycilik, Eşitlik, Sömürülmeme İlkesi

Those who struggle for a just world…

ACKNOWLEDGMENTS

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CHAPTER I

INTRODUCTION: SEARCHING FOR BASES OF JUSTICE

The concept of justice has dominated late twentieth century political philosophy. One of the most important concepts in our daily life, justice, has been discussed since Plato. It used to be associated with truth and righteousness. For most of the later thinkers also, justice has been seen as one of the absolute moral values, like a Platonic ideal. Then, since the second half of the twentieth century prominently, the topic of justice has attracted political thinkers and become a central topic for political philosophy rather than moral philosophy. Before justice became such a popular topic in the late twentieth century, the discussions in political philosophy usually centered on economic models, the government, the organization of society and institutions, and some related concepts such as power, sovereignty and the nature of law. But since the 1970s, political theorists' interests have turned to more moral and personal concepts such as justice, citizenship, responsibility, gender, environment, and so on.[1] Especially, John Rawls' celebrated article "Justice as Fairness"[2] which came out in 1985 is usually accepted as a turning point in contemporary political theory. The contemporary debates on justice mostly rely on

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[1] Will Kymlicka, *Contemporary Political Philosophy An Introduction*, second edition, (New York:

[2] John Rawls, "Justice as Fairness: Political Not Metaphysical", *Philosophy and Public Affairs* 14 (Summer 1985): 223-252.

his principles of justice. It is almost impossible to mention justice without referring to John Rawls' works. It is almost as if a new discipline called *Rawlsology* has emerged. However, I should clarify for the reader from the outset that I did not intended to contribute to *Rawlsology* in this study. Although I admit that Rawls's eminent principles are milestones for political philosophy and especially for the concept of justice, the shift towards questions on justice which has taken place in political theory can be better explained in light of the political transformations taking place in the world. For example, the collapse of the Soviet Union has changed perceptions, concepts, and arguments in the political arena. Capitalism has declared its superiority and Fukuyama proclaimed the end of history. Most political philosophers have as well adopted the capitalist framework as a constant for their political theories. Most political theorists, like Rawls, have attempted to find solutions to the problem of justice within the capitalist mode of production. Their attempted solutions are usually directed at softening certain damaging effects of capitalism with the help of some principles of justice. I would like give a preliminary notice that this dissertation does not propose a solution within the capitalist discourse. On the contrary, I aim to display capitalism is itself as unjust since it is based on exploitation. Precisely, justice requires "absence of exploitation" which will be the concluding principle of my inquiry on justice.

While I concede the importance of concepts, theories and principles and their effects on the direction of certain events, I hold that the directing power of concrete events is definitely much stronger than the effectiveness of concepts and theories. Especially working on this dissertation has enabled me to witness how

much the present state of affairs dominates theories, perspectives, and concepts. Any dominant view posits itself as if it is peerless and eternal and as if it is ridiculous to speak of its alternatives. When studying contemporary theories of justice, I noticed that they utilize some concepts (such as the individual, freedom, justice, morality) as if these concepts are univocal. In this study, I try to show that those political theories simply presume certain meanings, perspectives and grounds though they pose their notions as if they were objective. Thus, I dig into the grounds in order to reveal what there really is and how we demarcate between what is good and what is bad, what is just and what is unjust.

Contemporary debates on justice mainly focus on the problem of distribution. The issue is how we can balance between the well-off and the bad-off: some people are talented but some others are disabled, some countries are affluent whereas others are poor. As Peter Singer points out in his distinguished article "Famine, Affluence, and Morality", it is morally bad to observe that some people suffer from starvation, malnourishment, treatable illnesses, and so on without doing anything about it.[3] Thus, the task of justice is to distribute certain goods in order to repair both natural and societal injustices. In her article "What is the Point of Equality", Elizabeth S. Anderson claims "the distribution of nature's good or bad fortune is neither just nor unjust"[4] and "people, not nature, are responsible for

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[3] Peter Singer, "Famine, Affluence, and Morality", *Ethics in Practice* (Oxford: Blackwell Publishing, 1997): 585-595, 586.

[4] Elizabeth S. Anderson, "What is the Point of Equality", *Ethics* (1999): 287-337, 331.

turning the natural diversity of human beings into oppressive hierarchies".[5] Similarly, Judith Shklar indicates that in some cases what we call 'natural misfortune' stems from social and cultural phenomena and gives brilliant examples in *Faces of Justice*: for instance, to have a black skin color is a natural fact, but it has turned out to be a misfortune for black people. Moreover, she maintains that although an earthquake is a natural disaster, deaths and harms usually result from flawed constructions.[6] In other words, injustices do not come from nature, but certain natural facts turn into a disadvantage and even injustice in certain societal forms. Therefore, instead of perceiving injustices as the result of bad fate or misfortune, I regard justice as a social and institutional matter.

In his *Lectures on the History of Moral Philosophy*, John Rawls claims: "The idea of justice lies at the heart of moral and political philosophy."[7] However, while some philosophers lay the stress on moral grounds, others consider justice to be a branch of political philosophy as distinct from morality. I try to balance the moral and political sides of justice since I see one as embedded within the other even though the weight of this dissertation is more on the political side. I defend the idea that neither justice nor any of our moral judgments are innate or divine and I regard morality as something open to interference by social and historical transformations. They are formed through and within the long history of human

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[5] Anderson, "What is the Point of Equality", 336.

[6] Judith N. Shklar, *Faces of Injustice* (New Haven and London: Yale University Press, 1990), 1-5.

[7] John Rawls, *Lectures on The History of Moral Philosophy* (Cambridge: Harvard University Press, 2000), 5.

beings' struggles for a better life. However, political ideas alone do not convince us, a moral or humanitarian vindication is usually needed for any political argument. The recent interventions in Arab countries in 2011 by powerful states expose how the notion of human rights and freedom can be used for justification of some political interests.

Precisely because of this, it is very important to clarify the concepts and grounds directing our practical life. Therefore, I begin with searching the grounds of normativity. In the first chapter, I handle the question of what would happen to morality in a world without God. When unjust things happen to us, we usually grumble as such: what did I do to deserve those injustices? This question consciously or unconsciously presupposes a judge who has supreme power to see everything and decide what is waiting for us in the future. While reading a novel, it is easy to see "who is doing right" and "who is wrong" and "what factors made him/her to do so", but in real life,[8] if there is no omniscient judge, it is impossible to make absolute judgments and understand why all these bad things are happening to us. Acknowledging that there is no omnipotent judge weights a very important responsibility to mortal humans, namely to reconsider justice for this world.

My endeavor is to defend the idea that a material foundation is needed in the absence of a divine basis of morality. I argue for revealing the foundations in order to know how to approach moral situations. In the second chapter "Searching for

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[8] Shklar, *Faces of Injustice,* 9-11.

Bases of Normativity", I compare and contrast foundationalism and anti-foundationalism. Here, my aim is to enlighten bases of normativity and so our sense of justice in a way that will help to explain why we have certain intuitions regarding morality and justice. In addition, I try to find some criteria in order to assess and judge some moral and juridical situations. I think these two questions are inseparable since a certain system of values usually conditions our evaluations of moral situations.

Related to the foundationalist versus anti-foundationalist approaches, I review the debate between natural law theorists and legal positivists. As it is well-known, natural law theorists maintain that morality is the source of a law or norm; whereas, legal positivists defend that there is no necessary connection between law and morality. I review both classical and modern versions of natural law theory. I maintain that not only classical natural law theory but also modern versions of it understand justice and law with a reference to divine, ideal or self-evident sources. Then, I comment on legal positivists' critiques of natural law theory. Just like legal positivists, I reject that the sources of law or morality are sacred; they are somehow the results of certain juridical, social, political, and historical processes. But I do not agree with the legal positivists' claim that law and morality are two distinct realms. I claim that what generates law also generates morality. In order to illustrate how a judge may decide, a judge in conference told the audiences that a man who had no coal and firewood in a very cold winter day stole some from the balcony of his neighbor. In this case, the judge could sentence that man because of breaking into someone else's property and stealing something. But the judge did

not punish the man on the ground that the weather was severe and the man has a right to get warm. Throughout this dissertation I maintain that the origins or foundations of justice, law and normativity are to be found in material processes. Here, one may ask whether the judge's conscience is material. I do not have an answer to the question of what is conscience but I can say that our judgments just like our norms and laws are open to the effects of material processes. I use the expression 'material processes' mainly to indicate economic formations; but the expression could also be used to cover social, geographical, cultural, political, and historical formations.

In addition to these economic, historical, social and political processes, I regard the biological structure of human species as a universal basis for normativity. There is also a natural basis that human evolution and socialization processes require. I review biologically-based explanations of universal norms with the help of biological necessities, in 2.3.1. Concerning the problem of origins of norms, what human biology necessitates explain very little. In this regard, Jean Porter attempts to combine biological explanations and pragmatism so that while some very general and universal norms can be explained by the biological structure and development of human beings, cultural diversities will be explained by pragmatic reasons.[9] I am concerned about pragmatic approaches on morality and justice that can lead to cultural relativism. When it comes to justice, neither pragmatism nor any other version of cultural relativism can guide us to understand and judge the

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[9] Jean Porter, "Moral Ideals and Human Nature", in *Universalism vs. Relativism: Making Moral Judgments in a Changing, Pluralistic, and Threatening World*, ed. Don Browning, (United States of America: Rowman& Littlefield Publishers, Inc., 2006), 69-70.

moral situation we face. As I claim in 2.4., agreements or disagreements on justice-related issues are definitely different from diversity of our tastes. Thus, we ought to reveal and agree on a truth ground that we can understand, judge, and demarcate.

I address historical materialism as a methodology which may enable a satisfactory account for normative issues and various understandings of justice through history. Moreover, historical materialism molded with epistemological realism specifies a ground where we can distinguish the sides and demarcate which side is just and which is unjust. Here, historical materialism is taken up because of epistemological and normative concerns. Thus, instead of dealing with the ontological implications of historical materialism, I prefer to benefit from its explanatory function and political stance.

The third chapter "Searching for the Bearers of Justice" focuses on bearers of justice—as I clarify at the beginning of this chapter, I choose the word "bearers" since it encompasses both individuals and structures. Contemporary theories of justice usually regard individuals as the bearers of justice; however, I aim to adduce that individuals are not the sole bearers of justice. I do not regard individuals as puppets who are not responsible for what they are doing. Nevertheless, the domination of structures over both our individualistic behaviors and senses of justice in the era which we live in should not be ignored. In 3.3., I compare and contrast methodological individualism and structuralism with the help of some controversial cases. In these cases, marketing your own body, country, and political decision are discussed. I question whether selling so-called

inalienable possessions is the choice of those agents, or the result of the contemporary paradigm. While methodological individualism conceives justice in terms of individuals' intentions, structuralism approaches individuals as if they are merely outcomes of bigger processes i.e., structures; and justice represents a certain understanding of the prevailing structure. I consider structuralist explanations very important in order to clarify bases of normativity, however, they do not allow us to make normative claims. As I said above, enlightening the grounds is not adequate; we ought to judge, criticize, and demarcate. So, I prefer to follow Alex Callinicos's description of structures which can be understood as grounds not only determining but also enabling individuals certain possibilities to criticize, condemn, advance and change them.

Before the methodological individualism and structuralism debate, I discuss more orthodox versions of individualism. I regard individuals as bearers of justice, as well as structures. Nevertheless, I reject liberalism's understanding of the individual, as supra-historical, autonomous, atomistic, and rational. I try to illustrate that these four features attributed to the individual create an illusionary image of a person. To this end, I discuss the faculty of rationality of the human individual in detail in a separate section 3.2., because other characteristics, namely, being supra-historical, autonomous and atomistic stem from the faculty of rationality. Here I handle with two main versions of the understanding of what rationality is: the first is, I call, "strong" and the second one is "modest". The former one that I oppose represents those characteristics whereas the latter envisages more moderate senses of rationality which I consider to be admissible

for any theory of justice. The strong sense of rationality implies that individuals intend and act in accordance with their autonomous rationality and that justice is a question of cohabitation with another. However, as I argue throughout in this dissertation justice is not a matter of individual choice. Therefore, I defend that human individuals are social beings; they are influenced by each other. Besides, there are other and bigger forces influencing them, such as social, political and economic structures. So, theories of justice should include a modest sense of rationality and the individual.

I deal with the three main components of justice, namely, equality, freedom and rights, in the fourth chapter "Searching for the Principles of Justice: The Principle of Absence of Exploitation". Equality, freedom, and rights are the essentials of justice; we cannot imagine justice if any of those is missing. However, neither equality nor freedom can be regarded as a principle of justice without clarifying what we utilize them for. Throughout this chapter, I try to define them so that they can conform to justice for everyone and indicate a way for how they can be realized in practical life. While I deal with these realms and principles of justice, I introduce a ground principle which is "absence of exploitation." I claim that the principle of absence of exploitation ought to be considered as a guard of equality, freedom and rights: it is necessary but not sufficient condition. If exploitation persists, there is no chance for fulfillment of equality, freedom and rights. The conflict between justice and exploitation is indeed self-evident. Here again, it is important how we define exploitation. I prefer to deploy Karl Marx's understanding of exploitation, although it is highly a contentious conception.

Accordingly, in class societies, those who own the means of production take over some amount of labor of people who are working, i.e., slaves, serfs, or proletarians. In the capitalist economy, there is a legal labor contract between the employer and employee. Some therefore argue that exploitation is not the issue here since there is a pre-arranged consent of the worker, so employer's keeping the surplus value is not exploitation; rather it is a legal exchange. Yet for Marx, in spite of its legality, seizing some amount of workers' labor is exploitation which is the basic source of capitalist economy.[10] It is veritably inhuman that exploitation hinders workers to realize their potential.

In 4.2, I handle equality with its five uses; namely, legal, political, social, economic and moral. I borrowed these senses of equality from Stuart White.[11] All of these usages of equality complement each other but economic equality has a certain importance. For example, it is highly suspicious to speak of equal political participation of a hungry person. The increase in the number of people who are marketing their votes supports my idea. I mentioned those cases in 3.3. I identify economic equality with the absence of exploitation. I never claim that economic equality would solve all other inequalities and discriminations but I regard it as an initial step for ensuring other realms of equalities.

Then, I go on with freedom in 4.3. As the reader will have expected, I am not interested in metaphysical accounts of freedom; instead, I focus on its political

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[10] Karl Marx, *Capital vol. I*, in *The Marx-Engels Reader*, second ed. ed. Robert C. Tucker (New York, London: W. W. Norton & Company, 1978), 344-61.

[11] Stuart White, *Equality* (Cambridge: Polity Press, 2007), 4-14.

importance. As a political demand, freedom is a very popular notion in our modern world. Its popularity and its utilization as if freedom were merely a matter of choice do not lessen its value. I review the well-known distinction between positive and negative freedoms; the former is usually comprehended as "self-governing" and the latter is "absence of interference". Negative freedom is generally thought as a political demand or right. In his article "Two Concepts of Liberty", Isaiah Berlin indicates that positive freedom is also a political appeal since self-governing means that self-development, self-determination and political participation.[12] In addition to these conceptions of freedom, I refer to alternative attempts. First, I go over Philip Pettit's notion of "freedom as absence of non-domination" and then, Philippe Van Parijs's "real freedom". Both of these two notions attempt to realize freedom in practical life. However, they both assume a capitalist economy; so, realization of freedom would not be satisfied with these principles because capitalist economy relies on exploitation.

In the section on rights 4.4, I go over the contemporary human rights discourse. The question of whether legal human rights are derived from or must rely on moral rights is laid down first. Regarding the question, I agree with Allen Buchanan's approach[13] that legal human rights are not derived from the classical formulation

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[12] Isaiah Berlin, "Two Concepts of Liberty" in Isaiah Berlin *Four Essays on Liberty* (Oxford: Oxford University Press, 1969). http://www.wiso.uni-hamburg.de/fileadmin/wiso_vwl/johannes/Ankuendigungen/Berlin_twoconceptsofliberty.pdf

[13] Allen Buchanan, "Philosophical Theories of Human Rights", forthcoming in *The Oxford Handbook of Political Philosophy*, David Estlund, ed.

of human rights—such as John Locke's—and they do not have to rely on moral rights for justification but moral rights can support legal rights practices.

Politics directly determines rights; the determination is much more apparent than its influences on how we understand equality and freedom. The determination of rights by politics is direct because rights in our age are mostly inscribed. They are legalized through documents and enforced by international covenants. In this section, I reveal how the prevailing orientation of capitalist economy affects contemporary debates on human rights. In brief, some human rights philosophers abandon positive rights claiming that positive rights or welfare rights require institutional structure and well-developed economy. Indeed, I agree with them that positive rights require an institutional order more than negative rights do but this cannot be an excuse for giving them up. I insist that positive rights are basic and universal human rights.

Eventually, I propose "absence of exploitation" as a principle of justice. In a society where some people exploit others, justice will never be satisfied. All can agree that utilizing someone without his/her consent is unfair. Or, no one can claim that it is fair to force someone to work. Contemporary theories of justice indeed attempt to find solutions avoiding unfair utilizations. However, they ignore the fact that the capitalist economic model is established on surplus-value. So, it is ridiculous to imagine a just capitalist society. Even if labor contracts between employer and employee are proper in well-developed countries, they legalize exploitation. In this age, no one forces others to work through a whip but people have to work and somehow they are forced to agree on this or that contract.

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I would like to remind the reader that this dissertation is a result and combination of both philosophical questions and practical/political concerns. I would like to conclude the "Introduction" with Philip Pettit's words:

> Political theorists have long neglected such questions in favor of more metaphysical or foundational matters. They have preferred to spend more of their time reflecting on the meaning of consent, or the nature of justice, or the basis of political obligation, than they have on mundane issues of institutional design. They have chosen to do ideal theory, in John Rawls's phrase, rather than the sort of theory that would tell us how best to advance our goals in the actual, imperfect world.[14]

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[14] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999), 240.

CHAPTER II

SEARCHING FOR BASES OF NORMATIVITY

2.1 The Problem of Bases or Moral Values

2.1.1 God has No Sanction on Us Anymore

Throughout the history of philosophy, the concept of justice has largely been built on divine or non-earthly grounds. Because morality and religion generally went hand in hand until more recently, as John Hare claims, our moral language is still under the effect of religious vocabulary.[15] Historically, justice was usually thought of as something that was delivered by a divine judge; an individual who was chosen by God. Legal laws and decisions were often meted out with a reference to some kind of divine law. However this changed during the nineteenth century, when the death of God was declared—with the words of Nietzsche. But it was more than a shift in philosophy; beginning from the midst of the 18th century, the industrial revolution upset the social structure; and more importantly, scientific discoveries, especially evolutionary theory weakened the foundations of religion and the force of the church.

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[15] John Hare, "Religion and Morality", *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/religion-morality/ (accessed January 16, 2010).

With the modern age came the end of God and a decline in religious authority, and one may predict that those living in the modern age will also witness a decline in the force of morality. I realize that in our age most people continue to believe in God or Gods and that their moral attitudes are shaped by their religious beliefs. However, arguments that define and defend moral values on grounds of divinity alone are no longer considered compelling by most philosophers and many laypeople. Dostoyevsky expresses this idea succinctly when he states, "if God did not exist, everything would be permitted" and Sartre reiterates this point when he claims, "…it is very distressing that God does not exist, because all possibility of finding values in a heaven of ideas disappears along with him: there can no longer be an *a priori* Good."[16]

I agree with Sartre that the traditional ethical values and norms, most of which are related to the concept of justice, have lost their force since the ultimate reference point—for the good and justice—has disappeared. It is quite impossible to agree on *a priori* definitions and absolute reference points, anymore. When divine law ceased to be effective, the concept of human dignity took its place as a justification for the inalienable rights of human beings. However, rights are considered suspect by many; some people considered the modern human rights movement to be an attempt to westernize non-Western cultures. And, as such, some think that the movement denigrates non-Western cultures. In other words, a common and universal ground for reconciliation of differences left its place to separate and

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[16] Jean-Paul Sartre, "The Humanism of Existentialism," *The Philosophy of Existentialism*, ed. Wade Baskin (New York: Philosophical Library, 1965), quoted in Samuel Enoch Stumpf and Donald C. Abel, *Elements of Philosophy*, (New York: McGraw-Hill, 2002), 421.

small pieces of cultural norms, the force of which depends on the person owning the perspective of that culture. So, a superficial rhetoric of respect has become the dominant language of our age.

2.1.2 Need for Common Principles and Values

At the beginning of *After Virtue*, Alasdair MacIntyre proposes that, in the modern world, concepts like democracy, human rights, liberal rights, and justice are rootless; they hang in the air without any support. He then imagines a catastrophic situation in which all scientific and technological creations are destroyed, and all people with knowledge of science and technology are forgotten. When members of the new generation attempt to get the cultivation again, what they obtain will be only "fragments" of knowledge.[17] MacIntyre explains:

> The hypothesis which I wish to advance is that in the actual world which we inhabit the language of morality is in the same state of grave disorder as the language of natural science in the imaginary world which I described. What we possess, if this view is true, are the fragments of a conceptual scheme, pans which now lack those contexts from which their significance is derived. We possess indeed simulacra of morality, we continue to use many of the key expressions. But we have-very largely, if not entirely-lost our comprehension, both theoretical and practical, or morality.[18]

I agree with MacIntyre's hypothesis that especially since the era of a unipolar world has begun after the Soviet Union's resolution, many people have accepted certain moral ideals as true or valuable, but without questioning what they really

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[17] Alasdair McIntyre, *After Virtue,* 3rd edition (United States: University of Notre Dame Press, 2007), 1.

[18] Ibid., 2.

mean. As a result, our understanding of such concepts is often incomplete and the application of them is unclear. For example, as I said above, respecting others and other cultures has been a widely accepted motto of our century without enough questioning. However, this idea is too vague; it seems important to identify when people and cultures are deserving of respect and when they are not. For instance, should honor killings be respected because they are a cultural practice? Or, should we tolerate selling girls' virginity on the internet, or, selling somebody's vote in newspaper advertisements, in the name of individual liberties?[19] In summary, although many people share and apply many moral values such as tolerance, liberty, and respect, as Macintyre has articulated the possibility or the ground of sharing identical values or definitions has been swept away.

One may ask, is this disappearance of all transcendental concepts, notions, and grounds not desirable? If one accepts that justice and other related concepts mentioned by MacIntyre above are detached from their foundations, it is still legitimate to ask if it is really important to find (to reveal or to invent) foundations for justice and some other moral concepts. Why are foundations so important in this age in which "grand theories" have vanished and universalism has lost its effect? Can we not carry on public deliberations with our relativistic perspectives? Are unfounded theories and concepts not adequate to continue the discourse?

I think that humanity's abandonment of any hope from an eternal or divine justice-giver would be a positive progression in history especially for two main reasons:

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[19] I elaborate these examples in the next chapter.

human beings can then (i) understand the need to claim justice for *this* world and (ii) feel that the power to carry it out is in their hands. However, abandoning a belief in God's power would require us to redefine our ethical and political theories and values, including justice, and would require us to identify justifications for these ideas that would be considered compelling by all. Rather than identifying transcendental and *a priori* foundations for our theories, we must come up with justifications that would satisfy all people, including atheists. Before clearing the ground in this way, a demand for justice will not become a concrete and realistic demand. To put the point another way, if we know or assume that there is no "the world to come", if there is no judge to watch over every human being and every situation, then we urgently need to find an answer to the questions of why we ought to be good and fair, and more importantly, how we know what is to be done and if what we are doing is just. If we are alone by ourselves, then we have to find both our own reasons/justifications and our way to live in a fair world. I am not trying to claim that faith in God and religious ways of life have come to an end. My point is that, in the modern era, the social order does not operate in accordance with divine orders, so, values, demands and foundations have to be grounded in our secular world.

Furthermore, we live in a more multinational milieu in which religious and cultural values are becoming less influential. Largely due to the internet and the spread and advancement of various technologies, individuals today are being exposed to a very diverse array of religions, cultures, and beliefs. Ethical and political values are not sufficient to maintain public relations unless they are shared at least by a

group of people. Values and concepts cannot be left in the air if the aim is to convey a common thought, understanding, or at least a feeling. There is an urgent need to discuss different sides and find a common ground or determine some criteria to judge moral, political and judicial concerns. For example, some feel that the death penalty and vengeance are just, while others think that, no matter the circumstances, killing a person is an unjust violation of human dignity. Or, to provide a second example, some countries overthrow other countries' governments and even occupy their lands with the justification that the invaded countries have violated some international or universal laws. But which country's laws or which culture's values can have a binding force on the others? In order to have some motivating force, sanctioning power and to be persuasive, the concept of justice needs to be discussed in terms that are widely agreed upon by all involved.

Here, a more fundamental question might be asked: are these ethical and political concepts so innocent that we can continue utilizing them after we filter out their divine associations? I would argue, no. History is full of ironic cases in which, in the name of democracy, totalitarian policies are put into power, or, cases in which people are enslaved by those who promise to promote freedom. So, the concepts, such as, democracy, freedom, good, human dignity and justice have been tainted and abused. I partially believe that morality is a tool owned by the ruling class to control other people. However, I also consider them as historical achievements of humanity. In brief, morality is a realm of class struggle. Today, almost for the whole world, slavery is both morally and legally condemned, which is a great achievement when one considers that just two millennia before, slavery was very

widespread. Although today we are faced with other sorts of legal domination and illegal enslavement, we have ethical and political principles and rights as weapons to attack them. At this stage, I will not argue why one should believe that slavery is morally bad; I assume it to be morally bad and unacceptable. But I consider it very important to discuss in what context and for the interest of whom those moral concepts are used. So, I ponder the problem of foundation of normativity in order to distinguish which one we should adopt or abandon. Thus, I aim to uncover misleading grounds both religious and secular. I need to emphasize that I utilize the phrase "material bases" rather than "secular" or "physical" but in a way that the notion I prefer to use comprises both. Material bases evocates not only anti-mystical and anti-religious stance but also pure reality such as starvation slapping our faces. To be sure, when the issue is justice or normativity, it is quite impossible to talk about objective reality without any mediation and I would never propose to find such an objective ground. But I intend to correspond the bases of justice with the physical situations and finally to suggest some principles and criteria of justice to agree on them.

2.1.3 The Debate between Foundationalism and Anti-Foundationalism

I continue where I left off MacIntyre's problem: what will happen to our moral and political concepts if their religious backgrounds have expired? Should we create new foundations? Indeed, there are two opposite poles that can be identified among the stances taken with regard to the problem of foundation namely, foundationalist and anti-foundationalist approaches. In a very general way, foundationalism refers to the idea that there is a set of axioms serving as a basis for

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all other principles that are to be derived from them. These basic axioms do not have to be real or true. The history of foundationalism can be traced back to Plato since all of our knowledge, according to Plato, has to be founded on the knowledge of Ideas; in other words, Ideas are the unique source of knowledge. The founder of modern foundationalism, Descartes attempts to find an indubitable epistemic foundation on which we can establish all our principles.[20] According to Hare, today modern science is claimed to be the foundation of all kinds of knowledge, even though many would not agree with the idea; for instance, evolutionary theory may provide a foundation for morality.[21] I am going to discuss whether evolutionary theory can serve as a ground for our normativity in section 2.3.

A moral foundationalist usually assumes that moral foundations are true. For example, natural law theorists whom I will discuss in the following section, moral realists and universalists claim that there are objective moral truths, such as, "genocide is wrong". Meanwhile, in his "Universalism and Relativism: Some Lessons from Gandhi", Timothy P. Jackson warns people not to confuse foundationalism with universalism. Foundationalism seeks a secure ground on which a set of arguments can be justified: "Some assertions may be mere preference or opinion, but there is bedrock of absolute certainty on which genuine knowledge can and must be built. Universalism, in contrast, is a claim about the

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[20] John Hare, "Religion and Morality".

[21] Ibid.

scope of our knowledge claims, rather than about their certainty."[22] But universalism usually is seen as the most agreeable base for the moral foundationalist. Many contemporary political theorists tend to base their theories on some expedient principles; their truth is not an issue. In this sense, John Rawls, for example, can be regarded as a foundationalist since Rawls' theory of justice rests on his two principles on which equal and free citizens can "reasonably" agree on them.[23] I have to underline the fact that Rawls is never a moral foundationalist since he accepts the idea that everyone has a different morality, doctrine and vision of "the good life"; but for his political theory, he attempts to formulate foundational principles of justice.

In brief, foundationalists are supposed to believe that there are universal moral principles, whereas, anti-foundationalists hold a moral relativistic position that there are no universal moral laws crossing cultures and "there is no way rationally and convincingly to negotiate moral difference between communities".[24] In contrast to foundationalism, anti-foundationalism—post-modernism, cultural relativism and pragmatism—acknowledges that there is no such thing as an infallible starting point. James Rachels in his article "Challenge of Cultural Relativism" summarizes the main arguments of cultural relativism as follows:

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[22] Timothy P. Jackson, "Universalism and Relativism: Some Lessons from Gandhi," in *Universalism vs. Relativism: Making Moral Judgments in a Changing, Pluralistic, and Threatening World*, ed. Don Browning (United States of America: Rowman & Littlefield Publishers, Inc., 2006), 138.

[23] John Rawls, "Justice as Fairness".

[24] Don Browning, ed., "Introduction," in *Universalism vs. Relativism: Making Moral Judgments in a Changing, Pluralistic, and Threatening World*, (United States of America: Rowman & Littlefield Publishers, Inc., 2006), ix.

1. Different societies have different moral codes.

2. There is no objective standard that can be used to judge one societal code better than another.

3. The moral code of our own society has no special status; it is merely one among many.

4. There is no "universal truth" in ethics; that is, there are no moral truths that hold for all peoples at all times.

5. The moral code of a society determines what is right within that society; that is, if the moral code of a society says that a certain action is right, then that action is right, at least within that society.

6. It is mere arrogance for us to try to judge the conduct of other peoples. We should adopt an attitude of tolerance toward the practices of other cultures.25

At first glance, none of the six entries seem unacceptable or particularly controversial. For a universalist, articles 2 and 4 may seem questionable but the conclusion—tolerance toward cultural differences—is adoptable up to a certain point unless human rights are violated or there are any discriminations. Although, I do not define myself as a universalist, I do not adopt cultural relativism either. All different cultures have produced different values and norms as well as their own justification for their values and norms. However, cultures are not formed in isolation; they do not develop by their own internal dynamics alone. Besides, I do not agree to the idea that culture is a mysterious untouchable phenomenon. There is a wide range of determinants shaping culture from physical geography, geopolitical importance, religions, power struggles to occupations and so on. As we interfere in our physical conditions, there is nothing wrong with interfering in or judging a culture. The main problem here is of course what our criteria will be in judging. The argument of material bases that I discuss at the end of this chapter

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25 James Rachels, "The Challenge of Cultural Relativism", *Moral Relativism: A Reader*, (New York, Oxford: Oxford University Press, 2001), 55.

might be regarded as a criterion. Accordingly, a culture cannot be a criterion for judging other cultures but we can reveal the material and historical bases of a cultural norm and decide if there are individual or group interests or abuses behind that norm and which norm is beneficial for the rest of the group or the community.

In this study, I compare and contrast different attitudes, which could be thought of as different versions of foundationalism and anti-foundationalism or of their intersection. But I will focus on the attitudes in terms of their relation to realist and anti-realist perspectives.[26] Although foundationalism sounds as if it refers to realism and anti-foundationalism to anti-realism, there are foundationalist but anti-realist views and vice versa. I consider it very important to take the foundationalism/anti-foundationalism debate in connection with the debate on realism/anti-realism in ethics and politics since politics' or ethics' relation to reality should be revealed, I believe. I do not think that normativity could be detached from physical reality. This does not mean that all normativity is derived from physical reality. That is, there is always a gap between "what is" and "what ought to be". But I believe there is a coherent relation between the two distinct realms and keeping this relation in mind helps to discover moral truths and their justifications.

Here, instead of discussing all the different perspectives in this debate regarding foundationalism and anti-foundationalism, I merely present some of the more

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[26] Here I do not want to utilize the term "realism" exclusively under "moral realism". I use "realism" to imply the idea that our theories, scientific, moral, political, have a possibility to explain what is out there, in principle.

plausible arguments of both the foundationalist and the relativist views. My aim is to develop a historical materialist perspective, which is in some sense realist and in some sense anti-realist, since I believe that reality is a social construction from an earthbound materiality. This attitude would be foundationalist but the envisaged foundations are historically changeable rather than transcendental and *a priori* foundations. Besides, the foundations are material. Here again, the term 'materialism' is not used in place of secularism. Although I use the term 'materialism' to distinguish my sense of 'justice' from the spiritual meanings attributed to it, there is more to materialism than the elimination of divine conceptions. In addition, in my conception, materialism does not view physical reality as something bare; rather it admits that reality is mediated with social phenomena, which are discussed in the final section of this chapter.

To present my position, I discuss several reasonable arguments, before exposing my comprehension of the problem of justice. To this end, first, I discuss natural law theory and legal positivism. While I argue against natural law theory, I discuss deficiencies of legal positivism as well. I aim to go beyond the explanations of legal positivism and reveal materialist grounds of normativity. To this end, I also present attempts at coming up with moral universals founded on human biology. Biological explanations for our universal moral norms account for generally accepted moral rules all over the world but fail to justify cultural and moral multiplicity. Jean Porter combines biological approaches with pragmatism, which has strong arguments concerning cultural diversity, in order to keep both universal and cultural norms, detailed in Section 2.3. After arguing against the pragmatic

theory of truth as a version of anti-foundationalism, I criticize it for having a weak relationship with reality and not suggesting criteria for evaluating our current norms. Finally, I suggest my way of historical materialism as a methodology serving both for following the origins of our current norms and demarcating them in accordance with which side we take as a foundation of our normativity. I am aware of the fact that historical materialism is a trivial notion including a huge debate on how history progress if it does; that is why I need to underline that I grab the notion as a way out of this study's main problem; i.e., the grounds of justice. Dealing with the problems brought by that notion would be a topic for another and maybe larger study. For now, I request the reader, if I have a right to demand such a thing, to consider this notion, that is, historical materialism, only with its narrow meaning which could be a materialist perspective grasping normative issues but through a historical window.

2.2 The Natural Law Theory vs. Legal Positivism Debate

The debate between natural law theory and legal positivism can be considered an old version of our main problem on foundationalism and anti-foundationalism. Positive laws, made by humans, are subject to change; however, the concept of law is taken to be associated with permanency, constancy, and universality. In brief, the problem is—for now—whether there is a firm and common origin or ground of positive laws, e.g., a natural law. If there is, then this means that there is a fixed and real foundation of our moral values and political concepts. But if there is no natural law, this does not necessarily vindicate anti-foundationalism since, as

this dissertation claims, foundations do not have to be everlasting as implied by natural law theory.

In this section, I review the main points of the debate on the origins of law, which is especially important for my purposes. More precisely, I intend to show that natural law theories, either classical or modern, suggest that there is a universal nature of all human beings, which makes it sound as if there is a God or God-like order pre-conditioning human nature and moral imperatives binding moral life in this or that way. To support this claim, I will discuss traditional and modern examples of natural law theory and their understanding of rationality. Then, I will present legal positivism as a reply to natural law theory. In this section, I question how the validity of law can be ensured, when law is relieved from sacred origins. Yet I will also attempt to show that legal positivism is sometimes inadequate in explaining the nature of law. While legal positivists bring out the relation between legal authority and legal law, my aim is to highlight historical processes behind the authority, law and normativity.

2.2.1 Natural Law Tradition

According to classical canon, since Cicero and Aquinas, "An unjust law is not a law".[27] When we are confronted with an unjust event, we name it 'unjust' first by looking at the positive laws that are in force. However, when our current written laws are insufficient, we appeal to "higher laws", which are understood to be more

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[27] John Finnis, "Natural Law", *Routledge Encyclopedia of Philosophy*, Version 1.0(London: Routledge), § 4.

fundamental and universal. In fact, natural law theory offers an explanation for those higher and more basic laws, which all other laws allegedly stem from. While natural law theorists cannot agree on whether natural law is divine order or not, all agree that the authority of law is ultimately conferred by morality. The function of natural law is to serve as a code of morality.[28] That is, according to natural law theorists, every law has a moral worth and positive law derives its entire validity from natural law; it is essentially a mere emanation of natural law. Positive laws are derived from the natural one by human beings. While positive laws can be easily withdrawn because they are the products of legal systems which are open to change; natural law cannot be broken, it is indestructible and unchangeable.

