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**On Human Rights in the Context of Economic Thought:
An Alternative Approach Through
The Idea of Public Use of Reason**

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par

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ABSTRACT

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The dissertation attempts to account for an alternative connection between human rights and economics. It suggests that this connection involves a comprehensive analysis of the idea of *public use of reason*. The fundamental concepts of political economy, such as civil society and state, are then re-visited within a conceptual framework which is originally based on Kant's notion of *becoming mature*, but at the same time, surpassing it in the extent of the pluralistic society.

The thesis begins with an investigation of overlapping backgrounds of the idea of human rights with the idea of public use of reason by focusing on Kantian philosophy, particularly on the conceptions of autonomy, freedom and categorical imperatives. Next, it deals with Rawls's interpretation of the Kantian idea of public use of reason through a narrow political dimension. The thesis provides an account that place a strong emphasis on Hegel's influence on the "political turn" involved in Rawls's original thought. It is also argued that the political understanding of public use of reason in the Rawlsian approach can be considered as a derivative of Adam Smith's *the man within breast*.

Marx and Bentham provide two different arguments for the idea of rights of man, nevertheless since they fail to provide an account of pluralistic society, their arguments remain inconclusive. The thesis presents a distinct approach to these arguments through the concepts of public reasoning and pluralistic society. It furthers this approach with an extensive analysis of human rights and social justice in the context of the capability approach. It is claimed that the capability approach is reasonably consistent with Rawlsian political liberalism especially when Nussbaum's political turn and her updated list of central capabilities are first considered. Finally, the thesis provides an analysis of "political turns" among which Rawls has a particular position regarding the influence of Hegel over his ideas of *public reason* and *reasonableness*.

In conclusion, the thesis proposes that a constitutional state in which human rights are ensured through the political and social institutions is the condition of possibility for

using reason publicly. Nevertheless, this condition is fundamentally connected to the material conditions of life provided within the economic framework. Such an interpretation suggests that economics should be considered as a means in providing the appropriate conditions for using reason publicly.

Key Words: Human Rights, Kant, Rawls, Public Use of Reason, Political Economy, The Capability Approach

RESUME DE LA THESE

Des droits de l'Homme dans le contexte de la pensée économique : une approche alternative à travers l'idée d'« usage public de la raison »

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L'idée des droits de l'Homme a donné lieu à de nombreuses controverses depuis le 19ème siècle et elle est devenue aujourd'hui un élément central de plusieurs disciplines de recherche. Néanmoins, la question des droits de l'Homme, de leur violation, des abus et coercitions a été considérée le plus souvent d'un point de vue légal, alors même qu'il existe d'autres enjeux dans le domaine économique. De fait, la relation entre ces enjeux économiques et les droits de l'Homme n'ont pas connu de traitement majeur, en-dehors d'enjeux particuliers comme les droits de propriété ou le droit au développement. En outre, au sein-même de la science économique, il semble régner une certaine confusion théorique entre les questions « que sont les droits de l'Homme ? » et « à quoi servent les droits de l'Homme ? ». Les droits de l'Homme, et plus particulièrement le lien entre ces droits et l'économie est une question importante qui mérite d'être examinée de manière approfondie. Cette thèse vise à présenter une approche de ce lien qui sera construite autour du concept clé de *l'usage public de la raison*.

Avant de procéder à l'examen de cette question, il est nécessaire d'apporter quelques précisions sur deux faits préliminaires. Premièrement, l'idée des droits de l'Homme a une portée très large, et la littérature qui s'y rapporte est conséquente et en croissance constante. Deuxièmement, l'analyse qui sera menée dans cette thèse repose sur les fondations philosophiques de l'idée des droits de l'Homme, et peut être considéré de prime abord, comme incohérentes avec les débats économiques récents. La thèse est donc volontairement restreinte à un examen étroit de ces grandes idées et théories. Nous démontrerons toutefois, inévitablement, nos arguments en nous fondant sur la littérature récente puisqu'il y a eu plusieurs tentatives de résoudre la confusion théorique autour des droits de l'Homme en économie. Ce travail n'a donc pas pour objectif d'étudier les grandes théories en tant que telles, ni même d'analyser les écrits d'auteurs en particulier.

La méthodologie utilisée ici consiste plutôt en une analyse de textes d'auteurs divers, dont les idées et questionnements ont un rapport étroit avec la problématique abordée dans cette thèse.

De fait, il existe un courant philosophique caractérisé par une approche normative de la philosophie, influencée par la publication des travaux de John Rawls. De plus en plus de théoriciens ont observé, à mesure que les débats évoluaient sur les questions de justice sociale, de droits de l'Homme et d'économie politique, qu'un retour aux analyses menées par Kant et Hegel sur des thèmes similaires s'imposait (cf. par exemple Onora O'Neill, Allen Wood, Charles Taylor, Paul Guyer, Robert Pippin, etc.). L'approche retenue dans cette thèse n'est pas différente. Elle analyse les possibles connexions entre l'idée de droits de l'Homme et l'économie en utilisant un cadre conceptuel directement emprunté au siècle des Lumières, et plus particulièrement aux essais kantien et hégélien se rapportant aux thèmes de l'autonomie, de l'autodétermination et de la société civile.

Alors même qu'elle pourrait être la source d'une importante recherche, la notion de droits de l'Homme dans la pensée économique a trop souvent été restreinte à celle de *droits individuels*. Du fait de cette ambiguïté, notre but est également de retracer l'évolution du concept de droits de l'Homme dans l'histoire de la pensée économique, en tâchant de dépasser le caractère arbitraire de certaines conceptions de ces droits. Il est évident que ce que l'on appelle les *droits de l'Homme*, tout comme certaines approches particulières en économie, sont fondés sur des idées ayant émergé durant la période des Lumières. Les Lumières sont une période particulière du point de vue de la pensée politique et philosophique, caractérisée par une compréhension distincte de l'*individu* et de la *société civile* comme déterminants des libertés, cette compréhension étant basée sur les notions d'*autonomie* et d'*usage de la raison*. Plus précisément, nous nous intéressons à la période des Lumières en tant qu'elle est à l'origine d'un débat sur les prérequis essentiels à la maturité, ou à « la sortie de l'homme de sa minorité dont il est lui-même responsable » (Kant, 1784) en faisant appel à sa raison. Dès lors, l'ensemble de notre thèse est guidé par un examen préalable d'une certaine partie de la réponse que Kant donne à la question « *Qu'est-ce que l'Aufklärung ?* » (« qu'est-ce que les Lumières ? »).

En effet, nous nous focalisons sur un usage particulier de la raison autour duquel nous

structurons la thèse, à savoir l'usage public de la raison. L'idée des droits de l'Homme analysée dans cette thèse a beaucoup en commun avec l'analyse de la conception de l'usage public de la raison ainsi qu'avec les notions d'auteur (*Gelehrter*) et de public de lecteurs (*Publikum der Leserwelt*). Nous souhaitons souligner que l'idée des droits de l'Homme est fondamentalement associée à l'idée d'un usage public de la raison. En cela, nous mettons en avant l'idée que les droits de l'Homme consistent en un ensemble particulier de normes qui établissent les conditions des possibilités pour qu'une personne utilise publiquement sa raison. Le motif qui nous conduit à établir un tel lien entre droits de l'Homme et usage public de la raison est l'idée que, à certains égards, les droits de l'Homme ne sont pas seulement une question relative à la légitimité ou à la philosophie normative, mais, dans un certain sens, également à la théorie économique.

Par conséquent, au cœur de notre analyse se trouve un argument fondé sur l'idée de l'usage public de la raison se référant à des textes particuliers de Kant, Hegel, Adam Smith, Bentham, Marx, Rawls, Amartya Sen et Martha Nussbaum, qui doit conduire à un rapprochement entre les droits de l'Homme et l'économie. Nous considérons qu'une telle *médiation* peut surmonter les problèmes posés par les deux faits préliminaires mentionnés précédemment. Pourtant, l'idée de l'usage public de la raison se révèle être l'idée la plus critique dès lors que la conception de la *société civile* est prise en compte. Nous arguons que la pertinence de la notion de droits de l'Homme pour l'économie est évidente, surtout quand il s'agit de considérer le rôle des *marchés libres*. Cet argument élargit les limites de la compréhension principale des droits de l'Homme comme des droits juridiques. Ainsi, l'idée des droits de l'Homme représente un discours unique qui transcende inévitablement le domaine de la légitimité.

Cependant, une telle justification philosophique spécifique des droits de l'Homme s'avère encore insuffisante pour en faire un examen sous l'angle de l'économie. Par conséquent, nous choisissons de limiter la portée de notre examen à un cadre politique plus étroit afin de mieux articuler l'idée des droits de l'Homme avec l'économie. Pour ce faire, nous faisons un lien avec l'idée rawlsienne de la *raison publique* présentée dans *Libéralisme politique*, qui est profondément inspiré par l'idée kantienne de l'usage public de la raison. Le but de Rawls dans *Libéralisme politique* est d'énoncer les conditions de la coopération sociale *raisonnable* dans une société bien ordonnée parmi des citoyens libres et égaux ; en d'autres termes, d'établir la morale raisonnable ou

l'inégalité politique entre les citoyens selon un consensus par recoupement qui est assuré et maintenu par le *raisonnement public*. Dans cette perspective, la conception de *sagesse* constitue l'argument principal de l'idée de la *raison publique*. Le but de proposer un tel argument est de parvenir à une possible réconciliation au sein de la diversité des idées à travers un équilibre réfléchi, c'est-à-dire de trouver un cadre politique pour un consensus par recoupement afin de maintenir une stabilité. En ce sens, la façon par laquelle Rawls traite de la question de la *sagesse* par la justification de l'idée de la raison publique fournit une approche particulière utile pour notre examen des droits de l'Homme dans le contexte de l'économie et par là-même transfère notre questionnement d'un large champ philosophique à un champ politique. Une fois que l'idée de l'usage public de la raison – et des droits de l'Homme – est examinée sous cet angle, la question de la liberté et de l'autonomie devient indirectement sujette à la détermination des circonstances économiques. Dans cette perspective, nous procédons également à un examen du *spectateur impartial* et de *l'homme intérieur* chez Adam Smith. Nous cherchons alors à montrer les similitudes essentielles entre les concepts du *raisonnement public* et de *l'homme intérieur*. Nous avançons que ces similitudes peuvent également être comprises en se référant à la pensée économique.

De fait, le concept de droits et libertés inaliénables et indivisibles avait été largement diffusé après les déclarations prétendument universelles des droits de l'Homme, et il existe donc des arguments assez conséquents à l'encontre de l'idée des droits de l'Homme dans l'histoire de la pensée économique. Cela nous conduit à analyser les critiques des droits de l'Homme dans la pensée économique. Dans cette perspective, nous nous focalisons particulièrement sur les critiques benthamiennes des droits de l'Homme, et sur les concepts d'*émancipation* et d'*être générique (Gattungswesen)* présents dans les travaux connexes de Marx. Il s'agit d'articuler l'analyse alternative des droits de l'Homme fondée sur l'idée d'usage public de la raison avec l'analyse de l'économie politique afin de présenter les conditions d'une réconciliation possible.

Il existe une longue tradition qui consiste à traiter la question des droits de l'Homme parallèlement à celle de la justice, et plus particulièrement à celle de la *justice sociale*. Considérer la relation de la justice sociale avec des éléments clés des droits fondamentaux et avec le *raisonnement public* soulève des questions plus complexes. Nous concluons donc notre recherche par une analyse du concept de capacités en

fournissant une dimension additionnelle à l'argument sur les lacunes de *l'approche par les capacités* concernant « l'équité des processus impliqués ou à propos de la liberté des citoyens d'invoquer et d'utiliser les procédures qui sont équitables » (Sen, 2004b, p. 336). Notre analyse comprend notamment l'examen critique de Martha Nussbaum sur la notion de capacités qui se rapporte directement à l'idée des droits de l'Homme.

Organisation de la thèse

La thèse a pour objectif de développer une relation alternative entre les droits de l'Homme et l'économie. A cette fin est entreprise une analyse approfondie de l'idée d'*usage public de la raison*. Les concepts fondamentaux de l'économie politique, tels que la société civile et l'État, sont ainsi revisités dans un cadre conceptuel qui est, à l'origine, fondé sur la notion de *majorité* chez Kant, mais qui, dans le même mouvement, va au-delà de cette notion pour rendre compte du pluralisme de la société civile.

La thèse débute par une étude des fondements communs des droits de l'Homme et de l'idée d'usage public de la raison en se concentrant sur la philosophie kantienne, en particulier sur les concepts d'autonomie, de liberté et d'impératifs catégoriques. Par ailleurs, elle s'intéresse à l'interprétation rawlsienne de l'idée kantienne d'usage public de la raison dans une vision plus étroitement politique. La thèse conduit un raisonnement qui rend plausible l'influence de Hegel sur le « tournant politique » dans la pensée originelle de Rawls, même si la référence à Hegel n'est explicite que dans les derniers textes de l'auteur de la *Théorie de la justice*. Il y est également soutenu l'idée selon laquelle la compréhension politique de l'usage public de la raison dans l'approche rawlsienne peut s'éclairer d'une nouvelle lumière si ce concept devait être rapproché de celui de *l'homme au-dedans* d'Adam Smith.

Marx et Bentham apportent deux arguments différents en faveur de l'idée des droits de l'Homme, cependant, dans la mesure où ils laissent la question du pluralisme de la société civile en dehors de leur champ d'investigation, leurs arguments demeurent peu concluants. La thèse présente une approche alternative de ces arguments grâce aux concepts de raisonnement public et de société pluraliste. Elle pousse plus loin cette approche grâce à une analyse approfondie des droits de l'Homme et de la justice sociale

dans le contexte de l'approche par les « capacités ». Il y est affirmé que l'approche par les capacités est parfaitement compatible avec le libéralisme politique rawlsien, notamment lorsqu'on prend en considération le tournant politique de Nussbaum et sa liste actualisée des capacités centrales. Finalement, la thèse offre une analyse de ces « tournants politiques » parmi lesquels Rawls occupe une position tout à fait singulière, en particulier lorsque ses idées de *raison publique* et de *raisonnabilité* sont réinterprétées à la lumière des enseignements de la philosophie politique de Hegel.

En conclusion, la thèse suggère qu'un Etat de droit dans lequel les droits de l'Homme sont garantis par les institutions politiques et sociales constitue la condition de possibilité de l'usage public de la raison. Autrement dit, une société qui a vu naître en son sein le *souci* de l'usage public de la raison fait évoluer son organisation étatique dans le sens de l'Etat de droit où les droits de l'Homme fondent et garantissent la liberté qu'exige un tel souci. Néanmoins, cette liberté politique, condition de toute possibilité d'usage public de la raison, est également et fondamentalement liée aux conditions matérielles de l'existence qui constituent l'objet de l'économie politique. Une telle interprétation donne à penser que l'économie, entendue comme l'ordre des conditions matérielles de l'existence, doit être comptée, non point comme fin mais comme moyen incontournable, parmi les conditions de l'usage public de la raison.

Les chapitres suivants tentent d'explicitier le lien entre les droits de l'Homme et l'économie en suivant l'idée de l'usage public de la raison.

Le premier chapitre résume le vaste contexte philosophique de l'usage public de la raison en se concentrant sur la philosophie kantienne, en particulier sur les concepts d'autonomie, de liberté et d'impératifs catégoriques. Notre but dans ce chapitre est de souligner les imbrications logiques et contextuelles de l'idée des droits de l'Homme avec l'idée de l'usage public de la raison. Pour ce faire, j'expose le débat contemporain concernant les droits de l'Homme et explore une considération plus étroite des droits fondamentaux et inaliénables sur la base de l'usage public de la raison. De fait, certaines des critiques faites à l'encontre des droits de l'Homme ne seront pas prises en compte dans un premier temps. Par exemple, il est parfois avancé que toute liste des droits de l'Homme est historiquement spécifique et contingente, et que ces droits visent à protéger la dignité humaine sous certaines conditions qui appartiennent

significativement aux sociétés occidentales. Dans ce contexte, les conceptions de droits de l'Homme peuvent varier car les conceptions de la dignité humaine, et des menaces à la dignité humaine, changent (cf. Donnelly, 2013). L'idée des droits de l'Homme est purement simplement rejetée par certains car les droits de l'Homme sont considérés comme une erreur ontologique (cf. Macintyre, 1981). Certains théoriciens ont avancé que de tels droits ne sont pas inaliénables en raison du fait que l'absence de garantie institutionnelle par une autorité ou le manque de reconnaissance *de jure* laissent ces droits vulnérables aux violations. L'idée des droits de l'Homme est donc un « idéalisme sans espoir » ou une « hypocrisie faible d'esprit » (cf. Arendt, 1973 ; Hart, 1983). Notre thèse n'a pas pour vocation de participer à un tel débat controversé. Au contraire, nous nous focalisons sur une forme particulière des droits de l'Homme, et sur une lecture alternative des potentialités humaines en termes d'usage public de la raison.

Comme Kant l'a rigoureusement formulé, la problématique de l'usage public de la raison suppose un « public » dont les membres sont dotés d'une capacité inconditionnelle de critique au sens où chacun, sans exception, mais à la condition expresse de le vouloir, peut prendre la plume, en toute autonomie et liberté, en tant que *Gelehrter* (sujet capable d'apprendre, de comprendre, de s'exprimer) pour s'adresser par écrit à ceux et celles qui lisent (*Publikum der Leserwelt*). Cette compréhension du public dévoile la possibilité d'une institution qui est unie par des individus égaux, des individus qui ont la capacité d'utiliser leur raison de cette manière particulière. Dans cette perspective, la distinction que Kant fait entre les utilisations privées et publiques de la raison joue un rôle important à l'égard de ce qui est alors appelé la société civile. Au cœur de la compréhension kantienne de l'autonomie se trouve la conception de la liberté des individus rationnels en termes d'utilisation de la raison dans le domaine public. Chaque individu rationnel est capable d'utiliser sa raison, ce qui mène à l'autonomie. Par conséquent, chaque individu rationnel accède à la dignité. La question de la dignité, qui a été également une des justifications majeures de l'existence des droits de l'Homme, est formulée comme faisant partie de la conception de l'usage public de la raison. Il est évident que ce que Kant entend par *dignité* est plus une particularité potentielle de l'être humain qu'un fait naturel.

La formulation de la question de l'usage public de la raison partage certains éléments avec les *impératifs catégoriques* que Kant a plus tard décrit dans les *Fondations de la*

métaphysique des mœurs, ouvrage dans lequel il tente d'établir le principe fondamental de la moralité. Puisque l'existence des individus est une fin en soi, ces derniers sont alors membres du *royaume des fins*, dans lequel les individus sont sujets à la nécessité d'exercer leur raison. Ainsi, nous arguons que l'usage public de la raison devient une question de réconciliation entre le royaume des fins et le royaume de la nature, et donc une question reliée à la vie politique. En ce sens, la conception de la rationalité en sciences économiques apparaît comme faisant partie du royaume de la nature où la nécessité est basée sur l'intérêt individuel dans lequel la motivation principale d'un individu prend ses origines dans le désir, ses inclinations ou encore son amour propre. Une telle interprétation est motivée par l'existence de tout un ensemble de théories économiques où les valeurs morales sont absentes. Cependant, nous pouvons trouver un terrain conceptuel convenable pour insérer l'idée centrale de rationalité en économie au sein d'un schéma moral de l'autonomie qui peut également nous ramener à l'idée d'usage public de la raison. Pour atteindre cet objectif, l'idée kantienne de devoirs parfaits et imparfaits et l'idée de raisonnement prudent peuvent être considérées comme une référence convenable afin d'articuler la question de l'intérêt personnel dans le cadre général de l'idée d'usage public de la raison. Bien que la compréhension kantienne de l'autonomie prenne partiellement en compte l'intérêt personnel, la théorie dans laquelle John Rawls traite cette question de la « rationalité » s'ouvre sur un débat de nature essentiellement politique.