Although natural law theory usually reminds us of some kind of theological morality or ethics, natural law does not necessarily have to imply the orders of God. There are some modern natural law theorists who purport to be secular. However, I shall insist that any theory that puts at its center human beings and their capacity of rationality in abstraction from nature and evolution and that approaches law without considering its historical and social bases is in fact not free from religious associations. I pay attention to contemporary discussions on natural law, with special focus on the relation between human nature, law (principles, values and norms), and rationality. In the following chapter, I discuss the capacity of rationality and adopt a perspective contrary to the one natural law theorists propound. At first glance, the thinkers I discuss here all seem to be saying more or

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[28] M. Varn Chandola, "A Unified Definition of Natural Law", *Loyola University Chicago Law Journal*, 33 Fall, No. 1 (2001), 195-199, 196.

less the same thing. From Aquinas to Kant, the persisting theme seems to be that human beings are rational creatures and that this capacity has the ability to discover natural law as the foundation of morality. But John Finnis, one of the modern pioneers of natural law theory, makes a distinction between the classical and the modern traditions of natural law and sets himself apart from the well-known so-called modern natural law thinkers such as Hobbes, Locke and Kant. I go into details of the discussion because Finnis's critique of the modern understanding of the relation between natural law and rationality helps me to clarify the narrow sense of rationality which I will explore in the next section.

While I discuss these thinkers, I have in mind the question of whether natural law can be secularized. Finnis has the tendency to interpret natural law thinkers from Aquinas to Kant detaching their religious thoughts from their moral philosophies. My opinion is that natural law theory, whether classical or modern, is tied with the idea of God very tightly and I think this can be seen even in Finnis's understanding of rationality.

2.2.2 Can Natural Law Be Understood as Law of Nature?

Before going into details of the notion of rationality in natural law theories, I desire to deal with a preceding problem: Is natural law a sort of law of nature? This question is important in order to understand the link between theology (or, cosmology in general) and morality. I discuss the problem raised by John Finnis in his *Natural Law and Natural Rights* again since he calls 'natural law' "an unfortunate expression" because it is often conflated with the "law of nature". This conflation causes moral laws to be thought of as though they are things found in

physical nature.[29] However, it remains quite questionable whether such a distinction between natural law and law of nature can be maintained in its original formulations. When we look at the history of the term, we see that 'natural law' is in fact a fitting name for some universal moral principles because the moral life of human beings was thought to be an indistinguishable part of the order of the universe. For example, Aquinas maintains: natural law is "nothing else but the rational creature's participation in the eternal law."[30] So, here natural law is considered to be a part of a more comprehensive law, namely, eternal law, which does not only govern human beings but the universe with beings on it. Finnis seems to claim that one can make sense of Aquinas's concept of natural law independently of eternal law (which was law of nature for Aquinas). But as D. J. O'Connor in *Aquinas and Natural Law* points out, Aquinas sometimes uses the term 'natural law' instead of 'law of nature'. This is to be expected in Aquinas's time since, as O'Connor reminds us, the distinction between the two terms is a result of the modern understanding of science and nature.[31] Accordingly, during the times of Aquinas, people had the tendency to think that there was one set of laws ruling over both physical nature and the practical life of human beings. We do not have such a tendency anymore; now, scientific laws and moral principles are regarded as separate. In fact, this confusion indicates that Aquinas's morality is

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[29] Quoted from J. W. Harris, "Review: Can You Believe in Natural Law?" *The Modern Law Review*, Vol. 44, No. 6 (Nov., 1981), 729-735, 730.

[30] Quoted from D. J. O'Connor, *Aquinas and Natural Law*(Great Britain: Macmillan & Co Ltd., 1967), 61.

[31] Ibid., 59-60, 80-1.

closely related with his metaphysics and theology. According to Aquinas, everything in the universe is pre-conditioned by a law which is merely the order of God. God, as an architect, designs the nature of every being and every event so that they follow a certain law which is appropriate for their nature.[32]

John Finnis does not think like O'Connor: In *Aquinas*, he prefers to read Aquinas's natural law theory as merely a moral philosophy distinguishable from his theology, so that defending a secularized version of natural law has arisen as a possibility. In her "Review" of Finnis's book *Aquinas*, Jean Porter claims that Finnis adopts Aquinas's natural law theory eliminating its theology by arguing for that it is "peripheral" to Aquinas's moral theory.[33] I believe, as Porter claims, nature precedes morality according to Aquinas. Therefore, the violation of a moral law is actually being incongruous with nature, which is a sin. That is, in contrast to what Finnis maintains for Aquinas's philosophy, according to Porter, natural law is much more than the moral law.[34]

I think the importance of the discussion between Porter/O'Connor and Finnis on whether natural law can be distinguishable from law of nature lies under the problem of whether a secular interpretation of natural law theory is possible or not. O'Connor and Porter maintain that a theological perspective and underlying cosmology precede morality at least for Aquinas's natural law theory. However,

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[32] Ibid., 59.

[33] Jean Porter. "Review: Reason, Nature, and the end of Human Life: A Consideration of John Finnis's 'Aquinas'", *The Journal of Religion*, Vol. 80, No. 3 (Jul., 2000), 476-484.2000, 476.

[34] Ibid., 479.

Finnis attempts to relate morality with the good but here the good is understood as human good which is uninterested in achieving the way directed by God. Regarding the relation between natural law and eternal law in Aquinas's theory, Finnis's opinions on Aquinas seem to be a "misinterpretation". In the next section, I go on with other natural law theorists, Locke, Kant and Finnis, in order to deepen the problem of secularism. I have recourse to Finnis again since he makes a distinction between classical and modern natural law theories and he categorizes his theory as classical.

2.2.3 A Distinction between Classical and Modern On the Base of Rationality

As mentioned in the previous section, Finnis distinguishes moral law from both eternal and physical law. Instead, he tries to relate natural law with the human good, rationality and freedom, which are rooted in Aquinas (according to Finnis of course, but not according to Porter). Relating natural law with moral issues rather than any force beyond human will can be rooted in John Locke—I believe, no one would object to it. Thus, a discussion of Locke here is needed also because his understanding of freedom and rationality can be seen as the source of the modern and secular conception of natural law.

Locke is considered as the pioneer of classical liberal political thought. His conception is novel in a sense but in another sense I maintain that the model of human being formed by Locke evokes a divine background; so it is not that much secular. I handle the problem after I also discuss Kant's understanding of rationality. Afterwards, I present Finnis's criticism of both Locke and Kant and their "modern" understanding of rationality. Finnis claims that rationality in

classical sense was not considered a distinct faculty but it was thought as penetrating all kinds of activities of human beings. Whereas Finnis proposes to return to the classical sense of rationality, he grounds his natural law on the strong sense of rationality (i.e., Lockean and Kantian) which is not very different from the modern sense, so I think, he fails. After elaborating Lockean and Kantian ties between natural law and rationality, I will discuss Finnis's distinction between classical and modern understandings of rationality and why his natural law theory shares the same destiny with the traditional theories of natural law.

2.2.3.1 Locke's Conception of Natural Law

In Locke's political philosophy, every individual is free but restricted by the natural law. Locke understands the natural law, which every rational being has the ability to understand and interpret, as a sum of principles intending to protect the life, liberty and possessions of human beings. The natural law has been in force before positive laws were formulated and even before societies were arranged—the period is known the "state of nature".

> The state of nature has a *law of nature* to govern it, which obliges everyone; and reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty or possessions: for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by his order…[35]

> And that all men may be restrained from invading others' rights, and from doing hurt to one another, and *the law of nature* be observed,

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[35] John Locke, "Second Treatise", *Two Treatises of Government*, ed. Peter Laslett, student edition (Cambridge: Cambridge University Press, 1988), chapter II, §6, italics are mine.

which willeth the peace and preservation of all mankind, the execution of the law of nature is, in that state, put into every man's hands…[36]

First, I want to draw attention to the italicized phrases "law of nature" which even Locke uses interchangeably with "natural law". Despite five centuries passing between Aquinas and Locke, this quotation shows us that the distinction between "natural law" and "law of nature" has not been made even in the 17th century. Law was thought of as one eternal all-encompassing order and regulation of the universe and human will. This "unfortunate" naming of natural law, in Finnis's words, supports my thesis that despite attempts to secularize natural law theory, it remains very connected with its divine origins so that these initiatives fail—at least we observe that in Locke, in one sense. Remembering that Locke is a deist thinker, I think that what Mark Murfy maintains in "Natural Law Theory in Ethics", that deist characteristic of natural law theory entails a shade of God on moral life, is also true for Locke:

> It is also clear that the paradigmatic natural law view rules out a deism on which there is a divine being but that divine being has no interest in human matters. Nor can one be an agnostic while affirming the paradigmatic natural law view: for agnosticism is the refusal to commit either to God's existence or nonexistence, whereas the paradigmatic natural law view involves a commitment to God's existence.[37]

Although Locke claims that the natural law instructs that since every individual is a work of God, nobody can destroy his and someone else's property,[38] Locke's

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[36] Ibid., §7, italics are mine.

[37] Mark Murfy, "Natural Law Theory in Ethics", *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/natural-law-ethics/

[38] Locke, *Two Treatises of Government,* §6.

comprehension of natural law seems compatible with the beginning of the modern and secular sense of natural law. Despite the fact that Locke explains natural law and the capacity of rationality with the idea of God, natural law and moral rules ensure rational human beings to live together on the world rather than to achieve the pathway to God. Locke and all the natural law theorists would defend Finnis's definition of the natural law as "self-evident" moral principles oriented towards human good.[39] From now on natural law is related with rationality which is usually considered to be a faculty of understanding self-evident moral rules.

2.2.3.2 Kant's Conception of Natural Law

Locke's view is developed by Kant whose explanation on the relation between freedom, rationality and self-evident moral laws is still adopted by contemporary liberal thinkers. Just as Locke is considered a milestone in political philosophy, Kant is considered as such in moral philosophy. Before going into details of the differences between Locke's and Kant's theories, I want to emphasize Kant's similarities with Aquinas and Locke regarding the parallelism between law of nature and natural law.

> Two things fill the mind with ever new and increasing admiration and reverence, the more often and more steadily one reflects on them: the starry heavens above me and the moral law within me. I do not need to search for them and merely conjecture them as though they were veiled in obscurity or in the transcendent region beyond my horizon; I see

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[39] J. W. Harris, "Review: Can You Believe in Natural Law?" *The Modern Law Review*, Vol. 44, No. 6 (Nov., 1981), 729-735, 729.

them before me and connect them immediately with the consciousness of my existence.[40]

In contrast to Aquinas and Locke, Kant certainly does not confuse natural law with the law of nature. However, reason is the faculty grasping not only conscience within the self but also the world outer to self—which is shared by all three of these thinkers. "Kant tried to show that both the laws of nature and the laws of morality are grounded in human reason itself."[41] Here, I do not want to go into the details of Kant's epistemology and how reason grounds knowledge about the outside world. But it is necessary to remember that Kant makes a clear distinction between physical and moral realms. Whereas in the former realm, laws of nature explain the operation of a deterministic nature, in the latter the moral law does not recognize any other determinations except the "categorical imperative", which is the moral law itself. Guyer explains Kantian moral law which is called the 'categorical imperative' by Kant as follows:

> The categorical imperative is the form that the fundamental principle of morality takes when applied to imperfectly rational creatures like ourselves: even though this principle can originate only in our own reason, and is not externally imposed upon us by any other divine or human ruler, it can still appear like a constraint because we also have inclinations that would if unchecked lead us to act contrary to it. On Kant's analysis, the categorical imperative requires us to act only on "maxims" or principles of action that can be "universalized," that is, that could be accepted and acted on by everyone who would be affected by our own actions.[42]

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[40] Immanuel Kant, *Critique of Practical Reason*, trans. and ed. Mary Gregor (Cambridge, New York: Cambridge University Press, 1997), 5:161–2.

[41] Paul Guyer, "Kant", *Routledge Encyclopedia of Philosophy*, Version 1.0(London: Routledge).

[42] Ibid., 35.

In accordance with the categorical imperative, reason has the ability to test whether a maxim can be universalized or not. Guyer maintains that Kantian moral law does not reflect God's command; rather reason discovers it. Thus, for now the common issue with the previous thinkers above is the superior role of reason in ethics, which is universal for entirely this tradition. In contrast to Aquinas, for Kant, reason does not require God, or any other reference point in order to distinguish between good and evil. I think, claiming that God is replaced by reason/rationality would not be wrong. Here, reason, for sure, does not include any material substance. It is neither subject to evolution nor history; it is beyond all the processes and change. Abiding, eternal, permanent attributes of reason are also that of God. In brief, what Kant or Guyer claim, that the categorical imperative must not be understood as a divine order, does *prima facie* seem to disprove my thesis; but the qualifications of reason vindicate it. Kant, at the very beginning of the *Religion within the Limits of Reason Alone*, notifies how reason can release itself from needs, means, whatever is external to itself.

> So far as morality is based upon the conception of man as a free agent who, just because he is free, binds himself through his reason to unconditioned laws, it stands in need neither of the idea of another Being over him, for him to apprehend his duty, nor of an incentive other than the law itself, for him to do his duty. At least it is man's own fault if he is subject to such a need; and if he is, this need can be relieved through nothing outside himself: for whatever does not originate in himself and his own freedom in no way compensates for the deficiency of his morality.[43]

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[43] Immanuel Kant, *Religion within the Limits of Reason Alone*, trans.Theodore M. Greene and Hoyt H. Hudson (New York: Harper & Row Publishers, 1960), 3.

Accordingly, the freedom of human beings is not of the same kind as animals'

being free; that is, doing whatever you want arbitrarily is not considered freedom,

rather freedom is acting in accordance with the universal moral law, which can be

grasped rationally. Kant does not understand freedom as "absence of external

impediments" in the Lockean sense.[44] For Kant, freedom is acting spontaneously,

namely, it is the power of acting without any internal or external determination,

such as one's body, desires, needs, other people, society, nature and world. I want

to emphasize that reason as envisaged by Kant (which even religion is considered

within the limits of) is not to be affected by anything. Here, human being in the

Kantian sense looks like a solipsist being. I am aware that this is a very serious

allegation. Kant certainly is not a solipsist; he recognizes the body, other minds

and the external world to some extent. Nevertheless, he establishes a relation

between reason and its externality that is characterized by "notwithstanding". In

other words, reason is alone and acts in accordance with moral maxims

notwithstanding external conditions.

Furthermore, Kant claims that human beings are born with a "predisposition" with

three aspects: "animality", "humanity" and "personality". Animality represents the

irrational impulses of human beings. However, they have reason which makes

them human. They possess also personality which means "capacity for respect for

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[44] Quoted from Paul Franco, *Hegel's Philosophy of Freedom*(New Haven: Yale University Press, 2002), 160.

the moral law as in itself". Thus, after these pre-dispositions, human beings are absolutely free to follow or not to follow the moral law.[45]

To repeat, what Kant calls pure reason of religion "cannot include what is historical" and "must waive consideration of all experience".[46] I think it is easy to observe the continuity of the tradition begun with Plato, peaked with Aquinas and modernized by Kant. There is no religion in the Christian sense in Plato. But it was Plato who condemned all change to meaninglessness/worthlessness. So, the human body and all physical reality were detached from reason. Following this historical path, it can be claimed that Kant is a successor of Plato and Aquinas. Despite the continuity, I appreciate Kant's innovation; in Aquinas, "the holy" reason could not precede God and religion whereas in Kant, religion—I do not want to go too far but may be even God—originates within the limits of reason.

2.2.3.3 Returning to the Classical Understanding of Rationality

In light of my discussion in the previous section, it can be seen that John Finnis, who believes that natural law can be secularized, remains within this tradition. Finnis also claims that despite the fact that not all human individuals are equal, they have something in common which distinguishes them from other "sub-rational creatures".[47] Human beings for Finnis ought to act in accordance with

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[45] Kant, *Religion within the Limits of Reason Alone*, 15.

[46] Ibid., 11.

[47] John Finnis, "Natural Law: The Classical Tradition", *The Oxford Handbook for Jurisprudence and Philosophy of Law*, ed. Jules Coleman and Scott Shapiro (Oxford University Press, 2002), 4.

some moral principles conforming to "their rational nature".[48] However, Finnis

believes, moral reasoning cannot be reduced to human nature or law of nature.

Here the phrase "human nature" refers to the physical disposition which is

considered to be separate from reason or the mind by the tradition I described

above. Even though Finnis objects to the idea that human beings' natural and

rational aspects can be completely separated from each other (i.e., he is not a total

Kantian in that respect), he does seem Kantian in that he believes that morality is

nevertheless an autonomous realm independent of physical laws. He maintains,

"ought is not derivable from is…".[49] Here, what Finnis tells us is that the capacity

of rationality gives human creatures a way to ask the question "what should I do?".

So, human beings, in contrast to other species, have the ability to choose what is

good for themselves and other human beings. It is true that if they choose evil,

they behave contrary to their nature—at this point for Finnis, human nature is

identified with moral good because of the capacity of rationality of human beings.

At this juncture, what is rational is natural but the reverse is not always true. In

other words, anything unnatural is irrational; but of course there are some natural

inclinations which are irrational. Speaking of cases where human beings fail to

meet normative standards, Finnis writes:

> Unreasonableness of this kind is, as the saying goes, 'human, all too
> human'. But to speak more precisely, it is a way of being less than
> fully what a human person can be. And this is not the only reason for
> calling it 'unnatural'. Poor thinking and choosing not only fails to
> actualize to the full one's capacities to be intelligent and reasonable,

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[48] Ibid., 5.

[49] Ibid., 4.

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but also results in actions and omissions which fail to respect and promote the humanity, the nature, of everyone they affect. A community in which the standards by which we identify such failure are violated is not flourishing as it might. Its members, whether they are those acting (and forbearing) or those who should have been benefited not harmed, do not fulfill their capacities. However typical of human affairs, such a condition is unnatural so far as it is disrespectful of human persons. It is unnatural because unreasonable, and unreasonable because neglectful of the good of persons, the good which is the subject-matter of practical reason's standards.[50]

Thus, rationality is the capacity that underlies many human activities which we comprehend as natural. According to Finnis, philosophers respected in the natural law tradition from Plato to Hobbes, Locke, Pufendorf and Kant always hold separate the moral realm and the realm of natural facts. But, as Finnis claims, the distinction between the pre-modern and the modern tradition of natural law is that in the latter, rationality is reduced to logic. In the modern moral theory, such as that of Kant, basic human actions such as nourishing, sheltering, having sex, and so on which are derived from "sub-rational" motives which are more bodily and physical activities rather than being purely mental or contemplative but the rationality of logic organizes these sub-rational motives avoiding contradictions with the universal law. In contrast to the modern understanding, for the ancient period the objectives of human action and the action itself cannot be thought of as separate and both include rationality and therefore, moral reasoning.[51]

So the break between 'modern' and 'classical' natural law theories should be located, fundamentally, in the loss of the classical theorists' insight that one comes to understand human nature only by understanding human capacities, and these capacities in turn only by

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[50] Ibid., 2.

[51] Ibid., 7-8.

understanding the acts which actualize them, and those acts only by understanding their 'objects', that is, the goods they intend to attain. Those goods are the *reasons* we have for action, and nothing in moral, political, or legal theory is well understood save by attending to those goods with full attention to their intrinsic worth, the ways they fulfill and perfect human persons, and their directiveness or normativity for all thinking about what is to be done.[52]

In brief, in contrast to other modern natural law theorists, Finnis does not grasp rationality as a distinct faculty which is in opposition to the human body and its actions. Underlying the differences between classical and modern, he adopts the Ancient comprehension of life, nature and human person with not only mental but also physical capacities. Therefore, in Finnis's theory, the capacity of rationality seems to be far from being a divine faculty; in this sense, Finnis's natural law is an attempt at developing a secular theory that is removed from its divine origins. However, his confidence on the existence of "self-evident" moral propositions expels morality and law out of the realm of experience, and in this sense it is not sufficiently removed from its divine origins. Even though "self-evident" does not mean "innate" for Finnis, it implies the objectivity of reason.[53] For example, "killing another person is objectively wrong". This information is not inherent in all our minds but our minds have to ability to conclude it. So, his universal understanding of reason does not take into account cultural and ideological differences. As Harris claims, "…Finnis's theory presupposes the existence of a supra-historical human nature".[54] Finnis also ignores the historical and social

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[52] Ibid., 8.

[53] J. W. Harris, "Review: Can You Believe in Natural Law?" *The Modern Law Review*, Vol. 44, No. 6 (Nov., 1981), 729-735, 732.

[54] Ibid., 733.

origins of moral rules. For Finnis, the historical achievements (good or bad) of natural law theorizing are beside the point. Natural law itself, if it exists, has no history and no achievements.[55] Finnis calls the opposite attitude "genealogy" of law and morality, work of Nietzsche and his aware and unaware successors, namely the legal positivists.[56]

2.2.4 Legal Positivism: Law within the Limits of Jurisprudence

The natural law tradition first came under attack in the 18th century by John Austin, the founder of the approach called "legal positivism." Legal positivists oppose natural law theory; they put forward that there is no necessary connection between law and morality. Law as a social fact is the "command of the sovereign or the legal system".[57]Some thinkers believe that legal positivism has its origins in Hobbes's *Leviathan* in which the sovereign is superior to any law and can use it for his "political ends".[58] So, it is claimed that there is a parallelism between Hobbes and Austin since they both approximately define law as the judgment of an authority.[59] However, Hobbes's situation is a bit controversial, I think:

> …Hobbes's book is based on a theory of self-interest in a hypothetical
> and supremely "rational" covenant to subject oneself to a supreme

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[55]Ibid., 729.

[56] Finnis, "Natural Law: The Classical Tradition", 8.

[57] John Austin, *The Province of Jurisprudence Determined*, W. Rumble (ed.), (Cambridge: Cambridge University Press, 1995) (first published, 1832) Lecture 1, 35-36.

[58] James Boyle. "Thomas Hobbes and the Invented Tradition of Positivism: Reflections on Language, Power, and Essentialism", *University of Pennsylvania Law Review*, Vol. 135, No. 2 (Jan., 1987), 383-426, 388.

[59] Ibid., 385.

sovereign. At the very end of this definitional passage it might have looked as though Hobbes was straying into natural law ("for the Distinction of Right and Wrong"). But the final clause makes it clear that right and wrong are actually functions of the law.[60]

In fact, as seen from the quotation the main problem between natural law and legal positivism is about where the legitimacy of law comes from rather than about views on rationality or the origins of law. In other words, it is about whether what makes law a law is an order of a legitimate sovereign/ a result of political convention or, an objective moral basis. In contrast to Aquinas's theory of emanation explaining natural law, Austin maintains the idea that "laws emanate from superiors".[61] Nevertheless, this does not mean that laws are merely expression of superior's desires. Rules or laws should be understood by the people who will obey them; they should be publicized. Besides, a time limit is required for the validity of a law or rules.[62] This does not have to remind us the famous Hegelian motto: "What is rational is actual and what is actual is rational"; for sure history is full of some sort of persistent evil traditions and passing time could not sweep them away. Even so, time would be one of natural criteria to observe the success of a norm or law; which is one of points of legal positivist attitude that I vouch.

In the manner described, legal positivism does not merely rest content with the claim that the authority of law comes from the existent legal authority. As Finnis

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[60] Ibid., 391-2.

[61] Martin P. Golding, *Philosophy of Law*, (New Jersey: Prentice-Hall Foundations of Philosophy Series, 1975), 26.

[62] Ibid., 26-27.

mentions above, legal positivism, in contrast to natural law theory, has a certain historical, analytical and comparative method.[63] Through the lens of the historical and social conditions, the legal positivist attitude attempts to explain current legal rules and the process of law-making within the realm of experience. Here the mentioned "historical methodology" is not merely or even primarily about revealing the history of jurisprudence. It seems first and foremost about exposing the internal relations of command, obedience, legitimacy, and so on underlying legal processes. Neil Duxbury quotes George W. Keeton, who finds that Austin's historical method is lacking: "it overestimates the 'command' element present in law, and ignores its historical development."[64] Again contrary to natural law theory, legal positivism prefers to remain in the realm of "is", rather than "ought". Jurisprudence should be examined as a distinct field other than morality and the authority of a rule resides in the internal dynamics of jurisprudence.

Also, H. L. A. Hart, one of the most important names in the development legal positivism, criticizes Austin's "correlation of command and obligation". According to Hart, someone with a gun can command others to do something and others can obey but this does not mean that what the armed person commanded are rules. Hart's point is that we should distinguish legal obligation and other sorts of

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[63] Quoted from Neil Duxbury, "English Jurisprudence between Austin and Hart", *Virginia Law Review*, Vol. 91, No. 1 (Mar., 2005), 1-91, 10.

[64] Ibid., 11.

obligations including, moral one.[65] He introduces the notion of "rule of recognition" so that legal obedience and moral obedience are not to be mistaken.

2.2.5 The Rule of Recognition

Neil MacCormick defines legal positivism as the view that: "all rules which are rules of law are so because they belong to a particular legal system, and that they belong to the system because they satisfy formal criteria of recognition operative within that system as an effective working social order".[66] That is to say, people who are in a legal involvement with one another by force or by convention acknowledge the validity of extant rules which are formed in accordance with that legal order. The notion of recognition originates from Hart who aimed to establish that legal obligation is intelligible in itself and yet conceptually distinct from moral obligation. Hart claims that a law may have "moral" and "intellectual values" which must be regarded completely as different realms.[67] According to Hart, a legal system comprises a rule of recognition and all the other rules are valid by reference to it. So, people living inside a legal system accept some common public standards and they all have an obligation to respect laws and apply rules. Hart's concept of "recognition" seems similar to Wittgenstein's "rule following": to know how a system works is to know how to follow rules. All signs are meaningful in the system in which they are valid.

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[65] Golding, *Philosophy of Law,* 29.

[66] Quoted from Sebastian Urbina, "Legal Reasoning and Formal Criteria of Recognition", *Law and Philosophy*, Vol. 15, No. 1 (1996), 1-631996, 1.

[67] H. L. A. Hart, "Positivism and the Separation of Law and Morals", *Harvard Law Review*, Vol. 71, No. 4 (Feb., 1958), 593-629. 621.

> For Hart, then, the law of a particular legal system consists of a master rule of recognition and all those valid rules which satisfy the various criteria for validity that happen to be recognized in that rule. Nothing other than this counts as the law. There is no 'law behind or above the law' as the natural lawyers would have it. The law just is that determinate and limited set of rules which satisfy the rule of recognition, and legal rights, duties, powers and so on exist to the extent, and only to the extent, that these rules so specify. For Hart, then, the question of how legal rules are to be interpreted and applied is of vital importance.[68]

According to Hart, the tension between "what is" and "what ought to be" belongs to moral theories. While recognition of a rule is an issue for legal theory, obeying that rule is a psychological problem. The reasons for either respect or disrespect are related with "feelings" and "emotions"; however, recognition or "rule-following" is that of with "cognition". We can rationally understand a law and purpose of it but applying it is a task of "fiats of the will".[69] Although here Hart regards the problem of obedience as a "choice",[70] obedience is very a serious problem for legal positivists, who are always criticized because of their lack of explanation on obedience.

As Hart would also claim, obedience to a rule may take place in two distinct ways; one way is to internalize the rule, which is the ethical comprehension, and the other is legal recognition of it without adopting the content of the rule. In other words, for legal positivists, form and content are distinguishable. On the other hand, for natural law theorists, if ethical content is missing in recognition and

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[68] Wilfrid J. Waluchow, "Hart, Legal Rules and Palm Tree Justice", *Law and Philosophy*, Vol. 4, No. 1 (Apr., 1985), pp. 41-70. p. 44.

[69] Hart, "Positivism and the Separation of Law and Morals", 625-6.

[70] Ibid., 629.

obedience, then this means that the moral law is broken, too. The disagreement is again on what underlies the law. Remember that for natural law theorists "an unjust law is not a law", what makes law a law is its moral validity. Natural law theorists would defend the idea that a law is valid only if it is morally permissible. On the other hand, for legal positivism, a law's validity, recognition and obedience to it are three distinct issues. I think no one would object that if a law is law, it has to be valid, and if someone obeys the law, he/she recognizes it at the same time. But one may recognize the law and not obey. Nevertheless, for natural law theorists an ethical content must be included in all validity, recognition and obedience. According to Sebastian Urbina, legal positivist MacCormick claims that natural law theorists and legal positivists are alike in that they both admit the sufficiency of the criterion of legal recognition. However, the disagreement arises from the condition of necessity. On the one hand, natural law theorists believe that if a law is valid then the validity is not only sufficient but also necessary.[71] On the other hand, legal positivists acknowledge that validity of a law depends on "acceptance" or "recognition" of it which is sufficient but not necessary.

In his "Legal Reasoning and Formal Criteria of Recognition", Sebastian Urbina contraversializes with Neil MacCormick and his legal positivism and defends the indivisibility of form and content of a rule. Urbina gives an example putting forward the difference between the ethical and formal understanding of a rule. "Imagine a person that lives and behaves all his life as a monk; in order to properly "understand" this form of life but he really does not believe at all the usual

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[71] Urbina, "Legal Reasoning and Formal Criteria of Recognition", 3.

commitments of this form of life."[72] In this example, the monk formally adopts the rule; however, does not internalize it; so, the formal criterion is ensured but ethical content is missing.

Going back to the monk example, if a person can understand and apply the rules in order to be a monk, then that person accomplishes being a monk formally, which is totally sufficient for a legal positivist. Nevertheless, Urbina rejects the distinction made by MacCormick between form and content of a rule. He claims that recognition of both content and form are necessary to recognize the law; otherwise obedience to the laws of Nazis in power could be valid.[73] In other words, to accept an order as a valid rule requires not only formal but also material (Urbina uses the term "material" for the content of legal validity, footnote 2, p. 2) criteria of recognition. Nuremberg Trials, during which the Nazis were adjudicated after the Second World War, is proposed to refute legal positivism. In the Trials, most of the defenses were based on the argument that the judged soldiers had obeyed the orders of their superiors. Some authors claim that there is a close link between the defense and legal positivism.[74]

I do not want to give the details of the discussion and reformation of legal positivism. But I intend to emphasize the importance of the material criteria, i.e., recognizing the content of a rule. I also want to point out that formation of

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[72] Ibid., 5.

[73] Ibid., 8.

[74] Stanley L. Paulson, "Classical Legal Positivism at Nuremberg", *Philosophy and Public Affairs*, Vol. 4, No. 2 (Winter, 1975), 132-158.

societies is not a result of coincidence; rules and laws are not formed contingently. Rules and laws rely on some material contents which can be ethical. Can you accuse a Nazi soldier who was responsible for killing innocent people although in the meantime he was just following the orders? My answer is certainly yes unless his rank was too low and his life was under threat. Orders are orders and the law is the law; however, all orders and laws are meaningful in certain contexts. A law and an order can be questioned before being obeyed looking through the content and the circumstances making those rules possible. The material content might mean ethical content but it does not have to be supra-historical or innate moral imperatives. Ethics and moral rules can also be subject-matter of historical analysis of human evolution and formation of social organizations. In the following section I present H. L. Hart's very persuasive biological justification of normativity and eventually legal systems.

2.2.6 Necessity of Law

I prefer to go on with H. L. Hart's justification of legal positivism since his point is not very far from Urbina's point that obedience and recognition go hand in hand and also because his arguments help to explain the biological approaches to meta-ethics, which I mention later. New par Hart explains law as a system of social rules distinct from the rules and principles of morality, whether conventional or ideal. In doing so, he tries to identify certain facts about the human species that make moral and legal systems understandable and necessary and which connect the content of some legal and moral rules with facts about human nature. First of all, human beings are in danger before nature. Secondly, they have enormous needs which

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they can never obtain by themselves within limited resources and those hard conditions. Although humans have a selfish nature, they should better live together and struggle against nature and meet their needs together. Given these facts, it is necessary, if men are to live together at all, to have certain rules protecting their personal safety and property and ensuring that degree of mutual forbearance and respect that will make social living tolerable. No unconditional moral imperatives are prescribed. "If men are to live together and find such living tolerable, there are certain human wants, failings, and weaknesses that must be recognized."[75] In brief, human beings set their moral lives and legal systems in accordance with their survival. So, normativity is derivable from human nature for Hart. Recognition and obedience would occur after the comprehension of the necessity of rules and laws.

In one sense, Hart's account of the relation between law and human nature resembles that of natural law theorists' since, as Finnis puts it, natural law explains human nature and what is good in accordance with that nature. As a legal positivist Hart also gives an account of some universal moral and legislative principles such as prohibitions against killing, lying and incest. In fact, this sort of explanation can be seen both in the ideas of natural law theorists and legal positivists. However, the difference lies in the different conceptions of human nature. While legal positivists think that a certain kind of human nature has brought current moral values and laws to humanity, natural law theorists define human beings as possessing a reason and conscience at the beginning and how to act is organically linked to that human nature. Here, there are two different senses of 'human

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[75] D. J. O'Connor, *Aquinas and Natural Law*(Great Britain: Macmillan & Co Ltd.,1967), 83.

nature': Hart emphasizes that human nature is subject to evolutionary processes, whereas natural law theorists imply an innate character of it. That is, in the former, the foundation of morality is presented in terms of more contingent facts about human "nature" whereas in the latter grounds are a priori and transcendental.

2.2.7 Neither Natural Law nor Legal Positivism

To come to the point, I have indeed explained so far why I criticize natural law theory. In a nutshell, natural law theory, even though some contemporary versions might be more secular, has a divine reference point for our moral values. I do not think that the link between natural law theory and divine authority has been completely severed; instead an absolute reason is claimed to replace God. So, human body and surroundings have been overwhelmed by this reason. Eventually, natural law theory, no matter how much it has changed, will always have difficulties accepting evolutionary explanations, defended in the next section.

On the other hand, I do not totally admit that law is nothing but the order of the legal authority or the system as claimed by some legal positivists. I agree with Sebastian Urbina that "…the formal criteria of recognition are unable to say anything substantial in relationship to 'justice', 'common sense' and the 'fundamental assumptions'…"[76] I believe that the comprehension of justice, laws, and moral concepts are partly the result of the legal system, but they also have social, cultural and historical bases, which seem more permanent than the legal ones. In contrast to natural law theorists, those unwritten bases are not fixed,

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[76] Urbina, "Legal Reasoning and Formal Criteria of Recognition", 20.

either. More precisely, legal system and the legal framework build the rules and their justification; however, some values have much more deeper bases which have been established by common struggles of humanity.

After closing up the discussion between natural law theory and legal positivism on the status or the origins of our morals and legislation, I deepen the discussion on human nature with two additional arguments: biological explanations and the rational agent model. I discuss what sort of rational capacity, (i.e., source of moral thinking) we have as human beings at the beginning of the next chapter. In the following section, I continue to cover the foundationalism-anti-foundationalism debate with universalism versus cultural relativism in the context of universal biological explanations and the pragmatic theory of truth.

2.3 Universalism vs. Cultural Relativism: Biological Explanations and Pragmatism

2.3.1 Biological Explanations for Universal Norms

Human biology provides trustworthy arguments for foundationalists as well as revealing the complex nature of the human being. I believe, first I must differentiate the notions "human nature" and "human biology", although some thinkers use them as if they refer to the same thing. 'Human nature' usually refers to the fixed character of human individuals as distinct from other creatures. However, 'human biology' grasps human beings as one among other species. Yet, both notions share the idea that human beings' biological structure, that is, needs, desires, instincts, drives and motives condition human behaviors and various

human organizations, such as, families, cultures, communities and societies. So, morality, traditions and legal laws, which govern our lives, are seen as the result of human biology.

There is always a gap between "what is" and "what ought to be". Normative judgments directly drawn from factual conclusions are called naturalistic fallacy. That is, the naturalistic fallacy is committed when an "ought" statement is derived from an "is" statement. Here what I argue is not what naturalistic fallacy is or is not but what I attempt to underline is that biological explanations of human societies' moral and political ideals do not immediately bring about the naturalistic fallacy. More precisely, defining human biology with its capacities and constraints does not automatically result in a certain morality or politics, well-adjusted to the organism. The route we are following here, on the other hand, when we appeal to biological explanations, is from the realm of "ought" to the realm of "is", rather than, from "is" to "ought" which would be a naturalistic fallacy. In other words, looking through the present values and ideas, their roots are traced to the biological structure of human species.