Le second chapitre présente une reconstruction de l'idée kantienne de l'usage public de la raison dans une perspective politique plus étroite. J'analyse la reformulation rawlsienne de la conceptualisation kantienne dans laquelle le concept est transformé en *raison publique*. Également, j'examine le « tournant politique » de Rawls ainsi que l'influence Hégélienne sur l'idée du libéralisme politique. Ainsi, dans la formulation rawlsienne, la *raison publique* requiert l'existence de citoyens pouvant raisonnablement prendre part à la coopération sociale étant dotés de la capacité de prendre des décisions sur la base des valeurs et des standards en cours au *niveau public*, que les autres ne pourraient « raisonnablement rejeter » (Scanlon, 1982, p.116). L'idée de la raison publique représente une forme particulière de raisonnement concernant les questions publiques fondamentales, contrairement aux *manières non-publiques* de raisonner qui intègrent des doctrines religieuses ou de points de vue philosophiques. Il y va alors d'un devoir civil de justifier les décisions relatives aux « problèmes politiques fondamentaux

en référence seulement aux valeurs et standards publics » (cf. Wenar, 2008). Alors que le grand projet de Rawls dans la *Théorie de la justice* (TJ) partageait initialement la même base en termes de principes politiques et moraux que Kant et Rousseau, dans *Libéralisme Politique* (LP), Rawls a tout particulièrement favorisé une conception de la justice dans le contexte d'une société démocratique marquée par une pluralité de points de vue et de valeurs. Il proclame que l'objet d'étude du libéralisme politique ne réside pas en ce qu'il nomme le libéralisme des lumières, car « le libéralisme politique n'a pas une forme uniquement basée sur une doctrine libérale exhaustive sur la raison » (Rawls, 1996, p. xxxvii). En d'autres termes, il cherche à retrouver les « instabilités » pratiques de sa première théorie en la reformulant sans se baser sur des doctrines exhaustives, mais en la liant aux idées qui « sont présentes dans la culture publique » (*ibid.*, p. 8-9). Un tel tournant politique dans la pensée de Rawls est en vérité basé sur une reconsidération de l'idée d'usage publique de la raison dans une perspective politique, c'est-à-dire au sein du seul contexte politique afin de résoudre les difficultés posées par l'approche kantienne. Par conséquent, en considérant l'œuvre complète de Rawls, de la TJ à ses *Lectures*, nous arguons qu'il est également nécessaire de considérer son influence hégélienne, au moins autant que son influence kantienne, surtout lorsque nous examinons le tournant qu'a pris Rawls dans ses points de vue quant à la relation politique des citoyens au sein des institutions sociales. Ces institutions forment, d'une certaine manière, notre monde social au sens d'Hegel. (Gledhill, 2011, p.10).

L'objectif pratique de *Libéralisme Politique* est davantage centré sur l'utilisation d'outils politiques pour gérer des vues compréhensives déraisonnables dans le cadre d'un pluralisme raisonnable afin d'éviter une controverse sur les questions fondamentales. La principale différence du libéralisme politique avec divers libéralismes compréhensifs, ainsi qu'avec toutes les autres idéologies compréhensives, est le contexte politique dont la portée est très restreinte. Il ne couvre qu'un domaine public limité qui se compose de citoyens libres et égaux de telle sorte que son idée n'est pas considérée comme éthique, mais politique. La base de la distinction entre la *politique* et l'*éthique*, ou entre une conception politique de la justice et diverses doctrines compréhensives au sein de la société conduit Rawls à apporter une précision sur la distinction fondamentale entre le public et non-public dans le cadre de son concept de la raison publique. Rawls met son idée de la raison publique au centre du processus de formation des principes politiques de coopération équitable. Ce processus implique également l'existence d'une *lecture*

publique comme dans sa définition kantienne. La base d'une action raisonnable pour des personnes raisonnables qui ont un *sens de la justice* est justifiée par une compréhension particulière du *public*. Cependant les questions qui sont censées être résolues par l'usage de la raison publique sont seulement les plus fondamentales, les « questions relatives aux fondements constitutionnels et à la justice de base » (*ibid.*, p. 224), sur lesquelles toutes les personnes raisonnables peuvent se mettre d'accord. Les personnes raisonnables n'ont pas à accepter les mêmes principes de justice. Ainsi, l'interprétation de la notion d'*usage public de la raison* dans le contexte économique apparaît comme *raisonnable* une fois que l'idée est reformulée en termes de *raison publique*.

En effet, si nous analysons la conception rawlsienne de la raison publique d'une manière purement kantienne, un tel raisonnement fondé sur des idées politiques ne serait pas entièrement public, ni raisonnable. Pour Kant, utiliser la raison en-dehors de tout contexte public est appelé usage privé de la raison. Dans cet usage privé de la raison, la liberté n'est pas la principale préoccupation. Kant ne traite pas d'une société politique, de sorte que l'idée de l'usage public de la raison ne nécessite pas une formation sociale ou politique particulière. Il l'applique à toute société *éclairée* à travers la dimension universelle des impératifs catégoriques. Par ailleurs, la conception rawlsienne de la raison publique conduit à une coopération sociale entre les citoyens qui promeuvent différentes valeurs fondamentales, ou différentes façons de poursuivre le *bonheur*. Un tel *pluralisme* dans les valeurs et les conditions conduit à une abstraction des citoyens qui prennent leurs décisions en raison de leurs intérêts personnels. En ce sens, les citoyens dans une *société démocratique bien ordonnée* vont inévitablement avoir leurs propres considérations du bien ou de l'*utilité*. Cela est dû au pluralisme dans la conception rawlsienne de la coopération sociale. Ainsi, l'idée de la *raison publique* fournit un cadre théorique caractérisé par une combinaison de progrès individuels (en termes de préoccupations privées) et de justice sociale (en termes de préoccupations publiques associées à un aspect éthique). Par conséquent, Rawls ici se place entre les deux *royaumes* de l'éthique kantienne en opérant une médiation du *royaume de la nature* et du *royaume des fins*. Dans ce contexte, la conception de la raison publique dépasse le sens limité de l'autonomie que nous observons dans l'idée kantienne de l'usage public de la raison. Cependant, il est évident que l'idée de la raison publique n'a que très peu de portée dans une conception large de l'« individu » alors qu'une (étroite) conception politique de l'individu, similaire à l'interprétation que nous voyons dans

l'auteur (*Gelehrter*) de Kant, a une fonction essentielle dans la construction de cette idée.

Ainsi, la version rawlsienne de la « raison publique » couvre seulement un domaine public limité, constitué de citoyens libres et égaux, si bien que son idée n'est pas considérée comme éthique mais comme politique. En ce sens, le « le but pratique » de fournir une base publique au *Libéralisme Politique* (LP) est de réconcilier l'ensemble des idées divergentes au sein d'un équilibre réflexif, et donc de délimiter un terrain politique permettant un consensus par recoupement et le maintien d'une certaine stabilité. Afin de réaliser une telle réconciliation, la raison publique doit être conservée *impartiale* en réponse à « l'impossibilité pratique d'atteindre un accord politique raisonnable et réalisable en matière de jugement sur la vérité des doctrines compréhensives » (Rawls, 1996, p. 63).

L'impartialité est aussi l'un des concepts importants de l'économie politique, en particulier, lorsque l'on considère les œuvres d'Adam Smith sur la *Théorie des Sentiments Moraux* (TSM) et la *Richesse des Nations* (RN). Bien que Rawls ne se réfère pratiquement jamais à l'œuvre d'Adam Smith, nous estimons qu'il est légitime d'établir un rapprochement significatif entre les idées proposées dans la TSM et la RN et l'idée rawlsienne de raison publique, en lien avec son grand projet sur la justice sociale et le libéralisme politique. Les deux auteurs sont connus pour mettre *l'impartialité* au centre de leurs théories (notamment dans la TSM et la TJ). Néanmoins, les « tournants politiques » y sont importants. Ces faits constituent la base de ce que nous entendons examiner dans le but de fournir un large examen de l'idée de l'usage public de la raison dans le contexte de l'économie politique. Parmi ces deux approches, la première peut être considérée comme une étape importante dans la pensée économique ; elle est appelée *système de liberté naturelle*, un système qui, pour le dire brièvement, est basé sur l'idée d'*intérêt personnel*. Nous pouvons appeler ceci la société commerciale d'Adam Smith, qui est la société qui produit plus que n'importe quel autre type de société qui invite les hommes à chercher *la facilité du corps et la paix de l'esprit* (Smith, 1759, p. 181). Ainsi le système de liberté naturelle évoque une société orientée vers *la richesse réelle et la grandeur* (Smith, 1776a.p.70). Dans un tel système, chaque homme, tant qu'il n'enfreint pas les lois de la justice, est laissé libre de poursuivre son propre intérêt à sa propre manière. La seconde approche, basée sur un libéralisme avec

une conception particulière de la justice, à savoir l'idée de recoupement consensuel dans une société pluraliste sur la base de la *raison public*, correspond au *libéralisme politique* de John Rawls.

Ces deux auteurs partagent une même compréhension de l'autonomie individuelle et, dans une certaine mesure, une manière similaire d'envisager l'idée d'*amour de soi*. En effet, dans les deux approches, l'*intérêt personnel* est fondé sur un ensemble de principes moraux qui rend les individus plus proches et permet le maintien de l'harmonie dans la société. Ainsi, émerge l'idée d'une organisation sociale *vertueuse* intégrant l'individualisme, ainsi que la bienveillance et la réciprocité, même si cette réciprocité est sujette à caution selon certains points de vue. Cette analyse vise essentiellement à déterminer le critère qu'Adam Smith et John Rawls privilégient quant à la possibilité d'une harmonie dans la société traversée par des intérêts individuels ainsi que la façon dont ce critère doit être pondéré lorsque des conflits d'intérêt surgissent dans la société. En d'autres termes, nous discutons de quelle façon la compréhension politique de l'usage public de la raison dans l'approche rawlsienne peut être considérée comme un dérivé de *l'homme au-dedans* d'Adam Smith.

Le troisième chapitre présente les premiers travaux de Marx, en mettant l'accent sur la question des droits de l'Homme et le texte *Anarchical Fallacies* de Bentham. L'étude débute par un examen critique de l'analyse de Bentham concernant l'idée des droits de l'Homme sur les questions des « erreurs théoriques » et des « méfaits ». Nous poursuivons cette analyse en étudiant la compréhension marxienne de l'homme et en particulier son idée d'émancipation humaine. Marx, dans *Sur la Question Juive* (1843), procède à une distinction théorique entre *Gattungswesen* et *monade*, qu'il érige comme argument central de la conception des droits de l'Homme en relation avec les concepts de marché et de société civile. A travers les arguments de Marx et Bentham sur les droits de l'Homme, notre but dans ce chapitre est de proposer une approche alternative, toujours en référence à l'idée d'usage public de la raison.

Jeremy Bentham est largement reconnu pour ses écrits en droit, économie, politique et philosophie. Concernant sa vision originale à l'égard de la législation et du système de droit et du gouvernement, il décide de construire une théorie sur le principe de l'utilité, également appelé *principe du plus grand bonheur*. Par ailleurs, dans son manuscrit

intitulé *Anarchical Fallacies*, il discute de façon critique l'idée des droits de l'Homme dans le contexte des droits naturels. Ainsi, les *Anarchical Fallacies* constituent une théorie du droit basée sur le principe de l'utilité. Le principal argument développé dans le manuscrit a un objectif double : le premier est de faire une critique catégorique de la Déclaration française des droits de l'Homme de 1789, et le second est de fournir une théorie alternative des droits cohérente avec le principe du « plus grand bonheur ». Cependant, ce second objectif est moins explicite dans le manuscrit que le premier. Néanmoins, il est évident que Bentham fonde ses idées sur le rôle essentiel d'un système juridique et du gouvernement dans la maximisation du plus grand bonheur pour le plus grand nombre. Dans ce contexte, les actions ne peuvent être évaluées qu'au regard de leur *utilité* ; le bien résulte de la maximisation du plaisir et de la minimisation de la douleur. Ainsi, l'*utilité* est présentée comme un dispositif de mesure facile au sein d'une théorie générale du bonheur. Dans cette perspective, le devoir d'un gouvernement est de maintenir le *plus grand bonheur du plus grand nombre*.

Pour Bentham, il n'y a pas de liberté, de propriété et de sécurité et donc aucun droit sans qu'il n'y ait un gouvernement. Il refuse ainsi l'idée des droits naturels en raison du fait que ce sont des droits imaginaires : « Du droit réel proviennent les droits réels [...] des lois imaginaires proviennent les lois imaginaires » (Bentham, 1843b, p.523). Les droits de l'Homme, pour Bentham, sont essentiellement différents des droits réels produits dans un cadre légal « réel ». Il est donc impossible qu'un système juridique couvre les devoirs naturels mentionnés dans la Déclaration des droits de l'Homme. À cet égard, nous partageons partiellement l'approche de Bentham sur les droits naturels concernant le débat sur les droits de l'Homme. Fournir une justification adéquate des droits de l'Homme nécessite, d'une certaine manière, une mesure renvoyant à des concepts tels que l'autonomie, la dignité, la liberté et l'égalité. Étant donné que notre raisonnement se fonde sur l'idée de l'usage public de la raison indépendamment des droits naturels, la question des droits de l'Homme qui est examinée dans cette thèse se réfère à une qualité spécifique ou un ensemble de qualités que tous les êtres humains possèdent, en tant que puissance de raisonnement. Par conséquent, nous analysons les critiques de Bentham au travers de deux thèmes : premièrement, la problématique essentielle posée par la relation entre les droits de l'Homme et les droits naturels, ; et deuxièmement, sa théorie à propos d'un système légal qui est essentiellement basée sur le principe d'utilité. Notre but dans cette section est d'examiner ce dernier, afin d'établir les fondements de notre

étude sur la critique marxienne des droits de l'Homme : ces droits, dans la conception marxienne de la société civile, sont critiqués en tant que partie du domaine économique en relation avec le *principe de l'utilité*. Nous nous fondons sur cet argument pour reconstituer la démarche suivie par Marx dans sa conceptualisation de l'*être générique* (*Gattungswesen*). En d'autres termes, nous souhaitons parvenir à une réconciliation dans l'idée de *l'émancipation humaine*.

En effet, Marx suggère un contexte plus large pour clarifier le problème de l'émancipation humaine en relation avec la société civile dans la plupart de ses premiers écrits. Nous nous concentrerons ainsi sur sa classification au sein du concept d'émancipation qui est initialement mentionnée dans *Sur la Question juive*. A cet effet, après avoir analysé le principe d'utilité de Bentham, nous approfondissons notre examen de la raison public à travers l'analyse de *l'émancipation politique* marxienne qui est considérée comme un niveau d'émancipation qui peut se réaliser uniquement dans la société civile. Nous suggérons que l'ensemble de la théorie de l'émancipation, dans sa critique des droits de l'Homme, peut être considérée comme un cadre très utile pour introduire l'idée de l'usage public de la raison dans l'économie politique à travers une critique du *principe d'utilité*. Autrement dit, le concept d'*être générique* associé à un réexamen des droits de l'Homme à travers l'idée de l'usage public de la raison, peut jouer un rôle clé dans la cadre d'une possible réconciliation entre les droits de l'Homme et l'économie politique.

Bien que Marx affirme, dans *Sur La Question juive*, que *l'émancipation politique* cause l'*aliénation* de l'homme, il admet que ce niveau d'émancipation est nécessaire quand on considère le contexte de *l'émancipation humaine*. Il considère le concept d'*aliénation*, inspiré de Feuerbach, comme une situation ambiguë dans un Etat politiquement émancipé dans lequel l'homme est divisé en deux parties : un *être générique/citoyen* abstrait dans sa vie sociale et un *monade/bourgeois* dans sa vie individuelle. Cependant pour Marx, la caractéristique la plus importante de l'activité humaine est de façonner la nature à travers l'utilisation d'institutions sociales. Cette caractéristique fournit un but à l'action de l'homme, de sorte qu'homme et institutions constituent un tout : « *l'homme n'est pas un être abstrait, extérieur au monde réel. L'homme, c'est le monde de l'homme, l'Etat, la société.* » (Marx, 1970, p.131). Dans cette perspective, l'homme en tant qu'individu ne peut pas être isolé du reste de la société dans laquelle il évolue. Le

monde social est le lieu où l'homme développe ses propres capacités à s'accomplir en tant qu'être générique. L'homme transcende librement les nécessités d'ordre physique et découvre de nouveaux besoins et de nouveaux désirs. Cela constitue pour Marx la différence essentielle entre les animaux et les hommes.

En effet, l'état politique, dans lequel les potentialités humaines de l'homme sont oppressés par un ordre inhumain sur lequel il n'a pas de prise, dans lequel ses véritables besoins et nécessités sont déterminés indépendamment de ses propres jugements, et enfin dans lequel sa vie humaine et son existence sont ignorés, est un système dans lequel l'homme ne peut pas devenir un être social autonome. Dans ce contexte, Marx suggère indirectement une approche transcendantale au sens kantien au problème des conditions de possibilité pour qu'un homme s'accomplisse en tant qu'être générique. Dans cette perspective, nous arguons que l'idée d'émancipation humaine partage le même fondement que l'idée kantienne de l'usage public de la raison car, d'une part, Marx anticipe dans sa théorie un processus du progrès humain qui est similaire – dans la manière dont ce progrès prend forme – au processus par lequel l'homme devient mûr au sens kantien, et d'autre part, Marx conceptualise la vie générique de l'homme de la même manière que Kant pense l'idée de l'homme « mature » des Lumières.

J'affirme ainsi que l'idée de droits de l'Homme soutient indirectement le *bourgeois* dans sa poursuite du bonheur car les *soucis privés* constituent un passage inévitable vers la *majorité*. Dans la mesure où l'autonomie requiert nécessairement une émancipation vis-à-vis des influences externes, l'usage public de la raison suppose, comme une de ses conditions de possibilité, la capacité de faire partie de l'activité économique au sein d'une société civile dans le but d'arriver à la réalisation de soi. En ce sens, le choix rationnel est transformé en choix raisonnable sous la régulation de principes guidés par les droits de l'Homme, en vue d'assurer la liberté de l'usage public de la raison. C'est ici que les droits de l'Homme sont liés avec l'économie, car ces droits sont considérés comme une condition nécessaire minimale afin de faire un usage public de la raison.

Dans le quatrième chapitre, nous poursuivons cette recherche à l'aide d'une analyse approfondie des droits de l'Homme et de la justice sociale au regard de l'approche par les capabilités. L'enjeu est ici de reconsidérer le concept de capabilités dans le cadre de l'usage public de la raison, et ainsi de mettre au jour la relation, indirecte mais capitale, entre les domaines des droits de l'Homme et de l'économie, à travers les idées de

capabilité et de liberté. L'approche par les capacités dans sa forme actuelle a été développée par Amartya Sen et Martha Nussbaum, et a influencé un large éventail de domaines de recherche. Bien que son usage soit principalement relatif à des études de type technique ou appliqué, la discussion de cette approche a toujours majoritairement concerné ses aspects philosophiques. Le concept de capacités est essentiellement fondé sur la question des aptitudes des personnes en termes de « faire » et d'« être » (« *doings* » et « *beings* »), plutôt que sur celle de la réalisation des désirs ou de l'intérêt personnel dans la recherche du bonheur ; ou bien, en termes économiques, sur des questions de revenus, de dépenses ou de consommation. En résumé, l'argument de l'approche par les capacités se concentre sur les droits fournis aux individus pour leur permettre de poursuivre et de réaliser leurs propres buts, ceux qu'ils ont raison de valoriser, afin de dépasser la seule considération de la maximisation de l'utilité. Dans ce contexte, certains aspects de l'approche par les capacités peuvent être envisagés à partir des fondements de l'idée d'usage public de la raison (cf. Nussbaum, 1988 ; 2003, et Sen 1993 ; 1999).

La notion de capacité a été employée de diverses manières à l'intérieur même du cadre général de l'approche par les capacités. En effet, Amartya Sen l'utilise au singulier, suggérant qu'il n'existerait qu'un seul ensemble de capacités pour chaque individu. Cet unique ensemble de capacités inclut la combinaison de divers fonctionnements qui peuvent être envisagés aussi bien en tant que simples potentialités qu'en tant que « faire » ou « être » achevés. En revanche, Martha Nussbaum emploie le terme de capacité au pluriel, considérant ces fonctionnements potentiels comme des *capacités*. Employé en ce sens, les capacités sont alors classées dans une liste arrêtée selon un ordre spécifique qui détermine et délimite la liberté globale de l'individu. Ainsi, alors que ces deux versions présentent un aspect normatif très proche, dans la mesure où elles sont fondées sur les mêmes principes de base, elles proposent néanmoins chacune des conceptions distinctes de l'approche par les capacités et diffèrent sur le plan des enjeux, en tant que ceux-ci reposent sur des fondements philosophiques différents. Une distinction majeure entre les deux théories concerne la question d'établir une liste des capacités, qui implique par ailleurs de nouvelles divergences, notamment concernant les capacités « de base » ainsi que les droits de l'Homme.

En effet, aucune liste exhaustive et arrêtée des capacités n'est proposée dans le cadre

général de l'approche senienne. Sen insiste plutôt sur la difficulté même d'établir une telle liste, dans la mesure où une « liste figée de capacités » (Sen, 2004a, p. 78 ; Voir aussi Sen, 2005) ne serait pas en mesure de respecter les exigences du raisonnement public et de l'élaboration des valeurs sociales. Il ajoute par ailleurs qu'il serait difficilement possible de déterminer le poids et l'importance relatifs des différentes capacités afin de les classer selon un ordre lexical. En ce sens, établir une liste de capacités ne permettrait pas d'envisager suffisamment les divers enjeux relatifs à différentes époques. Par exemple, il est possible de sélectionner un ensemble de « capacités très élémentaires pour l'évaluation d'un seuil de pauvreté dans certains pays » (Sen, 2004a, p. 79) ; néanmoins, une liste plus étoffée pourrait être requise en vue d'autres enjeux. En revanche, Martha Nussbaum remarque que tout type de structure institutionnelle liée à la justice devrait être évalué selon le degré de liberté fourni par un certain ensemble de capacités qu'elle définit comme la possibilité d'intégrer les « éléments centraux des fonctionnements véritablement humains ». Selon elle, de tels droits émanent directement de l'idée de « valeur ou dignité humaine » (Nussbaum, 2000b, pp. 73-74). De cette manière, Nussbaum propose une longue liste de « capacités centrales » (la vie, la santé du corps, l'intégrité du corps, les sens, l'imagination et la pensée, les émotions, la raison pratique, l'affiliation, les autres espèces et le jeu). Notre propos n'est cependant pas de savoir si une telle liste est nécessaire ou non, mais d'envisager la possibilité d'intégrer l'usage public de la raison en tant que capacité centrale dans le cadre général de l'approche par les capacités. Ainsi, notre questionnement concerne davantage l'usage public de la raison comme capacité et les libertés qu'elle implique.

Par ailleurs, de nombreuses études montrent la relation qui existe entre l'approche par les capacités et la théorie de justice rawlsienne. Cependant, nous considérons que l'idée de capacité est davantage pertinente dans le cadre du libéralisme politique de Rawls, notamment dans la prise en considération de la liste mise à jour de « capacités centrales »¹ de Nussbaum et de sa relation avec les conceptions politiques de la justice. En dépit du « large flou » concernant ses origines, il nous apparaît que le projet « politique » de Nussbaum peut davantage être perçu comme un pont entre les idées de droits de l'Homme et de pensée économique. L'enjeu est donc d'analyser la version de l'approche par les capacités telle que Nussbaum la développe, ainsi que son tournant

1 La liste des capacités centrales a été révisée ; cf. la dernière version dans Nussbaum, 2007, pp. 76-78.

vers le libéralisme politique.

Ce chapitre se propose également d'établir une relation entre l'approche par les capacités et le libéralisme politique de Rawls. Par ailleurs, dans la mesure où les chapitres précédents sont dédiés au développement d'une conception alternative de l'usage public de la raison, nous nous efforçons ici de mettre en évidence de manière plus concrète et précise, la relation entre les droits de l'Homme et l'économie. Pour ce faire, j'insiste sur les origines des « tournants politiques » parmi lesquels Rawls occupe une position particulière, notamment au regard de l'influence de Hegel sur sa pensée politique. Pour autant, ce chapitre ne vise point à une quelconque exploration de la philosophie politique hégélienne. Il est davantage question de mettre au jour la présence d'idées hégéliennes dans les concepts de raison publique et de raisonabilité (« reasonableness ») tels que développés par Rawls. En gardant cette influence à l'esprit, il apparaît alors qu'une large part de ce qui est estimé peu pertinent pour l'économie prend finalement sens. Notre intention est donc de montrer que l'idée d'usage public de la raison permet une approche alternative de la question des droits de l'Homme en reconsidérant son application à des problèmes économiques qui restent sans réponse.

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ABBREVIATIONS

- (DRD) Declaration on the Right to Development, 1986
- (DRM) Declaration of the Rights of Man and the Citizen, 1789
- (ICCPR) International Covenant of Civil and Political Rights, 1966
- (ICESCR) International Covenant of Economic, Social, and Cultural Rights, 1966
- (IConfHR) Final Act of the International Conference on Human Rights, Teheran, 1968
- (UDHR) Universal Declaration of Human Rights, 1948
- (VD) Vienna Declaration and Programme of Action, 1993
- (VDR) Virginia Declaration of Rights, 1776

INTRODUCTION

The idea of *rights of man* or human rights has been central to various controversial debates since the 19th century and this idea today becomes one of the focal point of multi-disciplinary research. The question of human rights, violations of such rights, abuses and coercion has usually been considered as a legal issue even though there are some other concerns within the domain of economics. Indeed, there is no significant connection made between such economical concerns and human rights beyond some particular issues such as property rights or right to development. On the other hand, there has been also a theoretical confusion within economics on the question of *what human rights is* and *what are these rights for*. Therefore, the idea of human rights today, as well as the link between such rights and economics, remains partly an unexplored question and it is thus necessary to show how we can establish this link. The purpose of this dissertation is to present one possible path, the one that can be followed through the idea of *public use of reason*.

Before examining this question, it is necessary to mention two preliminary facts: First, the scope of research on human rights is large, and the literature written on this idea is immense and constantly growing; and second, that the critique which I will make is based on some philosophical foundations of the idea of human rights which might at first seem inconsistent with the recent debates on economics. Thus, in my dissertation I follow a narrower examination of those broad ideas and theories. However, I will inevitably support my assertions with recent literature as there were many attempts to deal with the theoretical confusion. Therefore, this dissertation does not attempt at analyzing the questions of grand theories, or else, the whole body of work of particular authors. The methodology that I follow will consist of text analysis concerning particular ideas and discussions which are highly related to the problematic that I am working on.

In fact, there has been a philosophical trend that is driven by a well-known approach in normative philosophy influenced by the publication of John Rawls's works. More and more theorists found that the more debates were pursued on the issues related to social justice, human rights and political economy, the more they are led back to the analysis

of similar issues by Kant and Hegel (e.g. Onora O'Neill, Allen Wood, Charles Taylor, Paul Guyer, Robert Pippin etc.). Here, I hardly suggest a different way while trying to shed light on a possible connection between the idea of human rights and economics. My intention is to formulate my question within the framework first provided within the Enlightenment era, especially in Kantian and partly Hegelian discussions, particularly in their discussions of autonomy, self-determination and civil society.

The notion of human rights has been generally considered as *individual rights* in the context of economics although there is a great opportunity for an extensive research in economics where human rights can be purposeful. Because of the fact that there is an ambiguity regarding human rights debate in economics, I will also attempt at following the traces of the idea of human rights within the history of economic thought by trying to get over the arbitrariness of different human rights considerations. It is obvious that so called *rights of man*, and some particular approaches in economics as well, are raised on the ideas that emerged through a certain period in history; namely the Enlightenment era. The Enlightenment is a period of particular political and philosophical attitude including a distinct understanding of the *individual* and *civil society* as a key element of the liberties that is particularly based on the notions of *autonomy* and *use of reason*. My main concern here is a particular approach within the Enlightenment debate; the essential requirement, of becoming mature, of “the emergence from our self-imposed immaturity” (Kant, 1784) by using our own reason. Hence, the initial inquiry which guides the entire dissertation will focus on a certain part of Kant’s answer to the question of *What is Enlightenment?*. In this context, I keep my concern on a particular use of reason in order to provide a clear pathway for my dissertation; that is *public use of reason*. The idea of human rights analyzed in this dissertation has much in common with the analyze of the conception of *public use of reason* together with the notions of author (*Gelehrter*) and reading public (*Publikum der Leserwelt*). What I want to underline here is that the idea of human rights is fundamentally associated with the idea of public use of reason. In this sense, I set forth the idea that human rights consist of a particular set of norms that address the conditions of possibility to use one’s reason publicly. The motive for drawing such a connection suggests that, in certain respects, human rights is not just a matter of legitimacy or normative philosophy but, in some sense, of economic theory.

Therefore, at the core of my examination stands an argument based on the idea of public use of reason referring to particular texts of Kant, Hegel, Adam Smith, Bentham, Marx, John Rawls, Amartya Sen and Martha Nussbaum which shall lead to a *reconciliation* between human rights and economics. I consider that such a *mediation* can overcome the shortcomings of the two preliminary facts that I previously mentioned. Yet, the idea of public use of reason, I suggest, turns out to be the most critical idea once the conception of *civil society* is taken into account. I argue that the relevance of the idea of human rights for economics is obvious especially when we think of the role of *free markets*. This argument, so my claim goes, expands the limits of the central understanding of human rights as legal rights. Thus, the idea of human rights represents a unique discourse that inevitably transcends the domain of legitimacy.

However, such a specific philosophical justification of human rights still stays on the short side when we need to make an examination within the context of economics. Hence, my intention is to limit the scope of my examination to a narrower political framework in order to better articulate the idea of human rights with economics. To do so, I make a link through the Rawlsian idea of *public reason* presented in the *Political Liberalism*, that is deeply inspired by the Kantian idea of *public use of reason*. Rawls's purpose in the *Political Liberalism* is to set forth the conditions of *reasonable* social cooperation in a well ordered society among free and equal citizens; in other words, reasonable moral or political inequality among citizens depending on an overlapping consensus which is assured and maintained by *public reasoning*. Following this line of reasoning, the conception of *reasonableness* forms the core argument of the idea of *public reason*. The purpose in proposing such an argument is to achieve a possible reconciliation among the diverse range of ideas through a reflective equilibrium, that is, to find a political ground for an overlapping consensus and to maintain stability. In this sense, the way in which Rawls deals with the question of *reasonableness* towards the justification of the idea of public reason provides a peculiar approach in my examination of human rights in the context of economics and thence transforms the question from having a wide philosophical content into a political one. Once the idea of *public use of reason*—and human rights—is examined this way, the issue of freedom and autonomy becomes indirectly subjected to the determination of economic circumstances. In this sense, I also make an examination of Adam Smith's *impartial*

spectator together with *the man within breast*. My purpose here is to show the essential similarities in the conceptions of public reasoning and the man within breast. I argue that these similarities can also be understood by referring to the economic thought.

In fact, the concept of inalienable and indivisible rights and liberties had been widely known after the so called universal declarations and there are quite significant arguments within the history of economic thought related to the idea of rights of man. This drives me to further my analysis through the critiques of rights of man in economic thought. In this perspective, I focus particularly on the Benthamian critiques of rights of man and on the conceptions of *emancipation* and *species-being* presented in related works of Marx. My intention here is to articulate the alternative reading of human rights made on the basis of idea of public use of reason with political economy analysis in order to present the conditions of a possible reconciliation.

It has also been a long established tradition to handle this matter together with the question of justice; particularly *social justice*. More difficult questions arise when we consider the relationship of social justice with key elements of basic rights and public reasoning. My purpose is to conclude my research with an analysis of the concept of capabilities by providing an additional dimension to the argument on the shortcomings of the *capability approach* concerning “the fairness or equity of the processes involved or about the freedom of citizens to invoke and utilize procedures that are equitable” (Sen, 2004b, p.336). My analyze particularly includes Martha Nussbaum’s critical scrutinies which directly relate to the idea of human rights.

Organization of the thesis

The following chapters attempt at elucidating the connection between human rights and economics by following the idea of public use of reason.

Chapter One sketch out the broad philosophical background of the idea of public use of reason by focusing on Kantian philosophy, particularly the conceptions of autonomy, freedom and categorical imperatives. My aim in this chapter is to point out the overlapping backgrounds of the idea of human rights with the idea of public use of reason. To do so, I outline the contemporary human rights debate and explore a

narrower consideration of basic and inalienable rights on the basis of public use of reason. As a matter of fact, some of the criticisms concerning human rights will not be taken into account in the first place. For instance in some views, it is asserted that any list of human rights are historically specific and contingent and they are required to protect human dignity under certain conditions which significantly belongs to western societies. In this context, conceptions of human rights change because conceptions of human dignity, threats to human dignity, all change (See Donnelly, 2013). In some views, the idea of human rights is simply rejected because human rights is specified as an ontological error (See Macintyre, 1981). Some theorists have claimed that such rights are not inalienable because of the fact that the absence of institutional guarantee of an authority or the lack of *de jure* recognition leave such rights vulnerable to violations. The idea of human rights is thus a “hopeless idealism” or “feeble-minded hypocrisy” (See Arendt, 1973; Hart, 1983). This dissertation does not intend to take part such a controversial debate. Rather, I focus on a particular form of human rights; an alternative reading of human potentialities in terms of using reason publicly.

The point I am dealing with here involves a “public” in which members are critical to the extent that they can write as an author (*Gelehrter*) and can autonomously comprehend what they read (*Publikum der Leserwelt*). This understanding of *public* unveils the possibility of an institution that is united by the equal individuals those have capability to use their reason in this particular way. In this perspective, the distinction that Kant made between private and public uses of reason plays an important role with regard to what is then called *civil society*. Yet, the core of the Kantian understanding of autonomy is derived from the conception of the freedom of rational beings on the basis of using reason publicly. Each rational being has capacity to use their reason which leads to autonomy; hence, each rational being has dignity. Therefore, the question of dignity, that has also been one of the main justifications for human rights claims, is formulated as a part of the conception of public use of reason. It is obvious that what Kant calls *dignity* is a potentiality peculiar to human being rather than being a natural fact.

Formulation of the question of using reason publicly shares the same grounds with *categorical imperatives* that Kant later discussed in the *Groundwork* (Kant, 2002) in

which he aims to set forth the fundamental principle of morality. Since human beings exist as an end in itself, they are members of the *realm (kingdom) of ends* together with *the realm (kingdom) of nature*, in which the former is the realm where human being is subjected to necessity of reason. Then, my claim is that public use of reason becomes a matter of reconciliation between the realm of ends and the realm of nature; a matter of political life. In this sense, the conception of rationality in economics appears to be a part of the realm of nature where necessity is based upon self-interest in which one's main motivation originated by the extent of desires, inclinations or self-love. Such an approach is stimulated by a variety of "value-free" economic theories. However, we can find a suitable background to serve the core idea of rationality in economics within one moral scheme of autonomy that can also bring us again to the idea of public use of reason. To do so, the Kantian idea of perfect and imperfect duties together with the idea of prudential reasoning can be taken as a suitable reference to articulate the question of self-interest into the main framework of the idea of public use of reason. While Kantian understanding of *autonomy* does partly include an account of self-interest, the theory in which John Rawls deals with such a rationality question leads the discussion into a more specific political framework.

Chapter Two presents a reconstruction of the initial examination of Kantian idea of public use of reason through a narrower political dimension. I will analyze Rawlsian reformulation of the Kantian question in which the concept is transformed into the *public reason* together with an examination of Rawls's political turn and the Hegelian influence on the idea of political liberalism. Accordingly, in the Rawlsian formulation, *public reason* requires those citizens who can reasonably be a part of social cooperation by having ability to make decisions using values and standards in the *public* level which others could not "reasonably reject" (Scanlon, 1982, p.116). The idea of public reason represents a particular type of reasoning on the fundamental public issues contrary to *non-public* ways of reasoning which is a part of religious doctrines or comprehensive philosophical views. It is then a duty of civility to justify the decisions on "fundamental political issues by reference only to public values and public standards" (See Wenar, 2008).

While Rawls's grand project in *Theory of Justice* (TJ) initially shares the same basis

with moral and political principles which had been explored by Kant and Rousseau, in *Political Liberalism* (PL), Rawls particularly favors a conception of justice in the context of democratic society marked by a plurality of reasonable views and values. He asserts that the concerns of political liberalism is not the concerns of what he calls Enlightenment liberalism because “political liberalism has not a form only basing on a comprehensive liberal doctrine founded on reason” (Rawls, 1996, p.xxxvii). That is to say, he tends to recover the practical “instabilities” of his former theory by re-forming it without grounding on comprehensive doctrines, but relying on the ideas that “are present in the public culture” (Ibid., pp.8-9). Such a political turn in Rawls’ thought is actually based on a political reconsideration of the idea of public use of reason, that is, within the sole political context to resolve the perplexities in the Kantian approach. Therefore, through the whole story from *TJ* to his *Lectures* (Rawls, 2000), I argue that we should also consider the Hegelian influence, at least as much as Kantian influence, especially when we examine Rawls’s turn in terms of his views on the political relationship of citizens within social institutions. Such institutions , in a way, form our social world in Hegelian fashion (Gledhill, 2011, p.10).

The practical aim in the PL is much more centered on the use of political tools to manage unreasonable comprehensive views within a reasonable pluralism to avoid a controversy over fundamental matters. The main difference of political liberalism with various comprehensive liberalisms, as well as all other comprehensive views, is the political context that is very narrow in scope. It covers only a limited public domain which consists of persons as free and equal citizens so that his idea is not considered to be ethical but political. The basis of the distinction between the *political* and *ethical* or between a political conception of justice and various comprehensive doctrines within society leads Rawls to make a clarification on the fundamental distinction between the public and non-public within the context of his idea of public reason.

In this context, Rawls employs a strategy based on the division of rational and reasonable, in which the initial idea roots back to the *TJ* (Rawls, 1971, pp.123-125), in order to form his political conception of justice in the framework of fair terms of social cooperation. *Rationality* refers to a person who chooses a higher satisfaction level than lower options. As a matter of fact, *rational views* alone are unable to have an essential

political role in forming a well-ordered society on the basis of an overlapping consensus. An agreement on principles of justice must appeal also to what Rawls calls the *reasonable*. Therefore, *reasonableness* is a matter of managing relationship of persons with each other in which all parties have their own specific purposes. In this sense the “practical aim” of providing a public basis to the PL is to reconcile the diverse range of ideas through a reflective equilibrium, thus, to find a political ground for an overlapping consensus and to maintain stability. To achieve such a reconciliation, public reason has to be remained *impartial* because of the “practical impossibility of reaching reasonable and workable political agreement in judgment on the truth of comprehensive doctrines” (Rawls, 1996., p.63). Indeed, the *impartiality* is also one of the significant conception in political economy especially when we consider Adam Smith’s works of the *Theory of Moral Sentiments* (TMS) and the *Wealth of Nations* (WN). As we can consider that Rawls gives relatively very few references to Adam Smith, it is clear that the ideas proposed in the TMS and the WN had strongly influenced Rawlsian idea of public reason within his grand project of justice and political liberalism. This is what I shall elaborate later in this chapter.

Rawls places his idea of public reason just in the center of the process of forming the political principles of fair cooperation. This process implies also the existence of a *reading public* as in its Kantian definition. The basis of a reasonable action of reasonable persons who has a *sense of justice* is justified through a particular understanding of *public*. Yet, the matters here which are expected to be resolved by the use of public reason are only the most fundamental ones, those “matters of constitutional essentials and basic justice” (Ibid., p.224) which all reasonable people can agree on. Reasonable people do not have to accept the very same principles of justice. Thus, the interpretation of the idea of *public use of reason* within the economic context appears to be *reasonable* once the idea is reformed as *public reason*.

Indeed, if we analyze Rawlsian conception of public reason in a pure Kantian way, such a reasoning based on political ideas would not be entirely public, nor reasonable. For Kant, thus, using reason out of any public context is called private use of reason in which freedom is not the main concern. Kant does not deal with a political society, so the idea of public use of reason does not require a particular social or political

formation. It applies to any *enlightened* society through the universal dimension of categorical imperatives. On the other hand, Rawlsian conception of *public reason* leads to a social cooperation among citizens who endorse different fundamental values; or different ways of pursuing *happiness*. Such a *pluralism* in values and conditions leads to an abstraction of citizens who make their decisions due to their self interests. In this sense, citizens in a *well ordered democratic society* are inevitably going to have their own considerations of good or *utility*. Indeed, this is the fact of *pluralism* in the Rawlsian conception of social cooperation. Thus, the idea of *public reason* provides a theoretical framework featuring a combination of individual progress in terms of private concerns, and social justice in terms of public concerns in corporation with an ethical aspect. Therefore, Rawls here stands in between of the two *realms* of Kantian ethics by mediating the *kingdom of nature* and the *kingdom of ends*. In this context, the conception of public reason exceeds particularly the limited sense of autonomy that we see in Kantian idea of public use of reason. However, it is obvious that the idea of public reason involves very little in a broad conception of “individual” whereas a (narrower) political conception of the individual, a similar understanding as we see in Kant’s *Gelehrter*, has an essential function in the construction of the idea.