The most basic argument of the foundationalists who place human biology at the basis is that murdering is never approved of in any culture with the exception of wars, blood feud, and honor crimes. Besides, "not to lie without any vital reason" is another universal principle supporting foundationalism. The logic behind grasping these cult norms as an evidence for biological foundations for normativity can be justified through this argumentation: If murdering had been allowed, then societies would never have been arranged and humanity would have disappeared.

The best example that can be used to explain why such principles are necessary and universal is the prohibition of incestuous relationships. It is known that incest was allowed in some communities in history, but then they disappeared. At the beginning incest was a casual choice; but it became a rational and necessary procedure to prohibit it when its consequences became apparent. To put it more directly, the force and validity of these worldwide norms which ban killing, harming, lying, and incest are not intrinsic to them. They are the contingent results of the development of humanity, which seem necessary now when we survey the period from the end to the beginning.

2.3.2 Pragmatic Criticism of Biological Explanations

When we look at the big picture, biological approaches seem to explain the fact that human beings have some principles in common. However, when we begin to look at the details in that picture, we see that every age, every culture and community has its own principles, values and conceptions of justice.

> Even granting that we can account for the pervasiveness and force of general ideas and norms, the fact remains that no person or society can function at this level alone. Generalities must be specified in order to be put in the action, and by the same token, an adequate theory of morality needs to say something about these processes of specification.[77]

Even those basic universal commandments differ from culture to culture. And each culture finds its own justifications for those basic norms and its own reasons for

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[77] Porter, "Moral Ideals and Human Nature", 65.

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making exceptions. For example, the regulation that forbids murdering can be justified with either the notion of human dignity or the claim that life is given to us by God and no one other than God can take it. Or, each culture finds its own exceptions; for example, honor killings are allowed in some cultures. Therefore, biological approaches do not offer a comprehensive explanation, justification and exceptions of particular norms. Biological explanations put forward a fundamental principle like "cogito ergo sum" which provides an important basis for a start; however, it leaves behind many issues waiting to be clarified.

In discussing this problem, Jean Porter claims that naturalistic and pragmatist approaches together can explain both similarities and differences among the different cultures. According to Porter, there is a universal human nature which all our general norms stem from. However, cultures arise and develop under different circumstances and they modify universal rules and norms in accordance with their circumstances.

> On this account, moral norms do reflect some elements of a universal human nature, and this accounts for the broad similarities that characterize them. Yet that nature underdetermines the norms through which it is expressed; these must be specified in and through the processes giving rise to and sustaining a particular way of life, and as such they will reflect the local, provisional and contingent character proper to all social arrangements.[78]

Porter maintains that there is a firm ground that we can lean on, which is human nature. However, this ground is not very secure since it is shaped by social arrangements. Indeed, as pragmatism claims, each culture establishes its own

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[78] Ibid., 69-70.

grounds of normativity in order to explain and justify its morals. Looking at the diversity of cultures in the world, pragmatism seems to be right that there is no one justification or evaluation criteria of norms but each culture establishes their own which change through time. So, combining biological explanation with pragmatism; Porter, as well, seems right that it is possible to explain both common and different attitudes, values and norms throughout cultures and eras. However, I do not believe that the explanatory power of pragmatism is adequate since the explanation is based not on the reality but on the principle of efficacy. In order to explore the relation between pragmatism and reality, I discuss some aspects of pragmatism and attempt to defend realism against the pragmatic understanding of reality and truth.

2.3.3 The Pragmatic Theory of Truth

As it is well-known, pragmatism is founded by Charles Sanders Peirce, William James and John Dewey, as a reaction to the classical understanding of truth in philosophy. According to the classical understanding or the Cartesian tradition, truth, which was always considered to be exterior to mind, was conceived of as something to be discovered and realized. Truth was absolute, abiding and independent of human practice and its aims. However for pragmatism, truth cannot be external to the knower; so, it is not immediate. Truth is not to be thought without taking our needs, desires, intentions, and goals into account. William James claims "'The true'…is only the expedient in the way of our thinking, as 'the

right' is only the expedient in our way of behaving'.[79] Similarly, Dewey uses the term "warranted assertibility" instead of "truth" since the latter may suggest something absolute.[80] Thus, according to the pragmatic understanding of truth, there is no truth anymore somewhere out there; there can only be quasi-true claims or well-grounded persuasive arguments. In this way, pragmatism abolishes the correspondence theory of truth, which assumes we have beliefs, knowledge and truth on the one hand, and reality, on the other, whereas our aim is to match one side to the other.

As pragmatism defeats the classical understanding of truth, it at the same time, dethroned the Cartesian subject. According to pragmatism, the subject cannot stand outside of reality and wait for truth to be revealed. Dewey maintained that human beings are members of the animal kingdom.[81] The subject, as a human being cannot be thought of as separate from evolutionary processes, nature and society. Human beings, as distinct from other species, have the ability to speak. But this capacity like the others appears as a part of the process of survival. A human being expresses the world through language in accordance with his/her needs. Thus, the question is not about the correspondence between how a subject

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[79] William James, *Pragmatism*. (Cambridge, MA: Harvard University Press, 1979), 222.

[80] Richard Rorty, "Pragmatism", *Routledge Encyclopedia of Philosophy*, Version1.0, London: Routledge.

[81] John Dewey, *Thoughts on the Interpretation of Nature and Other Philosophical Works,* ed. D. Adams (Manchester: Clinamen Press, 1999), 75-6.

depicts the world and how the world is; rather, it is about what human beings need at a certain time and under what conditions.[82]

Dewey, in *Reconstruction in Philosophy*, claims that future philosophy has to present some useful ideas on people's ethical and social problems in their daily life rather than trying to solve traditional dilemmas in philosophy. Davidson agrees with Dewey that human beings certainly search for the truth; however, they do not do the searching for its own sake; i.e., they do not aim at the truth for itself. They have other needs and objects than truth, which is only a means to achieve those goals. In brief, truth is the name of what is aimed at and what is justified.[83] However, "being justified" does not imply the criterion in classical philosophy, certainty or being definitely justified. Achieving certain truths or certain justifications is not possible, besides, is not the aim. Justifying an opinion is nothing more than arguing with valid and persuasive arguments for the current situation.

I have to underline that pragmatism avoids proposing any kind of necessities; for instance, pragmatism does not admit the claim that human beings are necessarily social and rational beings. Moreover, although pragmatists maintain that human desires form a basis for morality, they do not assert that human beings have some certain inclinations and desires which lead people to behave in certain ways.[84] In

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[82] John Dewey, *Human Nature and Conduct* (Southern Illinois University Press, 1998), 15-21.

[83] Rorty, "Pragmatism".

[84] J. E. Tiles, "Pragmatism in Ethics", *Routledge Encyclopedia of Philosophy*, Version 1.0, London: Routledge.

"The Moral Philosopher and the Moral Life" James claims that there is no certainty even in the natural sciences, which are improved and changed by new data and inventions, there is no certain knowledge in ethics, either, "until the last man has had his experience and said his say".[85]

> …there is nothing final in any actually given equilibrium of human ideals, but that, as our present laws and customs have fought and conquered other past ones, so they will in their turn be overthrown by any newly-discovered order, which will hush up the complaints which they still give rise to, without producing others louder still. "Rules are made for man, not man for rules"…[86]

The arguments of pragmatism so far are very persuasive. Pragmatism changes the direction of philosophy and enables us to re-think the settled position of subject, object, nature and knowledge. It underlines that human being is essentially not only an animal but also a social being; thus, pragmatism handles the problem of the subject in both evolutionary and historical processes. Ethical and political principles, rules and values are considered the outcomes and parts of these processes throughout human history. However, the other side of the mirror is problematic regarding the moral questions. Pragmatism gives green light to moral relativism in accordance with its own understanding of historicism. Nevertheless, it definitely opposes moral skepticism. To this end, i.e., in order keep to the importance of morals in social life, James espouses the function of religion. For sure, James never asserts the objectivity of either God or religion. But the idea of God and religion has a considerable function in society and moral life. According

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[85] William James, "The Moral Philosopher and the Moral Life"*International Journal of Ethics*, volume 1, number 3 (April 1891), 330-354, 330.

[86] Ibid., 347.

to James, even people who do not believe in God can take advantage of the idea of God since moral ideals can be preserved with the help of the ideal of God and religion.[87]

Dewey certainly has to be distinguished from James since he never attempts to escape moral skepticism by taking God and religion behind him. Skepticism is always a philosophical choice nevertheless the social side of human beings is incompatible with nihilism and skepticism. On the other hand, Dewey does not adopt the other side, i.e., Kantian universal ethics: "The escape from selfishness is not by the Kantian road of an emotional response to the abstract universal, but by the recognition of the genuinely social character of human nature".[88] So, grasping the inherent processes of becoming human and a socialized being, leads human beings to live with temporary consensuses. Unlike James, Dewey relates ethics with reality in part and establishes an essential relationship between ethics and the physical nature of human beings. He does not suggest an ethical way to live but he indicates ethical behaviors' origins.

Thus, pragmatist attitudes render debates about realism irrelevant. In other words, throughout history, different cultures have different values and norms. Because there are different cultural norms and values, some of which are conflicting, then there arise two problems for philosophers. One problem is finding a realistic

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[87] William James, *The Will to Believe and Other Essays in Popular Philosophy*, (Cambridge, MA and London: Harvard University Press, 1979), 116, 143.

[88] J. E.Tiles, "Pragmatism in Ethics", *Routledge Encyclopedia of Philosophy*, Version 1.0, London: Routledge.

ground that norms and values can correspond to. The other question is the problem of underdetermination. If human biology/nature grounds cultural norms only to a certain extent and there arise cultural differences that cannot be accounted for with respect to human biology alone, then how do we compare and evaluate these different cultures? When they yield conflicting norms, how do we determine which is right or superior? Porter thinks that a naturalistic pragmatist account solves both problems. According to this account, while history is progressing, cultures could justify some norms to ensure their survival and their persistence is at the same time their justification.

2.3.4 Some Defects of the Pragmatic Theory of Truth

A pragmatist attitude adopting the idea that social conditions could justify anything with the criterion of that culture's survival and persistence seems litigious especially through the lenses of a realistic attitude. Even though it takes into account the social conditions out of which norms arise in admitting the validity of those norms, it looks only at the consequences and in terms of a criterion of success. In that respect, the pragmatist attitude is too consequence-oriented and not historical enough. While it claims to be forward-looking the fact that it does not analyze the historical dynamics deeply and critically enough renders it conservative. For example, instead of searching the roots of believing in God, James prefers to satisfy the results of societies' religious beliefs without questioning if such a belief is beneficial or not.

Validity of norms through history is not always ensured by a pragmatic agreement but mostly by real facts. I should better clarify what I mean by "real facts". The

biological structure of human beings can offer a universal and highly stable structure. But it should be considered that the biological structure is the result of the evolution of species, i.e., adaptation to the changing conditions of nature. So, the "stable" ground includes change. Besides, rationality, a distinguished faculty of human beings, has also appeared as a result of the adaptation process. Thus, there is no need to ascribe to rationality more meaning than the fact that it is a means for surviving. These physical and mental states of human beings are embedded in and develop in and through a social environment. These different social surroundings can be yet somehow material and real.

I believe that the social construction of norms of justice and their physical base cannot be thought of as separate; they cannot be investigated in disjunction from each other. We cannot claim that culture is arbitrary and local while human biology is natural and universal—as Jean Porter claimed so. We should not stop at the claim that pragmatic reasons explain and justify cultural norms; we should illuminate the grounds, which are not only physical but also social. For example, in a certain region, there might be a dominant person or group and they could rule all kinds of social relations including moral ones. So, in that society, norms are not verified by pragmatic agreement but by power itself. If there is a cultural norm that allows a kind of behavior which is not allowed in other cultures—for example, honor crimes—we are faced with a demarcation problem: i.e., should we respect the norm as that culture's own value or not? In these situations we should search for the grounds. If that norm is a norm because it suits a male dominant system's interests, for example, then we have to oppose that system besides the norm. Here,

my attitude is neither to defend certain values admitted as universal against others nor to justify anything peculiar to a certain culture that practical circumstances brought about. Rather, my position is simply that we should explore the bases of moral and political concepts to identify some criterion/criteria for demarcation. Thus, if a theory can explore the grounds, then, we can take a stance towards that practice.

2.4 Historical Materialism: Revealing Grounds and Demarcating Sides

In this study I propose historical materialism as a framework in considering the problem of how we demarcate moral norms. The term 'materialism' is often used to suggest both a secular and a physicalist perspective. Indeed, there has been an alliance of materialism with atheism and atomism, historically. Here, I prefer to use the concept of historical materialism rather than physicalism and naturalism since especially when the issue is normativity, history should not be disregarded. Secularism, physicalism and naturalism have moved most of the philosophical problems including the moral ones from the realm of the "unknown" to a more concrete world where they can be examined. But I believe, what historical materialism has done is more than that. According to historical materialism, as expounded by Karl Marx, in a nutshell, class conflict brings about the progression of history; and morality appears both as a set of norms defined by the powerful side of the struggle and as a means used to maintain power.[89] In other words,

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[89] Karl Marx, *The German Ideology* (USA: Prometheus Books, 1998), 67.

morality is not an abstract realm of conscience; rather it is determined by power struggles. Besides, it serves to preserve and sustain the existing conditions.

Since the beginning, my question has been what bases our moral values stand on. Throughout this chapter, I intent to figure out whether there are bases. I do pursue the question since I believe that our moral language has to be detached from its religious or ideal origins (in the Platonic sense). Up to this point, I emphasize that the solution for me is not to place "groundlessness" in an opposition with "ideal grounds". So for this section, I argue that the grounds ought to be there and I try to explain why I insist on materialist grounds and what I mean by that. Concerning the limits of this study, I do not see the need to debate the metaphysical problems of historical materialism such as how history evolves, how much class struggle determines intellectual fields, if classes exist and so on. I regard historical materialism as a methodology in order to understand how our norms and rules have been formed and a way out to demarcate some moral dilemmas. Although the notion that history determines our normative frameworks and juridical systems is open to various objections, it nevertheless has an explanatory power that cannot be overlooked. Accordingly, this kind methodology would help us to follow the origins of our current norms and demarcate them in accordance with which side we should take. To articulate, I would like to bring up the case of Hurricane Katrina which occurred in the South Eastern States, in 2005. After the devastating disaster, a number of people, victims of the disaster looted stores. I did not conduct a sociological research but most probably those people would not do that before the Hurricane. But when the legal authorities failed to manage the crisis, people

began to do things that they might never have imagined themselves to be doing before. Those region severely affected by the disaster is known as highly impoverished district. One may claim that crime tendency in such poor areas is higher, so it was highly probable that people in New Orleans would loot stores after the Hurricane. Because this challenge indicates the correlation between poverty and guilt, it also supports my argument that material conditions prepare moral behaviors. However, another challenge to my point would be a more recent example that there was no looting in Japan after the Nuclear Accident in 2011. The cultural and situational differences between Japan and New Orleans will be researched but I would never say that Japanese are virtuous whereas Southern US citizens are morally guilty. I do not think that we can put all the blame on those people. The guilt mostly belongs to the system which made a natural disaster much worse. Thus, "it [historical materialism] shows that circumstances make men just as much as men make circumstances".[90]

The oldest question of philosophy "how can we be sure that there is a reality out there?" cannot be ended. However, we have to end this debate somewhere since there are some practical issues which we cannot postpone. If we had followed ancient skeptics, instead of Socrates, we could not be in the same place as we are today. Simon Blackburn claims that relativism is a modern version of ancient skepticism.[91] Although people give up believing in God today, they believe that

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[90] Ibid., 61

[91] Simon Blackburn, *Truth: A Guide for the Perplexed* (London: Allen Lane Publisher, 2005), xiv.

anything can be believed.[92] When debating on the beauty of a picture or on our tastes of wine, relativism may not pose a problem. But if we are trying to demarcate on foxhunting, then relativism does not work.[93] We cannot keep goingwith the view that each person has a different perspective and anything goes. We have to admit that there is a reality out there and there must be a highly significant difference between our beliefs, opinions and knowledge.

Here my ontological and moral claims on reality seem tangled. However, when history began, social constructions appeared, reality became wrapped in various meanings. So, I comprehend reality as a social and physical whole. Reality is usually considered within a shell waiting to be revealed. Social relations, institutions, our prejudices, or our mental restrictions are thought of as barriers to reach truth, reality. I do not totally agree with this idea because those barriers also shape reality but still we have to demarcate between what is real and what is presented to us as real. Remembering Baudrillard's provocative argument that the Gulf War took place on CNN,[94] I attempt to explain how materialist conception of reality serves as a basis for answering such questions. The Gulf War took place in Kuwait. I understand the importance of the problem that television has created a new sort of reality. But we all live in the reality, although it is captured by TV.

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[92] Ibid., xiv

[93] Ibid., 66.

[94] Jean Baudrillard, *The Gulf War Did Not Take Place,* trans. Paul Patton (Bloomington: Indiana University Press, 1995).

And, it does not matter whether we accept it or not, we have to wake up when bombs are coming on us.

In brief, historical materialism claims that human labor shapes physical reality. At the beginning, I maintained that physical reality is not bare which means that human beings give meanings to the physical world. As production processes of material conditions turn nature into a human construct, productive activity of human beings establish history, social structures, cultures, morals and peoples' relations with all those. However, historical materialism indicates that these historical and social formations do not coincidentally appear. Their appearances are governed by the development of productive forces and the relations of productions that prevail through them. In a single sentence, those who own the forces of production determine the current institutions and relations. That is, in order to preserve their distinguished positions, the ruling classes formulate illusionary realities, such as 'that we are rational beings' and 'we have chosen our lives', or 'that the war took place on TV'. To differentiate what is real and what is illusionary, we should look at the grounds of those material relations and take our sides.

CHAPTER III

SEARCHING FOR THE BEARERS OF JUSTICE

3.1. Introduction

In the previous chapter, I attempted to expose what a materialist ground of justice looks like. I emphasized that any social or moral theory has to rely on a sort of ontology and a world-view and so, I have tried to present how a materialist world-view can enable some criteria in order to handle the main dilemmas related to the problem of justice. I argued that justice is not derived from our innate and self-evident morality and it is not merely an outcome of a legal system; but it has moral and biological foundations as well as legal bases. I did not answer the question of what justice is yet: my attempt is to prepare a ground and a context in which we can deliberate about both some demarcation criteria and some principles of justice. I have not said much on the human beings who are the subjects of and subjected to justice, either. This chapter is devoted to questions regarding the bearers of justice; i.e., if these bearers are individuals and if so, how much rational they are, or if they are subjected to structures. I prefer to utilize the notion of "bearers of justice" instead of "agents" or "individuals" because of two reasons. First, I object to the usage of the words, 'individuals' and 'agents' as if these individuals and agents are always there without questioning the ontological assumptions behind those notions. I do not deny the existence of individuals and agents but I think that the

notion of an agent possessing strong rational and moral capacities, being aware of his/her interests and being reasonable when something is appropriate with his/her interests is somewhat illusionary. In the following sections, I explain why such a strong agent cannot be a bearer of justice. Throughout this chapter, as I did in my previous chapter, my aim is to express that we are not special creatures of God, whom we are made in the image of. Therefore, we should question the comprehension of a God-like individual who is distinct from the conditions surrounding him/her and is supra-historical and autonomous. A second reason why I utilize the notion of "bearers of justice" instead of "agents" or "individuals" is that bearers of justice can be structures as well, such as, economic, social, cultural or political structures and institutions.

Handling the notion of the individual constitutes the main artery of the issue of justice. In this chapter, I critically examine the human individual and capacities attributed to the human species. Today, the human individual is understood and defined in terms of four main characteristics; namely, a-historical, rational, autonomous, and atomistic. Here, my initial aim is to underline that the notion of the individual as we understand it today is not as old as the history of humanity; on the contrary, the concept as we utilize it today is peculiar to modernity. To this end, I briefly review the Ancients' understanding of individuals, which was entirely different from ours.

Then, I explore the development of the modern sense of individuality. I concisely handle the hegemonic discourse of individualism. My endeavor is to designate that the emergence of the notion is very important in that all human beings have been

regarded as equal and their rationality and will have begun to be considered as equal to a monarch's and even superior to mystical explanations. However, as the century which we live in sanctified the human individual together with its rationality, choices, decisions, rights and liberties, individualism has turned into an ideology of self-interestedness. That is why, the notion of the individual lies at the heart of the problem of justice.

Afterwards, I focus on the so-called unique gift of human beings distinguishing them from other species, which is rationality. I believe that the certain sense of rationality attributed to the individual which I will discuss encompasses certain features, namely, being a-historical, autonomous and atomistic. I question to what extent human beings are rational. Through the history of philosophy since Plato, a great importance has been attributed to the capacity of rationality. I call the classical sense of rationality "strong rationality" and distinguish between strong and moderate understandings of rationality—which are my conceptualizations. I defend that human beings have rational capabilities but these capabilities are not as strong, a-historical and autonomous as most political and moral theories envisage; rather I argue, as moderate accounts of rationality acknowledge, that our rational capacities have developed through history and they too are subject to causal relations just like our other capabilities. Also, moderate conceptions of rationality can vindicate the claim that reasoning processes of human individuals should not be described as being atomistic.

In the second part of this chapter, I focus on the notion of individuality in accordance with its explanatory power concerning the problem of justice. I discuss

two different sides of the problem; i.e., methodological individualism and structuralist objections to it, respectively. Methodological individualism employs the individual in order to explain and construct a form of justice. Conversely, structuralism regards justice as an ideological form of a structure. Although, I seem to condemn individualism and to be inclined to argue for structuralism, I criticize structuralism as well. I try to find a middle ground between methodological individualism and structuralism so that we, individuals, can demand and struggle for justice. This middle ground again has militated by historical materialism which also has strong references to both physical reality and its mediation through history.

3.2 The Notion of the Individual in the Ancient Ages

Before elaborating the notion of the individual in the contemporary era, I prefer to briefly mention how different the understanding of human beings in ancient ages was in order to underline that our contemporary sense of the "individual" is not abiding. Long before Socrates and Plato, there used to be a different understanding of human beings and justice as we can see through the mythologies of ancient times that we cannot fully comprehend today. In Homeric poems, *dikē* is utilized for justice though the English translation of justice does not fully correspond to it. Alasdair MacIntyre claims that Homeric poems cannot be accurately translated into our present languages since our conception of the universe has changed so much since then. For example, in order to understand the word *dikē*, we must assume an ordered universe, that is, an order that is of both nature and society.

Dikē means to maintain and restore the divine order.[95] In other words, the order sometimes breaks down but such break-downs are also part of the order, since justice is the means or capability of human beings to restore it. Greek tragedies depict circumstances that are very hard for human beings to deal with. However, coping with these harsh events brings about a certain kind of wisdom on human beings, which is called justice, "a balancing of evil with good".[96] According to D. D. Raphael, the relation between justice and the divine order can best be seen in Aeschylus' *Oresteia*, which "illuminates the concept of justice", in Ancient Greece:[97]

> Fate, nature, the gods-whatever name you give to superior external powers–control the vicissitudes of human life; but when someone like Oedipus insists on finding out the truth, however horrible, or when someone like Antigone insists on doing what she thinks is right, whatever the consequences, they show us the moral heights to which human beings can ascend.[98]

Of course the quote is not sufficient to understand how justice used to be comprehended in that time but I indicate the point that Oedipus was destined to kill his father which had been predetermined long before he was born. Justice was up to the decisions of the Gods, not up to the conscience or will of persons. Thus, rationality, will, and conscience were not regarded as strong enough to stand in the

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[95] Alasdair C. MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988), 13–14.

[96] D. D. Raphael, *Concepts of Justice* (Oxford: Oxford University Press, 2001), 24.

[97] Ibid., 21.

[98] Ibid., 20.

face of fate. I guess I would not be wrong to claim briefly that the sense of the individual in ancient ages was different from ours.

3.3 Individualism

As mentioned at the beginning of this chapter, the notion of the individual stands at the core of contemporary theories of justice. Since the purpose of indicating this contemporary understanding of the individual is problematic, I design this chapter of the study in two parts: First, I intend to handle the individual with its certain qualifications as attributed to it by contemporary theories and subsequently, I deal with a more modest version of it, i.e., methodological individualism, and its expositions regarding the issues related to justice.

Individualism can generally be defined as a moral and political stance defending the idea that individuals have a moral worth and they possess their own desires, goals and values independently from other authorities above them. Although the usage of the concept of the individual goes back to centuries ago, Steven Lukes insists that the notion of the individual as we understand it today belongs to the nineteenth century.[99] Beginning with the end of the eighteenth century, Enlightenment thinkers, Kant, Rousseau, and Voltaire, rejected any kind of authority including God and social formations ruling over the individual's reason and conscience. These thinkers opposed the pressure of social organizations and

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[99] Steven Lukes, *Bireycilik*, trans. İsmail Serin, (Ankara: Bilim ve Sanat, 2006), 11.

defended the glory of human beings, autonomy, privacy and self-improvement of individuals.[100]

What Lukes indicated is really important; indeed the development of the notion of individualism cannot be distinguished from the emergence of the ideals of freedom, universalism, egalitarianism and humanism. In addition to these ideals, utilitarianism has played a significant role in the development of individualism. Accordingly, individuals are unique and atomic beings. While the ends that each individual has or sets him/herself is considered to have unique importance, these individuals are also regarded as equal and seen as "one" in the sum total of individuals that comprise society regardless of who each is.[101] All these ideals together have constituted the model of the independent, autonomous, abstract and rational individual. So, the appearance and development of the notion of individualism has been really important for the realization of the value and rights of human beings as persons. In his *Sources of Self*, Charles Taylor defines the modern and liberal individual as a person who can choose his/her own way for him/herself through isolating him/herself from both outside influences and his/her momentary wishes and thoughts and through contemplating and reasoning.[102]Adorned with liberties and rights, the individual turned into such a

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[100] Ibid., 17.

[101] Ibid., 60.

[102] Charles Taylor, *Sources of Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989), 168.

being that questioning of his/her interests, desires, decisions and choices is all but unquestionable.

However, as Jean-Claude Kaufmann points out, the victory of individuals is not the success of individuals merely but a result of certain social transformations.[103] With the rise of capitalism and liberal democracy in the United States, the discourse of individualism has reached its peak[104]and individualism has become the leading ideology. It is indeed remarkable how strong the correlation between the developments and pervasions of capitalism and individualism is; in this context, we should be careful about the contemporary discourse of individualism.

In *Bireycilik Sorunu,* Philippe Corcuff observes the shift that has taken place throughout the development of the notion of individualism. He points out that while the notion of the individual has been established with demands for autonomy against former collective norms, community restrictions, and the tyranny of "us", today the tyranny of "me" has been established over the tyranny of us.[105] That is, the discourse of individuality presents itself as the sacred and untouchable reality. Although the ideal of individuality may well be a kind of fiction, it is posited as pure reality. Corcuff thinks that the abstracted individual lies at the heart of the construction of reality, today.[106] I need to reiterate that I do not intend to deny the

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[103] Philippe Corcuff, *Bireycilik Sorunu: Stirner, Marx, Durkheim, Proudhon*, trans. Aziz Ufuk Kılıç, (İstanbul: Versus, 2009).

[104] Lukes, *Bireycilik,* 37.

[105] Corcuff, *Bireycilik Sorunu*, 5-6.

[106] Ibid., 6.

existence of individuals either in the metaphysical or in the political sense. But I feel uncomfortable with the hegemony of this discourse. The contemporary way of viewing individuals is not the only way; even with the naked eye we can see that Ancient Greek culture—as I mentioned above—and Eastern cultures have a different way of grasping persons. Thus, we do not have to automatically accept theories of justice relying on such an understanding of the individual.

As a matter of fact, one of the main arguments of this thesis is that individualism cannot provide a satisfying ground for normativity and justice. Besides, justice and normativity ought not to be regarded as reflections of abstract individuals. Individualism understands social relations through individuals' rational and utilitarian motives. This perspective is insufficient to see other forces on social relations. My aim throughout the chapter is to show that individuals' decisions and choices are not autonomous. I discuss the dependency relation between individuals and structures at the end of this chapter.

My concern, as I said in the beginning, is with how the modern sense of individuality affects our understanding of justice and normativity. The human individual is conceived as an agent who is self-conscious, rational and reasonable. From the moment when he/she is considered to be mature, this individual is seen as making his/her own decisions and having the ability to choose the best option for him/herself. Social, cultural and historical influences on this individual's decisions and attitudes are usually ignored since the individual is regarded as an abstract and unique agent. I discuss both of these issues in detail in the following sections of this chapter. Nevertheless, here, I should emphasize that in this sense

being fair and moral is regarded merely as a choice of an individual. Thus, in this contemporary age, the individual is regarded as the bearer of justice. That is, justice is regarded as an issue brought about by the decisions of rational individuals with atomistic and autonomous orientation. Hence, while justice is confined to the limits of morality (i.e., moral reasoning of individuals), morality is confined to individuals' conscience.

After I elaborate rationality and methodological individualism, respectively, I can substantiate my claim that individuals do not always choose what is best for them because their rationality is not so perfect. On the contrary, as a consideration of the evolutionary process of human species would reveal, rationality is subject to outside influences. More importantly, we cannot conceive individuals as atomistic beings since each individual can affect the other and their decisions are made through negotiation with others. In addition, their decisions do not bind only themselves; rather, all the decisions affect others' lives. Therefore, I would argue in the following pages that individuals alone cannot be the bearers of justice.

3.4 Rationality

When discussing the grounds of justice, at least a shared sense of it, I think the notion of rationality must be brought into light. Attributed to only human beings, rationality has provided a unique place to human species on the world. Aristotle defines human beings as rational animals. When considering what distinguishes human beings from animals, he seems right; reason—besides labor and language ability—has seemed to be one of the most apparent differences. Alternatively, in his "Theoretical Rationality: Its Sources, Structure, and Scope", Robert Audi

indicates that attributing rationality merely to human beings themselves, i.e., their personality, is a deficient approach since it is possible to talk about the rationality of systems, of arguments, of emotions, etc.[107] Although Audi has a point, political and moral theories have to assume a rationality that is peculiar to human nature in order to attribute political responsibility to people. In fact, in both politics and ethics, it is assumed that people must be aware of what they are doing so that they can take responsibility for their actions. Awareness of what you do and why you do it seems to be a basic feature of rationality, so that people can be treated as responsible beings and all social and legal institutions can function smoothly. Regarding this basic assumption, all political projects, even those which treat human beings as if they are unaware of their own interests, present themselves as if they meet human beings' rational expectations and preferences.

The nature of rationality is a topic of interest not only for moral and political thinkers but also artificial intelligence researchers. What differentiates human species from others might cause humans and machines to be regarded as closer to each other, one day. For now, according to Daniel Dennett, we do not call any machine or system "rational" although some are defined as "intelligent", as opposed to what Audi claims. Daniel Dennett in his "Mechanism and Responsibility" claims that we identify rationality with an autonomous character but concerning those intelligent machines, there is a strict causal relation between input and output. Regardless of whether or not human rationality can be reduced to

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[107] Robert Audi, "Theoretical Rationality: Its Sources, Structure, and Scope", *The Oxford Handbook of Rationality,* ed. Alfred R. Mele and Piers Rawling, (New York: Oxford University Press, 2004),17.

an account involving causal relations only, we can at least observe that the explanation is not very direct as "in chemical reactions, explosions, electric impulses, in explaining the occurrence of human motions".[108] Can we assert that computers are thinking or fermentation of yeast is a rational process? In contrast to Dennett's, Donald Davidson's answer seems to be yes; according to Davidson, there is no need to exclude rationality from the causal chain.[109] Therefore, if a system functions well, adapts to new conditions or, produces complicated and logical outputs from the inputs, then we can consider the system to be rationally working. Davidson's idea is quitere moved from the classical understanding of rationality. For example, according to Kant, it is the self-governing disposition of reason that proves the idea that ethics and politics are possible—if and only if reason is not subjected to cause-effect relations. In other words, for reason to be held responsible for its actions and intentions, it must be considered outside the causal chain that physical beings have to follow so that it can be.

Indeed, a number of definitions of rationality have been proposed. My aim is neither enumerating all nor formulating a novel one but presenting the common points of these extant accounts of rationality and explaining how they influence our general conception of justice. Contemporary theories of justice usually hold a certain sense of rationality; accordingly, people as bearers of justice are rational beings in this sense. So, justice is thought as something carried through these

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[108] Daniel Dennett, *Brainstorms: Philosophical Essays on Mind and Psychology*(Cambridge, MA: MIT Press, 1998), 235.

[109] Donald Davidson. *Problems of Rationality* (Oxford: Clarendon Press, 2004), 101-7.

rational individuals' actions, rights and institutions formed by their free consents. In this regard, I focus on rationality as one of the main characteristics of the modern individual since this feature of human persons is one of the main constituents of the modern sense of justice.

In general two satisfactory definitions of rationality are set; I quote them from Alex Callinicos's *Making History:* the former one is called "Weberian" by Callinicos. According to this conception, rationality is seen as an agent's choosing the best way when moving towards a target.[110] In other words, according to this conception of rationality, human beings are able to choose the best way or tool among the all givens in order to accomplish their aim, which makes them rational beings. The latter definition seems similar to the former one: a person is a rational creature if and only if he/she knows about what he/she want sand is aware of what to do to obtain the object he/she wishes for.[111] The difference between the two lies in the question of whether that person has the ability to choose the *best* way among the other options that he/she has before his/her.[112] As seen, while rationality in the former is grasped as a strong faculty, in the latter it seems a bit weaker, or at least moderate.

In this part, I argue against the sense of rationality accepted as given in most of the moral and political theories, which corresponds to the former one above. I never

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[110] Alex Callinicos, *Making History: Agency, Structure, and Change in Social Theory* (Ithaca, N.Y.: Cornell University Press, 1988), 7.

[111] Ibid., 6.

[112] Ibid., 7.

claim that people are irrational; my aim here is to discuss the deficiencies of those conceptions of rationality that are adopted as given and unshakable, which I call the "strong sense of rationality". Contrary to the strong sense, I discuss alternative approaches and definitions of rationality, which I call "modest". Moreover, I attempt to indicate that the former understanding of rationality, which I expose in the following section, is not the only explanation and we are not forced to assume the strong sense for our theories of justice; there are alternative comprehensions of rationality, which are more convincing than the former one. The latter conceptions of rationality might have resemblances with the former one and they might represent a rationality of a liberal individual, too. Again what I am interested in here is to shake the strong grounds of the idea of the rational—in the strong sense—human individual which is seen as the bearer of justice.

3.4.1 The Strong Conception of Rationality

3.4.1.1 Strong Individualistic Rationality

Regarding the former sense of rationality, I prefer to utilize the word "strong", since it refers to a conception that is abiding and belongs to autonomous, independent individuals. But Jon Elster calls it the "thin theory of individual rationality".[113] "One argues, that is, that the rational agent chooses an action which is not only a means to his end, but the best of all the means which he believes to be

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[113] Jon Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge, UK: Cambridge University Press, 1983), 1.

available."[114] According to Elster, this conception is thin because it does not explain the reasons behind a rational behavior.[115]And similarly, Alex Callinicos calls "specification" of the "weaker",[116] what I call the strong conception of rationality. Elster gives an example in his book *Sour Grapes*:

> When I take an apple from the fruit bowl… I want an apple, and I take it: nothing more needs to said. I may add, at the risk of some pedantry, that I believe there is an apple there; also, if I want a stronger form of explanation, that an apple is at the time what I want most, compared to the other options I believe to be available. In short, I prefer the apple. There is no need to go beyond this and add, falsely, that I take the apple in order to bring about a certain sensation in my taste organs, or to maximize a certain sensation.[117]

The view that reason resembles a divine capacity goes centuries back in the history of philosophy. This definition is admitted by a number of philosophers including Plato, Hobbes, Locke, Kant, Adam Smith, Rawls, and so on. Regarding all these philosophers, it is possible to maintain that, in their view, the faculty of reason has an absolute awareness of its surroundings and of itself. Having this instantaneous and autonomous character, reason does not allow anything to affect itself while thinking and acting. If reason is admitted to be some howconditioned, it loses its distinguished position and becomes more like a physical thing. Whenever reason is conditioned, the sense of strong rationality is damaged. Thus, this comprehension blocks some ways of investigating the nature of rationality.