Although there has been plenty of studies on the notion of *impartiality* in economic thought, it seems to me that the majority of the attention has been given to the *public reason* (previously to the *original position/veil of ignorance*) of Rawls and the *impartial spectator*, together with *the man within breast*, of Adam Smith. Both authors are known for placing the *impartiality* at the very center of their theories (particularly in the TMS and the TJ). Yet, there are also quite significant “political turns” through the body of work of these two authors. These facts constitute the basis for what I intend to examine in order to provide an extensive examination on the idea of public use of reason within the context of political economy. Among the two approaches, the first may be considered as a milestone in economic thought –known as *system of natural liberty*– that, roughly, is based on the idea of *self-interest*. We may call it the *commercial society* of Adam Smith which the society would produce more than any other society that easily encourages men *to seek ease of body and peace of mind* (Smith, 1759, p.181). Therefore the system of natural liberty evokes the *society towards real wealth and greatness* (Smith, 1776a. p.70). In such system, every man, as long as he does not violate the laws

of justice, is left free to pursue his own interest in his own way. The second approach; grounds on liberalism within a particular conception of justice, or the idea of overlapping consensus in a pluralist society on the basis of *public reason*, which is known as *political liberalism* of John Rawls. What they have in common is the way they understand the independence of the individual and, in some extent, the way they endorse the idea of *self-love*. Indeed, in both approaches, *self-interest* is grounded on a set of moral principles of what brings individuals closer and what leads to sustain the harmony in society. Thereby, the idea here induces a *virtuous* social organization embedded with individualism, at the same time, in collaboration with benevolence and reciprocity; even though this collaboration seems to be “nonsense” in some views. As we shall see later, the heart of this part of my examination is much more related with the question of which criteria Adam Smith and John Rawls prefer in the context of the possibility of harmony in society enclosed with self-interested parties and how this criteria is to be weighted when they yield conflicts in social compact. In other words, I discuss whether the political understanding of public use of reason in Rawlsian approach can be considered as a derivative of Adam Smith’s *the man with in breast* or not. This, therefore, is one of the central subjects of this section. In fact, since there is still available research scope for finding out more on the question of human rights and economics beyond the *principle of impartiality*, my intention is then to further my inquiry through the discussion in economic thought where the problematic of rights of man is central.

Chapter Three deals with Marx’s early texts, focusing, on the writings regarding the question of rights of man and with Bentham’s so-called text *Anarchical Fallacies*. I start by making a critical review of Bentham’s analysis concerning the idea of human rights as he criticizes human rights on the issues of the “theoretical errors” and “mischiefs”. Then I further my review through the Marxian understanding of *man* and particularly he Marxian idea of *human emancipation*, as Marx, in *On The Jewish Question*, draws a theoretical distinction between *species being* and *monad* as a center argument against the conception of human rights in relation with the concepts of market and civil society. My aim in this chapter is to provide a distinct approach through the arguments of Marx and Bentham on human rights by reconsidering the idea of *public use of reason*.

Jeremy Bentham is widely known for his writings on law, economics, politics and philosophy. Regarding his curious attention on legislation and system of law and government, he decides to build a theory on the principle of utility or *the greatest happiness principle*. On the other hand, in his manuscript called *Anarchical Fallacies* he critically discusses the idea of rights of man in the context of natural rights. Thus, the context of the *Anarchical Fallacies* is much more concerned with a theory of right that is based on the principle of utility. The main argument in the manuscript has a dual purpose; the first one is to make a categorical criticism of the 1789 French Declaration (DRM) and the other one is to provide an alternative theory of rights together with the “greatest happiness” idea whereas the latter is much less mentioned in the manuscript comparing to the former. Nevertheless, it is obvious that Bentham proposes his ideas on the basis of the essentiality of a legal system and government to maximize the greater happiness for the greatest. In this context, actions can only be valuable depending on their *utility*; the good is the maximization of pleasure and the minimization of pain. So, *utility* is formulated as an easy-to-measure device within a more general theory of happiness. Following this line of reasoning, the duty of the government is to maintain *the greatest happiness of the greatest number*.

For Bentham, without government there will be no liberty, property or security and hence no rights. He thus refuses the idea of natural rights because of the fact that they are imaginary rights; “from real law come real rights [...] from imaginary laws come imaginary ones” (Bentham, 1843b, p.523). Human rights, for Bentham, are essentially different from real rights produced within a framework of “real” law. It is thus impossible that a legal system of law shall cover such natural duties mentioned in the declaration of rights of man. In this regard, I tend to partly share Bentham’s approach on natural rights concerning the debate of rights of man. Providing an adequate justification for human rights requires, to some extent, a measure which as a matter of fact includes the conceptions such as autonomy, dignity, liberty and equality. Since my reasoning is based the idea of public use of reason apart from the natural rights discourse, the question of human rights that is examined in this dissertation refers to a specific quality or set of qualities which all human beings essentially possess as a potentiality of reasoning. Therefore I analyze Bentham’s criticisms under two topics; (1) the essential problematic in the relation between rights of man and natural rights and

then (2) his theory on a system of law which is essentially based on the utility principle. My aim in this section is to examine the latter in order to provide a basis for my inquiry on Marxian critique of rights of man in which human rights, within the conception of civil society, are criticized as a part of economic domain in relation with the *utility principle*. My concern in this argument is to follow in the steps of Marx by formulating his idea of *species being*. In other words, I seek to find a reconciliation within the idea of *human emancipation*.

Indeed, Marx suggests a broader context to clarify the issue of human emancipation in relation with civil society in most of his earlier writings. I thus focus on his classification in the concept of emancipation which he initially mentioned in *On The Jewish Question*. To do so, after analyzing the utility principle of Bentham, I further my examination of public use of reason with a review of Marxian *political emancipation* which is considered as a level in the emancipation process realized only within civil society. I suggest that the whole theory of emancipation in his critique of human rights can be considered as a very useful guideline to place the idea of public use of reason into political economy featuring a criticism of the *utility principle*. That is to say, the idea of *species-being*, together with the re-examination of human rights through the idea of public use of reason, can play a key role in a possible reconciliation of human rights and political economy.

In *On The Jewish Question*, although Marx asserts that *political emancipation* causes *alienation* of man, he admits that this level of emancipation is necessary when we consider the background of *human emancipation*. He considers the conception of *alienation*, derived from Feuerbach, as an ambiguous situation in the politically emancipated state in which man is divided into two parts as an abstract *species-being/citoyen* in his socialized life and then a *monad/bourgeois* in his individual life. However, for Marx, the most significant feature of man's activity is shaping the nature through the use of social institutions. This feature provides a purpose to man in his actions and thus man and institutions constitute *the whole* together; "man is no abstract being squatting outside the world. Man is the world of man, the state, society" (Marx, 1970, p.131). In this manner, man as an individual cannot be isolated from the society in which he exists. Social world is the place where man develops his own powers to realize

himself as a species-being. Man freely transcends the necessity of physical needs and discovers new needs and wants. This fact, for Marx, constitutes the essential distinction between animals and humans.

Indeed, political state, where man's human powers are oppressed by inhuman order that man has no control over it, where his real needs and necessities are determined totally independent from his own assessments, and thence where his human life and existence is ignored, is a system in which man is far from being autonomous social being. In this context Marx indirectly suggests a transcendental view in a Kantian sense on the issue of the conditions of the possibility for man to live as a species-being. In this regard, it is my claim that the idea of *human emancipation* appears to share the same background with Kantian idea of public use of reason as (1) Marx draws a course of progress in his theory which appears to be similar –in terms of the *form* of the progress– with the process of *becoming mature* in the Kantian approach and (2) Marx deals with the idea of *species-life* like Kant does with the idea of “mature” man of Enlightenment.

Accordingly, it is my suggestion that the idea of human rights indirectly assures the *bourgeois* in his pursuit of happiness because of the fact that *private concerns* constitute an inevitable part of *becoming mature*. On the other hand, since the conception of autonomy necessarily requires an emancipation from external guidance, public use of reason embodies the capability to be a part of economic activity within civil society in order to achieve self-realization. In this sense, *rational choice* is transformed into *reasonable choice* under the regulation of principles guided by human rights in order to ensure the freedom of public use of reason. This is where human rights is linked with economics since these rights are considered as claims of a minimum set of requirements in order to ensure using reason publicly.

In **Chapter 4**, I further my examination with an extensive analysis of human rights and social justice in the context of the capability approach. My aim is to re-consider capabilities within the framework of public use of reason. Here I demonstrate the indirect but very important relation between the idea of human rights and economics through the capabilities and freedoms. The capability approach in its present form has been pioneered by Amartya Sen (See Sen 1980, 1984, 1985a, 1985b, 1987, 1992, 1993,

1995; Drèze and Sen 2002) and Martha Nussbaum (See Nussbaum 1988, 1992, 1995, 2000, 2002a, 2003a) and it has influenced a broad range of research domains. Although it is widely used in technical or applied studies, the discussion has always been more on the philosophical side. The concept of capability is essentially based on the question of abilities of people in terms of their “doings” and “beings” rather than fulfillment of desires or self interest in the course of happiness; or to the extent of economics,; income, expenditures and consumption. The argument of the capability approach, in brief, is concerned with the question of entitlements provided people to pursue and embrace their own purposes that they have reason to value instead of focusing on the maximization of utility alone. In this context, some aspects of the capability approach can be traced back to where the idea of public use of reason is also rooted (see Nussbaum 1988, 2003b and Sen 1993, 1999).

The notion of *capability* has been used in different manners within the general framework of the capability approach. For instance, Amartya Sen uses this term in its singular form, that is, there is only one capability set (See Sen, 1993a; 1999a; 1999b; 2004a; 2008) available for each individual. This single capability set consists of a combination of various functionings that can be either mere potentialities or actual doings or beings. On the other hand, Martha Nussbaum uses the term in its plural form and considers these potential functionings as *capabilities* (See Nussbaum 1995a; 1997a; 2002; 2005a; 2005b). In such use of the term, capabilities are classified within a list in which individual’s overall freedom bonded to a number of more specific capabilities. While the normative aspects that both versions hold are very closely related as they share the same fundamental principles, they actually present distinct versions of the capability approach and have different purposes in their approaches as they have different philosophical accounts. Nussbaum’s “capabilities” theory distinguishes itself from Sen’s in one crucial point, that is, the “issue” of listing the capabilities which leads to further differences like the “basic” capabilities and then human rights.

Indeed, any comprehensive list of capabilities is available within the general framework of Sen’s approach. Rather, he draws some essential difficulties in making such a list because of the fact that a “cemented list of capabilities” (Sen, 2004a, pp.78; See also Sen, 2005) would not be able to meet the requirements of public reasoning and the

formation of social values, or else, it is hardly possible to determine the relative weights and importance of the different capabilities within a lexical order. In this sense, fixing a list of capabilities would be insufficient to include the various purposes in different times. For example, it is possible to select a list of “very elementary capabilities for assessing the extent of poverty in some countries” (Sen, 2004a, p.79) whereas a thicker list might be needed for other purposes. On the other hand, Martha Nussbaum remarks that any institutional scheme related to justice should be assessed on the basis of the degree provided through a certain set of capabilities which she defines as the ability to engage in “the central elements of truly human functioning”. For her, such entitlements are derived straightforwardly from the idea of “human worth or dignity” (Nussbaum, 2000b, pp.73-74). Accordingly, Nussbaum provides a lengthy list of the “central capabilities” (Life, Bodily Health, Bodily Integrity, Senses, Imagination and Thought, Emotions, Practical Reason, Affiliation, Other Species, Play). My concern here is not the question whether such a list is necessary or not. What interests me is the possible integration of the public use of reason as a central capability into the general framework of capabilities. Hence my question is much more related to the capability of public use of reason and the freedoms which this central capability involves.

There is plenty of research showing the relation between the capability approach and Rawlsian theory of justice. However, it is my claim that the idea of capability is reasonably consistent with Rawlsian political liberalism especially when we consider Nussbaum’s updated list of “central capabilities”² and its relation with political conception of justice. Despite its “thick vague” origins, I believe that Nussbaum’s “political” project can better serve as a bridge between the idea of human rights and economic thought. In this sense, my intention is to deal with Nussbaum’s version of capabilities approach and her turn to political liberalism. In this context, one of my purpose in this chapter is to offer a brief overview of the capability approach and its relation with political liberalism of Rawls. On the other hand, as earlier chapters were devoted to the development of an alternative account of public use of reason, in this chapter I aim at showing a more convincing connection of human rights and economics. To do so, I focus on the origins of “political turns” among which Rawls has a particular

2 The central capabilities list has been revised; see the latest version in Nussbaum, 2007, pp.76-78.

position regarding the influence of Hegel over his political thought. However, this chapter hardly attempts to cover a full critique of Hegel's *philosophy*. Rather, in this chapter I seek the traces of Hegelian ideas within the Rawlsian conceptions of *public reason* and *reasonableness*.

If we keep this influence in mind, then, it seems to me, much of what has always seemed irrelevant to economics begins to make more sense. My hope is that it does at least give some reasons for thinking that the idea of public use of reason gives the human rights discussion a new approach by reconsidering their application to issues in economics that remain unsolved.

CHAPTER 1: REVISITING THE RIGHTS OF MAN

1.1. INTRODUCTION

Human rights have been discussed extensively for a long time in academic literature. When philosophers and researchers in relevant fields deal with human rights, they usually tend to first examine the core idea behind it. Here, I do not suggest any different way in my dissertation. My claim is that the idea of human rights has always been connected to certain ethical theories in which I try to follow one particular approach where philosophy of human rights has great potentiality to contribute to political economy. So this chapter attempts at providing basis for a bridge between two bodies of literature by presenting a philosophical justification for human rights rather than opting for entirely legal justification.

The purpose of this chapter is to cover an extensive examination of human rights in the context of the Kantian idea of *public use of reason*. The starting point of this examination is the analysis of the conception of *becoming mature* discussed in Kant's famous text "What is Enlightenment?" (Kant, 1784). My intention here is to focus on a particular form of human rights through an alternative reading of human potentialities in terms of using reason publicly. That is to say, the point I am interested in involves a *public* in which members are critical to the extent that they can write as an author (*Gelehrter*) and can comprehend what they read (*reading public/Publikum der Leserwelt*). Such an understanding of *public* requires a society which consists of equal individuals who have capability to use their reason in a particular way. Since this view of public reason that I examine is developed by Immanuel Kant, I try to make an analysis toward a further understanding of the relationship between Kantian philosophy and the idea of human rights. Therefore, the idea of human rights to be analyzed in this chapter has much in common with the analysis of the conceptions and ideas that are proposed within the general framework of Kantian philosophy. Yet, this chapter will also include an extensive overview of human rights in the context of the declarations

and relevant texts.

This chapter is set up as follows. In Section 2, I outline a short review of the idea of human rights by focusing particularly on the “universal” declarations, treaties and definitions. In this way, I expect to provide a brief sketch of the discussion on human rights which is relevant to my main line of research. I also give some attention to the objections which have been raised within contemporary human rights debate. The overview of such controversies sets the stage for my argument on the relation between the idea of public use of reason and human rights in further sections of this chapter. In Section 3, I make an analysis of the idea of public use of reason and its relation with the Enlightenment. There, I discuss how Kant had introduced his view of public use of reason and in particular how he defined the relation between *Gelehrter* and *Publikum*. I also present the publicity condition that is suggested within the general framework of the idea of the public use of reason. Then, Section 4 aims at demonstrating the particular place of the idea of public use of reason in the Kantian philosophy. In this section I argue that the moral underpinnings of the idea behind public reasoning is provided through the framework of categorical imperatives and prudential reasoning. In what follows, I show the conditions of possibility of using reason publicly for self-interested parties those who are already members of the civil society. Finally in the last section, I analyze Kant’s views of human rights in the context of his understanding of the right (*Recht*) and the lawful state (*Rechtsstaat*). Then I set out the relevant aspects of Rawlsian political liberalism, in particular his idea of public reason.

1.2. THEORY AND PRACTICE OF HUMAN RIGHTS

1.2.1. Human Rights as an Idea

The rights of man, what we call today human rights, had become prominent after early texts and declarations of human rights such as 1776 Virginia Declaration of Rights (VDR) and 1789 Declaration of the Rights of Man and the Citizen (DRM) (which I call *former declarations*) and it has substantially been known after 1948 Universal Declaration of Human Rights (UDHR) and 1966 International Covenants of Civil and

Political Rights (ICCPR) and Economic, Social, and Cultural Rights (ICESCR) and 1993 Vienna Declaration and Programme of Action (VD) (which I call *latter declarations*). However, there is an evident difference between basic structures of former and latter declarations. While the ideas of *natural rights* and *social contract* constitute the fundamentals of the former declarations, the latter declarations is based on the idea of use of reason itself. Since the idea of *self-evident* rights defended in the former declarations is something certainly different than what I am trying to point out, I tend to keep them separate in my examination. The *inalienability* of these rights is directly justified by the consideration of rights as natural endowments. I will discuss further the question of natural rights in the third chapter where I analyze Jeremy Bentham's criticism of the rights of man.

Nevertheless, I take both former and latter declarations into account in a limited sense as there are some common points that they share. Those rights refer to the most central feature of human persons that they are "born and remain free and equal in rights" (DRM, Article 1). Since they are all free and equal members of the society, "they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety" (VDR, Article 1). These are the claims for a certain living condition that is justified through some distinct qualities that all human beings have and the exercise of such rights can only be limited if these limits are "determined by law" (DRM, Article 4). Indeed, this is the point of origin of the idea of human rights where all humans are considered as "beings" those who have ability to use their own understanding, or use their reason, so that they should live in a free and equal society directed by rule of law as free and equal members. In this sense, even the former declarations share the core idea of human rights with the universal declaration through the conception of "use of reason".

On the other hand, there has been a large number of agreements, covenants and legal documents which are also based on the principles set forth by the idea of human rights.

Thus, analyzing the nature of such documents related to human rights would also help us to clarify the question of what human rights are. In his comprehensive work on human rights, Elliott (see Elliott, 2011) introduces an extensive coding of 779 human rights instruments from 1863 to 2003 concerning the formal institutionalization of human rights which includes the number of drafted human rights instruments, most significant kind of violations and increase in the number of particular rights over time. Figure 1 and Figure 2 display both yearly and cumulative number of human rights instruments and declarations which were drafted and opened for signature from 1863 to 2003. Due to this research, international human rights instruments remarkably increase just after the second half of the 19th century. Between 1863 and 2003, 85% of all recognized instruments were drafted from the 1940s onward which indicates the fact that human rights can be considered as relatively recent historical phenomenon.

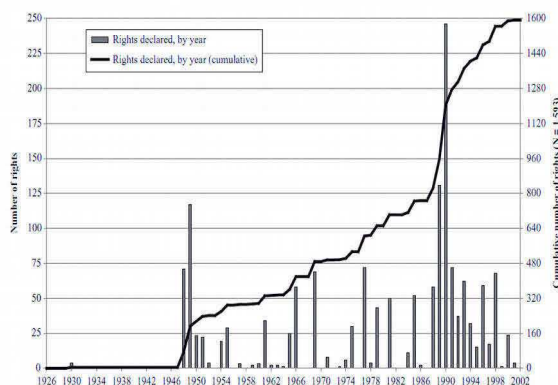


Figure 2. Rights, freedoms, and entitlements declared over time (Core List) 1926-2002

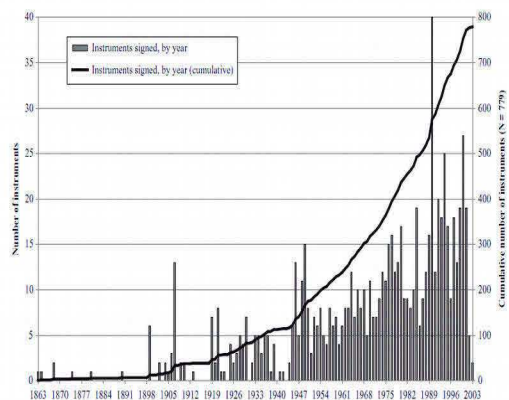


Figure 1. International human rights instruments signed over time (Master List) 1863-2003

Table II displays the essential ideas or virtues that provide the basis for the provisions of human rights instruments. This table shows us that human rights instruments are mostly based on moral conceptions such as dignity, freedom, equality or fairness. Yet, we see another significant increase in human rights instruments just after the UDHR. Indeed, the UDHR offers plenty of refined propositions that mostly derived from former texts related to human rights. However, the UDHR also presents a significant change in the

tradition of human rights; it is no more an “independence” or “citizenship” act as its premises. Rather, it is a mature text on the essence of human rights where ethical considerations are particularly concerned. The UDHR also leads to the adoption of subsequent covenants like the ICCPR and the ICESCR in 1966 (which were enforced in 1976). Through these instruments, the idea of human rights has become more influential in the global arena.

It is again claimed in the UDHR that all human beings are “born free and equal in

TABLE II. Ultimate virtues and aspirations

<i>Virtue/Aspiration</i>	<i>Frequency of mention</i>	<i>Percent of all mentions</i>	<i>Percent of all instruments (N = 145)</i>
Equality/Non-Discrimination	52	24.9	35.9
Multilateralism/State Cooperation	39	18.7	26.9
Human Dignity and Diversity (respect for)	28	13.4	19.3
Peace/Solidarity/Tolerance	24	11.5	16.6
Fairness/Justice/Equity	19	9.1	13.1
Freedom/Liberty/Independence	11	5.3	7.6
Sovereignty/Non-Interference	8	3.8	5.5
Rule of Law/International Instruments (respect for)	8	3.8	5.5
Democracy/Pluralism/Non-Partisanship	7	3.4	4.8
Environ. Preservation/Sustainable Development	6	2.9	4.1
Development/Economic Growth and Efficiency	4	1.9	2.8
Moral Well Being/Religiosity	2	1.0	1.4
Transparency/Accountability	1	0.5	0.7
Totals	209	100	>100 ¹

¹ Percentages exceed 100 because the categories are not mutually exclusive; each document can specify more than one virtue or aspiration. dignity and rights” because they are “endowed with reason and conscience” (UDHR, Article 1).

All human beings thus have “the right to life, liberty and security of person” (UDHR, Article 3) and everyone has responsibility to act within confines of law “for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (UDHR, Article 29-2) Furthermore, it is particularly expressed that everyone, as human being, has potentialities to develop their own personalities in accord with their personal purposes and plans of life. Since “dignity and the free development of his personality” (UDHR, Article 22) is the main concern, it is essential to maintain a

fair standard of living in the framework of economic, social and cultural rights. Finally, “everyone has duties to the community in which alone the free and full development of his personality is possible” (UDHR, Article 29-1). Such a duty refers to acting as free (and *mature*) members in society.

In this context, a right is considered as a human right when it is covered by some set of permissions, entitlements, and prohibitions which are directly connected to the condition of being human. For example in the ICCPR it is stated that “these rights derive from the inherent dignity of the human person” (ICCPR, Preamble) while in the Vienna Declaration it is stated that “all human rights derive from the dignity and worth inherent in the human person” (VD, Preamble). A person is entitled to these rights whatever his/her ethnicity, nationality, personal characteristics, political tendency, belief or feelings are. Such rights have priority over all other rights and they can be taken to describe a more general political framework. This is why the idea behind human rights has also a central role in making constitutions, international agreements or covenants. In this manner human rights serves both tasks of protecting and empowering individuals to live their own worthwhile lives. They are recognized as “a common standard of achievement for all peoples and all nations” (UDHR, Preamble) because “human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments” (VD, Section I, Article 1)

The most important aspect of the idea of human rights is its explanation of why such rights are fundamental since they refer to a particular quality or set of qualities which all human beings essentially have as a potentiality, that is, “all human rights will come under one or the other of these three overarching headings: autonomy, welfare (minimal provision), and liberty. And those three can be seen as constituting a trio of the highest-level human rights” (Griffin, 2008, p.149). Indeed, the main rationale behind the idea of human rights in the context of human rights documents is based on the conception of *autonomy* and it, in its philosophical sense, refers to a particular property, among others, which distinguishes human being from all other beings. Following this line of

reasoning, human beings —unlike other beings—, “do not have a nature that is determined in advance; they are self-creators” (Ibid., p.31). Such a “self-creation” is the process itself that is guided by *reason*. My claim is that when we deal with *reason* in the context of human rights, we will naturally follow the Kantian explanation of public use of reason.

1.2.2. Disagreements and Objections

The idea of human rights discussed in this chapter has also been a part of a controversial debate on fundamental questions. For example it is claimed in some views within the discussion of human rights that any list of human rights is historically specific. This is because they claim to protect human dignity under certain conditions which are actually relevant to western societies. In this view, conceptions of human rights change “because conceptions of human dignity, of the subjects of human rights, and of the threats to human dignity, all change” (Donnelly, 2013, pp.17, 26-27). It is difficult to assert one strong foundation for human rights as there are multiple, or inconsistent, foundations; “but those justifications appeal to ‘foundations’ that are ultimately a matter of agreement or assumption rather than proof” (Ibid., pp.20-21).

In some critics, the idea of human rights is simply rejected because of the claim that human rights have ontological errors within themselves:

“The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there *are* such rights has failed.” (Macintyre, 1981, p.69)

It is also argued that the protection of those rights are necessarily related to a legal recognition by a government or institution. In other words, the question is whether human rights are legal rights or not. Because human rights are defined as inalienable/innate rights, however, lack of any guarantees –lack of *de jure* recognition– that presumably provided by a government or institution makes such rights vulnerable to alienations. In this context, Hanna Arendt criticized the very idea of human rights as a

“hopeless idealism” or “feeble-minded hypocrisy” (Arendt, 1973, p.269). Such an inconsistency in human rights, in her view, can only be resolved by the recognition of the most basic right of all; the “right to have rights”. Because “loss of national rights was identical with the loss of human rights” (Ibid., p.292). Arendt’s idea of *right to have right* is an attempt to re-frame human rights through a practical-political perspective by simply transforming them from moral rights into positive rights. Having such political freedom maintains a realm in which people can be recognized as equals in the political deliberation which is achieved through practice: “We are not born equal, we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights” (Ibid., p.301). The deprivation of human rights is thus senseless if the legal recognition (or right to have rights) is not achieved. A similar argument is also made by H. L. A. Hart. In his view, the idea of right without legal recognition is nonsensical and liberty can be secured only by establishment of real rights through a legal system:

"There are no rights anterior to law and no rights contrary to law, so though it may express a speaker’s feelings, wishes, or prejudices, the doctrine of natural rights cannot serve, as utilitarianism can, as an objective limit rationally discernable and discussable on what laws may properly do or require. Men speak of their natural rights, said Bentham, when they wish to get their way without having to argue for it.” (Hart, 1983, p.186)

It is not easy to provide detailed explanations to such “perplexities” of human rights. Yet, such an attempt would exceed the limits of this dissertation. I will thus try to eliminate that sort of conceptual confusions by placing the Kantian idea of public use of reason into the very center of my examination. My intention in doing this is to avoid providing an explanation to broad meaning of *dignity*.

1.3. KANT’S IDEA OF PUBLIC USE OF REASON AND BEYOND

1.3.1. The Enlightenment and Use of Reason

The conceptions of *use of reason* and *understanding* have long been in discussion since the beginning of ancient philosophy. However, this discussion played a particular role in the Enlightenment in which the social transformation of society started through the

ideas of individual progress and –particularly– use of reason, that is, “exercising the reason in all matters” (Descartes, 1909–14, Part II). Indeed the Enlightenment is significantly known by its particular concern with *reason* together with a new consideration of *civil society* and *state*. Thus, the idea behind human rights, and economics as well, is strongly connected to the Enlightenment. In other words, the questions that we are dealing today with human rights and economics are somehow fruits of the ideas originating from the Enlightenment era. In this sense, concerning the idea of human rights, I tend to focus particularly on the question of use of reason and its relation with the conceptions of the civil society and the state in the context of political economy. My claim is that the question of *the conditions of possibility* for human rights and its connections to economics is better examined in the context of the Kantian idea of *public use of reason*.

However when we are concerned with economics, it is usually assumed that liberties and freedom of self-dependency are directly linked to the choices which are made in a *rational* way. *Autonomy*, in this context, has been considered as a feature of an abstract rational individual and has always been a part of value-free debate. Providing such a formal framework for “atomized” society leads us to distinguish civil society from public sphere where civil society emerges as a realm formed by self-centered individuals who are principally concerned with only their own well-being. This value-free attitude and procedural considerations often goes along with certain political approaches. However I hardly suggest that kind of approach. Rather, I try to follow a more Kantian –and partly Hegelian– discussion on the question of the Enlightenment. For example, Habermas considers civil society as a public sphere of citizens who are able to engage in free and open discussions. In this sense, the development of civil society appears as a matter of fulfillment of the incipient promise of the Enlightenment project (Habermas, 1996, pp.327-329). Such a consideration provides an extensive explanation for the Enlightenment project. On the other hand, for Foucault, the Enlightenment can be considered as an open-ended project (See Foucault, 1984) where we must do nothing but make use of reason (*Räsonieren*). Kant for example states that

“the very existence of reason depends on that freedom; for reason can claim no dictatorial authority” (Kant, 1781, p.348). German translation of the word *Räsonieren* which Kant uses in his philosophical texts refers to the use of reason for a particular end; “Räsonieren is to reason for reasoning’s sake” (Foucault, 1984, p.36). Foucault stresses that Kant, in most of his works, takes *Räsonieren* as a central element in order to define this ongoing process as “internal teleology of time and the point toward which history of humanity is moving” (Foucault, 1984, p.37). On the other hand, O’Neill, concerning the principle of reason, states that:

“Nothing will count as a principle of reason if it demands submission to some unvindicated authority; anything that does count as a principle of reason must be one that all can follow. The principles of reason are those that can secure the possibility of inter-subjectivity. Kant does not ground reason in actual consensus, or in the agreement and standards of any historical community; he grounds it in the repudiation of principles that preclude the possibility of open-ended interaction and communication” (O’Neill, 1990, p.194)

An examination on Enlightenment requires a basic analysis of the dynamics of this movement in which the role of each individual as responsible members directly affects overall process:

“I do not know whether we will ever reach mature adulthood. Many things in our experience convince us that the historical event of the Enlightenment did not make us mature adults, and we have not reached that stage yet. However, it seems to me that a meaning can be attributed to that critical interrogation on the present and on ourselves which Kant formulated by reflecting on the Enlightenment. “ (Foucault, 1984, p.50)

Therefore, *reason* provides a particular type of freedom; the ability to use own understanding, or in Kantian words; “Sapere Aude!”. In this context, Kant defines the Enlightenment as “man’s emergence from his self-imposed immaturity” (Kant, 1784, p.1). The word “immaturity” (*unmündigkeit*) refers to the need of external determination. Accordingly, man is capable to liberate himself by using his own understanding; by refusing external determination. In this sense, human rights in the Kantian sense consists of moral claims for respecting that kind of autonomy or claims for maintaining fair conditions in order to be able to use *reason*. The notion of *dignity*,

together with *reason*, has been a key element in making such claims. However, although there is a tendency to consider *dignity* as a natural fact, I tend to take dignity as a fruit of reason. In this sense, *freedom* appears to be a matter of dignity, that is, the potentiality of *using one's own reason without external guidance*; a matter of *worthiness to be happy*.

1.3.2. Kantian Idea of Public Use of Reason

The conception of *use of reason*, as mentioned above, constitutes the key point of Kantian understanding of the concept of *autonomy*. Accordingly, Kant makes distinction in the use of reason and tries to point out a certain way of using reason. There are two certain ways of *use of reason*; (1) *public use of reason* and (2) *private use of reason*, of which he clearly endorses the freedom of public use of reason:

“Nothing is required for this enlightenment, however, except freedom; and the freedom in question is the least harmful of all, namely, the freedom to use reason publicly in all matters.” (Kant, 1784, p.2)

Kant, in his answer to the question of “What is the Enlightenment?” [Was ist Aufklärung? (Kant, 1784)] in the *Berlinische Monatschrift*, tries to elaborate the characteristics of this era. To do so, he first refers to the state of being *immature* in which people is to accept the external authority of others; to be directed in cases where the use of reason is needed. Immaturity, for example, is being confined by a book that takes the place of our understanding, a pastor who takes the place of our conscience, or a physician who decides for us what our diet is to be. However, for Kant, it is a responsibility for people to avoid being in a state of immaturity. It is possible only by a process that is directed by an inherent potentiality of mankind, that is, the courage of using one's own understanding which “finally even influences the principles of government, which finds that it can profit by treating men, who are now more than machines, in accord with their dignity” (Kant, 1784, p.6).

Dignity here in its Kantian use refers to the potentiality of using reason publicly. This is, however, far more demanding than the one in natural rights discourse since the process

of becoming mature generates obligations towards those with whom individuals do not engage in the public level; “Consequently, only a few have succeeded, by cultivating their own minds, in freeing themselves from immaturity and pursuing a secure course.” (Kant, 1784, p.1) Therefore, every rational being has a duty of freeing itself from immaturity even though “a public can only attain enlightenment slowly.” (Kant, 1784, p.2)

Kant’s distinction between private and public uses of reason has an important role in the process of becoming mature especially when we consider his account of publicity. In this sense, members of a society that consists of scholars (*Gelehrter*) and reading public should be free to criticize all matters in a particular way. Such a freedom can only be exercised when these same individuals conceive themselves as the citizens of a cosmopolitan society. Thus, the tension between cosmopolitan and civil (or public and non-public) society appears to be one of the most important matters in Kantian analysis of the Enlightenment.

1.3.3. Background of “An Answer to the Question: What is Enlightenment?”

The *Berlinische Monatsschrift*, published between 1783 and 1796, was one of the most important figure of the Enlightenment. Kant, like other contemporary scholars, has various essays published in the *Berlinische Monatsschrift*. These essays provide us an extensive point of view regarding Kant’s idea of public use of reason. First, we can get a clear definition of the Enlightenment and then we can go further on the issue of use of reason by making distinction between public and private uses of reason in order to distinguish civil (*bürgerliche*) from cosmopolitan (*weltbürgerliche*). For example in his essay “Idea for a Universal History from a Cosmopolitan Perspective”, Kant tries to give a response to a note of Johann Schultz published in the *Gothaische Gelehrte Zeitung* where Schultz mentions to the “idea” of Kant:

“It is a favourite idea [*Lieblingsidee*] of Herr Professor Kant that the ultimate goal of the human race is the establishment of a perfect constitution. He desires that a philosophical historiographer would undertake to write a history of humanity from this perspective in order to show whether humanity has come closer to this final

goal at some time, has strayed from it at others, and what still remains to be done to achieve it.” (Schultz, 1784; quoted in Kuehn, 2001, p. 288)

Then, a couple of months after, Kant refers to this analysis in a footnote of the *Cosmopolitan Perspective*:

“A statement printed in the short notices in the twelfth issue of this year’s *Gothaische Gelehrte Zeitung* (1784), based, no doubt, on a conversation of mine with a scholar who was passing through, compels me to provide the present clarification, without which the statement would make no sense.” (Kant, 2006; p.3)

Kant, afterwards, writes the second essay “What is Enlightenment?” as answer to an essay of Moses Mendelssohn in the *Berlinische Monatsschrift* in order to clarify the perplexities concerning Mendelssohn’s duality of “man of man” and “man of citizen”. Moses Mendelssohn in his essay previously (September 1784) answered to the very same question of “What is Enlightenment?” and defined enlightenment as one of the “modifications of social life” that bring a person “into harmony with the destiny of man”³. On the other hand, Kant also wrote his essay on the Enlightenment to find a definition for the term “the Enlightenment” which had often been examined in the journal but rarely provided a clear description. While Mendelssohn considers the conflict of the “Enlightenment of man” and the “Enlightenment of the citizen” as a philosophical obstacle, Kant reformulates this duality by replacing the “enlightenment of man” with “public use of reason”. Thus, for Kant, “what Mendelssohn had called the ‘enlightenment of the citizen’ was a matter for the ‘private’ use of reason” (Schmidt, 1989, p.269). In this sense Kant states that “the freedom in question is the least harmful of all, namely, the freedom to use reason publicly in all matters” (Kant, 1784, p.2). Kant here considers the *public* as a realm in which universal exercise of one’s reason can be achieved. In other words, one participates to the *public* sphere as long as he is a free-individual and that is clearly what distinguishes it from one’s social role in the community:

“But by the public use of one’s own reason I understand that use which someone

3 Translated by James Schmidt (Schmidt; 1996, p.53) from the original text “Ueber die Frage: was heißt aufklären?” in *Berlinische Monatsschrift* 4, 1784, 193-200.

makes of it as a scholar before the entire public of the world of readers. What I call the private use of reason is that which one may make of it in a certain civil post or office with which he is entrusted.” (Ibid., p.2)

On the other hand, *private use of reason* serves the function of citizen in society as being a teacher, pastor or else —contrary to general understanding as “one’s self-centered nature”. Since private use of reason refers to the state of being critical about one’s own (particular) role as a member of society, such a reasoning should be restricted. For Kant, anybody who is in a “private” speaking position is to be bounded by the limits of personal opinion. That is to say, Kant’s use of “private” is meant to be the deprivation of certain rights as in the case of a pupil who is not allowed to express himself on the issues of course hours or the instruction methods. Kant, in his formulation of private use of reason, seems to be inspired by a relevant Prussian rule set in 1776:

“While clergy may write whatever they please in theological or philosophical articles addressed to the reading public, they must be careful to distinguish these scholarly opinions from their responsibilities as representatives of the church in their parishes.” (quoted in Schmidt, 1989, p.290)

On the other hand, *public use of reason* refers to being in a state of thinking of institutional matters such as writing a lecture as a scholar (*Gelehrter*). The term *Gelehrter* is generally translated as *scholar* —or in some documents as *savant*. But concerning the Kantian use of the term, it is more convenient to understand it as the way of reasoning as an *author* who is not restricted to express himself. Thus, wisdom or the level of knowledge has no purpose in such explanation. The *Gelehrter* expresses himself by means of writing to a public in accordance with his own understanding. *Writing*, here, is the method of the *Gelehrter* in postulating his constructive thoughts carefully regarding the errors in public. For example, in the early period of Enlightenment, or late into the eighteenth century, *the republic of letters* (*respublica literaria*) was established to provide long-distance communication among intellectuals that consists of a group of scholars, scientists, authors etc. who were all staying in touch through publishing books and articles or exchanging letters. In this period the diffusion

of the ideas to the public had significantly increased. Therefore the model that Kant proposes concerning the interrelation between *Gelehrter* and the *reading public* resembles the relations among this specific social class which was formed by educated intellectuals of its time.

Kant's model presupposes a certain type of free exchange among these enlightened authors in a particular type of academic contest. For example a manuscript written to be sent for a competition is supposed to be anonymous in order to ensure the impartiality of the jury until the decision has been made. This means that sending a manuscript is enough to be an author as well as to belong to the jury. Thus, this kind of evaluation process provides an advantage of openness to a larger public and lets readers contribute actively to the debate as an author. We can see that Kant tries to implement that kind of collaboration into his Enlightenment model. However Kant uses the term of *Gelehrter* in order to address a more general "reading world" rather than a local community. This is because Kant does not specify any set of qualifications or personalities for the *Gelehrter*, such as academic capabilities or languages that he can speak. So that it is not a matter of ignorance or intellectuality. Instead, the term calls for a person who has advanced to the world of publishing which is the world much more comprehensive in scope than an understanding of a particular audience of oral speech sharing the same place and time with its author. Rather, it seems that Kant refers to a potentiality of world of readers that we might call an *enlightening public* to the extent that all available authors and readers are included. Thence, such a comprehensive approach provides a much more inclusive and divergent understanding of "public". The members of *reading public*, as well as *Gelehrter*, are positioned to not bind themselves to special qualification or permission so they are not distinguished by their capacities.