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[114] Quoted from Callinicos, *Making History*, 7.

[115] Elster, *Sour Grapes*, 1.

[116] Callinicos, *Making History*, 7.

[117] Elster, *Sour Grapes*, 5.

In spite of its "thinness", to use Elster's words, this conception of rationality is still acknowledged as the basis of ethics and politics. I try to enumerate some pre-suppositions of this strong comprehension of rationality and the shadow it casts on the moral and political realm. The thinkers that I mentioned above do not necessarily or explicitly adopt all of these assumptions, but I will argue that the assumption of an agent having the ability to choose the best is nevertheless more or less based on the premises I identify below.

First of all, it is assumed that there is an independent subject who can be held responsible for his/her thoughts and actions since the subject him/herself has the ability to determine his/her actions. According to Macdonald and Pettit who in analyze and criticize this conception of rationality, this subject is called an "agent". Butthey argue subjective and unique "action cannot be explained solely in terms of individuals' properties, beliefs, desires etc." and that "these explanations must also make irreducible reference to institutions (or more generally to structures...)".[118] In other words, as Macdonald and Pettit point out the strong sense of rationality sees the agent as free from any determinations; so influences of social structures on individuals are ignored. Accordingly, human beings are regarded as atomistic individuals; their interaction with other people, nature and society are ignored.

Secondly, it is assumed that the agent is conscious of his/her alternatives in the ethical and political realm but without being subject to any determination except

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[118] Quoted from Callinicos, *Making History*, 8.

the imperatives of reason. If we remember the natural law theorists, they say that reason has the ability to distinguish between good and evil. So, the individual is aware of his/her choices but as Kant would claim he/she ought to pursue his/her reason which directs the agent towards the good, rather than his/her bodily impulses.

Then, the third assumption is that an agent has a capacity to pick what is the best among alternatives. Audi maintains that encompassing perception, memory and consciousness, reason used to be seen as the basic source of rationality; nevertheless, owing to the fact that experience is excluded from the capability of reason, this classical understanding of rationality is "misleading".[119]

If reason had such an omniscient character, everything would be better today, but indeed it is not. The world has been the scene of a number of irrational actions, behaviors and events. Human beings sometimes may not be aware of even some simple interests that they might have. For example, take a citizen who would like to pay fewer taxes. A political party promises to voters that it will decrease taxes if it is elected. Our reasonable citizen votes for that party among the other options. S/he thinks he is making the best choice for him/herself. But in doing so, has he questioned exactly how that party will reduce taxes? Suppose that the party wins the elections and privatizes some state enterprises. It is thus able to decrease taxes because it needs fewer amounts of funds for the public service now. Despite the

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[119] Audi, "Theoretical Rationality", 18-9.

fact that the citizen pays less tax money, actually more money goes out of his/her pocket since s/he pays money to private enterprises for public service.

As can be seen from this example, this understanding of rationality is unable to answer some questions: such as, how can we know whether A is conscious of what s/he really intends; how can we be sure that the options before him/her are not different from what s/he wants to see or is made to see; how can s/he know that what s/he chooses as his/her best option is anything other than the option some other party oriented him/her towards to choose? Regarding the example, the citizen supposed that if s/he paid less tax then s/he would save more money. S/he was not aware of the fact that s/he actually did not want to have to "buy" public services. S/he thought that the best option among the others that s/he could think of was the party which had made a promise to reduce taxes. Thus, s/he could not see beyond what is given to him/her and did not choose what the best is for him/her eventually.

3.4.1.2 Strong Collective Rationality

Jon Elster puts forward also the notion of "thin collective rationality". It is thin because of the same reason that strong individualistic rationality is, i.e., rationality or the reasons behind a rational behavior are not explained. Here again I prefer to use the term "strong" since we are still talking about autonomous, independent individuals and their abiding rationality. If these independent individuals are preserved, how can we talk about their collective assemblies and a rationality of the collective body? According to Elster, the thin rationality of a collective group is different from the sum total of rational tendencies of the individuals composing

the group. Elster states that we sometimes observe an individual sacrificing his/her interests for the sake of interest of the group.[120] Or, individuals make their decisions by taking into account the decisions of other constituents of the group. It is for this reason that I discuss collective rationality under a separate section.

Game theory is a discipline that searches and predicts how "*strategic interactions* among *rational players* produce *outcomes* with respect to the *preferences* (or *utilities*) of those players, none of which might have been intended by any of them."[121] Accordingly, rational individuals in a group make their decisions separately but they also consider how others will decide and how their choice will affect the final result. "Chess is an example, as are firms competing for business, politicians competing for votes, jury members deciding on a verdict, animals fighting over prey, bidders competing in auctions, threats and punishments in long-term relationships, and so on."[122] Game theory relies on rational choice theory, which assumes that "a decision maker chooses the best action available according to her preferences."[123] Here, what motivations are behind the preferences does not matter; it can be either selfish or altruistic.[124] But feasible and optimal benefits are targeted.

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[120] Elster, *Sour Grapes,* 26–7.

[121] Don Ross, "Game Theory", *Stanford Encyclopedia of Philosophy,*(Fall 2010 Edition)http://plato.stanford.edu/entries/game-theory/

[122] Cristina Bicchieri, "Rationality and Game Theory", *The Oxford Handbook of Rationality,*ed. Alfred R. Mele and Piers Rawling, (New York: Oxford University Press, 2004),182.

[123] Ibid., 182.

[124] Ibid., 182; Elster, *Sour Grapes,* 8.

Elster regards game theory as a "tool" in order to understand the interdependent strategies of the constituents of a society. First of all, this tool assumes that decisions regarding other's decisions are made. But the members of a group do not come together and discuss their options when making such decision (about others' decisions); rather they try to guess each other's moves. This is because, although they compose of a group, they are still taken as atomistic individuals. Then, according to game theory, the reward or the end-product at the end of the game depends on the total decision or action. Besides, the reward or punishment of an individual depends on others' punishments or rewards.[125] Elster gives a hypothetical example: in a village, as a result of increasing population, people want to cut trees and make new cultivation areas. If everyone cuts trees in their own field, then there is going to be land erosion. The optimal end would be to cut some trees to ensure new cultivation lands but not so many as to lead to erosion. Here, people do not make their decisions collectively, while trying to predict others', they make their own.[126] As seen from the example, both the punishment and the rewards that the group members will get at the end of the game depend on other group members' decisions. Game theory or rational choice theory ignores, as Elster points out, that the motives behind our decisions have a reference to others.[127] Game theory treats individuals as if we make our decisions in our own cubicle. However when we make those decisions we are affected by our circle,

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[125] Elster, *Sour Grapes,* 13.

[126] Ibid., 27-8.

[127] Ibid., 13.

society; we are connected to, influenced by and take into account what others will do. More importantly, we discuss and deliberate before making our decisions or we should do so. It should also be added that there are many more complicated ways in which social elements factor into our decisions and choices (such as, cultural backgrounds, mass media, and so on).In short, our decisions are not the results of our individual deliberation processes only.

3.4.1.3 Deficiencies of the Strong Comprehension of Rationality

Nearly all political philosophies involve a conception of human nature which molds and is molded by their political models. Political projects promise to assure what is good for peop leand how to define the human good is related with how to define human nature. Classical economy, for instance, takes human beings as having unlimited needs while the world with its limited resources cannot satisfy those needs, so, according to classical theorists, the task of economy is to balance unlimited desires with limited resources. Thus, considering human nature to be selfish may lead to the development of a model that is based on repressing or managing the unlimited appetites of human beings. The debates on rationality, especially rational choice theories, focus on how to establish a balance not only between selfishly desiring rational human individuals and resources but also among the members of the society composed of rationally self-interested human beings. Some of the theories of justice presuppose a competition among people and for nature and accordingly, form their solutions in terms of how this antagonism can be controlled and how some reconciliation can be achieved among these rational individuals.

Concerning both individualistic and collective strong conceptions of rationality, a number of deficiencies and objections can be enumerated. In the passages above, including the natural law section in the previous chapter, I have already presented some of them. But here I want to do a quick recap and also add a few more.

First, in accounts of rationality that I name "strong", history is almost never mentioned concerning either the faculty of reason or the ability of rationality. So, both the individualistic and collective strong senses of rationality are supra-historical. For those who understand rationality in the strong sense of the word, it is a capability of a faculty called reason which is as old as human beings' first appearance on the world. This is true for the capacity of rationality as well as for rational argumentation. The way it was when it first appeared is believed to be still preserved without any change. This approach is totally opposite to what evolutionary theory tells us about the emergence of human beings. According to evolutionary theory, human beings have evolved and gained their skills including their capacity for rationality and argumentation within thousands of years.

Secondly, as I discussed briefly above, while the notion of rational agency is widely accepted as an intrinsic feature of human nature today, it was not so in the ancient ages and in non-western-cultures. In Ancient tragedies, for example, the doer, the person is to be fated to be. As A. W. H. Adkins claims, our very neutral notions peculiar to individualistic rationality such as decision-making, will, and intention do not appear in Homeric poems.[128]Furthermore, I referred Finnis's

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[128] Quoted from Callincos, *Making History,* 11-2.

interpretation of classical understanding of rationality in the section 2.2.3 that all activities including physical ones making human beings human are called rational on the condition that they must be directed to the good. Thus, the conception of strong rationality has also appeared through time in the history of thought.

Thirdly, when our individual actions are considered, the answer to the question of whether we are rational and conscious agents is intuitively "yes." For example, when I desire to drink a glass of water, I am aware of the fact that I must stretch my arm to the glass and water and when I do the right movements; I can achieve what I want to do. In this case, no one other than me directs me to the glass. I intend and I act. However, when we narrow down the scale or look at the larger groups of individuals, it is not difficult to see that when individuals act as a member of a body; they are influenced by the group and their rational thought processes are directed by determinants other than sole rationality. So, even if we accept the strong sense of individualistic rationality, we could not use it to explain how groups are manipulated.

Fourth, as I mentioned before, desires, choices, and strategies of individuals are mainly based on communities or societies those individuals were born in.[129] If we define them as spontaneous, we would be neglecting effects of circumstances as if individuals were not living on the world. Game theory or rational choice theory ignores, as Elster points out, that our motives behind our decisions have social

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[129] Elster, *Sour Grapes*, 13.

backgrounds.[130] That is, our desires affecting our decisions are not only rational but also social and cultural.

Fifth, as Audi maintains, the capacity of rationality is severed from experience. Experience has no role in the process of reason's decision-making.[131] Audi maintains that encompassing perception, memory and consciousness, reason is used to be believed as the basic source of rationality: nevertheless, owing to the fact that experience is excluded from the capacity of reason, this classical understanding of rationality is "misleading".[132]

Eventually, the subject of liberal democratic organization of a society requires a strong sense of rationality. And, justice is regarded as an issue of human agents being aware of their own interests and making their decisions in their own separate habitats. This isolated, atomic and rational sense of individual gives us the wrong idea of human beings and bearers of justice because of the reasons that I listed above.

3.4.2 The Moderate Conception of Rationality

When the strength of rationality is undermined with the help of evolution theory, a new comprehension of rationality including an explanation of irrational behaviors of human beings becomes necessary. In contrast to the strong comprehension of rationality, some thinkers including Elster, Dennett, and Davidson put forth a more

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[130] Ibid., 13.

[131] Audi, "Theoretical Rationality", 18-9.

[132] Ibid., 18-19.

moderate understanding of rationality. I choose the term "moderate" in contrast to "strong", but this should not suggest that the moderate comprehension is not "well-grounded". On the contrary, it presents more plausible and "strong" explanations concerning the nature of rationality. Indeed, each of the thinkers can be evaluated under this title have a different definition of rationality but all oppose a supra-historical and supra-natural understanding of it. And, they all attempt to take into account motives, intentions, and similar conditions which determine our rational behaviors.

Callinicos simply defines such kind of rationality as follows A is rational if and only if A aims at P and knows that *x* is the way to get to P, then A does *x*, if A is not impeded by any internal or external conditions.[133] In other words, a rational being is identified with one who does what is required to get what is intended, unless it conflicts with other priorities one may have.[134] According to this modest sense of rationality, as a human, I may not be aware of all the possible options spread out before me. Because of this, I may possibly not choose the best option. However, I am sure that I can grasp the way or the tool that will help me to attain what I want or seem to want.

Daniel Dennett maintains that similar sorts of rational systems can be observed in both animals and artificially intelligent systems if they have some language skills

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[133] Callinicos, *Making History*, 49.

[134] Ibid., 6-7.

or can show what they intend.[135] Those systems can determine the appropriate means on the way to their goals and they have the ability to distinguish contradictions. The human organism, certainly, appears to be more complex than other creatures. In a similar way, the rationality of the human organism is more complicated than simply eliminating conflicts and pursuing targets. Nonetheless, the complex nature of human rationality does not vindicate the strong understanding of it.

In their "Introduction" to *The Oxford of Rationality*, Alfred R. Mele and Pierce Rawling make a distinction between theoretical and practical rationality: the theoretical rationality functions an epistemic concern over "what is rational to believe" and the practical is "what is rational to do".[136] I consider this distinction very important. Even though believing and acting are closely related, in many cases a contradiction arises between what is believed and what is done. When someone cannot achieve to do what is rational and goes on the other way, s/he will rationalize what s/he has done. The example of "sour grapes" which Elster referred explains this psychology of human beings: A fox wants to reach a bunch of grapes but it cannot, then it says that those grapes are sour.[137]

A different understanding of being a person can be proposed in accordance with the so-called modest sense of rationality. So, instead of the concept of individual

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[135] Dennett, *Brainstorms*, 23.

[136] Alfred R. Mele & Pierce Rawling, "Introduction", *The Oxford of Rationality,* 3-4.

[137] Elster, *Sour Grapes*,109.

we can use the word person which is less theory-laden. Persons are rational beings, too. Besides, they have the ability to speak and their consciousness is highly advanced compared to animals. I prefer to quote Dennett's definition of person:

[i] Persons are rational beings;

[ii] persons are beings to which … intentional predicates [i.e. beliefs and desires], are ascribed;

[iii] whether something counts as a person depends in some way on an attitude taken toward it, a stance adopted with respect to it;

[iv] the object towards which this personal stance is taken must be capable of reciprocating in some way;

[v] persons must be capable of verbal communication;

[vi] [persons are] conscious in some special way [namely they are aware of having engaged in actions and therefore can be held responsible for them]. [138]

Here Dennett indicates that persons have rational intentions and they are conscious to a certain extent so that they can take responsibility for their actions. Nevertheless, Dennett does not claim that those intentions are peculiar to that particular person; unlike Kantian autonomous individuals, "anyone's beliefs and desires must be those he 'ought to have' within the given circumstances."[139]

Who opposes the strong sense of rationality and adopt the more moderate senses of it can support liberal economies and agree with some versions of individualism. For example, Jon Elster maintains methodological individualism "the elementary

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[138] Dennett, *Brainstorms*, 269-71, 281-5, Callinicos, *Making History*, 5.

[139] Callinicos, *Making History*, 6.

unit of social life is the individual human action" and "to explain social institutions and social change is to show how they arise as the result of the actions and interaction of individuals".[140] However, the point is here that Elster opposes the idea that rational individuals are atomic beings making their decisions without any contact. Therefore, the more modest understandings of individual and rationality can relatively be permissible for a theory of justice since he gives a place for social interaction and dependence between individuals. Furthermore, he investigates the nature of rationality and factors influencing rational thinking and behavior such as "forbidden fruit is sweet", addiction, manipulation, resentment, wishful thinking in addition to "sour grapes".[141]

Thus, as can be seen, there are other ways of understanding humans' capacity of rationality and human individual as persons. We can place rationality and rational individual in history so that we can understand how human beings' ways of thinking are evolving and conditioned by historical circumstances. If theories of justice disclaim grounding justice on the idea of rational individuals as in the strong sense, then, explaining injustices will be easier. That is, justice would not be reduced to individuals' rational choice and conscience; rather it could be grasped as a social phenomenon binding whole society.

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[140] http://en.wikipedia.org/wiki/Methodological_individualism

[141] Elster, *Sour Grapes*, 111–125.

3.5 The Debate between Methodological Individualism and Structuralism Concerning Bearers of Justice

I would like remind that in the first part of this chapter my aim was to demonstrate that the individuals having strong rational capacities cannot serve as bearers of justice. That is, the previous part was devoted to a critique of assuming certain descriptive features of individuals. Nevertheless, I have not mentioned yet functional usage of individualism, so this part is allocated to handle functional or methodological practice of individualism. Regarding the issue of justice, one can explain justice and injustices with the help of individuals' decisions and actions. However, this is not the only way of explanation: one can explain justice through some determinations of structures, i.e., cultural, economic, social and so on. I discuss the two opposite sides of the problem and try to find the best way for both explanations of our current norms of justice and demarcation between the norms and decisions regarding justice.

To this end, I pose three controversial examples taking place in the news in short course and discuss methodological individualism and structuralism in terms of their approaches to these problems. These examples represent a certain sense of justice licit in our contemporary world. In the first example, a girl from Oxford University sells her virginity by public auction on internet. After this news, we have begun to hear other girls from other decent universities selling their virginities in order to pay their university fees.[142] Second example is that after the

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[142] http://www.telegraph.co.uk/education/educationnews/8239070/Teenage-student-sells-virginity-online-to-fund-tuition-costs.html

economic crisis which Greece severely faces with, Angela Merkel, German president, proposed Greece to sell some islands on the condition that they can pay their debts.[143] This offer was made about one and a half year ago and in these days, Greece put on the market almost any public enterprises and sources including islands, railways, airports, harbors, highways and so on. The third interesting example is from Poland: A Polish citizen advertised on a newspaper before the general elections in June 2010 that his vote is on sale. After a year, the same event happened in Turkey: before the general elections, two Turkish citizens unaware of each other from different regions of Turkey offered their votes for sale.[144] I have chosen these examples since whether they are immoral or unjust is highly doubtful and arguable. Although they seem immoral, it is yet difficult to condemn them as unjust. In the following two sections, I discuss the subjects of these examples as bearers of justice. I have two questions in my mind: The first is whether these acts originate in the private intentions of the subjects or they are the natural outcomes of contemporary moral and legal paradigm. My second question if it is possible to condemn these subjects mentioned in the examples morally and legally since I aim to find some criteria in order to demarcate between what is just and what is unjust.

3.5.1 Methodological Individualism

Methodological individualism "amounts to the claim that social phenomena must be explained by showing how they result from individual actions, which in turn

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[143] http://www.hurriyet.com.tr/ekonet/14003710.asp

[144] http://yenisafak.com.tr/Gundem/Default.aspx?t=09.03.2009&i=173967;
http://www.haberturk.com/yasam/haber/132338-satilik-oy

must be explained through reference to the intentional states that motivate the individual actors".[145] Indeed, methodological individualism can be concerned as a different version of the orthodox conception of agents. I attempted to handle the basic characteristics of this conception of agents in the previous sections. However, the methodological individualism avoids some of these metaphysical presuppositions. Instead, it makes use of individualism for its explanatory power. For this reason, it is called methodological individualism; individualism here has an epistemological function in order to explain social and historical events. Macro facts can be reducible to micro basics; that is, bigger social events rely on actions of individuals and individuals' private intentions behind those actions.[146]

While the orthodox conception of agents is a long-standing way of grasping human person, methodological individualism is first formulated by Max Weber, so it seems quite a recent approach.[147] Despite the fact that Weber himself prefers to work with the notion in order merely to give an account for sociological and economic phenomena,[148] methodological individualism, after Weber, has utilized also for analyzing the realm of values. Accordingly, if a norm appears as a prevalent opinion for a society, private purposes of individuals living in that society can be the account. "The idea has also been used to attack, among other

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[145] Joseph Heath, "Methodological Individualism", *Stanford Encyclopedia of Philosophy(Spring 2011 Edition)*, Edward N. Zalta (ed.) http://plato.stanford.edu/entries/methodological-individualism/.

[146] Callinicos, *Making History*, 5-8.

[147] Ibid., 22.

[148] Ibid., 7.

ideas, historicism, structural functionalism, and the roles of social class, gender roles, or ethnicity as determinants of individual behavior."[149]

Regarding the three challenging examples that I brought up in the previous section, a methodological individualist would claim that who wants to sell something within the limits of law can sell and the decision to exchange anything is most probably the result from some personal intentions of the agents, unless that agent is forced to do so. In a sense of free market, anything can be offered and acceptance of the offers is again the issue of free market. That is, girls can sell themselves by auctions if this will not cause a problem with the revenue office. And, Merkel's offer is merely an offer; it seems indecent proposal, though. But the final decision would be Greece's. The last example seems to undermine democracy; maybe because of this, some legal and moral concerns may appear but the decision is made by the agent him/herself.

Thus, methodological individualism does not give an account of why these three situations have appeared in this decade. After one of the news is heard, similar events have happened subsequently which is considered merely a coincidence by methodological individualism since individuals are regarded as unique and autonomous agents. In brief, methodological individualism understands certain senses of justice as they are related with particular conscience of individuals. History has none or very little role shaping individuals' apprehension of justice. If

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[149] http://en.wikipedia.org/wiki/Methodological_individualism

there is a wrong in a situation, the individual is regarded as the responsible of the guilt.

Indeed, Hegel, Nietzsche and Marx severely criticized orthodox conception of agents and proposed their alternative conceptions; structuralism took their criticism forward and propounded just the opposite ontology. After reviewing main arguments of structuralism with the help of these three interesting examples, I pose an alternative way regarding our contemporary conceptions of justice.

3.5.2 Structuralism

Having appeared on the scene history of thought in 1950s, structuralism has shaken the foundations of individualism. It was originated as a linguistic theory at first but then has been used to articulate anthropological, psychoanalytical and sociological issues. Structuralism takes social structures in order to explain social and cultural phenomena, that structures renders not only all social and cultural phenomena but also individuals possible. What is peculiar and novel to structuralism is its proposal that individuals and individuals' actions and intentions can be reduced to social, cultural, linguistic and economic processes. Adopting almost the same tenets, post-structuralism has emerged as an internal critique. Accordingly, post-structuralism retains both of the main arguments of structuralism; that is, structures are ontologically basic and individuals are also outcomes of those structures. However, for post-structuralism, structures are less concrete; they are transitive and open systems. In fact, it is highly controversial how to distinguish structuralist and post-structuralist thinkers and thoughts. Thus, I

handle structuralism and post-structuralism as related theories and ignore their slight differences.

Unlike methodological individualism, structuralism founds social, cultural, economic and linguistic structures, all social and individualistic events on which take place. Regarding the matter of justice, structuralism justifies some senses of justice and some forms of injustices with the help of the basic structures underlining them. So, there can be no understanding of justice independent from any social, cultural and economic networks. What Eagleton claimed about the relation between culture and power can be repeated for the relation between justice and power: We cannot escape from the power and hide behind justice as if it is a shelter since power and justice are one within the other. Justice enables legitimacy of power.[150] So, justice is never innocent. For example, in the ancient ages, slavery was legal and even a sign of prestige for people who owned some slaves. Citizens and even some slaves did not grasp slavery as unjust. Today, slavery is legally and morally condemned, although different legal forms of slavery persist. Some of the forms of slavery such as seasonal and temporary employment, labor of immigrant are adopted as legitimate. Thus, a historical moment defines its form of justice. Compared to the earlier forms through the history, today's understanding of human rights and justice are considerably advanced. According to contemporary understanding of justice, domination, oppression, violence, restriction of certain freedoms are illegitimate. However, different forms of suppression persist and are

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[150] Terry Eagleton, *Kuramdan Sonra* (İstanbul: Literatür Yayıncılık, 2004), 98, 101.

legalized. That is, our contemporary paradigm has brought about new forms of justices and injustices.

In this sense, structuralism enables us an account regarding the question why these certain forms of justice are regulated in this particular era and an ability to see what lies behind natural-looking social and individualistic behaviors.[151] According to a structuralist explanation, neither the girl selling her body, nor Merkel's suggestion nor Polish man's advertisement stem from supra-historical understanding of freedom and justice. When the free market ideology is adopted legal and moral in the name of freedom, there seems no possible way to condemn those agents in the examples. Neo-liberal substructure brings about a certain sense of superstructure which legitimizes marketing our bodies, countries, consciences, thoughts and political decisions as our labor power. Consequently, all these agents seem innocent and those offers are just. For example, two hundred years ago, could we grasp these as freedom? I believe, no. On the contrary, if remember Locke and classical liberalism, there are regarded inalienable rights. So, we cannot sell or transfer our body, vote and country. Nevertheless, neo-liberalism's justice makes possible and legitimize giving up our so-called inalienable rights.

Although structuralism gives the ability to understand why people have a certain sense of justice and why we all usually think that this sense of justice is natural and supra-historical, it is quite impossible to claim, "these offers are unjust" within the structuralist discourse since structures are regarded as prisons. If we are in the

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[151] Eagleton, *Kuramdan Sonra*, 54.

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prison, we cannot go out and look at it from the outside. Therefore, we cannot condemn neo-liberalism morally. According to Richard Rorty, it is ironical to judge a structure in which we live in, too. Rorty claims that any theory is a way of justifying our life-projection. However, since we have to justify our projections within our own culture and life-style, then we cannot go beyond what is given in our culture. So, we cannot find a ground for our culture and life-style. We can explain it but we cannot judge.[152] Thus, structuralism provides an account but takes away our right to judge and condemn.

Besides, for structuralism and post-structuralism the matter who will judge is not a proper question as well. For example, for Louis Althusser, the subject is merely an ideological outcome. We are not the persons to judge or to be judged. Similarly, Foucault claims that the subject is one of the primary results of the power.[153]While Nietzsche declared the death of God and Foucault declared the death of human subjects, so, we —subjects or agents— are social constructions. Therefore, for Foucault, neither resistance nor alternative power pursuits can be exterior to the power.

Despite the fact that Foucault and other structuralists propose resistance to a certain structure and power, however, this resistance would be internal to the current structure. The structure enables some ways outs. But the critical point here is that the way out are considered without any subject and consciousness. After the

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[152] Ibid., 55-6.

[153] Callinicos, *Making History*, 34.

declaration of the death of the subject, normative judgments such as good and bad, true and false, real and ideological become obsolete.

As I said before, my aim is to condemn these three subjects but structuralism does not seem to make possible to criticize those offers. So, I discuss in the following section if there is any other way to conceive structures which provide some criteria to distinguish between just and unjust.

3.5.3 Structures as Possibilities

Concerning my initial question whether the bearers of justice are individuals or structures, I have tried to expose some distinctive aspects of both methodological individualism and structuralism. In the former, the notion of individual comes up as a bearer of justice which means that individual is the one who is both the cause of and responsible for his/her moral behaviors. In the sections that I argued some of the typical characteristics of contemporary understanding of individual, I attempted to show that a-historical and autonomous comprehensions of persons are misleading. In the same way, justice is a social and historical phenomenon that it should not be reduced to individuals' personal decisions. In this section, I aim to reveal how the girl selling her virginity, Angela Merkel offering Greece to sell its islands and the citizen advertising his vote represent the contemporary sense of justice.

During the initial stages of capitalism, equality, freedom and justice were the basic principles that the bourgeoisie tried to launch for their promise of a more decent life. For the classical liberal thinkers, freedom has to be protected by inalienable

rights. For example, for John Locke, it is totally unacceptable to put our own body and our own country on the market, even though it might be a result of a free contract. In this regard, classical liberalism's understanding of justice seems very different from that of neo-liberalism. The examples that I gave above correspond to neo-liberalism's understanding of justice. Even Locke himself could not imagine such a world that anything can be salable. Indeed, since when it was acknowledged as legal and legitimate that human labor can be marketable by a contract, then in time, any sort of contract based on the consent of the parties has become perceived as legitimate and just. In brief the initial principle that liberalism justified includes antecedents of future understanding of market rules since the beginning. That is, classical liberalism shielded neo-liberalism's values, morality, law and sense of justice.

So far I agree with the account that an economic structure generates a certain sense of justice. That the questions whether sub-structure determines super-structure or individuals build structures have been discussed so much. However, what important here is that the relations between sub-structure-super-structure and individual-structure provide a satisfying account.

Structures provide us some sort of grounds; we can know through and make our judgments on that.[154]When we realize that we are standing on a certain structure— I prefer to understand structures as grounds which I will explain later—we begin to be aware of some differences between real issues and illusions that structures

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[154] Eagleton, *Kuramdan Sonra*, 138-139.

makes us to see. So, structures present us a ground of truth as well. However, structuralists would reject to make normative claims on these grounds.

Structuralists usually ignore the possibilities that structures enable us such as judging and changing them. In their book *Reading Capital*Louis Althusser and Etienne Balibar stress on "the existence of the structure in its effects"[155] which means that here is no structure somewhere out but its presence can be found in its effects. That is,—as Gülnur Acar Savran points out— the structure is comprehended as a conceptual thing rather than a tangible phenomenon.[156] Althusser and Balibar claims that the structure has a "metonymic causality on its effects" since the structure is an "absent cause".[157] In other words, structures are interior to their effects which brings about there is no tangible cause such as structures but only their effects. Acar Savran comments on that the existence of the structure in its effects gives rise to the reduction of tangible relations into absent causes and concepts.[158] Although we interpret and understand the world through concepts, the world and life do not merely formed by concepts and abstract structures. There are real relations in life and structures have to rely on a certain reality. Again with the words of Savran Acar, the physical reality exists before our thinking has abstracted it. Although Althusser and Balibar justify their theories

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[155] Louis Althusser, & Etienne Balibar, *Reading Capital*, trans. Ben Brewster (London: New Left Books, 1970), 188.

[156] Gülnur Acar Savran, *Özne-Yapı Gerilimi Maddeci Bir Bakış* (İstanbul: Kanat Kitap, 2006), 150.

[157] Althusser&Balibar, *Reading Capital*, 188.

[158] Gülnur Acar Savran, *Özne-Yapı Gerilimi*, 150.

through Marx's understanding of structures. However, Savran Acar claims that for Marx, the phenomena what we call structures are material processes.[159]

Alex Callinicos presents a Marxist sense of structures, too which is quite different from what Althusser and Balibar propose. According to Callinicos, historical materialism is a theory of structural possibilities.[160] That is, structures are usually understood as prisons limiting and determining individuals' actions but they also present frameworks that individuals can act on them. Structures introduce to us some possibilities as well, which is usually forgotten.

> …structures enable as well as constrain… Viewing structures from this perspective involves breaking with the idea of them as limits on individual or collective action, providing a framework within which human agency can then have free play. In so far as their position in structures delimits the possibilities open to agents, they are also presented with the opportunity to pursue their goals in particular directions.[161]

Terry Eagleton also maintains that living in a culture or being in a structure does not have to mean to be in a prison.[162] If we hold Marx's comprehension of both history and individual, it becomes possible to solve the dilemma realizing that determined by certain structures the person as the subject of the life has the power to change consciously those structures. With the words of Marx: "Men make their own history, but they do not make it as they please; they do not make it under self-

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[159] Ibid., 151.

[160] Callinicos, *Making History*, 300.

[161] Ibid., 275.

[162] Eagleton, *Kuramdan Sonra*, 63.

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selected circumstances, but under circumstances existing already, given and transmitted from the past."[163] So, the subject did not die but reconciled with history. That is, the values and opinions of the subject have some traces of history in which they live. In this sense, the values that the individual has are not self-evident, ahistorical and abstract but some of them can be regarded as historical and also universal in that moment of history. When the person realizes his/her position in a certain moment of history, can explain and try to universalize his/her current values and thoughts. Thus, individuals can determine and change the history, of course, with the given frameworks.

Again, my problem is here to find a ground that we can demarcate between what is just and what is unjust. If we take structures as grounds rather than prisons, then we act on that ground. Regarding the examples, all three cases are unjust. If we look at the first example, the girl putting her virginity on an auction thinks that she does this through her free will. However, she never thinks to benefit the possibilities given by the structure that she lives in. That is, she is neither a slave nor her father forces her to sell her body. She is very lucky in this sense but she is incapable of advancing her relative freedom. The girl, especially as a woman, ought to appreciate women's struggle and work for other women's freedom instead of legitimizing the idea that our bodies can be sold. Concerning the indecent proposals of Angel Merkel and Polish citizen, they do the same thing; they also legitimize that lands, citizens, our political decisions, our future, destiny

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[163] Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, in *The Marx-Engels Reader*, second ed. ed. Robert C. Tucker (New York, London: W. W. Norton & Company, 1978), 595.

can be sold. We gained political participation, all of our other rights, freedoms, with struggling through the ages. Thus, we ought to protect them and struggle for more. The girl and the Polish citizen determine also our future; their destinies and ours cannot be thought separate. Neither Greece nor Polish citizen not the girl do not sell their future, they also make our futures marketable since we are not atomistic beings. Besides, Greece is not a union composed of members whose interests are common. These sales will serve for a certain group's interests. All these three subjects sell their possessions since they are in a really bad situation and they want to save their present times. Thus, we could say that the authorities or institutions should be charged. Indeed, those institutions are blameful but these subjects are guilty, too. Instead of pushing forward the privileges such as equality, freedom, and democracy that liberalism brought about, the subjects in the examples downgrade those values and rights. So, those who are forced to sell their labor become forced to sell everything that they have. Thus, all three examples are morally and legally unjust.

CHAPTER IV

SEARCHING FOR PRINCIPLES OF JUSTICE:

THE PRINCIPLE OF ABSENCE OF EXPLOITATION

4.1 Basic Principles

Numerous struggles of human beings throughout history have produced a number of significant values such as equality, fairness, desert, freedom, human rights, rule of law, public participation in management, and so on. These values are held to be indispensable criteria of justice. Without any of them, justice would not be ensured; that is, a pan of the scale would be missing. However, there are two problems that first need to be addressed. The first is that like many of our concepts, the concepts of equality, freedom and rights are all burdened with different and even contrary contents, i.e., meanings. Secondly, I have to address a potential valid criticism: if we are to envisage a new sense of justice and a new form of society, why should we keep these values rather than develop novel ones? This point refers to the debate on "continuity versus rupture".

The debate on continuity versus rupture is related with how history, life and persons progress: are all new forms of society outcomes of the past or do revolutionary changes sweep all of the remnants of the past away? On this the debate, I defend the side of continuity. I have a Hegelian Marxist perspective; that

is, history progresses and when accumulations reach a saturation point, a new form of society (with its own ideology, agency, personality, etc.) comes on the scene. But this new form consists of older elements as well as novel ones. While a discussion on how history advances is beyond the scope of this dissertation, when I discuss those values that are associated with justice, I will try to touch upon why certain values ought to be maintained and how they ought to be redefined. I believe that we have to preserve those values, which we have developed; otherwise, we have to accept that history is merely the history of kings; rather than any sort of work of mass of ordinary people. What I am trying to say is that people have struggled to acquire those values that I have mentioned above, which have not been handed down to people by rulers. Of course history is full of examples of deterioration in equity and fairness. But now, we have to strive to get better. The reason why I mention the discussion briefly here is to underline that the realm of values should not be neglected. Although, I agree with Marx's claim that ruling ideas are the ideas of the ruling class, those ruling ideas have appeared as a result of progression of history; that is, struggles of deprived people.

In order to investigate what characteristics a just form of production must have, I begin with the most problematic concept, "equality", which has been distanced from "fairness" since John Rawls' claim that inequalities ought to be allowed to achieve fairness. What Rawls points out is that the principle of formal equality may deepen given inequalities. For example, if opportunities are offered in a way that ensures everyone to have an equal chance of accessing them, the persons who start ahead of others in life because of social contingencies and natural fortune are

able to take better advantage of those "equal" opportunities.[164] Rawls thinks that this might not be fair, and I agree with him on this point. Rawls admits that the problem stems from pre-existing inequalities but while he takes issue with the principle of formal equality of opportunity and proposes "the difference principle" as an alternative to formal equality of opportunity to solve this problem,[165] I am in favor of touching more directly the reasons which ground inequalities. If we do so, it would be possible to claim that equality and fairness can overlap.