1.3.4. Public Use of Reason and Publicity

The terminology that Kant uses in his works is of course directly associated to the general intellectual language in his day. Thus, my concern here is the context in which Kant uses the terms "public" and "private" regarding the *publicity* condition. As

mentioned above, one of the most central argument in “What is Enlightenment?” is the distinction of the public and private uses of reason. Following this line of reasoning, Kant elaborates the publicity condition by referring to the terms *Gelehrter* and *reading public*. There is, on the other hand, a significant number of references to the term of the *public* [or *öffentliche*, *Publiko*, *Publici* (see Laursen, 1986)] in the literature of his time. For example, the editors of the *Berlinische Monatsschrift*, the journal that published Kant’s “What is Enlightenment?” had thanked *das Publikum* for their anticipation in the introduction to the first issue in January 1783 (Biester and Gedike, 1783): “The preface to the first issue of Wieland’s *Der Deutsche Merkur* in 1773 referred often to the taste and judgment of the entire class of educated men as the *Publikum*” (Wieland, 1773; quoted in Laursen, 1992, p.217; see also Birgel, 1997). Or for example, by November of 1784, after Kant had sent his manuscript to the publisher but before it was published, Schiller states in announcement of the *Rheinische Thalia* that: “I write as a citizen of the world, who serves no prince [...] The public [*Das Publikum*] is everything to me, my education, my sovereign, my confidante” (Laursen, 1986, p.587; see also Hocks and Schmidt, 1975).

It is obvious that what Kant means by “freedom to public use of reason” is something beyond the claim of liberty to publish for all scholars. He insists that such an idea of freedom involves a greater public in which “greater freedom is afforded to those who are not restricted by an official post” (Kant, 1784, p.2). So that we can see how Kant tries to propose an extensive approach on the idea of freedom⁴. It is my claim that the notion of *Gelehrter* in Kant’s discourse has a similar function as a metaphor that Adam Smith’s use of the conception of *the man within breast*. I discuss this later in the Chapter 2. On the other hand, Kant uses another term called *publicity*, that refers to the deliberation process in the political level, which is connected to his idea of public use of reason. Kant mentions the importance of *publicity* in *Toward Perpetual Peace* as part of

4 Actually, Kant could not stay consistent with his claim regarding *Gelehrter* and reading public. Just after publishing *Religion Within the Limits of Reason Alone*, he experienced a theological censor because of the inconvenience of the king Frederick William. Then Kant wrote to the King to assure him not to write on religion again. This letter was later published in the Preface to *The Conflict of the Faculties*. In this text, Kant reformulates his account on the freedom of public use of reason and publicity with a much more narrower sense.

a transcendental principle of politics. Accordingly, maxims should meet the publicity criteria in order to be considered as “just”: “All actions that affect the rights of other human beings, the maxims of which are incompatible with publicity, are unjust” (Kant, 2006, p.104). Publicity here appears to be related with a kind of institution where the ideas can be freely shared and exchanged. So *publicity* is formulated as a form of political communication within a philosophical framework in which “without it there would be no justice (which can only be thought of as publicly proclaimable), and thus no right, since right can be conferred only by justice”(Kant, 2006, p.104). The principle of publicity here is formulated in order to provide solutions for the issues like rebellion, strikes, legally binding treaties and even matters of international relations. Therefore the publicity condition leads people to merge their ends with other peoples’ ends:

“For if they can attain their end only when that end is made public, then they must also conform to the general end of the public (happiness), and it is the proper task of politics to attain this harmony (to make the population satisfied with its condition). But if this end can be reached only through publicity, that is, by dispelling all mistrust toward the maxims of politics, then these maxims must also be in harmony with the right of the public, for it is in public right alone that the ends of everyone can be unified.” (Kant, 2006, p.109)

In the public level, no one is entitled to a specific or official position so that the ideas shared in public sphere represents the widest common interest. Herein, Kant provides an egalitarian account of public sphere in which freedom of public use of reason has an important role. Hence, maintaining liberty for the public use of reason is crucial for the members of a critical Enlightening public to avoid themselves from falling into the *immaturity*. The essential idea in such use is quite cosmopolitan: as members of a society of the world citizens (*Weltbürgergesellschaft*), people ought to use their reason publicly for the general interest of everybody in order to achieve the Enlightenment.

1.4. PUBLIC USE OF REASON AS A MORAL THEORY

1.4.1. Kantian Moral Discourse

The idea of becoming mature has a direct connection with the idea of “moral” law that aims at maintaining the conditions of availability of using reason publicly. Accordingly

Kant states that “the criterion of everything that can be agreed upon as a law by a people lies in this question: Can a people impose such a law on itself?” (Kant, 1784, p.4). In this sense, the formulation of the question resembles the “imperatives” which Kant first discussed in *Groundwork of the Metaphysics of Morals*. Kant’s aim in the *Groundwork* is to find out the fundamental principle of morality what he later calls “categorical imperative”: “Act only in accordance with that maxim through which you can at the same time will that it become a universal law” (Kant, 2002, p.37). Kant elaborates his ethical point of view and his account of autonomy and freedom in their practical sense within the framework of these “imperatives”.

In the *Groundwork*, Kant sets forth the *categorical imperatives* in three complementary parts in which there is one “of which unites the other two in itself” (Ibid., p.37). The first of the three sections of the *unconditional imperatives* addresses the universal form of the maxim; “So act as if the maxim of your action were to become through your will a universal law of nature”(Ibid., p.38). The first formulation of categorical imperative is proposed as a justification of availability that if *synthetic* propositions could accord with *a priori* judgments. Here, epistemological examination constitutes the first pillar of the imperative. The second formulation is related with the conception of *end in itself*: “Act so that you use humanity (*Menschlichkeit*), as much in your own person as in the person of every other, always at the same time as end and never merely as means” (Ibid., pp.46-47). The third formulation implies the conception of *harmony* by following the second one: “as the supreme condition of its harmony with universal practical reason, the idea of the will of every rational being as a will giving universal law” (Ibid., p.49). Finally the *categorical imperative* states; “Act only in accordance with that maxim through which you can at the same time will that it become a universal law” (Ibid., p.37). Kant defines the *necessary end* as “something whose existence in itself had an absolute worth, something that, as end in itself” (Ibid., p.45). Then, he simply proposes that:

“[N]ow I say that the human being, and in general every rational being, exists as end in itself, not merely as means to the discretionary use of this or that will, but in

all its actions, those directed toward itself as well as those directed toward other rational beings, it must always at the same time be considered as an end.” (Ibid., p.45).

This is the core idea which leads to the second (then, to the third) formulation of the categorical imperative. The categorical imperative, as a maxim, implies three features; the first formulation represents the *form*, the second supplies the *matter*, then the last formula maintains the *harmony* of laws in accord with the *kingdom (realm) of ends*. Kant states that:

“The concept of every rational being that must consider itself as giving universal law through all the maxims of its will in order to judge itself and its actions from this point of view, leads to a very fruitful concept depending on it, namely that of a realm of ends.” (Ibid., p.51)

As Kant justifies his idea step by step, I will try to follow in his steps to figure out the relation between the imperatives and the idea of public use of reason, and ultimately their relation with political economy and human rights. Kant begins the first section of the *Groundwork* with an examination of the idea of good will. He is concerned with the conception of *good will* to justify the *moral worth* of an action and, in particular, to provide an explicit account to the *maxim of a good will*: “There is nothing it is possible to think of anywhere in the world, or indeed anything at all outside it, that can be held to be good without limitation, excepting only a good will” (Ibid., p.9).

Kant’s conception of *good will* is not what it is used in general as a statement of benevolence. *Good will* is not implicitly specified as a will that does *good*, rather as a will that does *right*. In accord with the concept of *good will*, he asserts the concept of *duty* in order to develop the concept of *good will* since he claims that *duty* contains the *good will*. However, he argues first that a *good will* is not a matter of performing an action that conforms with duty. He defines *duty* as “the necessity of an action from respect for the law” (Ibid., p.52). However, the concept of *from duty* —and the *good will* —, involves an action that is performed not *in conformity* with duty but performed *from duty*.

“I also set aside the actions which are actually in conformity with duty, for which, however, human beings have immediately no inclination, but nevertheless perform them because they are driven to it through another inclination. For there it is easy to distinguish whether the action in conformity with duty is done from duty or from a self-seeking aim. It is much harder to notice this difference where the action is in conformity with duty and the subject yet has besides this an immediate inclination to it.” (Ibid., p.13)

My suggestion, then, is that *public use of reason* is a part of *good will* in a sense that the actions coming after using reason publicly conforms with the condition of action *from duty*. The conception of duty that we are dealing with here refers to the responsibility of being a member of the *realm (kingdom) of ends* in which members act in accordance with the above principles (three formulations). In contrast, the realm (kingdom) of nature is the place where actions are possible only “in accordance with laws of externally necessitated efficient causes” (Ibid., p.56). Hereby, human being belongs to both *kingdom of nature* in terms of necessity of nature and *kingdom of ends* in terms of necessity of reason.

Kant has a long list of explanation concerning duties which are relevant to the *good will* (See, Ibid., pp. 13-14). For example, “to preserve one’s life is a duty”, however, one also “has an immediate inclination to it”. Preserving one’s life for its sake “still has no inner worth”, and thus, the “maxim has no moral content”. In that case, the inclination of protecting one’s own life conforms to duty however it is not an action that is performed *from duty*. By contrast, to preserve one’s life, even under miserable conditions that obstructs a tasteful life, “is not from inclination or fear, but from duty: then his maxim has a moral content.” Then, “to be beneficent where one can” is a duty, however it is important that beneficence must not “take an inner gratification in spreading joy around others”. In such a case the action conforms to duty; however it has no true moral worth. If one is beneficent not from inclination but from duty then the action has moral worth; this is because it is purified from inclinations. Finally, “to secure one’s own happiness is a duty” while that “can easily become a great temptation to the violation of duties.” For him “all inclinations are united in a sum” under the idea of *happiness* and thus “all human beings always have of themselves the most powerful

and inward inclination to happiness.” However, there still remains “a law, namely to promote his happiness not from inclination but from duty” as in the case of *a person with gout* that “if his general inclination to happiness does not determine his will, if for him, at least, health does not count as so necessary in his reckoning” (See, *Ibid.*, pp. 13-14).

Accordingly, the point here is not to achieve the highest level of happiness, rather, *good will* appears to constitute “the indispensable condition even of the worthiness to be happy” (*Ibid.*, p.9). Kant furthers his account of happiness by making its definition as “power, riches, honor, even health, general well-being, and the contentment with one’s condition” (*Ibid.*, pp. 14-15). He calls happiness as complete satisfaction of all one’s *needs* and *inclinations*. Happiness is simply getting what you want through *counsels of prudence* and therefore cannot be one’s ultimate end. However Kant argues that:

“No-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end” (Kant, 1991, p.74)

In this context, the concept of self-interest as used in economics can not be an end in itself however it is an integral part of the duty of securing happiness. Therefore, *duty* in Kantian explanation is a matter of *worthiness to be happy*; or –in articulation with my examination–, using reason publicly in the pursuit of personal happiness. In this sense, the *public use of reason* appears to have a function in the *reconciliation* of the *realm of ends* and the *realm of nature*.

1.4.2. Public Use of Reason and Self Interest

The concept of autonomy is, of course, central to the Kant’s ethical discourse while it is used in a totally different purpose than the use of autonomy or “rational choice” in economics. It is meant, by “rational”, a more individualistic conception of autonomy where one’s main motivation is driven by the extent of desires, inclinations or character. This individualistic approach to autonomy is stimulated by a variety of economic

theories which are claimed to have a non-moral account of human beings and have the capacity to analyze autonomy that reflects the natural facts regarding self-interest. However, I tend to stick with the argument that there is a possibility in which Kantian prudential reasoning might serve as a conception of personal autonomy (See more; Waldron, 2005). According to this argument, we can find a suitable background to serve the core idea of rational choice, and economics as well, within one moral scheme of autonomy approach which can also bring us again to the idea of public use of reason. To do so, Kantian idea of “perfect and imperfect duties” together with the idea of prudential reasoning, mentioned in the *Groundwork* and again in the *Metaphysics of Ethics* (in some translations “*Metaphysics of Morals*”)⁵, can be taken as a suitable reference in order to articulate the question of self interest into the main framework of “use of reason”. In this context, the imperfect duties of *self-perfection* and *prudential reasoning* have a central importance in the examination of different understandings of autonomy.

Kant, in the *Metaphysics of Ethics*, makes distinction between (1) duties of right and (2) duties of virtue, in which (1) requires (external) enforceable legal framework while (2) does not, so persons can choose how to fulfill them. Then, he distinguishes two forms of duties of virtue as perfect and imperfect duties. They basically differ in method regarding fulfillment of the duty (strict and meritorious duties). Perfect duties of virtue require the adoption of particular ends, whereas imperfect duties of virtue allow individuals to choose the end depending on the conditions of adaptability. For example, respect, in the context of the principle of respect, is a perfect duty of virtue, because to respect dignity of others is in accord with treating humanity as an end. On the other hand beneficence (charity/mercy), is an imperfect duty of virtue, because it has not a law-giving position though it can still be adapted to the categorical imperatives as a maxim.

Finally, Kant distinguishes two forms of imperfect duties. They are, basically, duties to

5 There are two well-known translations of Kant’s *Die Metaphysik der Sitten* (see Kant, 1796 and Kant, 1996); I include both translations in my references as they have complementary parts to each other.

be fulfilled through self-perfection and happiness of others. The imperfect duty of self-perfection involves the cultivation of one's natural talents. He divides these natural talents into three sub-categories (Kant, 1796, pp.261-265): (1) powers of mind (mathematics, logic, science and philosophy), (2) spirit (memory, imagination, learning, and taste) and (3) body (gymnastics in the strict sense). As this is a very general categorization, it is clear that what Kant means by talent is something highly complex and comprehensive compared to the meaning of the word "talent". On the other hand, happiness of others is a matter of willing a benevolent action in accord with the duties of beneficence, sympathy and gratitude. Beneficence, for example, is the duty to help people pursuing their ends, so that their ends become our ends. Kant here implicitly integrates a sort of "rational choice theory" into his model through the forms of imperfect duties; self-perfection and beneficence toward others. These two duties constitute a conception of personal autonomy together with the supreme principle of considering human being as an end in itself. Accordingly, in Kantian formulation of imperfect duties, one can enjoy individual freedom through one's own inclinations while cultivating oneself and taking care of the happiness of others. So that, one does not need to sacrifice all other (individual) ends to meet the criteria of imperfect duties, or in other words, one can limit such duties for meeting the individual needs:

"Which of these natural perfections may be the more eligible, and in what proportion, when compared with the remainder, it may be his duty to design them as his ends, must be left to the private reflection of each individual, who will decide according to his taste for this or that kind of life, and according to the estimate he may make of his ability, whether he should follow some handicraft, or a mercantile employment, or become a member of a learned profession." (Kant, 1796, p.263)

Since Kantian *autonomy* does partly include an account of self-interest, his main concern is mostly directed to the supreme principle of morality as the requirement of pure practical reason. Kant seems to attach considerably so little importance to an extensive discussion on other type(s) of practical reasoning as he states in the preface to the *Groundwork* that his ultimate aim is to find a suitable foundation for moral philosophy. In this respect, Kant's model of the *moral law* does not enclose prudential

(practical) reasoning, however it is somehow integrated into the framework of moral reasoning. In fact, Kant's justification of duties of virtue as duties to others' and one's own perfection in terms of happiness, relies upon the idea that individual well-being is also a part of our ends. Therefore, it seems that these prudential concerns which are impossible to ignore in our actions have a crucial role in the determination of maxims. Prudence presents a particular exercise of practical capacity, however, it doesn't mean that these motives of self-interest are only motives in our action (or will). Such motives (or prudence) should stay within the moral framework. Therefore, prudential pursuit in one's plan of life should be reasonable (in the Rawlsian sense) to get a moral permission (See Rawls, 2000, pp. 164-167).

Kant stresses that while prudence is not a mere purpose of (practical) reason, reasoning of human beings are always open to affects of self-interest which possibly forms the maxims in a practical manner through happiness. Accordingly, in the *Groundwork*, he asserts that when a rational being enjoys a free will, his actions are guided by principle(s). This means that rational being is not attached to any external guidance but to a general rule as a principle determined through pure practical reasoning. However, Kant, in the *Religion within the Limits of Reason Alone* (Kant, 1934), where he argues the predispositions of good and evil, claims that human nature has an essential tendency to be *good* as well as to be *evil* at the same time. Accordingly, predisposition to good includes three other predispositions divided due to their functions: (1) *predisposition to animality* "may be brought under the general title of physical and purely mechanical self-love, wherein no reason is demanded" (Ibid., p.16). Such self love is directed by motives of (a) self-preservation, (b) the propagation of the species, through the sexual impulse and then (c) for community with other men, i.e., the social impulse. The second predisposition to good is (2) *predisposition to humanity* which "can be brought under the general title of a no doubt physical but yet comparing (for which reason is required); that is to say, we judge ourselves happy or unhappy only by making comparison with others" (Ibid., p.16). Finally the third predisposition to good is (3) *predisposition to personality* which is "the capacity for respect for the moral law as in itself a sufficient

incentive of the will” (Ibid., p.17). It is clear that Kant tries to integrate all three of these predispositions into his general theory of *morals* without ignoring any of them. Although there are some contrary arguments within the general body of Kant’s works, it is obvious that Kant deals with the concept of prudence as a distinctive feature of rational being that is principally out of pure moral concerns. Kant asserts that “in the case of virtue these obstacles are the natural inclinations which may come into conflict with the human being’s moral resolution” (Kant, 1785, p. 200). Under all these conditions, we can manage our instincts by means of reason –through the public use of reason– and resolve such conflicts then finally unite our different ends within harmony:

“Natural inclinations, considered in themselves, are good, that is, not a matter of reproach, and it is not only futile to want to extirpate them but to do so would also be harmful and blameworthy. Rather, let them be tamed and instead of clashing with one another they can be brought into harmony in a wholeness which is called happiness. Now the reason which accomplishes this is termed prudence.” (Kant, 1934, p.42, Book II)

Such external factors like inclinations (habits, desires, etc.) occupy a particular place in our reasoning and judgments for the sake of our *happiness*, since satisfying all of our desires as inclinations is not equated with *happiness*. Inclinations thus partly constitute our reasoning in the reconciliation of our competing desires to achieve *happiness*. In this context *prudence*⁶ (*Klugheit*) is the concept that Kant uses in the *Antropology* to describe the “skill at using other human beings to further his own ends” (Kant, 2006, p.165)⁷. In the *Groundwork*, Kant furthers his account of prudence with a footnote by distinguishing “worldly prudence” from “private prudence” in which;

“The first is the skill of a human being to have influence on others in order to use them for his aims. The second is the insight to unite all these aims to his own enduring advantage. The latter is really that to which the worth of the first is reduced, and about someone who is prudent in the first way but not in the second way one can better say that he is clever and sly, but on the whole imprudent.” (Kant, Immanuel; 2002 p.32)

Kant considers the prudential reasoning as a reasoning that covers individual motives

6 Originally he refers prudence in the *Groundwork*. See Kant, 2002, p.32.

7 See *Anthropology from a Pragmatic Point of View- Parrow notes*

within one united idea of “highest good”; *happiness*. Although the function of prudence is not merely to maximize the self-interest, inclinations, for Kant, “can be brought into a tolerable system” so we must “let them be tamed and instead of clashing with one another they can be brought into harmony in a wholeness which is called happiness” (Kant, 1934, p.42). Kant here does not only refer to mere pleasure or fulfillment of selfish needs, rather he suggests a harmonized model of selfish desires which are limited within the framework of moral law. On the other hand, apart from the moral law, all determining principles of the will are empirical so that they are a part of the principle of happiness. Thence, the pursuit of happiness is guided by the principles which help us to qualify the various level of desires and inclinations. However, the supreme principle of morality cannot solely guide us in the determination of principles for the pursuit of happiness, but, it is the experience, power of judgment and self-esteem that guide towards a successful pursuit of happiness.