To this end, I discuss two principles concerning equal distribution of wealth and income—"according to labor" (according to the effort spent in order to produce a commodity or a service, which certainly includes the required ability in order to be able to put forth an effort) and "according to needs". Instead of deciding which principle provides equality (either according to labor or according to needs, or, letting the market decide according to who will take what), I maintain that the principle "absence of exploitation" has a critical role in dissolving the dichotomies regarding equality. In brief, the just world in my mind is one where people are not exploited by other people.

I do not say that exploitation is the only barrier in front of justice. A society in which exploitation never takes place may still have some issues and problems regarding justice. Rather, I am trying to say that absence of exploitation is one of necessary conditions on the path going to justice. I think the issue of exploitation

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[164] John Rawls, *A Theory of Justice* Revised Ed. (Cambridge, Massachusetts:The Belknap Press of Harvard University Press, 1999), 62-3.

[165] Ibid.

has not received the attention that it deserves by political philosophers (with the notable exception of Karl Marx). What exploitation is and how it can be eradicated have to be discussed in terms of all the components of justice, namely, equality, freedom and rights.

Thus, in section 4.3 I discuss another problematic concept, "freedom", which in the last decades has been treated as if it is in an opposition with equality; as if we have to choose between the two. Nevertheless, I maintain that equality is the fundamental principle that secures the most important dimensions or forms of freedom. Where there is subjugation, we cannot even talk about justice. So, freedom as "absence of oppression" is an inevitable element of a just society as well as equality. Besides, I consider Philip Pettit's conception of "freedom as non-domination" and Philippe Van Parijs's conception of "real freedom" as an alternative to Isaiah Berlin's conceptions of negative and positive freedom. I discuss freedom as self-realization which can be found in both Mill's and Marx's formulations in 4.3.1, and which is closely related with my underlying principle "absence of exploitation".

In section 4.4, I continue with "rights". Sometimes rights are understood as the substance of justice, i.e., justice obtains when all rights are being respected; so the reader might expect me to begin with rights rather than equality. I completely agree that especially human rights are at the heart of justice; nonetheless, I believe that the realization of human rights is possible only through the realization of "actual" equality which is more than the achievement of legal equality. I consider rights important in the sense that they determine the formal content of equality and

freedom. Further, rights ensure the preservation of values that have been acquired through history such as equality and freedom. I object to the classical distinction between basic rights and social rights and claim that basic rights, social rights and in addition to them economic rights cannot be easily distinguished from one another. Even if we can distinguish them conceptually, I insist on the idea that unless social and economic rights are realized, the basic human rights will be remained too abstract, in some sense.

These three basic components of justice, i.e., equality, freedom and rights, have been formulated and defended by different thinkers; while some of them highlight equality and others emphasize freedom and rights. I emphasize the concept of equality more than freedom and rights not because the other two are less important but because I regard equality as a guarantor preserving the positive contents of freedom and rights. I will thus argue that these three realms of justice must be realized with the help of a fundamental principle: "absence of exploitation".

4.2 Equality

In our century, after the Soviet Union collapsed and individualism became the dominant ideology, political philosophers have taken a dim view of equality. In this section, my aim is to reestablish the indispensible importance of the notion of equality. To this end, I discuss various attributes of equality. To begin with, the concept of justice is closely associated with equality since the most traditional understanding of justice as "giving someone what is due to that person" presupposes the principle of equality, i.e., treating equals equally. Then, equality appears as a right to be equal, which I call 'legal equality' but there is more to the

concept of equality than just legal equality. In the following sections, I refer to Stuart White's classification of the five senses of it; namely, legal, political, social, economic, and moral.[166] I attempt to show that economic equality is essential for all the other four senses and finally I conclude that "absence of exploitation" ought to underlie economic equality in order for equality to be realized in its full sense.

4.2.1 Equality: Treating Equals as Equals

In his book *Justice, Equality and Rights,* Emmett Barcalow claims that we use the notion of justice in a relation with three concepts, namely, equality, desert, and right.[167] He calls these three terms "the principles of justice", since all the three principles serve to distinguish between just and unjust actions. That is, treating equals equally, treating individuals as they deserve, and finally treating people in accordance with rights are the requirements of justice.[168] Barcalow explains the principle of equality using a Kantian concept, namely "dignity". Simply by virtue of the fact that being human and rational, human beings have dignity and therefore, they are worthy of being considered equal, regardless of their nationality, religion, sex, prosperity, education and so on. Instead of utilizing the concept "being rational" Samuel Puffendorf repeats the Kantian thought by using the concept of conscience; accordingly, human beings have conscience that

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[166] Stuart White, *Equality*.

[167] Emmett Barcalow, *Justice, Equality and Rights: An Introduction to Moral and Political Philosophy* (Belmont, CA.: Thomson, Wadsworth, 2004), 54.

[168] Ibid., 55.

renders them different from other beings, so they "understand and obey the moral law".[169] Here, I would like to draw attention to the expression "rational" or "having the capacity to follow the moral law", which is put forward as an essential feature of justice, as if only rational human beings are the subjects of justice. Justice ought also to insure the mentally handicapped, although the law does not hold them responsible for their actions. Since they need to be nourished, sheltered, cured, and not to be harmed, they are the passive subjects of justice.

Going back to the concept of dignity, I regard the Kantian standard that human beings have dignity and thus deserve to be treated as equals as an important historical achievement of humanity. Although there are empirical evidences that slavery and genocides still take place in different places of the world, the Kantian maxim is at least accepted on principle. Nevertheless, the idea of human dignity and treating them as equals serve us as no more than abstract principles. More precisely, the Kantian dictum should be considered as an initial principle but then it has to be supported with the help of other principles and practical applications.

While Barcalow regards equality as one of the principles of justice along with desert and rights, he explains the principle of equality in terms of everyone having equal dignity and therefore, equal rights. So, in this sense, equality and having equal rights are not two distinct principles. But I claim that the principle of equality ought to imply more than being endowed with equal rights. However, I should note that in his book Barcalow is concerned with giving a detailed analysis

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[169] Ibid., 57-8.

of moral and legal rights; he does not necessarily reduce equality to equal rights. I do not reduce equality to equal rights or vice versa although I regard equal rights as a component of equality.

The principle of desert, I believe, is also one of the other components of the principle of equality. This oldest principle of justice includes two versions of justice, namely, distributive and corrective. Distributive justice refers to allocation of goods, earnings and honor. Corrective justice implies rectifying criminal issues with the help of either reward or punishment. D. D. Raphael defines 'the principle of desert' as follows: "the first idea is that justice looks to and matches merit; it claims that people should be given what they deserve". He proposes that this understanding of justice aims to punish the guilty, who break the law.[170] Both the Old Testament and Roman law appropriated this very same simple definition of justice: "justice is rendering to each man what is his (his own, what belongs to him, what is due to him)."[171] Thus, giving someone what he/she deserves is a kind of equal treatment.

The principle of "giving to one what is due to that person", as a principle of justice concerning equal treatment of equals includes several contradictions when a contemporary sense of justice is held. For instance, if "eye for an eye" can be regarded as a principle of justice, it may legitimize torture and capital punishment. But this principle may contradict basic human rights. For example, someone's

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[170] D. D. Raphael, *Concepts of Justice*(Oxford: Oxford University Press, 2001), 5.

[171] Ibid., 1.

right to live is taken away by capital punishment. Then, we may conclude that fairness of the principles of equality and desert depends on how we take them. In his book *Equality*, Stuart White explains how the notion of equality is complex and controversial: "It is complex in that it is not at base a demand for a thing but for a set of things which one might or might not view as necessarily all desirable. It is controversial in that it sometimes seems to threaten other important values."[172]

Carrying out the equality principle, as in the classical form brings out problems in economic issues as well. For illustration, suppose we apply this principle to economic issues in the following way through a formulation like "for equal wage, equal labor". Such an application would lead to unfair treatment between man and woman, someone who is pregnant and one who is not, and a disabled person and a healthy one and so on. Although this problem is quite old—maybe as old as the first appearance of the concept of justice on the scene—in the contemporary literature, it addresses John Rawls's notion of justice as fairness. According to Rawls's notion of justice as fairness, if formal equality sustains the current natural and social inequalities, then, the difference principle, "arranging social and economic inequalities for the benefit of the least advantaged of the society", is activated. Rawls defends that all offices and positions should be open to all, but qualifies this principle of equality of opportunity with the difference principle which allows "inequalities only when they really do benefit the least advantaged".[173] Rawls's first principle of justice claims to preserve "equal basic

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[172] White, *Equality*, 1.

[173] Rawls, *A Theory of Justice* Revised Ed., 53.

liberties for all".[174] However, the second principle envisages solving the current social and economic inequalities with the help of unequal opportunity for the benefit of the least advantaged. Although, Rawls claims that the first principle has a priority over the second one, the concept of fairness is introduced as a corrective tool. When formal equality is insufficient to solve injustices, this so-called difference principle will help.[175]

4.2.2 Equality Appears on the Political Scene: Equal Rights

I suppose that if we think more carefully about the meaning of equality, it will be possible to imagine how equality and fairness could coincide. I regard recognition of the equality of all human beings as one of the most important achievements of humanity since 17th century. The notion of equality has been enlarged, improved and legalized since then and I find it very helpful to follow its historical path.

John Locke prepared the philosophical ground for the idea that every human being is equal and free in the state of nature, which is the "pure form" of humanity.[176] Then, societies and governments are arranged through the consent of equal members who belong to that society. The Lockean ideas of equality and inalienable rights of all human beings became realized in the legal realm with the French Revolution in the 18th century. The 1789 Declaration set forth after the French Revolution resulted in there cognition of every human being as equal

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[174] Ibid., 130.

[175] Rawls, *Justice as Fairness, A Restatement*, 42-3.

[176] Although other philosophers who pointed out equality of all people can be found in history of philosophy before John Locke but Locke is admitted as the initiator of liberal democratic equality.

before the law. According to Article 1, "Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility".[177] The French Revolution put an end to enslavement, nobility or the idea of one person's inherited superiority over the others in both intellectual and practical realms. However, the revolution could not deliver all the ideals it had promised. The world has continued to witness inequalities, enslavements, genocides, and one nation's domination over others after the Revolution as it did before. Therefore, just after the Second World War, a new declaration was required. In 1948, The Universal Declaration of Human Rights was accepted. In this declaration equal distribution of rights are seen as the basis of justice as well as freedom and peace. Its "Preamble" begins with this statement: "Whereas, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…"[178] The first article of the 1948 Declaration begins with: "All human beings are born free and equal in dignity and rights…" It resembles the opening article of the French Revolution Declaration except for the included notion of human dignity. Being simply human, human beings have dignity and therefore, they are worthy of being considered equal, regardless of their nationality, religion, sex, prosperity, education and so on. And article 2 continues on this point and enlarges the first article: "Everyone is entitled to all the rights and

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[177] Declaration of the Rights of Man and of the Citizen (1789),
http://www.hrcr.org/docs/frenchdec.html

[178] "Preamble", Universal Declaration of Human Rights (1948),
http://www.udhr.org/udhr/default.htm

freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[179]

Considering humanity's record of violence, this declaration is very significant but definitely not sufficient. Since 1948, new declarations and covenants have been arranged in order to extend and maintain human rights. Yet, inequalities persist all over the world. I do not claim that the human rights declarations are accountable for that as their binding and coercive power is very limited. However, apart from that I think there is a significant problem about the comprehension of equality in those declarations; they consider equality only in the legal sense. Every person is considered legally equal regardless of whether they are rich or poor, healthy or handicapped, man or woman, white or black and so on; which is definitely good and just. However, this comprehension of equality is bound to be inadequate and it is maybe the case that it is used for concealing inequalities. In her book *Which Equality Matters?* Anne Phillips writes: "Even the most vigorous defense of inequality typically starts from some statements of egalitarianism, employing equality before the law to defend the inequalities of private property, or equal opportunity to defend inequalities in income and wealth."[180] Then she gives a brilliant example: legal egalitarianism is even defended by defenders of the British monarchy; according to them the important point is legal equality rather than the

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[179] Universal Declaration of Human Rights (1948).

[180] Anne Phillips, *Which Equality Matters?* (UK: Polity Press,2004), 2.

social one.[181] The argument is basically that if equality in the legal sense is ensured then it does not matter who is queen and who is servant. But of course, it does matter. So, I agree with Phillips' criticism concerning the approach utilizing legal egalitarianism as an excuse for social, economic and political inequalities. I do not intend to accept this excuse. Although, I grasp the universal human rights declarations as great achievements, I acknowledge that they are insufficient, not only in the sense that their enforcement in practice by political powers is limited but also it does not show how they can be applicable. In order to overcome this intangible character of legal egalitarianism, I put forward other meanings of equality which may give us a clue for a sense of more concrete and fair equality.

4.2.3 Equal Rights on the one Hand, Economic and Social Inequalities on the Other: But Who Makes the Laws?

Making an in-depth conceptual analysis of equality, in his book *Equality,* Stuart White enumerates five senses of equality:[182] The first is legal equality; that is, the law has to treat all people in an impartial and unbiased way within the limits of that law's enforcement and "no person should be above the law". The second is political equality which is a right to participate equally in political life. Thirdly, 'social equality' means both "the idea of status equality" and "absence of domination". Fourth is economic equality which I regard as necessary for the other forms of equality and explain in the following section. The last one is moral

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[181] Ibid., 2.

[182] White, *Equality*, 4-14.

equality meaning signifying "equal concern and respect". This brilliant classification of White leads us to a more adequate understanding of the notion of equality and how it can be satisfied. To this end, I elucidate the necessities of those five forms of equality for the realization of justice, respectively.

To begin with legal equality, even if some may believe that the impartial and unbiased nature of law is enough to avoid discrimination, I have an unforgettable scene from a master piece of Turkish cinema *Umut*, directed by Yılmaz Güney as a counter example in my mind. In this scene, a rich man with a *Mercedes* crushes a horse-cart on a road. The coachman, the owner of the horse who owns nothing other than the cart with the horse, and the rich man go to the police station in order to determine the damages. While the coachman expects to get some money for his dead horse, the police officer asks him to apologize to the rich man; otherwise the rich man will demand money for the damage of his car. The coachman desperately apologizes and returns empty-handed. So, the lesson learned from the story is: law protects he who owns money and power.

It can be said that the injustice in this example is not related with the law but it is a problem merely with wrong execution of the law. Such injustices might be peculiar to certain states' failure to be a rule of law. Yet if some people have privileges in their lives; they are always privileged before the law since it is that law that allows some people to have priority or privileges, and that same law will preserve their advantaged position. In a very brief way, the principle of equality before the law cannot be fully realized if other forms of equality are not satisfied.

No sentence could explain better what I am trying to say here about the nature of

law other than David Held's criticism of democracy. I quote it from Anne Philips:

> Democracy …is embedded in a socio-economic system that grants a "privileged position" to certain interests. The point here is not just that the wealthy find it easier to disseminate their views, to finance newspapers, launch pressure groups, lunch prime ministers. More troubling (because more systemic) is the fact that all governments depend on the process of capital accumulation as the source of incomes, growth, and jobs, and must therefore ensure that the economic policies they pursue do not undermine the prosperity of the private sector. This structural privileging of corporate power means that the democratic playing field is never level.[183]

What David Held tells about democracy is applicable to law as well. That is, it is

the stronger who makes the law and so, the law maintains the interests of the

stronger. In every era of history, this is what has happened. Thus, legal equality

does not also imply political equality. And further, absence of political equality

implies that legal equality always retains some potential to be violated. Indeed the

fate of political equality is the same as that of legal equality since those who own

the money can determine candidates, can support and advertise them in many

different ways or found political parties, organizations. "In a private property,

market-based economy, richer individuals will have a lot of control over business

investment decisions and this power might constrain how government can act."[184]

Anne Phillips claims: "Marxists, in particular, came to regard political equality

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[183] Phillips, *Which Equality Matters?* 17.

[184] White, *Equality*, 5.

almost as a confidence trick, a surface egalitarianism that obscures or legitimizes deeper inequalities in social and economic life."[185]

Thus, if we assume that legal and political equality could be ensured while maintaining economic inequalities, some people still will always have more. To take precautions against this, equality of opportunity and positive discrimination (if equal opportunity does not ensure that everyone has equal access to given opportunities) are usually suggested by contemporary political philosophers. All those sorts of suggestions seem to be helpful to solve the apparent results of social and natural inequalities. However, I do not really understand why we should deal with merely consequences rather than finding a way to address the causes and equalize the grounds.

As a result, attempts to ensure legal and social equalities are to be doomed to be insufficient if economic inequalities are preserved since the gap in income distribution affects severely equal participation in politics; i.e., in legislation and executive. Besides, those who cannot take place in legislative and executive processes either directly or indirectly would not be socially and morally equal, as expected. "Economic equality has certainly fallen into disuse, tainted as it is by the failures of socialism, and made to seem hopelessly out of kilter with celebrations of diversity and choice."[186] The experience of real socialism in the Soviet Union is usually interpreted as an unsuccessful utopia; rather than merely an experience. So,

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[185] Phillips, *Which Equality Matters?* 6.

[186] Ibid., 1.

the ideals that the real socialism aimed to achieve have been despised with the collapse of the Soviet Union. Just because that one practical experience did not go well, it does not follow that we should give up the criteria of economic equality as an indispensable component of justice.

However, I am aware of the fact that the phrase "to ensure economic equality" is also abstract. What is economic equality and how it can be ensured should be clarified. To this end, I first discuss what the term economic equality means, and which one of the tenets, "according to labor", or "according to needs" may correspond to economic equality. Then, I claim that the key ideas are the principles of "absence of exploitation" and "absence of alienation". While reflecting on economic equality, I do not forget to pose the problem of "people who cannot contribute to production" and "those who do not want to contribute to production".

4.2.4 What is Economic Equality?

So far, I have attempted to explain that other forms of equalities classified by Stuart White tend to be damaged unless economic equality is ensured. However, unlike legal and political equality, economic equality is an ambiguous concept and demand. According to White, economic equality began to be pronounced as a political demand after the Industrial Revolution in the 19th century due to the fact that the gap between the affluent and the poor became extremely widened.[187] So, economic equality was usually regarded as a demand to narrow the angle between wealth and income distribution in order to end deprivation. Elizabeth Anderson

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[187] White, *Equality*, 7.

hardly agrees with White; she upholds the idea: "Part of the appeal of equality of fortune comes from its apparently humanitarian impulse."[188] Accordingly, egalitarianism is an urge that everyone has a right to live a decent life. Then, she introduces the other reasoning for egalitarianism: "Part of its appeal comes from the force of the obviously correct claim that no one deserves their genetic endowments or other accidents of birth, such as who their parents are or where they were born."[189] I agree with both White and Anderson in a sense that before the appearance of the Industrial Revolution and capitalism, the line drawn between nobles and serfs was thicker. With the help of urbanization, working in the same space with employers, and everyone's including children working for very low wages rapidly increased the appeal for egalitarianism. So, the demand for equality was both for narrowing down the gap between rich and the poor and for human beings to be respected as equals.

Today egalitarianism is reduced to the demand economic equality which in turn is seen as an exhausted project by contemporary thinkers. Anderson summarizes the contemporary academic stance towards this notion. She points out that discussions on economic equality have been reduced to discussions on whether or not the state and the majority of the population of society have to subsidize "the beach bum, the lazy and irresponsible, people who can't manage to entertain themselves with simple pleasures, religious fanatics" and so on.[190] There are so many various

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[188] Anderson, "What is the Point of Equality", 290.

[189] Ibid.

[190] Ibid., 288.

opinions and theories suggested and discussed on how equal or balanced distribution of wealth and resources can be achieved but in my opinion all of the discussions that take place can be formulated in terms of two stances in general. One side is usually more egalitarian or humanitarian, and holds that resources, opportunities and wealth should also be distributed to the poor, disabled and unfortunate members of the society. The other side is more libertarian and they think that economic egalitarianism has no moral justification. I believe, although these two positions seem to be opposite, they share the same ground: One side claims that we might be one of "them" who lost his/her job, home, health and "they" do not necessarily choose their current situation; so we have to subsidize their minimum living in accordance with our moral duty. The other side maintains the idea that we do not morally owe "them" anything unless compensation is required by some contract or for any utilitarian reasons. Nonetheless, both of these camps share the same assumptions. First, they assume that there are only a handful of people out there whose basic needs must be met. Second, those thinkers utilize the language of "other" as if only "others" face malnourishment, health issues, problems with accessing education, unemployment, retirement, and so on. Third, it is not questioned who really subsidizes whom.

To begin with the first assumption, although what basic needs are is open to discussion, it is a fact that there are more than just a handful of people deprived of basic needs. I would like to draw attention to the fact that the thinkers posing these arguments are academicians working for a certain salary. Regarding the second assumption, I do not think that all academicians sustain the life of the ivory tower;

they are—at least I am—busy with getting a job, health insurance, to enable their children to receive a good education, retirement, and so on. Thus, the distinction between "we" and "others" is very thin; I am aware of the fact that there is a huge gap between academicians' life styles and the life styles of those who have to feed themselves with leftovers. However, unemployment, for example, is a serious threat all over the world even in the USA (In the USA, while the unemployment rate was 4.2 % in 1999, the rate increased to 5.8 % in 2008[191]), so, anyone can find him/herself in the shoes of those supposed "others". That is why, the question should be formulated as "what is a decent life that we deserve and how can we achieve it?" rather than "how can we save others?"

The most crucial assumption is the third one. It is a misrepresentation of the real situation. Except for people who cannot work because of physical and mental disabilities and those who do not want to work, most of the people who cannot sustain a decent life are actually people who are working a lot. And their deficient lives subsidize the luxury living of the minority. Therefore, we have to discuss economic inequality as a matter of "right", not "aid".

After positing the way that this work is going on, I now turn back to the question of what economic equality is. Of course, there are several attempts to describe the notion of economic equality. First, I begin with the dilemma between the tenets claiming to respond to economic equality, namely, "according to labor" or

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[191]International Labour Office database on labor statistics operated by the ILO Department of Statisticshttp://laborsta.ilo.org/STP/guest

"according to needs". Then, I suggest "absence of exploitation" as a way out of the dilemma.

4.2.4.1 "According to Labor" or "According To Needs"

Before the 19th century, just after the French Revolution, pointing out the insufficiency of legal equality, Gracchus Babeuf had put forward the idea of economic equality, according to which everyone should receive equal wages and everyone should work an equal amount of time in order to ensure equality in its full sense. According to Babeuf, no one ought to work more than others. Only in this way, can physical inequalities be impeded and no one can be superior to others; thus, all people would be equal.[192] This idea is more than the tenet of "equal pay for equal work", it requires everyone to work equally. The classical critiques by the advocates of free market economy are directed toward Babeuf: How will production be increased? How will people develop their talents? How will alienation of people towards their work be prevented?

Objections were not raised only by advocates of free market economy but also by Karl Marx. Marx stated that unless classes are eliminated, equality cannot be ensured. Marx always aims for people to establish an egalitarian society where private property of means of production and class are eradicated. However, as Allen Wood claims, equality for Marx is not intrinsically valuable but it has an

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[192] Philips, *Which Equality Matters?* 45-46.

instrumental value.[193]Anne Philips also argues that the more important objectives for Marx are the abolishment of private property of means of production, exploitation, domination, alienation, and class societies.[194] I agree with both Wood and Philips. In *Critique of the Gotha Program* Marx comprehends equality as equal access to goods which are needed. Marx claims that people are not equal; one has more children than another, one is stronger, the other is weaker. Neither their capacities nor their needs are equal. Accordingly, Marx has formulated two principles concerning equality: "according to labor" and "according to needs".[195] The former is the principle which is going be applied in a socialist economy and the latter is for a communist society.

> Any distribution whatever of the means of consumption is only a consequence of the distribution of the conditions of production themselves. The latter distribution, however, is a feature of the mode of production itself. The capitalist mode of production, for example, rests on the fact that the material conditions of production are in the hands of nonworkers in the form of property in capital and land, while the masses are only owners of the personal condition of production, of labor power. If the elements of production are so distributed, then the present-day distribution of the means of consumption results automatically. If the material conditions of production are the co-operative property of the workers themselves, then there likewise results a distribution of the means of consumption different from the present one. Vulgar socialism (and from it in turn a section of the democrats) has taken over from the bourgeois economists the consideration and treatment of distribution as independent of the mode of production and hence the presentation of socialism as turning

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[193] Allen Wood, "Marx on Right and Justice: A Reply to Husami",*Philosophy and Public Affairs* 8 (3): 1979, 267-295, 281.

[194] Philips, *Which Equality Matters?* 47.

[195] Karl Marx, *Critique of the Gotha Program*in *The Marx-Engels Reader*, second ed. ed. Robert C. Tucker (New York, London: W. W. Norton & Company, 1978), 530-3.

principally on distribution. After the real relation has long been made clear, why retrogress again?[196]

In a socialist state, there will be no more private ownership of means of production. Then, there will be no more classes. So, all members of the society will be equal in the sense that they gain in accordance with their work and there is no one exploiting others. And, the state will provide all social services, such as education, health care, sheltering, transportation, in return for taking some of workers' labor. However, as stated above, the problem is people having unequal abilities and needs. That is, the principle "according to labor" disregards physical inequalities, which is unfair. So, in a communist society, as Marx envisages, people will take what they need, which is totally fair, which later is called "the principle of equal welfare" by Jon Elster.[197] Nevertheless, socialism is a prerequisite stage for communism.

I do not want to get into more details on socialism and communism at this point; my question was how economic equality can be achieved, which is directly related with how economic equality is defined. Anne Philips states: "From a Marxist perspective, distribution is always secondary to production."[198] This point is more important than whether distribution should be made "according to labor" or "according to needs". As briefly mentioned in the previous paragraph, private ownership of means of production, exploitation, domination, alienation, and class

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[196] Ibid., 531.

[197] Elster, *Sour Grapes*, p. 296.

[198] Philips, *Which Equality Matters?* 47.

societies need to be removed according to Marx. He points out that exploitation, alienation, and domination are the natural consequences of class societies and ownership of the means of production by one class. Class societies have changed the nature of work; they have caused work to become alienated and alienating. Therefore, they never project a just form of production.

4.2.4.2 Nature of Work and Alienated Labor

In his *German Ideology*, Marx claims that work is the most important human activity through which human beings survive. But survival is not the only function of human labor. Human beings relate themselves with nature and other people through working. Animals also strive for their nutrition but they consume what is given in nature and only in ways that are fixed by their nature. Unlike animals, performing challenging and stimulating works, human beings not only transform and produce nature but also develop their capacities, faculties, and abilities.[199] In brief, work differentiates human beings from other animal species. Without work, human beings could not be human individuals. In this sense, work is a necessary and a very positive facility for human species. In Allen E. Buchanan's words: "Man's productive activity is universal both in the sense that the diversity of his products is unlimited and in the sense that he produces not just what is

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[199] Karl Marx, *German Ideology*, ed. Eugene Kamenka in *Portable Karl Marx* (USA: Peguin Books, 1983), 163-4.

immediately needed by himself and his offspring, but also by beings remote from him in space and time."[200]

However, with the appearance of private property, i.e., lands, animals, the very positive function of work has been reversed. While work makes human species humans in ideal conditions, it renders humans slaves in class societies. In societies with class divisions, there are two main classes: a class that owns various sorts of means of production and another class that has nothing but just their labor. In class societies, labor is external to the worker. "The more wealth the worker produces, the more his production increases in power and scope, the poorer he becomes."[201] His labor is not voluntary but forced, it is forced labor. It is, therefore, not the satisfaction of a need but a mere means to satisfy needs outside itself. While the worker produces objects, the worker himself turns into an object. The worker places his life in the object; but now it no longer belongs to him, but to the object.[202] In brief, external labor, labor in which man is alienated to himself, is a labor of self-sacrifice, of mortification. In traditional societies, it is argued, though work may have been hard and exhausting, the individual worker still had a large measure of control over his or her daily labors. In contrast, the modern industrial worker has little control over his or her work situation.[203] Capitalism, according to

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[200] Allen E. Buchanan, *Marx and Justice The Radical Critique of Liberalism* (USA: Rowman and Littlefield,1982), 17.

[201] Karl Marx, *Economic and Philosophical Manuscripts*, in *Portable Karl Marx,*ed. Eugene Kamenka (USA: Peguin Books, 1983), 133.

[202] Ibid.

[203] Karl Marx, *Communist Manifesto*, in *Portable Karl Marx,* 209-10.

Marx, inevitably produces a high level of alienation. Capitalism is based on exploitation of workers' labor and maximizing profit by mechanization and by a highly specialized division of labor. Thus, workers have to work so hard without knowing the process of production that they become inhuman in payment for the capitalist's increase of his profits. Workers in capitalist societies not only become alienated from their work and the products of their labor, but also from themselves and ultimately from each other. So, while labor has a liberating character at the beginning, in the capitalist mode of production labor consumes the worker.[204]In brief, what makes human species human individuals —i.e., work— turns human into an object for the market in the capitalist economy.

For a just production, work has to take its original form that does not alienate people but allows them to develop their talents and creativity. Here I utilize the notion of "original form of work", which is indeed the Hegelian sense of work. In Hegel, work is producing for someone else plays a fundamental role in making human animals conscious human beings. As I quoted from Barış Parkan, work in the Hegelian sense is regarded as a means by which "we can identify, in the medium we are working through, something very personal and unique about ourselves."

> Thus, at its best, work is more than a means of self-expression; it is a means of self-discovery. … What is most gripping about his [Hegel's] account is the social and organic conception of man that is developed in interaction with the concept of work. …When we work, we do so with a view to a social idea, such as meeting someone else's needs, in

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[204] Marx, *Economic and Philosophical Manuscripts*, in *Portable Karl Marx,* 134.

which we recognize our own needs as a member of the human species. Thus, work allows us to realize our own human nature.[205]

However, in order for work to achieve what Hegel claims it does, first, class societies have to be abolished and private ownership of means of production should not be allowed because the alienating character of capitalist mode of production prevents people from knowing and internalizing what and why they produce. If human beings realize what they produce and why they produce, productions processes and if the product belongs to them directly or indirectly, then alienation disappears. Secondly, no one should be allowed to exploit others. Only the government, a related institution or a collective union should keep the equivalent of some kind of surplus labor in order to provide social services. I discuss the comprehension of social ownership of the means of production and how such an ownership can maintain justice after I attempt to clarify what exploitation is.

4.2.4.3 Value of Labor

Will Kymlicka claims that Marxism implies a theory of justice which is "above all" a critique of unfair distribution of earnings between classes.[206] I think, Kymlicka's claim is right in some senses and not in others. He is right that Marxist theory presents an objection directed at the distribution of property, goods and profits; but Marx's theory involves a lot more than that. But he does not seem right since it is highly controversial to claim that it "fits comfortably within the normal

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[205] Barış Parkan, *Ontology of Work,*(Thesis (Ph. D.), University of Texas at Austin, 2003), 140-2.

[206] Kymlicka, *Contemporary Political Philosophy*, 171.

scope of theories of justice" as Kymlicka does.[207] Kymlicka misunderstands

Marxism as a theory defending the view that capitalists take over a certain amount

of value that they do not deserve whereas workers cannot take what they deserve.

The actual situation seems so; that is, there is an unfair distribution of wealth and

earnings in capitalism. However, throughout his theoretical life, Marx engages in a

more radical critique and analysis of the meaning of concepts such as 'desert' as

well as 'work', 'production', 'distribution', 'consumption', and so on. As Marx

indicates how labor can be a way of self-realization for human beings if there is no

alienation, exploitation and domination, he places a different meaning on the

concept of value than "desert." When the notion of "desert" is comprehended as

some amount of money paid in equivalence for some amount of work, then

alienation and exploitation of the worker begin there.

> According to Marx, what is most harmful about the activity of wage
> labor itself is that it alienates the worker from creative, self-conscious
> productive activity by robbing him of control over his actions,
> exhausting his body, and stunting his mind. In this activity, the
> capitalist utilizes the worker as a mere means, as an alien being, not as
> a fellow human being with human capacities which must be nurtured if
> they are to develop.[208]

In *Capital vol. I,* Marx distinguishes work and labor; work refers to human

activities producing "use-value" but labor is utilized for the production of "value",

which is valuable in the economic realm.[209] For example, cooking at home is a sort

of work, satisfying a basic need. Unless it serves for business, it does not have an

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[207] Ibid.

[208] Buchanan, *Marx and Justice*, 43.

[209] Marx, *Capital* vol. 1, in *The Marx-Engels Reader*, 302-19.

exchange value, but it has merely a use value. However, what is produced in a factory is produced for its exchange-value; rather than for its use-value. Here, labor, producing value in the sense of economics, is what is at stake since production is made for the sake of exchange-value. In other words, the exchange value, or the price of a product at the market, makes value visible; but this does not mean that the market place creates value; labor creates value, and the market place reveals it.

Marx claims that the capitalist not only aims to have goods produced so that their use-value has an exchange value in the market but also to gain more than the sum of necessary supplies. That is, in order to make profit the value of the products sold in the market has to be higher than expenditures of the means of production and the money paid to the workers. Thus, the capitalist takes over not only the product (i.e., value that is produced by the workers), but also the surplus-value, i.e., unpaid portion of the labor.[210] More precisely, a product emerging from capitalist commodity production has a value based on the amount of the effort put into producing it, which is called labor-time. However, labor-time is not fully paid to the workers. Workers receive wages in return for only a portion of their labor-time. In the remaining part, they are made to work for the capitalist. This remaining part that is not paid to the worker but taken by the capitalist is called 'surplus-labor' or 'surplus value'. In brief, surplus-value is unpaid labor and the capitalist exploits workers' labor within a certain amount of unpaid time. Besides,

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[210] Ibid., 344-61.

workers neither can control their production processes nor have a right on their own products.

Analytical Marxists, G. A. Cohen and John Roemer consider "surplus-value" and "exploitation" to be core elements of Marxist theory which are nevertheless highly problematic concepts. Concerning surplus-value, Cohen opposes Marx's claim that "human labor creates value". According to Cohen, worker creates a product which has a value. At the first glance, there seems to be no big difference. But Cohen implies that the market place determines the value of the product, so there is no given value of a certain amount of work. Accordingly, since the worker does not produce values but the product and the value of the product is created by the market, we cannot maintain that the worker works only two hours for himself and the remaining six hours (after taking expenses out) are held by the boss and that the boss exploits the surplus-value—i.e., that for six hours, the worker works for the boss rather than himself.[211] For both Cohen and Roemer, the exploitation that happens in a capitalist economic system is not based on surplus-value. For Cohen, the capitalist exploits the workers' labor through receiving what he does not actually need from the workers.[212] And for Roemer, exploitation is an unequal and unfair distribution and utilization of means of production. In short, Roemer's and Cohen's critiques of Marx are based on a reinterpretation of the concept of exploitation, which, in turn, is based on a conception of value that is more in line with that of the liberal political economists' conceptions.

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[211] G. A. Cohen, *History, Labour, and Freedom: Themes from Marx*,(Oxford: Oxford University Press, 1988), 214, 228.

[212] Ibid., 230.

I prefer to regard Cohen's redefinition of value as merely a verbal clarification. Marx's theory of value includes how a product is demanded in the market so; Marx himself underlines the "value of a product" as determined in commercial relations. Yet, it is not wrong to claim that labor produces value. Here, Marx does not maintain that labor has a constant value; rather, value is subject to change in accordance with relations of production. In other words, any kind of work produces a certain amount of value, either very little or much. For example, a shoemaker can make a pair of shoes manually within two days or can make it within two hours with help of machines, but both sorts of shoes might have same price at the market. They still have value which does not directly correspond to spent hours. Accordingly, how can we calculate surplus-value? If the shoemaker is employed by an employer and produces ten pairs of shoes, then, the employer may pay him for only two. This is the very nature of how capitalist add to his capital. Thus, capitalist has to exploit his employees in order to make profits; otherwise, there is no sense in being a capitalist.

Besides, both Cohen and Roemer regard labor, product and worker as distinct elements of the process of production. According to them, labor and product are associated with the market, but the worker like a machine is excluded from market relations. I do not agree with Cohen and Roemer because it is clear that the worker is not the owner of product but is the owner of his labor and the market price directly affects worker as both producer and consumer.

Furthermore, surplus-value production according to Marx, does not only serve as the source of capital, but also includes the cruel logic of domination. I allot more

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space to a discussion of how the capitalist system dominates over both people and nature, in the following section. It is important to remember what Marx repeatedly says about reification, estrangement or alienation of the worker in the capitalist economy. For example, in *Capital vol. I*, after his *1844 Manuscripts* he writes: "While the laborer is at work, his labor constantly undergoes a transformation: from being motion, it becomes an object without motion; from being the laborer working, it becomes the thing produced."[213] Buchanan reminds us that Marx does not utilize the notion of exploitation only as "uncompensated labor" but also, as "forced" and alienating labor.[214]

> This general conception includes three elements: first, to exploit someone is to *utilize* him or her as one would a tool or natural resource; second, this utilization is *harmful* to the person so utilized; and third, *the end* of such utilization *is one's own benefit*. What is most striking is the extreme generality of this characterization: exploitation is not limited to labor process itself.[215]

> I conclude, then, that Marx's concept of exploitation is broader and more complex than previous accounts have assumed. Exploitation, for Marx, is not confined to relations between classes. Accounts that overlook these points impoverish Marx's condemnation of capitalism as an exploitative social formation. …Any account which restricts Marx's concept of exploitation to the labor process ignores Marx's fundamental thesis that the labor process of a society exerts a pervasive influence on all human relations within that society.[216]

To sum up, as Marx stated, human beings in the capitalist system are "valued" in terms of their labor-forces and their labor is valued in terms of its exchange-value.

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[213] Marx, *Capital* vol. 1, in *The Marx-Engels Reader*, 344-61.

[214] Buchanan, *Marx and Justice*, 38.

[215] Ibid.

[216] Ibid., 42.

In fact, here human beings and their work have no "value" beyond their market value; that is, they are not "valuable" in themselves. Here, the issue is not how much a worker earns or how much a capitalist ought to pay for workers in order for workers to feel valuable. First, the capitalist can never pay for all of labor, which would be contrary to the principles of how capitalism does progress. Second, exploitation is not merely related with unpaid surplus-value. It also exhibits how capitalism utilizes people as tools and estranges them towards both their own work and themselves.

Thus, we see that one cannot claim to have addressed the question of justice without taking into account what goes on in the realm of production. This is the main shortcoming of mainstream contemporary political theory. While volumes have been written on basic principles of justice in the moral, political and legal realms, the questions of what principles can be formulated with respect to economic justice remains unexplored territory. Even though there have recently been attempts (by thinkers such as Thomas Pogge, Philippe Van Parijs, Peter Singer, Shue etc.) to draw attention to the economic dimension of social justice, these attempts have also not been able to get to the heart of the matter. These recent attempts have remained focused on problems of redistribution whereas what I am arguing is that an adequate theory of justice has to, before all, have something to say about justice in production. Studies in economics on these questions (for example Amartya Sen), should be incorporated more effectively into mainstream political philosophy so that the question of justice in production can be made to play a decisive role in contemporary debates.

I want to begin trailing a blaze in this area by pointing out what I believe any theory of economic justice in particular, and justice in general, ought to embody. We should adopt the principle that one should not exploit anyone. I believe, no one would object to this principle. The absence of exploitation can take place only in a society where private ownership of means of production is not allowed. Indeed, this second point is included in the first, but since many people who agree on the first may not easily agree on the second argument, I underline it: as Marx has revealed in his analysis of the contradictions in the capitalist mode of the production, private ownership of the means of production in a system where production itself requires a collective effort is intrinsically untenable. As I try to explain above, private ownership of means of production implies the existence of two classes: property owners constitute the first group and the second group works in their property. Then, property owners hold some amount of value of the laborers' produce, which is exploitation. If, on the other hand, we are talking about private ownership of the means of production in a system where production is not collective, of course, the question of justice in production would not even arise. However, as my dissertation is based on historical materialist premises which imply that our modes of production engender increasingly more complicated and universal forms of social cooperation, talking about a system where production is not collective seems to be no more than a hypothetical thought experiment.

In fact the underlying principle, absence of exploitation, establishes a ground for the others, such as freedoms and rights, so that they can be realized with the help of the principle of absence of exploitation.

4.2.4.4 Private Ownership versus Social Ownership

The rising interest in questions of justice has brought about the debate on ownership; roughly, on the one hand private ownership of the earning, goods, wealth, resources and means of production and on the other hand social or public ownership. Between these two poles, there are other forms of ownership. In economics, there is a huge literature on what sort of ownership increases production and is beneficial for society. Concerning the limits of this study, I cannot argue with all those positions in all their dimensions; instead here I discuss some of the positions conceptually and attempt to answer a few questions in accordance with the aim of this dissertation. I question, in the first place, what ownership means, what we own and what we can own; then, how much we own our labor and product, besides, whether our own labor can be distinguishable within cooperative production and division of labor. Subsequently, I try to figure out which forms of ownership can make possible absence of exploitation and alienation. Afterwards, I discuss whether public ownership is always a threat to freedom and rights or if there are plausible ways avoid this threat.

The idea of private ownership of the external world has been based mainly on the Lockean idea that if a person cultivates a piece of land or hunts a beast, then he is the unique owner of that land and its products, or of that beast since the basis of private property is one's own labor.[217] In fact, Locke begins with the idea that at the beginning God bestowed earth to all human beings in common. To take

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[217] John Locke, "Second Treatise", *Two Treatises of Government*, ed. Peter Laslett, student edition, (Cambridge: Cambridge University Press, 1988), §§ 27-8.

advantage of the blessings of this world, it must be cultivated and nothing should be wasted.[218] That is, Locke understands private ownership of the external world as the best way to benefit from the world. Claiming to be Locke's successor, Robert Nozick believes that the right of personal property rights lies at the heart of justice. According to his "entitlement theory" if a person acquires anything in a just way, then he/she has right to it. He claims that our talents and endowments are not common property; no one has right to them.

The opposite side of this view of ownership is composed of various models such as social, public or collective ownership. Some advocate that government or related institutions can possess means of production and citizens can benefit from them. Some maintain the idea that earth should not be owned. Some others claim that ownership of resources ought to be acquired by society. Or, outcomes of resources should be distributed equally to all members of the society. Indeed the principal distinction underlying these different attitudes towards the issue of ownership stems from the different answers given to the question: what are we entitled to own? For example, G. A. Cohen is in favor of the idea that we have a right to own what we acquired from birth i.e., our talents, capacities and so on. However private ownership of the external world is not necessarily is a right.[219] All natural abilities that persons develop belong to themselves naturally. I believe that John Rawls's argument in his *A Theory of Justice* puts an end to this

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[218] Ibid., §§ 25-6.

[219] Hervé Moulin and John Roemer, "Public Ownership of the External World and Private Ownership of Self" The Journal of Political Economy, Vol. 97, No. 2 (Apr., 1989), 347-367, 349-50.

discussion. First, he says that we do not deserve our natural endowments. Some people are born in Africa, some others in Europe. Some have got rich families, others not. Some are tall, some are short. But nobody can do anything to deserve his/her natural conditions and endowments before they were born. Secondly, the environment plays a big role in our success or failure. Some may not have the required conditions to be successful. Sometimes it may even be the case that the reason for someone's success is merely other one's failure. So, while we all have a right to our natural endowments, their development relies on the society in which we live (society presents possibilities and opportunities to develop them and also their worth are appreciated by the society) and thus we owe society.

In brief, our natural endowments are not the same with the means of production. Public ownership of the means of production does not have to mean that our natural endowments ought to be shared by the public. Because their appreciation and development rely on society; they are not so private enough. Nevertheless, my aim is to expose that the problem of distribution regarding the sum total of production is confused with the problem of sharing our natural talents. This confusion leads to a misinterpretation of the problem of distribution: as if it were a matter of seizing from the rich and talented and transferring to the poor and lazy.

4.2.4.5 Distribution and Consumption

Distribution, and more specifically, the question of according to what principles goods are to be distributed, is one of the central questions regarding equality. If there are plenty of goods and resources, as envisaged in communism, this would not be a problem. In fact, Marxists usually oppose the classical definition of

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economics which is a science balancing unlimited human needs with limited resources and goods. Whether resources are limited and whether needs are unlimited do not seem ultimately answerable questions to me since the answers to such questions depend on a lot of variables, such as how to differentiate between needs and wants. However, it is a fact that the vast majority of people have no access to the wealth and resources on Earth, while a privileged class of people possesses the majority of resources and wealth. That is, the problem is for now how existing resources and wealth ought to be distributed.

Here I would like to remind the reader of the Marxist comprehension of equality as an instrumental value that I spoke of in 4.2.4.1. According to the Marxist conception, equality is not an end-in-itself; what is valuable is to distribute goods in accordance with needs. Since persons and their needs are not the same, then equal distribution of goods would not be fair; instead what is desired is that each person can take enough.[220] Kymlicka claims that according to Marx, humanitarian needs vary from person to person in consumption as well as in production.[221] Norman Geras maintains the idea that Marx's notion of equality is based on moral equality.[222] What is intended intrinsically is a decent life for all and the principle of equality will serve to this end. Then the essential question is: what are the standards of a decent life?

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[220] Philips, *Which Equality Matters?* 61.

[221] Kymlicka, *Contemporary Political Philosophy,* 267.

[222] Norman Geras, "The Controversy About Marx and Justice", in *Marxist Theory*, ed. A. Callinicos, (Oxford: Oxford University Press, 1989), 231.

It is very difficult to come up with standards that would determine what is adequate for a life style to be considered appropriate to human dignity. Needs and desires are many and vary depending on the conditions of human imagination, which distinguishes the human species from others. Besides, such standards change from time to time and society to society. We can nevertheless speak of some principles.

Yet the world faces a big starvation problem as well as malnourishment, poverty, sheltering, incurable diseases and so on. Here two sorts of solution must go hand in hand. Public institutions must rearrange resources in a way that all members of society can benefit them. For example, municipalities can allocate their budgets on railways, subways and public transportation rather than on highways. And regarding moral equality, people may think that other people and next generations have a right to live on this world which might lead them to use resources in a rational and considerate way such as taking public ways of transportation. This is the second of the solution which might be useless or only have a slight effect insufficient to change the situation without the former sort of solutions put into action.

However, I do not prefer to say that human needs are unlimited since it has a negative connotation that as if people would have unsatisfied appetite even if they could consume the world and were still hungery. Instead, I prefer to say that human beings are not only consumers but also producers.

4.2.5 Is Economic Equality Sufficient to Eliminate Other Inequalities?

So far I attempted to explain that the stress on economic equality does not have to mean that differences would have to be ignored. As Marx claimed, equal treatment of different persons can be unjust. Each person has their own different capacities, needs, desires, priorities, and so on.[223] But "taking differences into account" and "pursuing economic equality" are separate issues; they do not have to conflict with each other.

Nevertheless, "is economic equality sufficient to eliminate other inequalities" is a legitimate question. That is, if the distribution of income in a society is arranged in accordance with some egalitarian principle; can the problem of equality still arise? My answer is simply "yes"; that is, economic equality is not sufficient to eliminate unfair inequalities because there are different forms of unfair inequalities most societies are faced with that are as deep as or deeper than economic inequalities such as gender, race/ethnicity, religion, sect, and so on. If we remember Stuart White's classification of equality types, economic equality is only one among many kinds of inequalities such as legal, political, social and moral inequality. As I claimed before, I regard economic equality as warranting all the others. However, if any of the other equality types is missing, economic equality has no value. In other words, economic equality is a necessary but not sufficient condition for securing other types of equality.

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[223] Marx, *Critique of the Gotha Program* in *The Marx-Engels Reader*, 530-3.

Implementing other types of equalities such as legal, social, political and moral is also very important. As I said before, economic equality is a necessary condition for their realization but they must also be recognized and protected as basic human rights since discriminations based on gender, race and religion can still arise in a society where there is economic equality.

Before concluding this part, I would like to underline that demanding equality does not necessarily follow from a metaphysical assumption equalizing all human persons. It is rather a political and moral demand that all human beings, not only despite their differences but also maintaining their individualities, deserve to be treated as equals and shown respect. Thus, we ought to demand a decent life and to be respected just because of being human. And, equality is an essential instrument to this end.

4.3 Freedom

One of the main constituents of justice, freedom, has interested philosophers throughout the history of philosophy, since it is related with more than several issues and having a direct influence on human life, such as; determinism, faith, God, responsibility, law, morality, punishment, reward, happiness, suffering and so on. On the one hand, in some cultures and religions, freedom has been regarded as becoming free from impurities, i.e., human body and bodily desires, in order to come closer to God as a pure soul. On the other hand, freedom is seen as the power of acting as one wishes. In the history of philosophy, Kant's account of freedom has been a milestone; if we do not suppose that human beings have free will, then, our moral, social and political lives would be meaningless. This Kantian turn made

"autonomy" and "responsibility" the main components of modern moral philosophy. While the Kantian understanding of freedom is mainly related with conscience and will, it still has relevance to politics. I will concentrate on the political senses of freedom since freedom as a concrete fact is actualized through political and social institutions and historical moments.[224] For example, a slave is not free even if s/he is capable of moral reasoning in the Kantian sense.

To discuss freedom as a political concept, I go over Isaiah Berlin's noteworthy distinction between negative and positive conceptions of freedom. What he pointed out has changed the course of the debates on freedom; it is virtually impossible to talk about freedom without referring to Berlin. I comment on two thinkers' conceptions of freedom which are Philip Pettit's "freedom as non-domination" and Philippe Van Parijs's "real freedom"; they both think that there is a third way alternative to negative and positive senses. Pettit's and Parijs's formulations of freedom precisely focus on the question of how to ensure justice. Afterwards, I make use of both Mill's and Marx's conception of freedom as self-realization in order to expose how the principle of absence of exploitation will actualize freedom.

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[224] Rawls, *Lectures on the History of Moral Philosophy*, 332.

4.3.1 Negative and Positive Freedom

In his article "Two Concepts of Liberty", Isaiah Berlin distinguishes between two senses of freedom; namely positive and negative liberties.[225] Berlin prefers to use the concept of liberty instead of freedom in his article's title; however, he uses both liberty and freedom to denote the same thing.[226] Although the notion of liberty evokes freedom in the political realm, I do not prefer to utilize the word liberty since it has the same etymon with liberalism. So far I have already tried to show that liberalism's understandings of the individual, rationality and autonomy are quite misleading. And, the word 'liberty' is usually utilized to refer to certain rights allowing us spaces of movement. But I believe that the freedom which people have tried to attain throughout history must involve more than an accession of what we are allowed to do. Thus, I prefer the word 'freedom' to denote its other senses. To continue with Berlin's distinction, he claims that although there are more than two hundred definitions of freedom in the history of philosophy, we can group them into two: one is the negative conception of freedom and the other is the positive conception of it. The former one can simply be defined as "absence of interference" and the latter is "being the master of self".[227]

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[225] Isaiah Berlin, "Two Concepts of Liberty",
http://www.wiso.unihamburg.de/fileadmin/wiso_vwl/johannes/Ankuendigungen/Berlin_twoconcep tsofliberty.pdf

[226] Ibid., 2.

[227] Ibid.

The negative conception of freedom is exemplified byHobbes's definition of liberty as "absence of external impediments"[228] Freedom is usually considered as opposed to coercion, oppression and interference. If our actions are impeded by some external authorities or conditions, then we cannot be deemed free. In the Hobbesian sense, freedom is mainly thought to be free from any political coercion. However Berlin gives the following counter-example: there may not be any legal restriction on travelling but if we do not have enough money to travel; it amounts to the same thing. So for Berlin, negative conception of freedom must include not only freedom from political repression but also freedom from coercion of conditions. Of course, we can never be fully free from natural necessities and restriction. For example, there are physical barriers preventing me from going to Mars, but this should not be conceived as a restriction of my freedom. But here I am talking about (as does Berlin) situations where people are impeded from doing what they want due to absence of things that are *already accessible* to certain other members of society.[229]

It may also be objected—as libertarians do—that no one has an entitlement to have what is needed to overcome natural restrictions provided to them on a plate. I will address this libertarian objection in section 4.3.3.

Berlinalso refers to the classical question of what should be done if a group's freedom lessens others. For example, if the minority holds the majority of

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[228] Quoted from Franco, *Hegel's Philosophy of Freedom*, 160.

[229] Berlin, "Two Concepts of Liberty", 2-8.

resources then they impede others' access. On the other hand, if private ownership is limited, freedom of those who possess more might be hindered. So, there seems to be a contradiction between social justice and freedom.

As Berlin mentions, a number of philosophers have tried to solve this problem. According to Berlin, the solution lies in the Ancient understanding of freedom and society: citizens used to consider their democratic rule to be for everyone's benefit and welfare which was more important than an isolated field of individualistic freedom. Here individual's freedom is not sacrificed for the sake of society; rather it is conceived in another way not the same as with "freedom from …" but "freedom to …".[230]

Unlike the negative conception of freedom, the positive conception of it focuses on "self-government" which is derived from Aristotle's notion of citizenship. While the focus of negative conception is how far the state may interfere in individuals, the positive conception of freedom's focus is on "the desire to be governed by myself". Thus, positive freedom is simply "being the master of self" which is adopted by Rousseau, Kant, Fichte, and Hegel.[231] Here the attention is brought to how I determine myself rather than how I avoid external impediments. Berlin indicates that the Kantian understanding of moral freedom can be transposed to politics:

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[230] Ibid., 7-8.

[231] Franco, *Hegel's Philosophy of Freedom*, 180.

> From this doctrine, as it applies to individuals, it is no very great distance to the conceptions of those who, like Kant, identify freedom not indeed with the elimination of desires, but with resistance to them, and control over them. I identify myself with the controller and escape the slavery of the controlled. I am free because, and in so far as, I am autonomous. I obey laws, but I have imposed them on, or found them in, my own un coerced self. Freedom is obedience, but, in Rousseau's words, 'obedience to a law which we prescribe to ourselves', and no man can enslave himself. …I am free only to the degree to which my person is 'fettered' by nothing that obeys forces over which I have no control; I cannot control the laws of nature; my free activity must therefore, ex hypothesis be lifted above the empirical world of causality. This is not the place in which to discuss the validity of this ancient and famous doctrine; I only wish to remark that the related notions of freedom as resistance to (or escape from) unrealisable desire, and as independence of the sphere of causality, have played a central role in politics no less than in ethics.[232]

At first glance, we may think that the positive conception of freedom is moral whereas the negative is political since the negative conception of freedom is a kind of resistance to external forces that interfere with our actions but the positive conception is more related with autonomy and self-determination. But if we understand self-determination as self-realization and acting within the conditions that we are conscious of, positive liberty can also be understood as a kind of political liberty in the Aristotelian sense. Positive freedom, unlike negative freedom, can allow some sorts of intervention of state or society for a certain purpose. In Ian Carter defines positive liberty as "the possibility of acting—or the fact of acting—in such a way as to take control of one's life and realize one's fundamental purposes."

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[232] Berlin, "Two Concepts of Liberty", 11.

Carter also points out that some thinkers including Isaiah Berlin object to the understanding of positive freedom as autonomy only.[233] Berlin states that those philosophers who have a positive comprehension of freedom can be considered in two different groups: According to Kant's and Fichte's conceptions of freedom in particular are too individualistic. On the other side, Hegel, Marx and Mill envisage the attainment of freedom "not only for the individual but also for the whole society".[234] Especially, Herder, Hegel and Marx put an emphasis on the role of history determining individuals' thoughts and actions. But they never conceived this determination as something that we should resist. Rather we should understand how history conditions us and see the possibilities that are given to us by a certain historical moment.[235]

Steven Lukes claims that the notion of self-development originated in Romanticism. The individual ought to reveal what s/he has in his/her inner world and present his/her capabilities to the outer world.[236] Then John Stuart Mill utilizes freedom as self-development; after Mill, according to Lukes, this notion has been adopted by the liberal tradition as well.[237] Freedom as self-development means that in order to realize his/her potential, the individual must resist the community's

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[233] Ian Carter, "Positive and Negative Liberty", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), http://plato.stanford.edu/entries/liberty-positive-negative/#ParPosLib

[234] Berlin, "Two Concepts of Liberty", 14.

[235] Ibid., 14-15.

[236] Lukes, *Bireycilik*, 81-82.

[237] Ibid., 83.

domination and make use of the opportunities for developing him/herself. For Marx, society is not considered as opposed to the individual's freedom. On the contrary, society presents a ground or means for individuals to develop themselves.[238]Human beings have various talents and abilities which have to be developed. However, class societies identify human beings merely with their professions. Therefore, human beings are confined within their jobs. Besides, their labor contracts, working hours, exploitation and other ways of domination are the main obstacles in front of freedom. In order to avoid limitation and oppression, Marx envisages a society in which people have a say in production and the governing of society. And, in that society, alienation and exploitation does not take place. Thus, people who work for themselves and their community with much less working time, they will enjoy developing their capacities and participating into political life.

4.3.2 Freedom as Absence of Domination

Isaiah Berlin's reputed article paved the way for alternative comprehensions of freedom. One of them is Philip Pettit's conception of freedom which is "absence of domination". It is worthy to discuss Pettit's formulation of freedom and his republicanism since he is a distinguished thinker whose ideas guided José Luis Rodríguez Zapatero—who is a member of Spain Socialist Workers' Party (PSOE)—for his reforms when he was the Prime Minister of Spain between the years 2004-2008.

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[238] Ibid., 84-85.

Pettit envisages a republic in which there is no practice of arbitrary power.This sounds like a negative conception of freedom but actually it is not. A master of a slave may not interfere in his/her slave's actions but still there is domination. "But even if the slave of a kindly master—the slave who suffers no interference—is unfree, then freedom must require the absence of domination, not just the absence of interference."[239] Thus, arbitrary practice of power is an obstacle for freedom. And, there should not be masters and servants in a free and just society.[240] In order to avoid arbitrariness of power, there must be rule of law in a republic. Law necessarily interferes in one's actions, but this should not be thought as restrictions of freedom yet.[241] Hence, interference is not always the opposite of freedom but domination certainly is.

Protecting individual freedom, the law can be seen as "bourgeois justice"; however, as Pettit maintains, law and struggles for freedom are very significant in order to protect individuals from domination of institutions, governments and rulers.[242] So, what Pettit points out is really important that freedom ought not to be understood as refraining from any interference of society and government but as a resistance to domination by them.

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[239] Pettit, *Republicanism*, 35.

[240] Ibid., 22.

[241] Ibid., 37.

[242] Ibid., 177.

4.3.3 Real Freedom

Real freedom is the name of the notion that Philippe Van Parijs coined. In his book *Real Freedom for All: What (If Anything) Can Justify Capitalism?* Parijs makes a distinction between formal and real freedom. Accordingly, libertarians regard freedom as a formal issue but they do not question how it can be realized.[243] As in the example I gave in section 4.3.1, there may be no restrictions on traveling but still I may not travel to space, or I would have not enough money to go somewhere else. Pettit points out the difference between "what I can" and "what I may"; I am not free to go to Mars but I ought to have a chance to travel around. Thus, freedom necessitates more than removal of restrictions and interferences; it must be something that can be realizable by provided "opportunities".[244] But how can opportunities be provided in order that people have a chance to enjoy the freedom to do something?

Parijs claims that "security" and "self-ownership" are recognized as essential components by formal conception of liberty but "opportunity" is also one of the necessary elements which a real conception of freedom consists of.[245] Security that "there is some well enforced structure of rights" is the primary principle of freedom. And, the second principle self-ownership envisages that "this structure is

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[243] Philippe Van Parijs, *Real Freedom for All: Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford: Clarendon Press) 1995, 4, 21-22.

[244] Ibid., 22.

[245] Ibid., 22-3.

such that each person owns herself".[246] These two principles are more or less adopted by former conceptions of freedom. However, these two are not sufficient to ensure freedom for all. Therefore, Parijs proposes the third principle that "this structure is such that each person has the greatest possible opportunity to do whatever she might want to do" which is called "*leximin opportunity*".[247] Full freedom for all requires some standard levels so members of the society can have a chance to realize their rights and liberties. "One is really free, as opposed to just formally free, to the extent that one possesses the means, not just the right, to do whatever one might want to do."[248]

In order to enable some of admissible liberties, such as freedom of travelling, Parijs introduces "unconditional basic income for all" which is essential for real freedom in its full-meaning for all members of a society.

> The real freedom we need to be concerned with is not just the real freedom to choose among the various bundles of goods one might wish to consume. It is the real freedom to choose among the various lives one might wish to lead. Stressing this distinction does not deprive income, or the budget-set, of its importance. But it makes it crucially important that the income should be given unconditionally to each citizen, no strings attached, that is, without any constraint other than her budget on not only what she may buy, but also on how she may use her time. Hence the following, far more radical suggestion. If we are serious about pursuing real-freedom-for-all—and if we are willing to abstract for the moment both from dynamic considerations and from interpersonal differences in abilities—what we have to go for is the

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[246] Ibid., 25.

[247] Ibid.

[248] Ibid., 32-33.

> highest unconditional income for all consistent with security and self-ownership.[249]

Parijs points out a very important issue that an unconditional income is necessary for realization of freedom in real life; otherwise freedom would be regarded merely as an abstract right. With the help of unconditional basic income people will have the opportunity to make free choices through developing skills and talents. However, Parijsis criticized mostly by libertarians that he must be given the answer why those who are working and possessing a certain amount of wealth should allocate for the others who do not or do not want to work. This debate takes us to the sides that I discussed in 4.2.4: On the one side, egalitarian philosophers defend allocating a certain portion of resources and wealth so that people in really bad situations can survive with a certain standard of a life style. On the other side, it is claimed that people who possess more have no moral obligation to share what they have with others.

This dilemma arises when we adopt the capitalist base. For example, production is conceived as something performed by individuals, however, it is collective work. Some thinkers who conceive capitalist economy fair also consider social justice as if welfare is just a dividend from the common wealth given to those who do not deserve that. But as I argued in the "Equality" section, charity or relief cannot ensure justice. If it is morally bad that some people do not have to access some basic opportunities; such as, well-nourishment, treatment, education, and so on, we should consider a decent life for all a human right rather than a gift. Thus, the

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[249] Ibid., 33.

capitalist mode of production which relies on exploitation should not be regarded as a base for justice; and justice involves much more than the issue of distribution. For real freedom providing people opportunities to develop themselves, first, we should adopt the principle, absence of exploitation, which I will clarify at the end this chapter.

4.4 Rights

Justice is directly related with rights since rights represent impartiality as well as justice; rights are at an equal distance to all equals regardless of who they are. Besides, rights ensure safety for the members of a certain society in which those rights are recognized since people know what they are entitled to do or not and that is in dependent of who they are, all members are considered as one of the equals. However, the relation between political order and human rights should not be ignored. In his "Human Rights" Jack Donelly points out: "human rights represent a kind of politics, not a politically neutral humanitarianism. They reshape the contours of, rather than eliminate, politics."[250] In the following pages, I attempt to expose how politics determine the language of human rights.

The issue of rights has been the most pondered topic for political theory in the twentieth century. The debate on rights, of course, goes back to centuries ago but in the twentieth century, concrete steps were taken to achieve recognition of rights—human rights, legal rights, children's rights, cultural, political, economic

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[250] Jack Donnelly, "Human Rights", in *Oxford Handbook of Political Theory,* John Dryzek, Bonnie Honig, and Anne Phillips, eds., (Oxford: Oxford University Press, 2006), 617.

rights, civil rights, group rights—on the international level. Especially in the twentieth century, there have been endeavors to institutionalize the enforcements of rights through covenants. Despite the fact that the discourse of rights has strong references to legality of rights, that what we mean by human rights must be clear as Buchanan argues: are we referring to "international legal human rights" or "moral rights"? Buchanan concisely exemplifies the confusion: Charles Beitz claims that if a state does not recognize the human rights of its citizens, then, other states have a right to intervene. Nevertheless, John Tasioulas objects to Beitz by claiming that states cannot be regarded as the provider or guarantor of human rights since even if there were no states on the world, human rights would be there. Here Beitz and Tasioulas speak of different rights. Since Beitz's focus is on international legal human rights, Tasiouslas's criticism identifying human rights with moral human rights is not proper.[251]

In the following sections, I discuss the relation between natural or moral rights and legal rights and try to make clear if legal rights rely on moral rights, or a foundation is required for legal rights. In 4.4.1.1, I examine Allen Buchanan's arguments that international legal human rights do not rely on classical moral human rights. In 4.4.1.2, I review James Griffin's justification of human rights which is a distinguished version of grounding human rights. Afterwards, I lay negative rights and positive rights on the table. I think this section, 4.4.2, maybe the most important section of this dissertation since it supports my initial thesis that political processes directly affect philosophical perspectives and theories. In

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[251] Buchanan, "Philosophical Theories of Human Rights", 1-2.

the last decades, it can be observed that positive rights that were supposed to be universal during the midst of twentieth century have begun not to be regarded as human rights. In other words, while negative rights are acknowledged as basic and universal, positive rights lost their grounds to be respected as universal and basic. The shift in the perceptions and theories of positive rights entirely conditions senses of justice. When the basic and universal rights are regarded solely as negative rights, then, justice is identified with negative liberties and rights. Nevertheless, being able to obtain clean water, for example, is a human right issue and lies at the heart of justice. This is a very basic and universal demand that everyone should obtain and all governments should supply. Precisely, this is not a question of distribution between freeloaders and riches. Again I propose that the principle of absence of exploitation is the way to satisfy positive rights, as well.

4.4.1 Foundations of Human Rights

4.4.1.1 Is There a Necessary Connection between Moral Rights and International Legal Rights?

In his "Human Rights and the Legitimacy of the International Order", Allen Buchanan defends the idea that human rights adopted by international declarations are not merely based on moral frameworks.[252] Although some philosophers have defined some natural or moral human rights, the modern conception of human rights defined by international covenants are beyond philosophical controversies.

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[252] Allen Buchanan "Human Rights and the Legitimacy of the International Order", (*Legal Theory*, Vol. 14, no. 1, March 2008).

Buchanan clarifies the sides of the discussion in his "Philosophical Theories of Human Rights"[253]: Accordingly, John Tasioulas, James Nickel and James Griffin defend that international legal human rights should be grounded on moral human rights (the *grounding view*),[254] whereas John Rawls and Charles Beitz maintain that international legal human rights do not necessitate moral grounds; they can be justified by "general interests" or "the international legal order".[255] I need to clarify that the first group of thinkers do not think that human rights are derived from natural rights. For example, Tasioulas maintains that assuming that human rights are derived from natural rights and are thus prior to social institutions and political practices, cannot give an account of how equal political participation can be a human right since human rights are supposed to haveexisted before the notion of political participation.[256] So, these thinkers including Tasioulas argue that legal human rights practices require a moral account and justification.

The grounding view has two main arguments: The first is that the Preamble of Universal Declaration of Human Rights is a text including moral claims and concepts and the following declarations' (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights) preambles also use the same moral arguments and notions; like, "whereas

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[253] Buchanan, "Philosophical Theories of Human Rights".

[254] Ibid., 2.

[255] Ibid., 3, 9-10.

[256] John Tasioulas, "The Moral Reality of Human Rights", in T. Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford: Oxford University Press, 2007), 75-101, ch3, 76.

recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and, "whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom".[257]However, Buchanan claims that these moral expressions such as, dignity, inborn and inalienable rights are not clarified; so, they do not imply a philosophical or moral theory.[258] Besides, they do not denote an absolute human nature; instead they are utilized in order to state that the declaration does not distinguish between nations, genders, religions and so on.[259] Similarly, in his "Elements of Theory of Human Rights" Amartya Sen claims that declarations approach rights as "self-evident" truths and disregarding the philosophical query on their justification makes their basis "loose" although he acknowledges that there is no time for these metaphysical discussions because of "the great urgency to respond to terrible deprivations around the world".[260] The second argument of the grounding view is that the Universal Declaration of Human Rights presents a list of basic moral

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[257] http://www.hrcr.org/docs/universal_decl.html

[258] Buchanan. "Human Rights and the Legitimacy of the International Order", 40.

[259] Ibid., 4-5.

[260] Ibid., 315-7.

human rights which must be recognized by all states. In this sense, they are "unearned" rights.[261]

Buchanan develops his response in his article "Human Rights and the Legitimacy of the International Order": First of all, he points out legal human rights are not directly derived from moral human rights. If we look at the development of legal rights, it can be seen that their formulations have usually been independent of philosophical discussions but directly related with some practical emergencies, i.e., wars, genocides, racism, discrimination, and so on. Thus, they are "earned". Besides, some human rights are fixed by some corrective regulations of institutions within time. Buchanan gives how American constitution has developed in a way that it can embrace all different groups, genders and races as an example.[262]

I agree with Buchanan's criticisms of what he calls the grounding view since as I argue in the second chapter, there is no necessary connection between legality and morality. Moral and philosophical justifications can be very helpful in recognition and implementation of legal human rights in practical life. However, I consider very important to review James Griffin's account of human rights since he justifies human rights through what he calls "practicalities", I think, which is similar to what I attempt to expose in my second chapter.

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[261] Ibid., 7-8.

[262] James Griffin, "First Steps in an Account of Human Rights" in *On Human Rights*(USA: Oxford University Press, 2009), 48.

4.4.1.2 "Practicalities" as a Ground of Human Rights

In the second chapter of *On Human Rights* " First Steps in an Account of Human Rights" James Griffin seeks some grounds for human rights so that "a more substantive account" and justification of human rights can be given. By definition human rights have to be universal. Griffin's aim is to justify the universality and necessity of human rights. Whereas some can claim that human rights are conventional presuppositions, some others maintain the idea that human rights have objective or real grounds. Considered in the latter group, Griffin introduces two ways of handling an account of human rights: The first is called "top-down; accordingly, some higher principles or patterns are initially agreed and human rights are derived from them. The second is the opposite, namely, bottom-up which suggests that commonsensical human rights are taken, then higher principles are inducted in accordance with their moral weights. Griffin is in favor of the bottom-up accounts and truly existing grounds for human rights.[263]

Griffin begins from the bottom; he regards "personhood" and "practicalities" as two essential grounds of human rights. Though some thinkers can propose pluralistic grounds, they would not serve as the basic grounds as personhood and practicalities do. While personhood expresses the physical and psychological nature of human beings, practicalities denote the social character of the human species.[264] The striving of human beings has been towards having a worthwhile

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[263] Ibid., 29.

[264] Ibid., 7.

and decent life and being a respected person.[265] So, human rights operate to protect personhood and worthwhile lives for human beings.[266] The ground of personhood alone is insufficient to explain fully both the practical lives of persons and the grounds of human rights. Human rights must be explained "through their existence conditions"[267]; this is where practicalities come in as the second ground. Human rights protect individual persons but there are societal organizations that persons live in and in which human rights become meaningful. Shielding the physical and psychological integrity of human beings, human rights also protect the social existence and social organizations of them. In this sense, practicalities can be considered as a way to understand human nature and the nature of societies together with their "motivations", justifications and "limitations".[268]

The idea of explaining human rights with the help of social practices reminds pluralistic and relativistic accounts of human rights. But as Griffin emphasizes practicalities, as he utilizes the term, do not imply that moral standards varies from culture to culture, time to time.[269] Neither moral standards nor human rights are supra-historical. Being historical does not necessarily imply being local and particular. So, human rights can be both historical and universal. While human rights have been developing throughout history, human beings have turned out to

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[265] Ibid., 32.

[266] Ibid., 33.

[267] Ibid., 38.

[268] Ibid., 37-8.

[269] Ibid., 38.

be more "human" with the help of human rights. It is impossible to distinguish between the route of becoming human and the process of becoming a social being. Human rights are both natural and necessary outcomes of these processes. Thus, human nature serves as the initial ground, and the nature of societies is the second substantial account of human rights. Both grounds together indicate that human rights are more than just "a moral point of view" but indeed they serve "moral standards"[270] which are immanent in the definition of human beings. Therefore, just as the biological nature of human beings is both universal and evolutionary, the nature of human societies is necessary, universal and historical.

4.4.2 The Discourse on Positive and Negative Rights

Similar to the distinction between negative and positive liberties, rights are grouped as negative and positive rights. A negative right can usually be defined as follows: If *A* has a negative right to do *x*, then, *B* is not allowed to prevent *A* from doing *x*. "The holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to provision of some good or service."[271] So, liberal rights, such as, security, freedom of expression, protection of bodily and psychological integrity, non-discrimination are regarded as negative rights and social and economic rights such as, education, sheltering, health, an adequate standard of living are positive rights.

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[270] Ibid., 39.