Kant furthers his account on happiness through counsels of prudence such as “diet, frugality, politeness, restraint, etc., of which experience teaches that they most promote welfare on the average” (Kant, 2002, p.35). Prudential reasoning here is similar to the reasoning within the context of personal autonomy, or rational choice, that is, “the material of our lives, the substantive happiness we pursue, comes from forces we can neither create nor (as Kant eventually came to admit) eradicate. Moral agency brings a kind of unity to our lives that prudential agency alone could never bring” (Schneewind, 1996, p.290). Having said that, even Kant himself seems to seek for an explanation of how to integrate such autonomy into the moral law. Otherwise, the gap between personal and moral autonomy would remain unbridged. Because any principle of happiness remains uncertain, or a “wavering idea”, as these principles are not “an ideal of reason but of imagination.” (Kant, 2002, p.53)

Kant argues that the source of happiness is the realm (kingdom) of nature and the endowments that nature provides us are “always burdensome to a rational being” (Kant, 1785, p.148). Because of this, a rational being tries to find “a deliverance from the

manifold dissatisfaction in which all these wants entangle him” (Ibid., p.171). Therefore, just because of the uncertain nature of prudential reasoning, Kant appears to hesitate whether to include the principle of happiness in his *supreme* model. However, we can still assume that:

“[P]ersons can be and often are regarded as having conditional value, too, insofar as they are regarded as useful, likable, lovable, or admirable [...] So we can and necessarily often do treat others as means to our ends, as good insofar as they are useful to us. When we think of people in terms of their skills and abilities, as in business, we often regard them as more or less ‘marketable’ and their time as having a price. Kant does not hold that this is morally wrong” (Sullivan, 1989, p.196)

In this context, Kant appears to hardly provide a particular treatment for the issues of what we call economics today. However, we can find the conceptions of *false humility* or *servility* that can be considered as a part of economics discussion. Kant mentions to the acts such as becoming “the slaves of other men” or to be “trampled under foot by others with impunity” (Kant, 1796, p.252). Then, he argues the exploitation of labour through an ethical perspective; “[I]f a man for gain or profit submits to all indignities and makes himself the plaything of another, he casts away the worth of his manhood [...] moreover, if a man offer his body for profit for the sport of others [...], he throws himself away” (Kant, 1963, p.118).

For Kant, we make ourselves a mere means to others’ self-esteem unless we are to be aware of our dignity. However, being in a particular position with others concerning economic relations, for example seeking for a wealthy life, does not violate the principle of autonomy: “A person can, indeed, serve as a means for others, by his work, for example, but in such a way that he does not cease to exist as a person and an end” (Kant, 1997, p.124). The claimed perplexity concerning the reconciliation of the accounts of prudence and the supremacy of moral law now is getting clearer because of the fact that Kant suggests a framework in which rational beings are bounded with both moral and prudential imperatives. Therefore, I tend to consider Kant’s account on prudence and its interrelation with autonomy as an important part of a more general

discussion of the idea of human rights. Since the *principle of respect* requires a consideration of rational being as an end in itself, it covers both duties of right and duties of virtue in which there are imperfect duties as fulfillment of individual needs and seeking for personal ends. Therefore, there should be no contradiction between self interest and the moral law because of our capability to decide the proportion through a sense of harmony. It must be noted that such a “thick” moral theory in its deepest essence goes beyond the purpose of this dissertation. However, the idea of public use of reason, and Kantian understanding of prudence in particular, provide a framework that is well suited to human rights discussion in the context of economics. In this sense, here I further my examination of Kantian philosophy through an analysis of Kantian understanding of human rights.

1.5. KANTIAN ANALYSIS OF THE RIGHTS OF MAN

In the *Perpetual Peace*, Kant mentions the idea of human rights as “God’s most sacred institution on earth” (Kant, 1991, p.101). The idea of such an institution is based on a cosmopolitan understanding of political deliberation and solidarity. In this sense, Kant’s account can be taken as an alternative to a more pragmatic or legal approach to human rights. On the other hand, the justification that I defend shares partly the same background with contractarian theories as I will follow the steps of Rawlsian approach. My intention here is to examine the role of *right* in Kantian discourse that “begins with our natural concern with morality and uses the contractarian framework to specify and draw out the implications of that concern. Contractarianism, in this case, is advanced as a way to articulate the content of morality” (Sayre-Mccord, 1999, p. 255). In this sense, Kant’s approach to rights of man can be seen as an attempt of a moral-philosophical explanation of rights as a categorical imperative. Since the moral law and the idea of right (*Recht*) are inter-related concepts in Kantian philosophy, they are united under a system of constitutional state as two complementary parts:

“The law of nature ought not to be divided, as is often done, into *natural* and *social*, but into *natural* and *civil* or *municipal*: the first is called *private*, the second *public law*; for to the state of nature, not *social* institutions, but the *civil* or

municipal, are to be opposed. In the state of nature, society need not be wanting, but only *that civil society*, securing by public institutions the rights of man; and that is the reason why the *natural* is called *private law* (jus privatum)*—After this follows a course of *theoretical law*, which omitting, we arrive at *ethics* or *morals* strictly so called.” (Kant, 1796, p.189)

The idea of right (*Recht*) constitutes an important part of Kantian analysis of rights of man. *Recht* in German language has a broader meaning than its English translation as *right*. *Recht* refers to both the individual legal entitlements and the legal order of justice. In this context, to guarantee individual rights within a legal framework is a duty in its Kantian sense. Such a system is necessary for people in order to be able to live together because “the external practical relation of person to person, in so far as the actions of one may affect or influence another” (Kant, 1796, p.178) which might cause coercion or discrimination within the society. Kant’s approach to *Recht* thus has a dual basis: on the one hand, the idea of human beings as equals in dignity that constitutes the ethical grounds; on the other hand, the idea of a just system of legal rights that constitutes the political grounds. Then the right of freedom forms the supreme principle of the entire system of right.

For Kant, freedom is the only birthright which refers to the independence from being constrained by another’s choice; freedom “belongs to him [man] by force of his humanity; and is independence on the will and co-action of every other in so far as this consists with every other person’s freedom” (Ibid., p.185). However such an understanding of freedom should be taken together with its three subordinating parts in order to constitute the universal principle of legal order:

"Subordinate to this supreme idea, and included under it, are the rights 1. of *equality*, i.e., the title not to be held bound to others beyond what they are in their turn bound to; consequently the right of everyone to be my own *master* (sui juris): 2. The right to be regarded as legally innocent and, *guiltless*, in so far as no one has been injured by his use of his freedom: 3. Lastly, the right to do to every man whatever implies nothing derogatory to that others rights, as, for example, to exchange one’s ideas and opinions with another, to tell or promise somewhat, and that whether true or untrue, whether sincerely or insincerely; for it is the province of the other to believe or discredit what is said –to accept or decline what is promised” (Ibid., p.186)

Freedom and equality thus constitutes two complementary parts of the supreme principle. This state of coexistence is one of the most significant part of Kant's conception of *Recht*. Maintaining a just order provides equal freedom for everyone as well as it leads to a public recognition of the dignity. The important point here is the distinction that Kant makes between moral law and legal rights; legal rights are subject to enforcement while it is not the case for the moral law. For him, "law" is the rule of right and it is "a law imposing no doubt obligation, but which does not exact the determination of choice by the contemplation of the obligation" (Ibid., p.179). Therefore "if a certain use of freedom is a hindrance to freedom universal, i.e., unjust and wrong, then co-action preventing such misuse of freedom goes to establish freedom according to a universal law, i.e., is just or right; and consequently law has in itself a right to co-act him who attempts to violate it" (Ibid., p.179). This "co-action" is legit only when the protection of freedom is needed. Apparently, Kant makes a distinction between the domains which he calls "ethical" and "juridical" since they are essentially interconnected but not identical. However, these two domains are lexically ordered so that the ethical domain has superiority over the juridical one:

"But woe to the legislator who wishes to establish through force a polity directed to ethical ends! For in so doing he would not merely achieve the very opposite of an ethical polity but also undermine his political state and make it insecure." (Kant, 1934, p.87)

Legal rights, as enforceable rights of freedom, can only guarantee the freedom of choice (*Willkür*) rather than the freedom of will (*Wille*). The term "choice" here does not mean that this legal framework can be changed in this or that way since rights are indeed unalienable. In such a system, people, as citizens, mutually recognize their equal freedom. This process of recognition thus can be driven under a particular type of society. The idea here is very similar to the *original position* of John Rawls; a system where the people decides basic principles of justice behind a veil of ignorance in order to avoid any discrimination or unfair treatment in the distribution of public goods (Rawls, 1971, p.118ff).

The idea of right, in its Kantian formulation, is essentially connected to the idea of public use of reason. Mutual recognition on the basis of equality and freedom can be attained only in the public level. Therefore a fair system of *Recht* should be first concerned with freedom of public use of reason and such a freedom must not be ignored in expense of any other freedoms. It is clear that this is actually a liberal understanding of state which is based on the principle of right. The implications of this principle become clear as we see that the constitution which Kant suggests in terms of “the wellbeing of the state” has a function that is conditional to the right to freedom; “it is that condition which reason, by a categorical imperative, makes it obligatory for us to strive after” (Kant, 1996, p.95). The state that Kant argues for is a particular one, that is, a lawful state (*Rechtsstaat*). He claims that a lawful state should be based on three principles namely *freedom* (of every member of society as a human being); *equality* (of each with all the others as a subject) and *independence* (of each member of a commonwealth as a citizen): “These principles are not so much laws given by an already established state, as laws by which a state can alone be established in accordance with pure rational principles of external human right” (Kant, 1991, p.74). In such a state everyone has inalienable rights, “which he cannot give up even if he wishes to, and about which he is entitled to make his own judgments” (Kant, 1991, p.84). However, a person who is being oppressed by the state is not able to make his own judgments. This is the case in which Kant refers to “freedom of pen” in *On the Common Saying* as a guarantee for basic rights:

“The citizen must therefore be authorized, with the approval of the ruler, to publicly make known his opinion about what in the ruler’s decrees seems to be a wrong against the commonwealth. For to assume that the ruler cannot err or cannot be unknowledgeable of a certain matter would be to presume him blessed with divine inspiration and elevate him above humanity. Thus the freedom of the pen is the only protector of the people’s rights —as long as it is held within the bounds of a great respect and love for the constitution within which one lives by a liberal way of thinking among subjects, which the constitution itself instills in them.” (Kant, 2006, p.57)

1.6. POLITICAL REFORMULATION OF THE IDEA OF PUBLIC USE OF REASON

As mentioned above, the principles of human rights, in Kantian sense, aims to guarantee the conditions of making one's own judgments, that is to say, *protect* and *empower* one's potentiality of using reason publicly. The point I assert here is that the idea of human rights, as understood in moral discourse, is fundamentally associated with the idea of public use of reason. Having said that, such an interpretation still remains "thick"⁸ especially when we consider the limits of the entire discussion of political economy. This brings me to the point where a political reformulation of the idea of public use of reason is needed. In this sense, the idea of *public reason* of John Rawls, which is formulated on the basis of political liberalism, provides great opportunities as it appears to be deeply inspired by the idea of *public use of reason*. While its roots reach back to the Kantian idea of *public use of reason*, Rawls tries to focus on the conditions of a *reasonable* social cooperation; a well ordered society among free and equal citizens. In other words, reasonable *moral or political inequality* (Rousseau, 1923, p.163) among citizens depending on an initial convention or a constitution which is ruled by public reason. In this sense, Rousseau's approach on equality and liberty appears to have an important role in the idea of *reasonable* citizens. Indeed, Rousseau is one of the main inspirations for John Rawls's works especially for his very famous "A Theory of Justice" where he analyzed the principles of social justice, for example the difference principle or the principle of reciprocity, for having a well ordered society, that is, a society "regulated by a public conception of justice". (Rawls, 1971, p.4)

Rawls mentions Rousseau's contractarian approach as one of the sources for his theory of well ordered society. Similar to Rousseau's conception of *nature of man*, Rawls formulates his theory of justice within the framework of social contract. The intention here is to hold an abstract *original position, or natural man* in Rousseauian sense, "which no longer exists, perhaps never did exist, and probably never will exist." (Rousseau, 1923, p.160) Such an abstraction leads us to an examination of the

8 I refer to Nussbaum's "thick vague" theory of the good which I discuss in the Chapter 4.

distinction between *natural man* and *civilized man* that is made by Rousseau in order to find out the origins of the inequality and to replace it with political equality⁹. Accordingly, in the beginning, where there was not any law other than natural restrictions, the savage man lived alone and did not need any external corporation because he had sufficient self-abilities to meet the basic living requirements. In this sense, inequality was not an issue for the savage man since he was not depending on anybody else but himself.

However, for Rousseau, human species are subject to two types of potential inequalities; first, natural or *physical* inequality that is established by nature; and second, moral or *political* inequality which depends on a formal agreement within society that is established by civilized men. Inequality and political conception of liberties have direct connections to the *civilized* human faculty that is achieved in expense of natural liberty. In this context Rawlsian idea of *public reason* appears to be a matter of *political liberty*, thus the purpose of such an idea goes beyond the limits of his former theory of justice. In fact, this is what Rawls calls the “political turn” in which he ventures a political interpretation of the “well-ordered society”. This “turn”, that I will discuss in the next chapter, is important in the sense that it can well provide a political framework to the examination of human rights in the context of economic thought.

9 The idea of abstract initial position is later used by Rawls; particularly within his conception of original position. In Rawlsian original position, agents are imagined in a position that as the parties that consist of free and equal persons, are deprived of all knowledge about their personal characteristics and social and historical circumstances.

CHAPTER 2: TRANSFORMATION OF THE IDEA; RAWLS AND THE IDEA OF PUBLIC REASON

2.1. INTRODUCTION

John Rawls in *Political Liberalism* (PL) offers an account of public reason that is necessary for the justification of the political principles of justice. While the two principles of justice have had the central importance in most broadly influential *A Theory of Justice* (TJ), these two principles are refined over the course of time and they are later replaced by the idea of public reason in his theory of political liberalism. Yet, since the publication of the PL in 1993, “the very words of its title have gained a new meaning” (O’Neill, 1997, p.411-412). The term “political liberalism” has increasingly been used to describe a particular approach to liberalism in which “comprehensive moral doctrines” are merely included in order to maintain stability. Liberal justice then is not considered as a concern of “metaphysical” inquiry but of “political” analysis. In this chapter, I tend to focus on the political conception of the public use of reason as presented in the works of Rawls. This chapter argues that elements of political reconsideration of public use of reason can be translated into the terms of human rights in the context of economic thought. I believe that, since Rawls has been placed within the Enlightenment tradition, his arguments concerning “the public political culture of a democratic society” (Rawls, 1996, pp.13-14) serve the purposes that I have already discussed in the previous chapter. In this sense, the account of publicity in the understanding of basic political institutions of a pluralistic society has a central role in my analysis of public use of reason.

The conception of reasonableness, on the other hand, constitutes my other concern in this chapter. In this context, I shall endorse an alternative account of public justification referring to the conception of impartial spectator presented by Adam Smith. In fact, John Rawls and Adam Smith are usually not seen as developing similar accounts of political and moral thought. Rawls’s views are better conceived in contemporary

political discourse especially in the discussion of social justice whereas Smith's works on political economy have had a central role in economic thought. However, *The Theory of Moral Sentiments* (TMS), one of the very first book that is written by Smith, has always been underrated compared to his influential book *Wealth of Nations* (WN). Smith takes the impartial spectator —the man within breast— to be fundamental to moral thought and practice and he holds that whatever role self-interest and passions might have in explaining the relations among people in a given society, an appeal to self-interest alone, without guidance of the man within breast, is insufficient. My claim is that the ideas and the moral framework that are proposed through the *Theory of Moral Sentiments* are deeply insightful and they provide an extensive context for understanding Smith's economic theory. In this sense, this chapter is also an attempt to examine the similarities of Rawlsian idea of public reason and the notion of *the man within breast* that Smith elaborates within his theory of sentiments. I tend to think that they are worth identifying and exploring because although Rawls and Smith do not share an overall approach to political thought and economics, the conceptions to which they refer within their respective theories may lead us to bring out the connection between human rights and economics.

This chapter is set up as follows. In section 2, I begin with an analysis of the ideas presented in *A Theory of Justice* and *Political Liberalism*. My aim here is to provide an outline of John Rawls's political thought and the background of his so-called "political turn" over the course of his entire career. In doing so, I try to highlight the role of the reasonable comprehensive doctrines in the process of overlapping consensus. Section 3, aims to demonstrate the political interpretation of the idea of public use of reason made by Rawls. I examine the public reasoning in comparison with the Kantian form of the idea. Then I further my examination through the discussion of non-public reasoning and publicity condition of political liberalism. In this section I also present the specific understanding of the pluralistic society that goes beyond Kantian moral discourse. In Section 4, I particularly focus on the political turn of Rawls which I call "Das John Rawls Problem" referring to the discussion of "Das Adam Smith Problem". There I

show the “new” forms of the principles of justice and I argue that the political turn that Rawls necessarily made because of the stability issues could provide an alternative basis to the analysis of human rights in the context of economic thought. My claim is that the motive behind this political turn can also be determined through a Hegelian perspective. This is one of the central argument which I try to elaborate extensively in the Chapter 4. Finally in the last section, I analyze the function of public reasoning in civil society in the context of Adam Smith’s *impartial spectator –the man within breast–* and “Das Adam Smith Problem”. My aim in this section is to show one possible implementation of the public use of reason in economic thought through Adam Smith’s theory of moral sentiments.

2.2. FROM “A THEORY OF JUSTICE” TO “POLITICAL LIBERALISM”

2.2.1. A Theory of Justice

John Rawls’s grand project in the TJ actually shares the same background with moral and political principles those have emerged since the Enlightenment era. Since *autonomy* is a matter of using reason, the principles of justice which Rawls asserts in the TJ are formulated on the basis of a moral agreement, that is, an agreement in which principles of justice are acceptable to all in general –which can be reflectively endorsed by all parties in the society. The purpose of Rawls in the TJ is to find out the basic principles for maintaining a well-ordered society. Accordingly, our personal views concerning the standards of justice, as well as other elements of the basic structure of society, are subject to a sustained revision upon reflection of reciprocal relationship with the others. Then, there may be a conclusion reached at a point that indicates the fundamentals of justice. If we (as citizens) do not have reason to reject anything more that need to be revised any further, we accept to be governed by these standards and principles. Rawls calls such a point as *reflective equilibrium*.

Rawls in the TJ is mainly concerned with the question of how the distribution of the burdens and benefits of social co-operation (as a reciprocal relationship with others), namely social primary goods, is shared out among the members within the basic

structure of society. He defines the benefits of social co-operation as 1) wealth and income, 2) food and shelter, 3) authority and power, 4) rights and liberties (Rawls, 1976, p.7-8). In the Rawlsian formulation, the idea of liberalism is bound with a particular understanding of justice which is strongly concerned with *the same amount* of allocation of *public goods*. Rawls furthers his inquiry by formulating two principles of justice. The first is called *the principle of greatest equal liberty* and expresses that “each person has an equal right to the most extensive liberties compatible with similar liberties for all” (Rawls, 1971, p,53). Then he proceeds to the second principle by dividing it into two sub-principles in which “social and economic inequalities should be arranged so that they are both a) to the greatest benefit of the least advantaged persons —the *difference principle*—, and, (b) attached to offices and positions open to all under conditions of equality of opportunity” (Ibid., p. 266) – the *principle of fair equality of opportunity*. Finally, he postulates a set of hierarchical requirements in his theory which he calls ‘lexical priority’. According to him, the principles are lexically prior to the other in the order of; the principle of greatest equal liberty > the principle of fair equality of opportunity > the difference principle. The requirements of the principles must be fulfilled sequentially and one should not be favored in expense of violating the other.

For Rawls, the conception of social justice should be “regarded as providing in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed” (Ibid., p.8). Indeed, in his theory of justice, Rawls tries to reconcile the conception of rational choice with the traditional contract theory and normative ethics. However, his theory of justice requires a degree of impartiality to the differences those originated from different degrees of individual wealth, social status and talents in order to bring out the basic principles in the social compact. Thus, he frames his theory within a hypothetical *original position* by assuming that persons are indifferent to their identities and talents because of the *veil of ignorance*. The “original position” is the realm where the principles of justice could be originated; where the parties, those which participate to the determination process of the just rules in society, are conceived as fully rational and motivated to pursue their life through their sense of self-respect. Each

independently has their own *worth-while life plan* while being disinterested in others'. However, in the original position, parties are also expected to take into consideration the position of others (those are to get economically worst-off) in setting the principles of distributive justice. Such an expectation for *empathy* is an important element of the theory to assess the *value of mutual respect*. For Rawls, such a mutual respect is shown "in our willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected" (Ibid., p.337). In this sense, "to respect another as a moral person is to try to understand his aims and interests from his standpoint and to present him with considerations that enable him to accept the constraints on his conduct" (Ibid., p.297).