[271] Leif Wenar, "Rights", *The Stanford Encyclopedia of Philosophy* (Fall 2011 Edition), Edward N. Zalta (ed.), http://plato.stanford.edu/entries/rights/

The international declarations of human rights do not define any right as negative or positive. However, it is usually considered the Universal Declaration of Human Rights in 1948 and International Covenant on Civil and Political Rights in 1966 as a list of negative rights whereas International Covenant on Economic, Social and Cultural Rights in 1966 presents general principles of positive rights. The latter covenant recognizes right to "work under just and favorable conditions", "social insurance", "protection of children", "free universal primary education" and "equally accessible higher education", "adequate food, clothing, and housing", "the highest attainable physical and mental health", "self-determination", "freely determine political status" and so on.[272]

As I mentioned at the beginning of the "Rights" section, it is highly remarkable that some political thinkers attempt to argue that positive rights should not be conceived as universal human rights. Or, some of them, for example Allen Buchanan, think that they can be modified or limited. Article 7 (d) of ICSCR states: "Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." Regarding the article Buchanan claims that not every society can carry out this principle since paying for holidays requires a wealthy economy. So, this right relies on institutional structure and resources of societies. Therefore, it should not be included in the list.[273] Amartya Sen summarizes and objects to the trend:

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[272] http://www2.ohchr.org/english/law/cescr.htm

[273] Buchanan, "Philosophical Theories of Human Rights", 5.

Human rights can include significant and influenceable economic and social freedoms. If they cannot be realized because of inadequate institutionalization, then, to work for institutional expansion or reform can be a part of the obligations generated by the recognition of these rights. The current unrealizability of any accepted human right, which can be promoted through institutional or political change, does not, by itself, convert that claim into a non-right.[274]

In his "The Morality and Human Rights", John Tasioulas criticizes claimability objection which basically argues for if there is a human right on the one side which means that people have a claim to have or not to have then on the other side, there must be some other agents or institutions which people, right-bearers, can demand to have realize their claims, i.e., rights. When negative rights are the issue, it is easy to determine who will claim and who is going to be claimed. For example, "not to be enslaved" is a negative human right; here each people are considered as an agent who has a duty not enslave other human beings. However, when positive rights are at stake, then, claimability arises as a concrete problem. To be sheltered, for instance, is positive right but it is not clear whose duty it is to find a shelter for unsheltered people. Tasioulas summarizes the problem: "…such rights require some sort of institutional structure to allocate duties and define their content." In other words, the claimability objection points out that if the bearer of a duty that corresponds to a certain right is not defined, then such rights are unrealistic, utopian and they cannot go beyond being "another piece of rhetoric".[275]

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[274] Amartya Sen, "Elements of A Theory of Human Rights", *Philosophy and Public Affairs*, 32: (4), 315-356, 320.

[275] Tasioulas, "The Moral Reality of Human Rights",80.

Tasioulas criticizes Onora O'Neill who proposes this claimability objection and makes a clear distinction between universal liberty rights and welfare rights. What she calls universal liberty rights are negative rights; according to O'Neill, independent of institutions and political structures all human beings have both claims and duties. Nevertheless, positive rights or welfare rights are not meaningful unless institutions are arranged in accordance with these rights. In this sense there is an asymmetry between these two kinds of rights and unlike the former, the latter has claimability issue for O'Neill since their existence conditions rely on institutions and political structures.[276]

Tasioulas claims that the right to be free from severe poverty and not to be tortured should not be distinguished from each other since violation of the former may cause violation of the latter.[277] Although O'Neill has a point that violators of the negative rights can be detected, she is mistaken when she implies that liberty rights are prior to institutions.[278] Tasioulas gives "freedom of speech", one of the liberty rights, as a counter-example of O'Neill's distinction; there must be a state to ensure that the necessary structure to allow freedom of speech is in place.[279] Thus, certain structures and institutions are required for both liberal and welfare rights. If we discriminate negative rights as universal liberal rights but positive rights as merely welfare rights rather than basic universal rights , then this means that what

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[276] Ibid., 88-9.

[277] Ibid., 90.

[278] Ibid., 90-1.

[279] Ibid., 92.

western governments can provide for their people are human rights but what they have difficulties in providing are welfare rights. Freedom of speech, freedom of press or freedom not be enslaved are liberal rights but they are not pre-institutional, rather their existence depends on political structures, as to be free from poverty, right to have a shelter and social security associates with structures too.

Tasioulas states "[human rights] set standards to which reality must be made to conform".[280] Today, human rights are institutionalized and they present a ground in order to protect both individual and group rights. However, we have to struggle for their realization. In this sense, recognition and implementation of positive rights are irrevocable. Those who propose the claimability objection have a point in that demanding positive rights and decent life standards for every human being requires an alternative economic structure. Because of this reason, contemporary thinkers tend to waive welfare or positive rights. Nevertheless, if they do not conform to reality, we have to make to conform reality to welfare rights. Thus, I insist on the right to absence of exploitation.

4.5 The Principle of Absence of Exploitation

As I repeated through this chapter, my aim is to bind all these three realms of justice, namely, equality, freedom and rights, to the principle of absence of exploitation. I attempt to prove that exploitation is one of the main obstacles in front of justice. Political philosophers expose various injustices and they try to

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[280] Ibid., 77.

formulate some principles and define some rights in order to prevent them. I regard all these endeavors as very important but I find it is strange that they have very little to say on exploitation. While domination, discrimination, arbitrary interferences, and social inequalities are condemned, exploitation is almost never mentioned. In addition to other principles, freedoms and rights, absence of exploitation must be recognized as a principle of justice. In fact, it ought to be identified as an underlying assumption since as long as exploitation exists, equality, freedom and rights would not be realized in their full senses.

Will Kymlicka defines exploitation as "taking unfair advantage of someone".[281] Here, how we understand "fair" and "unfair" determines what exploitation is. While Marx argues that contracted work causes exploitation, liberal theories of justice do not treat voluntary employment contracts as unfair utilization. As I discussed in 4.2.4.3 "Value of Labor" in detail, for Marx, if surplus-value is taken over by the employer, then the worker whose labor is not fully paid is exploited by the employer. However, most of the theorists claim that if the employer does not act contrary to the contract (if s/he does pay what is agreed on and does not use his/her power arbitrarily), then unfair utilization or exploitation is not the issue there. Especially in well-developed capitalist economies, illicit working is prohibited and contracts have to include some working standards and rights for both parties. So, they look fairer in comparison to the working conditions in underdeveloped countries. However, I agree with Marx's understanding of exploitation: both developed and underdeveloped

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[281] Kymlicka, *Contemporary Political Philosophy*, 190.

capitalist economies exploit people who do not possess the means of production but have to sell their labor in order to live. Workers may have the choice to work under these or those conditions but they have to choose to work and consent to this or that contract.

If there is unfair utilization of some people in a society, how can we say that all members of the society are equal? Even if they are regarded as equals before the law and they have the right to equal political participation or, even if there is no ethnic or sexual discrimination, we can never speak of people having equal dignity as long as one group utilizes another groups' labor. Besides, as I argue in the section on "Equality", equal political participation in a capitalist society is merely an ideal. Thus, principles of justice intended for ensuring equality ought to include absence of exploitation.

Realization of the principle of freedom also requires absence of exploitation. Regarding the economic aspect of freedom, I think it clear that people must have enough opportunities for concepts like "freedom of contract" and consent to make sense. For example, someone who had a chance to have a good education and is thus qualified has genuine options for work put before him/her to choose from. On the other side, if we think of positive freedom as self-realization, people ought to have certain opportunities, such as less working hours (leisure time) and social insurance (feeling secure about the future) to realize themselves. However, here the problem is not merely to provide some basic opportunities to everyone. The issue is if someone is directly or indirectly forced to work, then that person should

not be considered free since s/he cannot make sense of his/her work and cannot be satisfied fully.

Regarding human rights, as I attempted to expose above, their accomplishment highly depends on the acknowledgement of the absence of exploitation principle. Unless a new economic model which does not rely on exploitation is established, rights remain too abstract to be practically realized. Contemporary theories of justice are usually criticized because of their focus mainly on distribution. Buchanan claims that this is not a fair criticism since they concern a lot on rights, too. However, political thinkers concerning on rights must also take into account distribution and production. As I expose in "Rights" section, positive rights are very essential for human rights and they require a fair distribution and production.

Thus, labor contracts are not based on free rational consent but are in fact coerced. When trying to define and integrate equality, freedom and rights within the practical life, "absence of exploitation in the form of production" ought to be the basic criterion underlying all others. Nevertheless I need to reiterate that absence of exploitation would not eradicate all of injustices. This principle is not a magic wand for all problems; it is merely a principle but essential.

CHAPTER V

CONCLUSION AND FINAL REMARKS

As I said in the beginning, I have both philosophical and political concerns; during the process of writing the dissertation, sometimes philosophy sometimes politics have outweighed. These tides and turns bring about sometimes problems, sometimes new possibilities and new forms argumentation. Especially dwelling on the concept of justice requires anthropological, sociological, political, and economic as well juridical and philosophical argumentation. I tried to take into consideration some of the arguments from those disciplines yet my arguments and references are mainly philosophical. Although philosophy seems to be on the edge of practical life, politics requires moral concepts and philosophical theories in order to justify current practices. For example, as I spoke of in "Rights" section, human rights are utilized to legitimize liberal order of states and international relations. Philosophy usually prepares some grounds or frameworks so that we can make sense of empirical evidences and discuss our problems on those grounds or with those frameworks. Besides, it analyses and clarifies concepts, perspectives, and theories. In this study, I tried to clarify and classify contemporary political concepts with their references to past. I consider clearing the grounds very important since those grounds are not only theoretical but also material which I attempted to reveal throughout the chapters.

In the "Introduction" section, I summarized the context of the concept of justice within the contemporary political philosophy. I compared and contrasted my philosophical and political perspective with the mainstream contemporary political theory. While the mainstream theories presume the capitalist economic order, and understand justice as a question of distribution, I maintain that the problem of justice cannot be solved within this capitalistic and individualistic discourse. We need an analysis of the assumptions and concepts of the contemporary approaches. This analysis helps us to see the sides and the bases making possible these accounts and justifications of possible.

My problem was initially to reveal the religious grounds of justice and morality. In my second chapter "Searching for Bases of Justice", I did not make a genealogy of moral concepts; but I tried to relate their usages in the past with now. I defended that all moral concepts associated with absolutes and ideals, such as, good, truth and justice, should be redefined within material frameworks. Avoiding divine and absolute origins did not lead me to any versions of cultural relativism. I maintained foundationalism in contrast to anti-foundationalism since some foundations are necessary to understand moral and political affairs and take a stand. My foundationalism can be defined as historical materialist version of realism. I did not cope with metaphysical realism; instead I adopted epistemological functions of both realism and historical materialism. First, I emphasis three aspects of historical materialism: secularism, physicalism and historicism. The reader could see that historicism guided this dissertation from beginning to end but I tried to emphasis physicalism as well.

Before introducing historical materialism as a solution to the problems of articulating moral dilemmas and demarcating between the sides, I discuss the natural law theory and legal positivism. The natural law theory, as it is well-known, has an absolutist approach to normativity. I pointed out not only classical but also modern versions of natural law theory imply somehow absolute and divine references. I examined plausible objections of legal positivism to natural law theory. I mostly agree with legal positivists that neither legislation nor recognition of law stem from morality. Hart attempts to reveal its natural and biological sources, although classical legal positivists explain law in a reference to legal authority and legal system. Like Hart, I comprehend morality with its physical and historical bases. So, such broader sense of morality certainly influences political legal order.

Naturalist approaches to morality have similar accounts of the origin of morality and social norms. Accordingly, as told in section 2.3.1, human beings' biological nature or structure can be regarded as a universal ground of normativity. Here we can see what I mean by physical foundations; human body is objective and universal. However, the physical origins of normativity do say very little about the diversity of the moral norms and social/political organizations. Observing the diversity in the normative realm seems to vindicate pragmatic accounts of the norms. Although pragmatism has strong arguments, its weak relations with the objective reality bring us to a dead end. Precisely this is where my understanding of historical materialism is to put into use.

Elucidating how history develops would be a topic of another study; here I presume that history develops through the struggles of opposing classes and the ruling class dominates perspectives, concepts and theories. In accordance with such a historical materialist perspective, we can make conceptual analysis by distinguishing between the sides. In the final section of the second chapter, I tried to illustrate how we ought to search for grounds of current norms and demarcate between the moral and political sides.

The concern of the third chapter is the subjects of justice; namely bearers of justice. First, I clarified why I used the word "bearers" instead of agents or individuals. Since my attempt has been to indicate that justice is not an individual issue, I did not use persons or individuals. In addition, the modern sense of the concept of the individual implies supra-historical, autonomous, atomic, and rational beings. Throughout the chapter, I tried to reveal that this understanding of individuality is unreal. And, the contemporary theories of justice usually base their theories on this comprehension of justice. Although most of the political theories on justice propose some certain institutional solutions, individuals have a central place as bearers of justice. These approaches usually ignore the prevailing role of the social and economic structures on individuals. Since they attribute very strong abilities to human rationality, the individual is understood as a being who can distinguish what is fair and what is unjust. In the section "Rationality", I review different understandings of rationality. Of course, I acknowledged that human beings are rational creatures but they are born in certain conditions and the faculty of rationality, as any other faculty, is affected by those conditions. Thus, we can

search for alternative approaches to rationality and explore what conditions our rationality. It would be easier to understand and explain the notion of with the help of a moderate sense of rationality and the individual.

I tried to give an account of the current sense of justice and the so-called agents who are thought as the bearers of justice with the help of some current events. These events give us some clues about the grounds of the contemporary sense of justice. I claimed that our age's understanding of justice is conditioned by neo-liberalism's formulation of liberty. Persons may perceive that marketing their own body, country and political destiny is up to their personal decisions. I argued that our era's economic structure brought about a very individualistic sense of justice.

Here, I may sound as if I am defending structuralism in contrast to the methodological individualism. However, since I endeavor to find a way out in order to reveal grounds and demarcate which way is just which way is unjust, I do not want to place justice within the walls of structuralism. If we understand structures as prisons, then it is quite impossible to make normative claims with the walls of those prisons. Instead, I utilized the explanatory power of the notion of structures but preferred to understand them as grounds which also pave some certain ways for new possibilities. Therefore, I may regard individuals as bearers of justice but we should keep in mind that they are determined by structures. So, the role of individuals should try to break the boundaries of the structures and extend the possibilities.

My final chapter focuses on political principles of justice. I am aware of the fact that any principle of justice alone would satisfy justice practically. Since justice is

not a Platonic ideal, I do not try to find a final criterion to ensure justice. My endeavor is only to expose some bases in order for a better world, which is at least better than the one we live in. First of all, equality, freedom and rights are essential components of justice; all can agree on them. However, especially equality and freedom have been discussed throughout the ages; so we need to clarify their contents. First, I handled different aspects of equality. After classified legal, political, social, economic and moral equalities, I claimed that economic equality ensures other equalities.

In section 4.3, I reviewed the arguments on freedom. Isaiah Berlin's distinction between negative and positive freedoms is the backbone of this chapter. I adopt Berlin's re-formulation of freedom as self-development as a political conception of freedom. Besides, both Philip Pettit's and Philippe Van Parijs's novel approaches to the political conception of freedom are also very significant for realization of freedom in the political arena. Pettit claims that negative conception, "freedom as absence of interference", does not involve "freedom as non-domination". While freedom as non-interference implies the contrast between individual and society or government, freedom as absence of domination, a Republican conception, aims to dissolve this dichotomy. Parijs's notion of real freedom aims at realization of practical freedom. In brief, both their concerns show that both negative and positive senses of freedom should be advanced.

In the "Rights" section, it can easily be seen the domination of politics over philosophy. After I discussed the distinction between positive and negative rights, I revealed how the discourse of human rights has shifted. In our century, political

theories tend to disregard the universality of positive rights. They regard negative rights on the one hand as universal rights which all societies have to satisfy and they could exist even in the state of nature; on the other hand, positive rights are institution-dependent, so they cannot be universal as negative rights. However, the realization of positive rights, such as right to have a medical care or good education, is complementary for the realization of negative rights. Moreover, justice cannot be ensured if there is someone who needs medical care but cannot attain it, while others can easily attain it.

Finally, I propose my justice principle "absence of exploitation" in addition to equality, freedom and rights. Exploitation is a pejorative concept and obviously contradicts justice: It is defined as unfair utilization of someone. In this section, I claimed that labor contracts in capitalist economic order are also unfair utilization of persons. So, capitalism contradicts with justice. As I reiterated in the previous sections, the economy has to be rearranged in order to equality, freedom and rights to be satisfied and the first step is to adopt the principle of absence of exploitation.

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ADALETİN TEMELLERİ, TAŞIYICILARI VE İLKELERİ ÜZERİNE BİR ARAŞTIRMA

Hukuk, siyaset ve ahlak alanlarının kesişiminde yer alan adalet kavramı, genellikle mutlak ve kutsal çağrışımları ile birlikte anılagelmiştir. Adeta yukarıda, her şeyi gören ve her duruma vakıf bir yargıç varmışçasına, istenmeyen bir takım durumlar başımıza geldiğinde, "ben bunu hak edecek ne yaptım?" diye sorarız. Bir yasanın adil olup olmadığını sorgularken de, adalet Platon'un ideallerinden birisiymiş ve ondan alması gereken payı yeterince alamamış, diye düşünmeye eğilimliyizdir. Ben bu çalışmada, kutsal bir adalet dağıtıcısının ve İdealar evreninin olmadığı bir dünya için adaleti nasıl tasarlayabiliriz sorusunu dert edindim. İyilik, doğruluk ve adalet gibi ahlakın deneyim-öncesi kavramlarının modern dünyada temelsiz kalması sorununa ilişkin, günümüz düşünürlerinin önemli bir kısmı ahlaki görecelilik tutumunu benimsemişlerdir. Bu görüşe göre, farklı toplumların değişik ahlaki ve toplumsal kuralları vardır ve evrensel bir doğru olmadığına göre, bir toplumun normlarının diğer toplumlarınkilerden daha iyi olduğunu söyleyebilecek nesnel bir değerlendirme ölçütü yoktur. Bunun karşısında, kutsal veya *apriori* olmasa da temellerin olduğunu veya olması gerektiğini iddia eden görüşler ise, çeşitli adlar altında değerlendirilebilirler; ben bu tartışmayı "temelcilik" ve "temelcilik-karşıtlığı" olarak genellemeyi uygun buluyorum. Kendi yaklaşımımı

ise, laik, maddeci ve tarihselci bir tür temelcilik olarak adlandırıyorum. Mutlak ve dini temellerin eski işlevini yitirmesi, olumlu bir gelişmedir ama yine de kavramların, normların ve yasaların havada asılı kalması, bir takım ahlaki ve adli durumların kaynağının açıklanmasını ve o durumlar karşısında tavır almamızı zorlaştırır. Bu nedenle, temellere olan ihtiyacımız, hem felsefi hem de siyasi bir ihtiyacın ürünüdür.

Hukuki ve toplumsal kuramların bir temeli var mıdır ve olmalı mıdır soruları bizi doğal hukuk ve hukuki pozitivizm tartışmasına götürür. Doğal hukukçular esas olarak, yasanın temelinde doğruluğu kendinde saklı, genel geçer ahlaki yasalar yattığı görüşünü paylaşırlar. Kuramın miladı olarak kabul edilen Aquinas, "ahlaki olmayan bir yasanın yasa da olamayacağını" söyler. Yani, pozitif hukuk tüm geçerliliğini doğal hukuktan almaktadır. İnsanlar tarafından oluşturulmuş pozitif yasalar, kolaylıkla değiştirilebilir ve hatta ihlal edilebilirken, doğal yasalar değişmez, tahrip edilemez ve ihlal edilemezdir. Aquinas için doğal hukuku ihlal etmek, insanın kendi rasyonelliğinin tersine davranmasıdır çünkü Tanrı insanı kendi özgür iradesi ile iyi ve kötüyü ayırt edebilmesi için rasyonel yaratmıştır; iyiyi seçmek onu Tanrıya yaklaştıracakken, kötüyü seçmek Tanrıdan ve rasyonelliğinden uzaklaştırır.

Doğal hukuk kuramının daha laik bir biçimde desteklenebileceğini öne süren düşünürler de vardır. Örneğin, John Locke bizlerin Tanrının yaratıkları olduğumuzu söylese bile, Locke'taki rasyonellik vurgusu, Tanrının yasaları vurgusundan daha belirgindir. Benzer biçimde Kant'ta da insanın rasyonelliği ve bu rasyonelliği sayesinde ahlaki doğruları bulabilme yetisi ön plana çıkartılmıştır.

Locke ve Kant ile birlikte ahlak, ilahi alandan, insanın içsel alanına yani rasyonelliğin (ve de vicdanın) sınırları içerisine taşınmıştır. Ancak, insan rasyonelitesinin, belirlenimsiz, tarihler-üstü ve özerk bir biçimde kurgulanması, onun adeta ilahi sıfatlarla donatılması anlamına gelmektedir. Bu bağlamda doğal hukuk kuramı, yani ahlaki ve pozitif kuralları, değerleri keşfetme yetisinin insanın özünde verili olarak kurgulanması, bu türden ilahi bir rasyonellik düşüncesi ile birlikte maddi ve laik olmaktan çok uzaktır. Bu rasyonelite anlayışının adalet kavramı üzerine yansımalarını "Adaletin Taşıyıcılarını Araştırma" adlı bölümde ayrıntılı olarak ele aldım.

Bir günümüz düşünürü olan John Finnis, doğal hukuk kuramı çerçevesinde varsayılan rasyonellik anlayışının sorunlu olduğu tespitini yaparak, doğal hukuk kuramını dinsel çağrışımlarından arındırmaya girişiyor. Finnis'e göre, insan "ne yapmalıyım?" sorusunu sorabilen tek canlı türü olarak, iyiyi ve kötüyü birbirinden ayırt edebilen, rasyonel bir varlıktır. Ahlak dışı davranan kişiler, kendi rasyonel doğalarına aykırı hareket etmiş olurlar. Bu anlamda Finnis, yukarıda sözü edilen doğal hukuk kuramcılarına benzese de, rasyonelliği Antik Yunan'da kullanıldığı gibi daha genel şekliyle ele alma taraftarıdır. Finnis'e göre, pek çok doğal edimimiz rasyoneldir ve iyiye yöneliktir; diğer doğal hukuk kuramcılarından farklı olarak, yemek yemek, barınmak, cinsel ilişkiye girmek gibi bedensel etkinlikler de rasyoneldir. Ancak, rasyonelliği ve etiği, zihinsel alanın dışına taşıyan Finnis, önceki doğal hukuk kuramcıları gibi, insan doğasının ve ahlakın deneyim öncesi olduğunu iddia eder. Buradaki iddia, yine, ahlaki yargıların ve edimlerin doğuştan olması değil, rasyonel olanın nesnelliğinden ve apaçıklığından ileri gelmektedir.

Bu bağlamda, her ne kadar Finnis bedeni ahlakla buluştursa da, rasyonelitenin *aprioriliği*, deneyimi ve tarihi ahlaktan dışlamaktadır.

Hobbes ise bu konuda ilginç bir düşünürdür; bir yandan doğal hukuktan söz ederken, diğer yandan hukuku egemenin koyduğu kurallar olarak tanımlar. Bu yönü ile de bazıları tarafından Hobbes, hukuki pozitivizmin ilk temsilcisi olarak düşünülür. Ancak ilk defa John Austin hukuki pozitivizmi doğal hukukun karşısında konumlandırarak, yasa ve ahlak arasına sınır çekmiştir. Yasalar ve hukuk sistemi, yasal otorite tarafından belirlenir; ahlaki normlar ve hukukun yasaları arasında sorunlu bir ilişki yoktur. Yasanın meşruluğu ise otoritenin veya sistemin meşruluğundan gelir. Austin'in ardından gelen düşünürler—özellikle H. L. Hart, otoritenin koyduğu her kuralın yasa olamayacağı görüşünün altını çizdiler—yasanın otoritenin ağzından çıkan söz olmadığını, değişik toplumsal ve hukuksal süreçlerden beslenerek oluşturulduğunu ve bu süreçleri dolayımıyla tanındığını dile getirdiler. Hart'a göre bütün kurallar, geçerli oldukları sistem içerisinde anlamlıdırlar. Bir yasal sistemin içerisinde yaşayan insanlar, o sistemin koyduğu kuralları tanımak ve onlara uymakla yükümlüdürler. Uyup uymamaları, ahlaki bir sorun olmaktan çok psikolojik bir meseledir.

Hukuki pozitivistlere göre, yasaya biçimsel olarak uymak yeter koşuldur; o kuralın ahlaki bir içeriğe sahip olması ve insanların o ahlaki içeriği tanımaları zorunlu değildir. Ahlak ve yasa arasındaki ilişkiyi koparmış olması bakımından hukuki pozitivizm, Nazizm'i bile bir hukuk sistemi olarak meşrulaştırabilir ve Nazilerin yaptıklarını kurala uymak olarak tanımlayabilir olduğu gerekçesiyle çokça eleştirilmiştir. İkinci Dünya Savaşı'nın ardından kurulan Nuremberg

Mahkemelerinde, Nazi subayları ve Nazilere destek vermiş diğer insanlar savunmalarında kurala uyduklarını söylemişler, bu da hukuki pozitivizmin yasanın meşruluğunun dayanaklarını yeniden sorgulamasına neden olmuştur.

Sebastian Urbina, hukuki pozitivizmin bu çıkmazını çözmek için bir yasanın biçimsel ve içeriksel tanınması arasındaki ayrımın ortadan kalkması gerektiğini söyler. Ona göre, bir yasayı tanımak, içeriğiyle birlikte tanımaktır. Bu içerik, ahlaki olmak zorunda değildir. Urbina'nın maddi içerik olarak adlandırdığı yasanın içeriği, o yasayı yasa yapan maddi süreçlerin bütünüdür. Urbina'nın maddi içerik dediği yasanın meşruluğunun kaynağı, esasen benim de bu çalışmada ortaya sermeye çalıştığım maddi temellerdir. Yani Nazi hukukunu oluşturan siyasi süreçler, o hukukun yasalarını biçimsel ve içeriksel olarak şekillendirmiştir. Bu durumda, siyaseten meşru görmediğiniz Nazi iktidarının yasalarını da meşru göremezsiniz. Hukuki pozitivistlerin dediği gibi yasalar, yasal bir sistem içerisinde anlamlıdırlar; daha temel sorun o sistemin anlamlılığı, yani meşruluğu sorunudur. Yasa ve ahlak arasındaki tartışmayı laik ve maddi bir zemine taşıyan hukuki pozitivistlerin tarihsel, siyasi ve ekonomik süreçleri de, meşruluğu güçten ayrıştırarak tartışmaları gerekmektedir.

Hart, yasanın ve ahlakın insan doğasından geldiğini söyler. Ancak, onun bu söylemi, doğal hukuk kuramcılarının ahlaki normları aşkın bir insan rasyonelitesinde temellendirmesinden farklıdır. Hart, insan doğasının evrimsel süreçlere tabi olduğunu, bu evrimsel süreçler içerisinde ahlakın ve hukuk sistemlerinin oluştuğunu iddia eder. İnsanlar ihtiyaçlarını karşılayabilmek için

birlikte yaşamak zorundadırlar ve birlikte emniyetli bir şekilde yaşamanın da kurallarını zaman içerisinde belirlerler.

Hart'a benzer şekilde ahlakı ve toplumsal kuralları insanın biyolojik yapısında temellendiren yaklaşımlar vardır. Bütün toplumlarda ortak olan genel geçer yasalar, o yasaların aşkınlığından değil, tam tersine insanın evrimleşmesinin ve toplumsallaşmasının bir sonucu olarak ortaya çıkmıştır. Çok önemli bir gerekçe olmaksızın yalan söylememek, nedensiz yere birisini öldürmemek ve zarar vermemek, yakın akraba ile cinsel ilişkiye girmemek gibi dünyanın her yerinde kabul görmüş, çok genel ilkeler bu türden biyolojik açıklamalara örnek verilebilir. Kimi yasaların evrenselliği ve zorunluluğu, insanın biyolojik yapısının evrenselliği ve zorunluluğu ile ilişkilidir. Ancak, bu türden evrensel ve zorunlu diyebileceğimiz ahlaki ve hukuki kuralların sayısı pek fazla değildir. Buna karşın, farklı toplumlarda, farklı dönemlerde normların çeşitliliği ahlakın evrenselliğini baltalamaktadır.

Jean Porter bu sorun karşısında, insanlarda insanın biyolojik yapısından ötürü olagelmiş ortak bir temeli savunan anlayış ile temelcilik karşıtı bir kuram olan pragmatizmi birleştirerek, hem insanlık tarihi boyunca süregelmiş ortak değerleri, hem de kültürler arasındaki farklı tutumları açıklamaya çalışıyor. Porter'a göre, evrensel bir insan doğası vardır ve bütün genel normlarımız bu doğadan kaynaklanır. Ancak, kültürler farklı koşullar altında ortaya çıkar ve gelişirler; evrensel kuralları ve normları bu koşullar doğrultusunda kendilerine uyarlarlar. Buna göre, ahlaki normlar, hem evrensel bir insan doğasının kimi öğelerini yansıtırlar, hem de yerel, zorunlu olmayan, geçici özellikler gösterirler. Porter

insan doğasının somut bir temel olduğunu söyler. Ancak bu temel çok da sabit bir temel değildir çünkü insan doğası, sosyal düzenlemelerle şekillenir. Pragmatizmin de iddia ettiği gibi her bir kültür kendi etiğinin temellerini kendisi kurar. Tarih ilerledikçe, kültürler ayakta kalabilme, sürekliliklerini koruyabilme adına gerekçeleriyle birlikte çeşitli değerler ortaya koyarlar. Kendilerine uygun açıklamalar, gerekçelendirmeler sunarlar. Varolan farklı farklı etik ve politik temellendirmeler, pragmatizm için güçlü bir dayanak noktasıdır. Bu noktada Porter'ın biyolojik yaklaşım ile pragmatik yaklaşımı bir araya getirerek hem sabit hem de değişen değerlerimizi açıklamaya çalışması ikna edici görünüyor. Ancak pragmatizmin açıklama gücünün, açıklamaları gerçekliğe değil de iş görür olma ilkesine dayandığı için, yeterli olduğu kanısında değilim.

William James'e göre, "'Doğru'...(belki doğru olmayan ama) elverişli düşünme biçimimizdir, 'haklı' ise (belki doğru olmayan ama) elverişli davranma biçimimizdir". John Dewey de doğru sözcüğü yerine "gerekçeli iddia" ifadesini kullanır. Yani, bir tarafta gerçeklik, diğer tarafta da bizim o gerçekliğe dair inançlarımız, bilgilerimiz, doğrularımız yoktur; doğrunun yerine iyi gerekçeli, ikna edici argümanlar olabilir. Bir düşünceyi kanıtlamak, o an ve o durum için güçlü, kabul edilebilir gerekçeler sunmaktır. Pragmatizm, felsefe tarihinde insanın, nesnenin ve doğanın yeniden düşünülmesini sağlayan, geleneksel felsefeye karşı çığır açıcı, felsefenin adeta yönünü değiştiren, eleştirilmesi zor bir akım gibi durmaktadır. En temelde, insanın hem bir hayvan hem de toplumsal bir varlık olduğunu bizlere hatırlatarak, klasik felsefedeki özne sorununun, evrimsel ve dolayısıyla tarihsel süreçler içinde ele alınmasını sağlamıştır. İnsanlığın

oluşturduğu, etik ve siyasi ilkeler, kurallar ve değerler de bu tarihsel sürecin içerisindedir. Pragmatizm, bu görünürdeki tarihselciliğiyle ahlaki göreceliliğe ışık yakar. Elbette bu görecelilik, şüphecilik anlamına gelmemelidir.

Pragmatizm tarihsel olma iddiasındadır ama tarihselliği, rölativist konumunu desteklemek için kullanmaktadır. Tarihsel dinamikleri görmezden gelir. Örneğin James, "iz sürme"den bahsederken, Tanrı inancının tarihsel izini sürmek yerine, sonuçları ile tatmin olunabileceğini söyler. Aslında gerçek sonuçlarını bile irdelemez. Dinin insanları uyuttuğunu, öte dünya varsayımının insanları, bu dünyadaki haklarının peşinden gitmek yerine kaderlerine razı olup, ikinci yaşamlarında ödüllendirilme beklentisine sürüklediğini söylemez.

Sonuç olarak, pragmatizmin ortaya koyduğu gibi, insanın evrimsel süreci ve tarihsel koşullar insanlığın etik ve politik yaşantısını, kurgularını belirlemiştir. Bunların ötesinde hayali durumlar tasarlamak, deneyimin ötesinde bazı ilkeler belirlemek boştur. Ancak insan zihninin dışında, insan bedeninden başlayarak, insanın etkileyebileceği ama mutlak anlamda müdahale edemeyeceği fiziksel bir alan vardır. Pragmatistlerin deneyim dediği olguyu bu fiziksel alandan kopartığımızda kimi siyasi ve ahlaki kararlar, örneğin, ABD'nin Irak'a müdahalesi, toplumsal onay ve uzlaşı ile mubah olabilir. Dünyanın yarısından fazlası, Irak'ta nükleer bomba olduğuna inansa ve müdahale edilmesi yönünde oy verse bile bu ABD'nin müdahalesi meşrulaştırmaz. Müdahalenin gerçek temelleri ortaya konulmalı ve gerçek üzerinde ısrar edilmelidir. Yani pragmatizmin durduğu yerde kalıp, bir tavır almaktan geri duramayız. Dolayısıyla, adalet kavramının temellerini sorguladığımızda, temellerin hiç bir zaman sabit olmadığını kabul

ederken, fiziksel ve sosyal bir arka planı olduğunu da görmezden gelemeyiz. Bir durumun adil olup olmadığının ölçütlerini o arka plan verecektir. Fiziksel gerçekliğin ve sosyal örgütlenmelerin oluşturduğu temel, toplumsal uzlaşıdan, iş görürcülükten, faydacılıktan daha geçerli ve daha doğru ölçütler sunacaktır.

Ahlak ve adalet ile ilgili ikilemlerde, temelleri araştırma ve bir duruş belirleme sorunsalı ile ilgili olarak, tarihsel maddeciliği, bir yöntem olarak benimsiyorum. Somut gerçekliğin yanı sıra, bu gerçekliğin tarihin farklı dönemlerindeki üretim ilişkileri tarafından anlamlandırıldığı, dolayısıyla, maddi dünyayı, onun tarihsel dolayımları ile keşfetmeye ve anlamlandırmaya çalışmak gerektiği iddiasındayım. Tarihin, iktisadi alt yapının ve siyasetin gerçekliği ne ölçüde ve nasıl belirlediği sorularından kaçınarak, karşılıklı bir belirleme ilişkisini varsayıyorum ve bu varsayımın önümüze açacağı olanaklara odaklanmak gerektiğini düşünüyorum. "Orada ne var?" sorusunun, "Nasıl tavır almalıyız?" sorusu ile birbirinden ayrılamayacağını düşünsem ve kısmen de bunu göstermeye çalışsam da, bu çalışma da ben çubuğu biraz daha ikinci sorudan yana büküyorum. Daha doğrusu, ikinci soru yanıtlanmadan birincisine geçilmeyeceğini göstermeye çalışıyorum.

Özetle, gerçeklik kabuğunun içine gizlenmiş ve açılmayı bekleyen bir inci değildir. Bizler o gerçekliği keşfederken, onu yeniden üretiriz de. Bu yeniden üretim sürecinde, doğanın yeniden üretiminde olduğu gibi, üretici güçleri elinde bulunduranlar, üretimi de yönlendirirler. Dolayısıyla, anlamların ve gerçekliğin yeniden üretilmesinde de, üretim araçlarının sahipleri süreci kontrol ederler. Tarihsel maddecilik, bu süreçleri sınıf temeli ile açıklamamızı sağlıyor. Bunun yanı sıra, sınıfsal konumumuza göre, hangi zemin üzerinden tavır almamız

gerektiğinin de ipuçlarını veriyor. Burada benim yeniden kurmaya ve anlamlandırmaya yaptığım vurgu, gerçekliğin fiziksel tarafını göz ardı etmiyor. Bu dünyada açlık, yoksulluk, savaşlar, depremler en somut haliyle var. Biz bu olguların temellerini araştırmalı ve ona göre sınıfımızı, tarafımızı belirlemeliyiz.

Konumuz adalet olunca, adaletin taşıyıcılarının kimler olduğu sorusunu da sormak gerekiyor. Örneğin, 2005'teki Katrina Kasırgası'nın ardından, New Orleans bölgesinde yaşayan ve kasırgadan mağdur olan insanlar, dükkanları yağmaladılar. Bu durumda, adaletsiz olan doğa mı, insanlar mı, yoksa içerisinde yaşadıkları siyasi ve iktisadi düzen mi? Genellikle günümüz adalet kuramları, sistemin kurumlarının adaleti tesis etmedeki önemine dikkat çekseler de, bireye ve bireyin ahlaki sorumluğuna büyük bir önem atfedildiğini görürüz. "Adaletin Taşıyıcıları" adlı bölümde, adaletin bir tür birey kurgusuna dayandırılmasının eksik ve hatalı yönlerini göstermeye çalıştım.

Modern birey kurgusu, bizlere ebediymiş gibi sunulsa da aslında modernizmin doğuşuyla ortaya çıkmıştır. Modern birey, tarihler-üstü, rasyonel, özerk ve yalıtık bir varlık olarak kurgulanmıştır. İlk olarak, birey, bugünkü anlamıyla, bir on dokuzuncu yüzyıl kavramsallaştırmasıdır. Tarihin faklı dönemlerinde ve farklı toplumlarda insan bahsi geçen dört özelliğe sahip bir birey olarak algılanmıyordu. Örneğin, Antik Yunan'da baktığımızda, kişi ve adalet arasındaki ilişkinin bugünkünden çok farklı olduğunu görürüz. Tragedyalarda karşımıza çıkan adalet düşüncesi, doğanın düzenine ve bu düzene tabi olan insanların kaderine karşılık gelir. Adalet, iyi ve kötünün dengelenmesi ve bu süreçte insanların iyi ve kötü arasındaki mücadeleden ders çıkartmalarıdır. İnsan, iradesi ve aklı ile, iyi ve kötü

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arasında seçim yapan bir birey olarak değil, kaderi kaderiyle yüzleşen bir varlık olarak anlaşılmıştır.

On sekizinci yüzyıl sonlarından itibaren, Kant, Rousseau ve Voltaire gibi Aydınlanma dönemi filozofları, Tanrı'nın, dinin ve toplumun baskılarına karşı bireyin aklını ve vicdanını yücelterek, modern bireycilik düşüncesini oluşturmaya başlamışlardır. Bireycilik düşüncesi, özgürlük, evrensellik, eşitlik, hümanizm gibi ideallerle birlikte gelişmiş ve bireyin özerkliği, mahremiyeti ve kendisini geliştirmesi taleplerini ortaya koymuştur. Böylelikle, düşünme ve akıl yürütme yoluyla kendi anlık isteklerinden ve harici etkilerden sıyrılarak, kendi yolunu seçebilen modern, liberal birey düşüncesi ortaya çıkmıştır. Bugün ise, bireyin arzuları, tercihleri, kararları neredeyse sorgulanamaz hale gelmiştir. Philippe Corcuff'un dediği gibi, "*biz*in tiranlıklarına karşı konumlandırılan bireycilik, bugün *ben*in tiranlığını yaratmıştır. Aslında bir kurgu olan soyut birey, bugün su katılmamış gerçekliğin kalbindedir." Ancak, bireyciliğin bu başarısı, tek başına bireylerin başarısı değildir; bireyciliğin gelişmesi ile doğrudan bağlantılıdır. Bu bağlamda, kapitalizmi temel alan günümüz adalet kuramlarının adaletin taşıyıcısı olarak bireyleri görmeleri de, bireycilik ve kapitalizm arasındaki ilişkiyi yansıtır. Liberal demokratik devletler, rasyonel bireylerin bir araya gelerek haklarını, özgürlüklerini tanımladıkları ve kendi rızalarıyla oluşturdukları yapılar olarak sunulur. Ben bu çalışmada, birey düşüncesini ne ontolojik olarak ne de siyaseten reddediyorum. Yalnızca bireye atfedilen özelliklerin hatalı olduğunu ve adaleti bu özelliklere sahip bireyler üzerine kuramayacağımızı göstermeye çalışıyorum.

Burada modern bireye atfedilen, tarihler-üstü, rasyonel, özerk ve yalıtık olma sıfatlarından, özellikle rasyonalitenin üzerinde duracağım çünkü Aquinas'tan itibaren kurgulanan haliyle rasyonalite, diğer üç özelliğinde kaynağında yatıyor. Elbette, insanın hayvanlardan farklı, çok daha karmaşık bir akla sahip olduğu gerçeğini reddediyor değilim. Ancak rasyonelliği anlamanın tek bir yolu yoktur. Ben yalnızca kökleri Aquinas'a dayanan bugünkü liberal düşüncenin rasyonellik algısına karşı çıkıyorum ve karşısında daha inceltilmiş ve daha ılımlı rasyonellik anlayışlarının savunulabileceğini düşünüyorum. İlkine, sahip olduğu nitelikler itibariyle "güçlü rasyonalite" adını vermeyi uygun buldum. Buna göre, bireyin rasyonalitesi, fiziksel dünyanın ve dolayısıyla da neden sonuç ilişkilerinin dışındadır. Rasyonel birey kendisini dış etkilerden soyutlayarak kendisine sunulan seçeneklerden en iyisini seçme yetisine sahiptir. Jon Elster, rasyonalitenin böyle kurgulanışına "zayıf rasyonalite" adını veriyor çünkü bireyi o seçimine götüren nedenler irdelenmiyor. Bu yaklaşım, liberal demokratik toplumların meşruluklarının kaynağını da oluşturuyor: rasyonel insanlar bilinçli olarak, ideolojik gizli veya dolayımlı baskılardan, yönlendirmelerden etkilenmeden, siyasi kararlarını verirler. Bu anlayışa göre bireyler, birbirlerinden etkilenmezler ancak diğerlerinin ne yönde karar vereceğini hesaba katarak bir karara varırlar. Örneğin, oyun kuramında da, bireylerin arasında bir etkileşim, uzlaşı yoktur. Herkes kendi hücresinde, ötekinin ne düşündüğünü hesaplamaya çalışır.

Bu güçlü rasyonalite anlayışına karşı eleştirilerim beş madde altında toplanabilir. Birincisi, evrim kuramının bizlere gösterdiği üzere, insanın rasyonellik özelliğinin tarihler-üstü olması mümkün değildir. İnsan türünün gelişimi içerisinde, düşünme

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yetileri de gelişmiştir ve ihtiyaçları doğrultusunda değişik yönlerde gelişimine devam edecektir. İkinci olarak, rasyonel fail düşüncesi, görece yeni bir kavramsallaştırmadır. Örneğin, Eski Yunan'da ve doğu toplumlarında, bu türden güçlü ve fail birey anlayışına rastlanmaz. Üçüncü olarak, bireylerin tekil tekil eylemlerine baktığımızda, o eylemlerin bireylerin özel niyetlerinden mi kaynakladığını yoksa arkasında başka etmenler mi olduğuna karar veremeyebiliriz. Ancak, sosyal grupların edimlerinin arkasındaki güçler daha kolay ayırt edilebilir. Zaten sosyoloji bilimi, bunun üzerine kuruludur. Dördüncü olarak, bireyler içerisinde yaşadıkları toplumların ve içerisine doğdukları çağın özelliklerini gösterirler. Kararlarımızı etkileyen yalnızca zihnimiz değil, içerisinde yaşadığımız koşullardır da. Beşinci olarak, geçmiş deneyimlerimiz algılarımızı, hafızamızı, bilincimizi ve dolayısıyla da rasyonalitemizi etkiler. Bu etkilerinde akıl yürütmemizde ve karar vermemizdeki rolleri göz ardı edilmemelidir.

Evrim kuramının etkisiyle, güçlü rasyonalite anlayışına karşı, benim kavramsallaştırmamla daha "ılımlı rasyonalite" düşünceleri ortaya çıktı. Örneğin kimi düşünürler için, rasyonellik sadece insana özgü değildir; bir durumun veya bir sistemin de rasyonelliğinden bahsedebiliriz. Bir davranış, bir karar rasyonel olsa bile kişiye özgü olmayabilir. Epistemik ve edimsel rasyonellik ayrımı yapılabilir. Örneğin Vudu bebeğinin gücüne inanmak, rasyonel bir inanış değildir ama bir kere inandıktan sonra, o bebeği yapıp iğneleri saplamak edimsel olarak rasyonel olabilir. Dolayısıyla, rasyonellik tek başına değil, onu etkileyen faktörlerle ve hatta irrasyonel davranışlarımızla (ekşi üzüm, yasak elma, bağımlılık, hınç, Polyannacılık gibi sendromlar) birlikte ele alınmalıdır. Bu türden

ılımlı bir rasyonalite anlayışına sahip olan düşünürler de, liberal kapitalist toplum düşüncesini destekliyor olabilirler. Ama burada bireyin kararları, seçimleri mutlaklaştırılmadığından, bu seçimler sorgulanabilir ve bireyler tek başlarına adaletin taşıyıcısı olarak kurgulanmazlar.

Bu rasyonellik tartışmasını yapmamın asıl nedeni, bireylerin adaletin taşıyıcısı olarak kurgulanıp kurgulanamayacakları konusunda bir zemin hazırlamaktı. Adaletin sorumlularının yalnızca bireyler, failler, özneler olarak anlaşılmaması gerektiğine işaret etmek için, "taşıyıcı" sözcüğünü özel olarak seçtim. Adaletin daha büyük toplumsal süreçlerin ürünü olduğunu ama bireylerin de adaletin sürdürücüleri olduklarını göstermeye çalışacağım.

Burada adalet ile ilgili olgularda açıklayıcı güçleri bakımından iki uç yaklaşımı karşılaştırmak istiyorum: ilki, "yöntembilimsel bireycilik", ikincisi ise "yapısalcılık". Yöntembilimsel bireycilik, kısaca, bireylerin eylemlerinin, bireylerin kişiye özel niyetlerinden kaynaklandığı düşüncesidir. Çok eski bir düşünce olmasına rağmen, bu şekilde ilk kez Max Weber tarafından kullanılmıştır. Yöntembilimsel bireycilik, genel olarak, toplumsal, makro olguların, mikro temellere, yani bireylerin eylemlerine ve o eylemlerin arkasındaki niyetlere dayandığı iddiasıdır. Bireycilik sözcüğünün başında, yöntembilimsel kavramının kullanılıyor olmasının nedeni, bireyselciliğin epistemolojik olarak olguları açıklamakta kullanılıyor olmasındandır. Weber'in sosyolojik ve iktisadi olguları açıklamakta kullandığı yöntembilimsel bireycilik, Weber böyle istemese de, değerler felsefesinde de açıklayıcı bir güce sahip olagelmiştir. Yani, toplumsal olguların yanı sıra, hem bireylerin sahip oldukları ahlaki tutumların hem de

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toplumların oluşturduğu geleneklerin, normların, yasaların temelinde bireylerin düşüncelerinin ve eylemlerinin yattığı iddia edilmektedir. Yapısalcılık ise, yöntembilimsel bireyciliğin aksine, toplumsal ve kültürel olguları açıklamak için, onları önceleyen ve mümkün kılan yapıları temel alır. Yapı kavramı, en genel anlamıyla, başka özelliklere indirgenemeyecek olan, büyük, kapsayıcı bir şablon veya biçim olarak tanımlanabilir. İktisadi üretim biçimi, kültürel yaşam biçimleri, eğitim kurumları, aile, dini kurumlar, siyasi rejimler yapı kavramını somutlayabilir. Elbette ki yapı, farklı felsefeciler tarafından değişik anlamlar yüklenerek kullanılmıştır. Örneğin, Karl Marx için en temel yapı, belirli bir zamanda bir toplumda geçerli olan üretim biçimidir; toplumsal ve kültürel diğer yapılar bu iktisadi yapının yansımaları olarak görülür. Öte yandan, Louis Althusser de bu ayrım silikleşirken, post-yapısalcılar için, dil en temel yapı olarak kurgulanır. Ancak ben bu çalışmada yapının ne olduğu tartışmasından ziyade, yapı ve adalet arasındaki ilişki üzerinde duracağım ve adalete dair normatif bir iddiada bulunmanın olanağının olup olmadığına, varsa da bu zeminin ne olduğunu tartışacağım.

Günümüz dünyasının adalet anlayışına dair, hepimizin gayet iyi bildiği, gelişmiş kapitalist devletlerin, üçüncü dünya ülkelerini sömürmesi, doğal kaynakları kar uğruna tahrip etmeleri, göçmen işçilerin modern köleler olmaları, vs. gibi örneklerin dışında, son birkaç ay içerisinde karşılaştığımız, medyada şöyle bir geçen üç örnekten bahsetmek istiyorum. Bunlardan ilkini ara sıra duyuyoruz; genç kızlar bekaretlerini, internetten açık arttırma ile satıyorlar. Özellikle, Oxford, Bristol, Yeni Zelanda, Sen Diego gibi saygın üniversitelerde okuyan öğrencilerin,

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üniversite harçlarını ödemek için bu yola başvurdukları, haber olmaktadır. İkincisi, Almanya başbakanı Angela Merkel ekonomik krizde olan Yunanistan'ın adalarını kendilerine satmalarını istedi. Üçüncü örnekte ise, Polonya'daki genel seçimler öncesinde bir Polonya vatandaşı gazeteye oyunun satılık olduğu ilanını verdi.

Bu üç örneği vermemin nedeni, her üç teklif de ahlaksız görünmesine rağmen, günümüzde geçerli olan adalet kavrayışları çerçevesinde adil addedilebilmektedirler. Demek istediğim, serbest piyasanın bir çeşit özgürlük adı altında, yasal kabul edilmesi durumunda, bu üç teklife adaletsiz deme olanağımız kalmamış görünmektedir. Neo-liberal ekonomik yapının üst yapıya yansıması, en az emeğimizi satmamızın meşru olması kadar, bedenimizi, zihnimizi, özgürlüğümüzü ve vatanımızı satmayı da meşru kılmaktadır.

Kapitalizmin ilk evrelerinde, burjuvazinin yerleştirmeye çalıştığı, özgürlük ve adalet kavramları, daha onurlu bir yaşam vaadinin temel ilkeleriydiler. Klasik liberal düşünürler için, özgürlük devredilemez haklarla korunmalıydı. Örneğin John Locke için, bedenin ve vatanın satılması "özgür" bir sözleşmeyle bile olsa kabul edilemezdi. Klasik liberalizmin adalet anlayışı ile neo-liberalizminki birbirinden farklı görünmektedir. Yukarıdaki örnekler, neo-liberalizmin adalet anlayışını temsil etmektedir: Locke bile böyle bir dünya hayal edemezdi. Aslında insanın emeğinin sözleşme yoluyla alınıp satılabilmesi, yasal ve meşru kabul edildiğinden itibaren, tarafların rızasına dayanan her türlü anlaşma zamanla meşru ve adil olabilmektedir. Özetle, başlangıçta liberalizmin ortaya koymuş olduğu ilke, geleceğin nüvelerini yani bugünkü neo-liberalizmin ahlakını, hukukunu, kısacası değerler alanındaki meşruluğunu içerisinde barındırıyordu.

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Tekrar yapısalcılığa dönersek, yapısalcılık, bize toplumsal davranışa hükmeden ve böylece o davranışın daha az doğal ve kendiliğinden görünmesini sağlayan gizli kodlar ve kalıplara ilişkin bir kavrayış yetisi verdi. Yani aslında ne o genç kızın bekaretini satması, ne Merkel'in önerisi, ne de Polonyalı'nın oyunu satması, tarihlerler-üstü doğal bir özgürlük kavrayışından gelmemektedir. Buraya kadar yapısalcılık, durumu açıklayıcı bir güce sahiptir.

Yetersiz olduğu nokta, yine bahsettiğim örneklerden gidersek, "bu teklifler adil değildir" yargısını yapısalcılığın içerisinden kolay kolay yapamıyor oluşumuzdandır. Hem yapısalcılar hem de post-yapısalcılar için, yapı ontolojik bir işleve sahipken, değerler söz konusu olduğunda yapıdan bağımsız eylemde bulunmak mümkün olmadığından, yapıyı yargılamak da ironiktir. Vardır, kabul edilir; direnmenin olanakları olsa da yapının dışına çıkamadığımız için normatif iddialarla mahkum edemeyiz. Aslında, yapısalcılar ve post-yapısalcılar açısından, yargılayamayacak olmamızın yanı sıra, yargılayacak olan kimdir, sorusu da meşru bir soru değildir. Örneğin, yapısalcılar açısından Althusser'e baktığımızda, Althusser için, öznenin sadece ideolojik bir çıktı olduğu görürüz. Post-yapısalcılar açısından Foucault'a baktığımızda ise benzer bir şekilde, özne, iktidarın "en birincil sonuçlarından birisidir". Böylelikle, Foucault'a göre, ne direniş ne de herhangi bir şey, o iktidara, o yapıya dışsal olamaz. Halbuki Terry Eagleton'ın dediği gibi, bir kültürün, bir yapının içerisinde bulunmak cezaevinde bulunmak demek değildir. Yapı, yapısalcıların da belirttiği gibi, içerisinden çıkış yollarını da barındırır. Ama buradaki kritik nokta, bu çıkış yolunun öznesiz ve dolayısıyla bilinçsiz olmasıdır. Felsefe tarihine bakıldığında, Nietzsche'nin tanrıyı

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öldürmesinin ardından, yapısalcılar ve post-yapısalcılar da özneyi öldürmüşlerdir. Bu durumda, olan olur, iyi veya kötü, doğru veya yanlış, gerçek veya ideolojik gibi yargıların hiçbir hükmü kalmamıştır.

Bu düşüncenin karşısında ise başta belirttiğim gibi, yöntembilimsel bireycilik anlayışına göre, adalet, tarihler-üstü bireylerin taşıdığı değer, sorumluk, vicdan gibi kavramlara indirgeniyor. Peki, ikisinin ortasını bulmak mümkün değil midir? Yani yapıların belirleyiciliğinde ama insanın yaşamın öznesi olarak, bu yapıyı kendi lehine bilinçli olarak değiştirme olanağını birlikte ele alamaz mıyız? Eğer böyle bir çıkış noktası varsa bu, içerisinde yaşadığımız yapının adaletsizliklerini adaletsiz olarak mahkum edebilmemize ve adil olanın ne olduğuna dair ipuçları bulabilmemize olanak taşıyacaktır.

Ben bu orta noktanın Hegel/Marx geleneğinde yattığına inanıyorum. Hegel'in tarih anlayışı ve Marx'ın tarihsel maddeciliği tam da burada devreye girebilir çünkü "ilerleme kavramı olmadan, "toplumsal iyi"nin ne olduğunu bilemeyiz". Hegel'in öz-bilinci, yani tarihin bilincinde olan öznesi ile Marx'ın sınıf bilincine sahip öznesi yapıyı değiştirmeye muktedirdir. Dolayısıyla, "özne ölmedi ama tarihin içine yedirildi" demek doğru olur. Hegel bu bireyciliğin karşısına holizmi yani bütünselciliği koymuştur. Özne, toplumsal ve tarihsel bir varlıktır; bir bütünün parçasıdır. Özne ya da birey bütünden ve koşullarından soyutlanamaz. Bu bağlamda öznenin sahip olduğu değerler mutlak değil, tarihseldir; ancak tarihin o uğrağı içerisinde evrenseldir. Özne, kendisinin o tarihsel an içerisindeki konumunun farkında olduğu zaman kendisini ve tarihsel durumu anlamlandırır. Marx'a göre, "Tarihi insanlar yapar ama öyle kendi keyiflerine göre yapmazlar:

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bunu kendileri tarafından seçilmiş koşullar içinde değil, doğrudan içinde bulundukları, verili ve geçmişten aktarılmış koşullar içinde yaparlar". Diğer bir ifadeyle, tarihin ilerlemesinde bireylerin eylemlerinin rolü vardır. Ancak, bu eylemler keyfi değil, yapının içinden belirlenmektedir. Belirlenim sözcüğünü ise olumsuz anlamıyla kullanmak zorunda değiliz. Callinicos'un dediği gibi, yapıları, bireylerin eylemleri üzerindeki kısıtlayıcı rolleriyle anmaktan çok, onların, "insan etkinliğinin serbestçe hareket edebileceği bir çerçeve sağladığını" da düşünebiliriz. Callinicos'a göre "tarihsel maddeciliğin kendisi bir yapısal kapasiteler kuramıdır": "Yapılar kısıtladıkları kadar, olanaklı da kılarlar."

Alt-yapı, üst-yapı ve yapı-birey ikilikleri, hangisi hangisini ne oranda belirler soruları çokça tartışılmıştır. Ancak burada daha önemli olan alt-yapı üst-yapı ve yapı birey arasındaki ilişkinin nasıl bir yöntem sunduğu, neyi tahlil etmeye yönelik olduğudur. Yapılar bize bir zemin sağlamaktır. O zemin ve bir taraf üzerinden bilebilir ve yargılarınızı oluşturabilirsiniz. Bu nedenle yapı, ideolojik yanılsamanın yanı sıra bize bir hakikat zemini sunar. Çünkü yapı dediğimiz olgu, Marx'ın da dediği gibi maddi süreçlerden başka bir şey değildir.

Örneklere geri dönersek, her üç durum da, hem ahlaksız hem de adaletsizdir. Yapıların belirli kısıtlamalar ve belirli olasılıklar sağladığından hareketle, örneğin, bekaretini satan kız, bunu kendi özgür iradesi ile yaptığı düşüncesini taşımaktadır. İçerisinde bulunduğu yapının olanaklarından faydalanmaktadır. Yani, ne babası ne de bir başkası onu satmamaktadır. Bu anlamda şanslıdır. Ancak, içerisinde bulunduğu göreceli özgürlüğü, bir adım öte taşıma kararlılığından yoksundur. Kendi elleriyle kendi bedeni üzerindeki hakkını bir başkasına devretmektedir.

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Merkel'in teklifine ilişkin, Yunanistan özgür iradesi ile bu teklifi değerlendirebilir diye düşünenler olabilir ancak, Yunanistan çıkarları ortak olan bir bütün değildir. Yunanistan'ın parça parça satılmasından da yararlananlar olabilir ancak çoğunluk zarar görecektir. Polonyalı vatandaşın oyunu satması ise gününü kurtarmak ama geleceğini satmaktır. Geleceğini satıp satmaması, onun bileceği bir iş diyemeyiz çünkü onun geleceği aynı zamanda bizim geleceğimizi belirlemektedir. Onu bu duruma düşürenler utansın diyenler olabilir ama bu kolaycılığa kaçmadan, ben Nazım Hikmet'in dizeleriyle, "kabahatin çoğu senin, canım kardeşim" diyorum. Bu üç durumdaki adaletsizlik, liberalizmin getirdiği altı boş da olsa özgürlük, demokrasi, eşitlik gibi kavramları daha ileri taşımak yerine, çok daha geriye götürerek, emeğini satmak durumunda olan geniş sınıfların her şeylerini satmalarının meşru hale getirilmesidir. Eğer, emeğimizi satan tarafta yer alıyorsak, bu zemin üzerinden, adaletsizlikleri yargılama ve daha adil olana doğru değiştirme hakkımızı korumalıyız.

Çalışmanın ilk iki ana bölümü, adalet kavramına ontolojik ve epistemolojik bir zemin hazırlamak üzere tasarlandı. "Adaletin İlkeleri" adlı son ana bölüm ise, bu zemin üzerinden adaletin çerçevesini çizmek ve en temel adalet ilkelerini belirleyebilmeyi hedefliyor. Hemen hemen her düşünür, adalet kavramını anlatmaya giriştiğinde, onu, eşitlik, özgürlük ve haklar ile ilişkilendirir. Bu üç kavram olmaksızın, adalet hep eksik kalacaktır. Ancak, bu kavramlardan, özellikle de eşitlik ve özgürlükten, ne anlamamız gerektiği her düşünüre göre değişir. Ben bu çalışmada, bu üç adalet dayanağını tanımlamaya giriştim. Neticede

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"sömürülmeme ilkesi" olmadan bu üç alanın veya ilkenin tam olarak gerçekleşemeyeceğini göstermeye çalıştım.

Eşitlik günümüzde en sorunlu kavramlardan birisidir. Eşitlerin eşit haklardan yararlanması veya eşit muamele görme hakları, örneğin John Rawls'un ifade ettiği gibi, her zaman adil sonuçlar doğurmayabilir. Maalesef herkes eşit fırsatlarla, eşit yetilerle dünyaya gelmiyor. Böyle bir dünyada, fırsat eşitliği daha az avantajlı olanın fırsatlardan daha az yararlanabilmesine neden olabilir ki; bu hiç de adil bir durum değildir. Herkes için daha adil eşitliğin ne olabileceğini tartışmak için Stuart White'ın sınıflandırmasından yararlanıyorum: yasal, siyasi, sosyal, ekonomik ve ahlaki eşitlik. Yasal eşitlik, herkesin yasalar önünde eşit olmasıdır. Siyasi eşitlik, herkesin eşit derecede siyasi yaşama katılabilme hakkıdır. Sosyal eşitlik, toplumsal statüler, roller ne olursa olsun, bu statülerin eşit veya denk muamele görebilmesidir. Ekonomik eşitlik ise, biraz tartışmalı bir kavram olsa da aynı toplumda yaşayan insanların gelir düzeylerin dengeli olmasıdır. Ahlaki eşitlik, herkesin insan olmaktan ötürü, saygın bir yaşam sürebilmesi ve insan onuruna yakışır şekilde davranılmasıdır. Ekonomik eşitliği dışarıda bırakırsak, diğer eşitlik türleri Fransız Devriminden günümüze aksaklıklarla da olsa dünyanın pek çok yerinde hukuksal düzlemde sağlanabilmiştir veya en azından hak olarak tanınmıştır. Ancak ekonomik eşitlik sağlanamadığı sürece diğer eşitlik türleri de kağıt üzerinde kalmaya ve tam olarak pratikte gerçekleşmemeye mahkumdur. Bir insanın siyasi yaşama oy vermenin ötesinde katılabilmesi için sesini diğer insanlara duyurabilmeye ihtiyacı vardır. Bu durumda, maddi olanakları fazla olanlar, örneğin kitle iletişim organlarının sahipleri, kendi politikalarını diğerlerine

oranla çok daha fazla yayabilme imkanına sahiptirler. Yine aynı insanlar, yasama üzerinde söz sahibi olacak ve kendi yararlarına olan yasaları yapacaklardır. Toplumda saygı görmek ve insan onuruna uygun bir yaşam sürdürebilmek de, gelir ve imkanlarla ilişkilidir. Bu nedenle, ekonomik eşitlik diğer eşitliklerin sağlayıcısıdır. Peki, ekonomik eşitlik nedir, ne olmalıdır?

Ekonomik eşitlik denilince, günümüz adalet tartışmalarında, toplumsal üretimden, daha az ya da hiç kazanamayanlara pay vermek anlaşılmaktadır. Daha yetenekli olanlar, daha çok çalışanlar, daha varlıklı olanlar neden daha az yeteneğe ve daha az kazanana toplumsal hasıladan pay versin ya da vermesin iddiaları farklı adalet anlayışları ile desteklenmeye çalışılmaktadır. Burada adalet, bölüşüm meselesine indirgenmektedir. Bölüşüm önemli bir sorun olmasına rağmen, üretim de bölüşüm kadar ve hatta ondan daha fazla önemli bir meseledir ve maalesef günümüz siyaset felsefesi tarafından göz ardı edilmiştir. Bu çalışmada ben üretimin nasıl algılanması gerektiği üzerinde durmak istiyorum. İlk olarak, üretim insanı insan yapan temel özelliklerden birisidir. İnsan salt tüketen değil, doğayı yeniden üreten bir varlıktır. Hegel'in ortaya koyduğu gibi, insan doğayı dönüştürme serüveninde kendisini de keşfeder—ihtiyaçlarını tanır. Ancak sınıflı toplumlarda, Marx'ın ifade ettiği gibi, insan kendi ihtiyaçlarını karşılamak için değil, başkasına hizmet etmek için ya da ücret karşılığı çalışır. Marx'ın ortaya koyduğu üzere, kapitalist üretim biçiminde, işçi, ne üreteceğine karar veremez, üretim sürecinin bütününe hakim değildir, ürettiği ürünün sahibi olmaz ve emeğinin karşılığını tam olarak alamaz; dolayısıyla, ürününe, üretim sürecine, kendisine ve başka insanlara yabancılaşır. Burada emek, ürün ve işçi tamamen ayrıştırılmış; emeğin değeri piyasa koşularına

göre belirlenir hale gelmiştir. Halbuki değeri (değer sabit olmasa da ve toplumsal koşullar tarafından belirlense de) yaratan emektir. İşçi emeğinin değerini almalıdır. Bu da belirli bir saat ya da parça başı karşılığı olamaz. İşçi bir grup ile birlikte üretmektedir. Kullanılan makineler de bir üretim sonucudur. Diğer insanlardan ve tarihsel birikimden soyutlayarak, tek bir insanın üretimi tam olarak hesaplanamaz. Bu nedenle toplum bir bütün olarak kurgulanmalı ve herkes ürettiği kadar yerine, herkes onurlu bir yaşamı ne kadarına sahip olursa sürdürebilir sorusu sorulmalıdır. Kapitalist sömürü ise, onurlu bir yaşamın önündeki temel engellerden birisidir. İnsanın insanı sömürmediği ve herkesin saygın bir yaşam sürmesi için gerekeni aldığı bir toplum hedefi doğrultusunda, ekonomik eşitlik bir hedeftir ve onu belirleyen de sömürülmeme ilkesi olmalıdır. Bu, sömürünün olmadığı ve ekonomik eşitliğin sağlandığı bir toplumda diğer eşitsizlikler ve adaletsizliklerin son bulacağı anlamına gelmemelidir. Bu ilke yalnızca çözüm yolunda bir temel olarak görülmelidir.

Adaletin diğer ilke veya alanlarından birisi de özgürlüktür. Özgürlük, Kant ile birlikte modern felsefede, özerklik, sorumluluk gibi kavramlarla ele alınagelmiştir. Ancak ben bu çalışmada politik alanda özgürlüğün nasıl kavranması gerektiği üzerinde duracağım. Yirminci yüzyıla damgasına vuran Isaiah Berlin'in negatif ve pozitif özgürlük kavramları ile başlamayı uygun buluyorum. Negatif özgürlük, bireye dışarıdan herhangi bir müdahalenin olmaması olarak tanımlanırken, pozitif özgürlük, bireyin kendi kendisinin efendisi olması olarak tanımlanmıştır. Negatif özgürlük talebi, siyasi iktidarın bireyler üzerindeki engelleyici gücünü kısıtlamayı hedefler. Pozitif özgürlük ise, insanın kendi kendisini tanımasını,

gerçekleştirmesini ve politik yaşama aktif olarak katılmasını, dolayısıyla da kendi kendisini yönetmesini dillendirir. İlkinde devlet ve toplum bireyin önünde engel olarak görülürken, ikincisinde bireyin kendisi geliştirmesi için araç ve zemin olarak görülmektedir.

Berlin'in bu ayrımına karşı çıkanlar ve üçüncü yollar üretmeye çalışanlar olmuştur. Ben burada, bir negatif özgürlük kavramsallaştırmasına ve bir de pozitif özgürlük kavramsallaştırmasına alternatif iki yaklaşımı ele aldım. Philip Pettit özgürlüğün, müdahalenin değil, baskının olmaması olarak tanımlanması gerektiğini söylüyor. Müdahale özgürlüğün zıttı değildir ama baskı tam olarak zıttıdır. Pettit'e göre, burjuva adaleti, bireyi devletten ve toplumdan korumaya çalışır; ancak devlet ve toplum bireyin düşmanı değildir. Dolayısıyla özgürlük, bireyin baskıdan korunmasıyla sağlanacaktır. Phillippe Van Parijs ise, özgürlüğün gerçekleşebilmesi için insanların bir takım olanaklara sahip olmaları gerektiğini belirtiyor. İnsanın kendisini gerçekleştirebilmesi ve özgürlüğü deneyimleyebilmesi için, her bir bireyin "koşulsuz temel gelir"e sahip olması gerekmektedir. İnsan temel düzeyde bir gelire ve fırsatlara sahip olmazsa, özgürlük lafta kalır, soyut bir hak olmaktan öteye geçemez. Pettit ve Parijs özgürlüğün gerçekleşebilmesi, pratik yaşamda görünür olması için daha somut ilkeler ortaya koyuyorlar. Ancak, bir toplumda sömürü ve yabancılaşma varsa, insanların kendilerini özgürce ifade edebilmeleri, eyleyebilmeleri ve potansiyellerini ortaya çıkartabilmeleri mümkün olmayacaktır.

Haklar başlığına geldiğimizde, haklar adaletin tanımlayıcısı ve koruyucusu olma iddiasındadır. Ancak yine yirminci yüzyıla ait bir kavramsallaştırma olan negatif

ve pozitif haklar tartışması adaletin fiili olarak gerçekleşmesinin teorik engeli olarak yirmi birinci yüzyılda karşımıza çıkmaktadır. Yirminci yüzyıl, insan haklarının, çocuk ve kadın haklarının, kültürel, politik ve medeni hakların uluslararası sözleşmelerle tanımlanması açısından olumlu geçmiştir. Bu haklar antlaşmalar ve kurumlar yoluyla hayata geçirilmeye çalışılırken, felsefe de insan haklarının meşruluğunu sağlama görevi edinmiştir. Ancak negatif ve pozitif haklar üzerine yapılan güncel felsefi tartışmalar, kapitalizmin de meşruluğunu sağlama işlevi olduğunu düşündürtmektedir. Aslında uluslararası beyannameler hakları bu şekilde ayırmazlar. Ama felsefecilerin tanımladığı üzere, negatif haklar genel olarak müdahalenin olmaması, pozitif haklar da bir menfaatten veya bir hizmetten yararlanabilme yetkisi olarak tanımlanır. Bedensel veya zihinsel olarak zarar görmeme, güvenlik, ifade özgürlüğü, ayrımcılığa uğramama gibi haklar negatif haklardandır. Pozitif haklar ise, eğitim, sağlık, barınma, belirli bir yaşam standardı olarak örneklendirilebilir. Günümüzde bir grup düşünür, pozitif hakların bir kuruma bağımlı olduğunu ama insan haklarının evrensel olabilmesi için dünya üzerinde hiçbir kurum ve toplumsal örgütlenme olmasa bile geçerli olması gerektiğini, bu nedenle de pozitif hakların evrensel insan hakları sayılamayacağını iddia etmektedirler. Buna göre, 1966'da kabul edilen Ekonomik, Toplumsal ve Kültürel Haklar Uluslararası Sözleşmesi'nde yer alan, adil koşullar altında çalışma, sigorta, eğitim, beslenme, barınma, tatil gibi haklar, devletlerin imkanlarına bağlı olduğundan evrensel olamaz. Ancak John Tasioulas'ın da dediği gibi, bu pozitif haklar olmaksızın negatif haklar boş bir retorik olarak kalacaktır. Açlık ve işkence görmek birbirinden ayrılabilir değildir. Ayrıca, her iki tür de

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toplumsal bir yapıya bağımlıdır. İşkence görmeme özgürlüğü ve ifade özgürlüğü de ancak bir kurum tarafından sağlanır.

Özetle, insan hakları da, sömürülmeme hakkı olmaksızın soyut birer bireysel hak olmaya mahkum kalacaktır. Eğer herkesin saygın bir yaşam standardına sahip olmasını istiyorsak, pozitif hakların da evrensel insan hakları olarak talep edilmesi şarttır. Pozitif hakların ve de özgürlüklerin gerçekleşebilmesi devletlerin vatandaşlarına ekonomik eşitlik sağlamasıyla, o da sömürülmeme ilkesiyle mümkün olacaktır. Sömürülmeme ilkesinin, dünya üzerindeki bütün adaletsizleri çözebilecek bir formül olmadığının bir kez daha altını çizmek isterim. Sömürülmeme ilkesi bir tür olmazsa olmaz adalet ilkesi olarak kabul edilmelidir.