On the other hand, the parties in the original position remain uninformed about their social-status, wealth and talents under the constraints of the "veil of ignorance". Parties behind the veil of ignorance are supposed to expose principles without being influenced by heteronomous affects. Rawls states, by referring to Kant, that an autonomous person acts upon the principles that "are not adopted because of his social position or natural endowments, or in view of the particular kind of society in which he lives or the specific things that he happens to want" (Ibid., p.222). The veil of ignorance thus liberates agents from the undesired affects of all natural and social externalities. Under these conditions, Rawls assumes that the parties ultimately would decide to govern themselves due to the principles of justice over any other principles. He underlines that "a sense of justice is an effective desire to apply" (Ibid., p.497) which leads people to pursue their projections of life and "personal good" within society. Thus it is rational "for those in a well-ordered society to affirm their sense of justice as regulative of their plan of life" (Ibid., p.497) whereas in such a community the parties "recognize the good of each as an element in the complete activity the whole of which is intended to give pleasure to all" (Ibid., p.459). As a matter of fact, such mutual recognition lets parties to build up the capacity for fellow-feeling and "once a person's capacity for fellow feeling has been realized [...], he develops friendly feelings toward them" (Ibid., p.411-412).

On the other hand, acquiring an understanding of the principles of justice requires a development in our morality. Rawls thereby follows a progressive line of reasoning in describing the conception of moral development. He details the course of moral development as “it might occur in a well-ordered society realizing the principles of justice as fairness” (Ibid., p.461). Accordingly he sketches this course starting from what he calls (1) *the morality of authority* to (2) *the morality of association* and finally to (3) *the morality of principles*. Proceeding from former to the latter signifies a change in the ability of recognizing the perspectives of others including an advanced perception of *fellow feeling*. In this context, (1) the first stage of moral development, namely *morality of authority*, indicates the elementary moral conceptions that arise externally in childhood. In this stage, the actions of a child are considered as primitive motivations sourced from instincts and desires which can be described by the notion of self-interest. Then (2) the second stage, called *morality of association*, covers a wide range of relations in the society. The morality here is regulated by the role of the agent within the community or any type of association. This stage thus requires the least comprehension of cooperation with others who have different views and motivations. Finally (3) *the morality of principle*. As the third stage of moral development, is the degree that serves the *sense of justice* and agents’ basic relationship with principles. Such principles govern the associations and institutions within society in accordance with a general public point of view. Therefore “the recognition that we and those for whom we care are the beneficiaries of an established and enduring just institution tends to engender in us the corresponding sense of justice” (Ibid., p.415). Rawls presents *the morality of principle* as a part of a reciprocal agreement on moral sentiments. Therefore the conception of *sense of justice* involves in all of the society; “thus in a well-ordered society where effective bonds are extensive both to persons and to social forms, and we cannot select who is to lose by our defections, there are strong grounds for preserving one’s sense of justice” (Ibid., p.499-500).

Rawls, after developing his theory of *justice as fairness* within *TJ*, advances to another concern; seeking for a conception of justice in the context of a particular democratic

society marked by a plurality of reasonable values. In other words, an overlapping consensus among the *reasonable* comprehensive doctrines in a well-ordered society consisted of all *reasonable citizens* (See Rawls, 1987). Accordingly, Rawls presupposes the citizens as free and equal and the society as a fair system of social cooperation. In such a system, citizens are generally constrained by the *duty of civility* in their public lives which seems to overlap with the constituent idea of human rights, namely *public use of reason*. What Rawls seeks is the conditions of a *well-ordered society* consisted of *all reasonable citizens*. In this sense, there is a reciprocal relation of rights and duties since men have duty to act as members of a *constitutional democratic society*; or analogically, in Kantian words; members of *the kingdom of ends* which leads us to become free and *mature* persons. In this context, Samuel Freeman outlines Rawls's conception of democracy as follows;

“In the end, Rawls seems to commit himself to the view that the ‘people’ is an ideal implicit in democratic political culture: that of free and equal persons united together as one legal body, the body politic, which exercises constituent power to make the higher law in such a way that it expresses the political values of public reason, thereby enabling them to realize the (moral) powers that make them free and equal democratic citizens. This conception of the person and the people seems to be the basis for the substantive conception of democracy that Rawls sees as implicit [...] in the public political culture of which [the] constitution is an integral part” (Freeman, 2007, p.210)

2.2.2. Political Liberalism

As mentioned above, *A Theory of Justice* has played the leading role in John Rawls's discourse, while his theory of *political liberalism* occupies a particular place among his works. One of the main aim of political liberalism is “to say how the well-ordered society of justice as fairness is to be understood once it is adjusted to the fact of reasonable pluralism and regulated by a political conception of justice” (Rawls, 1996, p.171). Political liberalism is thus an essential constituent part that “in different ways fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it” (Ibid., p.145). Accordingly, it is “central to political liberalism that free and equal citizens affirm both a comprehensive doctrine and a political conception [of justice]” (Ibid., p.608-609). Rawls asserts that agents must

conform themselves to the pluralism of the modern democratic society and the system of social cooperation among diverse world views. In this sense Rawls here intends to discover the conditions of legitimacy within a framework of political philosophy. This is actually the ultimate aim of political theory as it is described by Thomas Nagel as “finding a way to justify a political system to every one who is required to live in it” (Nagel, 1991, p.33). Yet, the historical origin of political liberalism for Rawls is “the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries. Something like the modern understanding of liberty of conscience and freedom of thought began then. As Hegel saw, pluralism made religious liberty possible” (Rawls, 1996, p. xxiv).

Rawls asserts that the concerns of political liberalism are not the concerns of what he calls Enlightenment liberalism because political liberalism has not a single form that is only based on “a comprehensive liberal and often secular doctrine founded on reason and viewed as suitable for the modern age now that the religious authority of Christian ages is said to be no longer dominant” (Ibid., p.xxxvii). Following this line of reasoning, Rawls elaborates the political dimensions of justice by re-forming the idea of justice as fairness in order to set his idea of public reason apart from particular conceptions of justice. That is to say, he tends to recover the practical “instabilities” of his former theory by re-forming it without grounding on comprehensive doctrines, but relying on the ideas that “are present in the public culture, or at least in the history of its main institutions and the traditions of their interpretations” (Ibid., pp. 8-9). Indeed, such a reformulation is made by Rawls because of the need of setting the limits of political principles of justice for the sake of the stability of the theory. However, “the guidelines and procedures of public reason are seen as selected in the original position and belong to the political conception of justice” (Ibid., p.62). For example if we consider the veil of ignorance; it has a function to obscure the ability of knowing the particular comprehensive doctrines among parties, and; the original position has the function to set the basic structure of the well ordered society while “the original position also requires the parties to select (if possible) principles that may be stable, given the fact of

reasonable pluralism; and hence to select principles that can be the focus of an overlapping consensus of reasonable doctrines” (Ibid., p.78).

Therefore the practical aim in the PL is much more concerned with the use of political tools to supervise unreasonable comprehensive views, or *truths*, within a framework of reasonable pluralism in order to avoid a controversy over fundamental public matters: “Once we accept the fact that reasonable pluralism is a permanent condition of public culture under free institutions, the idea of the reasonable is more suitable as part of the basis of public justification” (Ibid., p.129). Having said that, through an analysis of political liberalism, Rawls also tries to elaborate the basic conditions of an available pluralistic society by re-examining the Kantian idea of *public use of reason* within a political context. In this sense, the idea of *public reason* which I will analyze it in the next section appears to be a political re-consideration of *public use of reason* in the context of an abstract social compact. For him;

“[P]ublic reason is not specified by any one political conception of justice, certainly not by justice as fairness alone. Rather, its content —the principles, ideals, and standards that may be appealed to— are those of a family of reasonable political conceptions of justice and this family changes over time.” (Ibid., pp. l-li)

In other words, establishing a political basis for a pluralistic society is the ultimate concern of Rawls in his attempt to re-frame his conception of justice through the idea of overlapping consensus based on *reasonable* comprehensive views in society. To do so, such a conception of justice “should be as far as possible, independent of the opposing and conflicting religious and philosophical doctrines that citizens affirm” (Ibid., p.9). However, Rawls underlines that the liberalisms of Kant and Mill, as well as his own *theory of justice*;

“may lead to requirements designed to foster the values of autonomy and individuality as ideals to govern much if not all of life. But Political Liberalism has a different aim and requires far less [...] Justice as fairness does not seek to cultivate distinctive virtues and values of the liberalisms of autonomy and individuality, or indeed any other comprehensive doctrine. For in that case it ceases to be a form of political liberalism” (Ibid., pp.199-200)

According to Rawls, the main difference of political liberalism with such comprehensive liberalisms, as well as all other comprehensive views, lies in its context which is very narrow in scope. It covers only a limited public domain that consists of persons as free and equal citizens. Thus, his concern in the PL is not considered as ethical but political. Such distinction between the *political* and *ethical* or between a political conception of justice and various comprehensive doctrines within society leads Rawls to make a clarification on the fundamental distinction between the public and private within the context of his idea of public reason. Rawls states that “The public vs. nonpublic distinction is not the distinction between public and private” (Ibid., p.220). He tries to avoid himself to enter the debate on the distinction of public and private in terms of individual point of views. Rather he asserts that “there is no such thing as private reason” (Ibid., p.220). Rawls here seems to specify the word non-public as a definition of various forms of association or *social unions* as he previously did in the TJ which include family, churches, universities, etc. Rawls furthers his account of public and non-public by enclosing the conception of *use of reason*. Accordingly, the non-public use of reason is described through the concepts of the *social*, the *familial* and the *individual*. In general, Rawls seems to imply various social uses of reason in civil society by the term *non-public reason* which is the reasoning of “churches and universities, scientific societies and professional groups” (Ibid., p.220).

Although the distinction of public and non-public will be examined in the next section, here, I briefly mention the relation between non-public reasoning and reasonableness. It appears to me that Rawls does not deny the fact that our non-public values, beliefs, and modes of discourse can have meaningful grounds to cohere with our public reasoning. Thus, the idea of a possible political society in which there is an agreement on the fundamental matters, that no reasonable person can reject, does not appear to be that futile. In this context, Rawls seems to employ a strategy based on the division of rational and reasonable –which the idea may well refer to the general “ethical” line of reasoning in the TJ– to form his political conception of justice in the framework of fair terms of social cooperation. For example, *rationality* shall remind us a person who has

“a coherent, hierarchical set of available preferences between the options open to him” (Rawls, 1971, p.123) and who choose a higher satisfaction level than lower options. Views those are based on rationality do not have an essential political role in the task of forming a well-ordered society on the basis of an overlapping consensus. Accordingly, a rational agent has two significant features; (1) agent does not suffer envy, for example, he is not expected to accept “a loss for himself if only others have less as well” (Ibid., p.124) and (2) agent does not concern with the benefit or welfare of others unless the difference in the benefits and welfare levels do not exceed certain limits. Rather, a rational person is a “mutually disinterested” agent in the civil society who pursues his own benefits with no intention to harm others. In this sense, rationality alone cannot provide a reliable justification under the conditions of pluralism as pluralism in society requires agents seeking for different ends. Rationality here presents the capacity to follow the ends of one’s own. Thus, a theory of an agreement on principles of justice must also appeal to what he calls the *reasonable*.

Reasonableness, for Rawls, is a matter of managing relationship of persons in a well ordered society, in which all parties has their own specific purposes. Reasonableness of persons basically is meant to be ready to “propose principles and standards as fair terms of cooperation and abide by them willingly, given the assurance that others will likewise do so” (Rawls, 1996, p.46). In this regard, the person mentioned here is possibly to have an “unreasonable” comprehensive doctrine in mind but is also aware of the unsuitability to a possible overlapping consensus upon others. Nevertheless, for Rawls the *reasonable* and the *rational* are complementary “but distinct concepts and both are indispensable” (Ibid., pp.51-53). Reasonableness is not only a matter of being impartial because reasonable agents are not expected to forgo their own interests, rather, they are expected to stop imposing any conception of the general good to each other. Persons still remain reasonable even when they enjoy the benefits of *self-love* while having a mutual understanding of advantageous political principles. Pluralism of pursuit of ends is possible if others will accept the very same political principles. However, Rawls seems to have doubts on the relation between the *rational* and the *reasonable*. The

question here is whether an inclusive conception of the *reasonable*, for example limiting the operation of the *rational* under the *reasonable*, will lead us to reach reasonable ends or not. Such a doubt is obvious because he denies one of his earlier work in which he corrects a comment in the TJ by considering the theory of justice as a part of the theory of rational choice (Rawls, 1971, p.16). However, we can not find a political justification for this proposition. Rawls simply introduces his thoughts as a *conjecture* (Rawls, 1996, p.53).

Rawls furthers that a reasonable person must also admit a particular responsibility what he calls the “burdens of judgment”. Thus, reasonableness is also meant to be “the willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime” (Ibid., p.54). That is to say, a certain level of reasonable disagreement is possible in pluralistic societies where people generally faces with various comprehensive views rather than imposing one accepted view. Rawls does not disregard the difficulty of weighing the relevant considerations of such doctrines. However, he seems to try excluding this difficulty by limiting his project within the political sphere. The burdens of judgment do not signify the mere differences in personal views, but the availability of a certain level of a reasonable disagreement among those views. Rawls gives a long list of the sources of a reasonable level of disagreement in the PL (Ibid., pp.56-57). In this sense, Larmore tries to summarize these burdens to indicate most common and important sources of reasonable disagreement as follows;

“(1) The empirical evidence may be conflicting and complex, (2) Agreement about the kinds of considerations involved does not guarantee agreement about their weight, (3) Key concepts may be vague and subject to hard cases; (4) Our total experience, which shapes how we assess the evidence and weight values, is likely in complex modern societies to be rather disparate from persons to person; (5) Different kinds of normative consideration may be involved on both sides of a question, (6) Being forced to select among cherished values, we face great difficulties in setting priorities.” (Larmore, 1996, p.170)

2.2.3. Reasonable Comprehensive Doctrines and Overlapping Consensus

For Rawls, comprehensive doctrines can not justify political principles of justice. However, the political conception of justice, as well as public reason, is “a module, an essential constituent part that fits into and can be supported by the various reasonable comprehensive doctrines that endure in the society regulated by it” (Rawls, 1996, p.12). In this sense, such a political conception of justice somehow corresponds with comprehensive views of citizens. Because when there is a plurality of comprehensive views, “It is left to citizens individually –as part of the liberty of conscience– to settle how they think the values of the political domain are related to other values in their comprehensive doctrine” (Ibid., p.140). Nevertheless, Rawls here is suggesting a particular way to deal with comprehensive views in building an overlapping consensus; namely *reasonable* comprehensive views: “We look for a consensus of reasonable (as opposed to unreasonable or irrational) comprehensive doctrines. The crucial fact is not the fact of pluralism as such, but of reasonable pluralism” (Ibid., p.144). Rawls makes such a distinction by proposing a dual set of criteria, starting with the concepts of coherence or rationality. According to this, a reasonable doctrine at first;

“[C]overs the major religious, moral, and philosophical aspects of human life in a more or less consistent and coherent manner. It organizes and characterizes recognized values so that they are compatible with one another and express an intelligible view of the world [...] it normally belongs to, or draws upon, a tradition of thought and doctrine. Although stable over time, and not subject to sudden and unexplained changes, it tends to evolve slowly in the light of what from its point of view, it sees as good and sufficient reasons.” (Ibid., p.59).

Then he furthers his analysis towards the second criteria by asserting that such a comprehensive doctrine should pass the evaluation process in comparison with the essential structural feature of the doctrines that are already a part of an overlapping consensus, because “in a particular case someone may, of course, affirm a reasonable doctrine in an unreasonable way, for example blindly or capriciously” (Ibid., p.60). In this sense, the doctrine which can not be considered as reasonable is described as “the only comprehensive doctrines that do not accord with public reason on a given question are those that cannot support a reasonable balance of political values on the issues that it

raises” (Ibid., p.243). In the end, public reason appears as an important part of any reasonable agreement to achieve *overlapping consensus* within the whole theory of political liberalism. In this context, Rawls gives the *modus vivendi* example as another way of agreement in order to better express what he means by an *overlapping consensus*. He, distinguishes the agreement that is based on self-interest from the agreement that is based on a consensus on the principles of justice. An agreement based upon a *modus vivendi* occurs when the participating parties find making such an agreement to be feasible and favorable. The problem here is that such an agreement does not require a basis of political principles so it is easy to abandon when one of the parties thinks it is not favorable anymore. On the other hand, the object of an overlapping consensus is distinct from *modus vivendi*. It is itself a moral conception; such a consensus “therefore, is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self –or group– interests. All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides” (Ibid., p.147). However, the parties those involved in the overlapping consensus will not give up on supporting the political principles of the agreement. Indeed, this “stability” concern in the overlapping consensus is the most important difference from *modus vivendi*.

2.2.4. Towards a Political Turn

The “practical aim” of providing a public basis to the PL is to reconcile the diverse range of ideas through a reflective equilibrium, thus, to find a political ground for an overlapping consensus and to maintain stability. The concept of reconciliation here “expressed in its most concise form [...] means a particular mode of coexistence, the achievement of a particular and unstable equilibrium between the reasonable and the rational, as Rawlsian terminology calls them” (Ege and Igersheim, 2008, p.34). To achieve such reconciliation, public reason has to remain “impartial [...] between the points of view of reasonable comprehensive doctrines” (Rawls, 1996, p. xix) because of the “practical impossibility of reaching reasonable and workable political agreement in

judgment on the truth of comprehensive doctrines” (Ibid., p. 63). However, Rawls has been criticized because of the issue of *inconsistent* ideas concerning this practical aim which are demonstrated in the TJ and the PL. Even Rawls himself mentions this issue in the preface to the PL. He asserts that to understand the nature of the varying ideas in the TJ and the PL, “one must see them as arising from trying to resolve a serious problem internal to justice as fairness, namely from the fact that the account of stability in part III of Theory is not consistent with the view as a whole” (Ibid., pp. xvii-xviii). Then, while in the TJ it is supposed that the conditions of a well-ordered society would come into existence under the supervision of the *theory of justice (as fairness)*, In the PL, Rawls tries to eliminate such “comprehensive philosophical doctrine” for the sake of the “reasonable pluralism”. Thus, as he is fully aware of the stability concerns, prevailing inconsistencies in the theory force him to seek “many other changes and calls for a family of ideas not needed before” (Ibid., p. xix). Rawls definitely tries to figure out the condition of possibility for individuals to flourish the sense of justice with respect of *justice as fairness*. However, this also requires opting out from personal attitudes, beliefs or doctrines. Finally, he intimates that he has decided to re-form the ideas postulated in the TJ which later lead him to a *political turn*¹⁰. In this context, the ideas of “overlapping consensus” and “public reason” appear to constitute the most fundamental part of this turn.

10 See more in Gaus, 2014

2.3. PUBLIC REASON and WELL ORDERED SOCIETY

2.3.1 Public Reason As An Idea

As mentioned above, Rawls, in the PL, aims at specifying the extent of political arguments based on religious, philosophical, or moral comprehensive doctrines in a well-ordered society. The question is much more related to the fact that whether such comprehensive doctrines “hold a reasonable political conception of justice that supports a constitutional democratic society” or not. Rawls, at this point, proposes his idea of public reason by arguing that comprehensive doctrines are acceptable in public forums in order to have an overlapping consensus over fundamental political matters only when they are proposed on the same basis of non-comprehensive political values. Rawls states that “in public reason comprehensive doctrines of truth and right be replaced by an idea of the politically reasonable addressed to citizens as citizens” (Rawls, 1996, p.574). So the question here is that if such a theory of political liberalism, which is limited to a particular political form based on *public reason*, can be actualized without any moral foundation –or a comprehensive theory– or not.

Rawls specifies public reasoning as a particular use of reason that is acceptable to *common human reason*. Citizens are considered unreasonable when they impose their views without using their *common* public reason. Such use of reason also lacks of public dimension. In this sense public reason seems to be partly formulated as Kantian *enlarged thought* that is to be “attributed to the faculty called common sense” (Kant, 1892, §40) which implies a sort of impartiality by putting ourselves “in thought in the place of every one else” (Kant, 1892, §40). Then, common human reason is the source of basic solution to resolve the perplexities of opposing claims:

“[C]ommon human reason is impelled [...] from practical grounds themselves, to go outside its sphere and to take a step into the field of practical philosophy, [...] so that it may escape from its embarrassment concerning the claims of both sides and not run the risk of being deprived, through the ambiguity into which it easily falls, of all genuine ethical principles.” (Kant, 2002 p.21)

Rawls asserts that if we are to recognize various moral and religious views, what he

calls comprehensive doctrines, we will not be able to reach an overlapping consensus. Disagreements about such doctrines and their conceptions of the *good* and the *truth* are very difficult to resolve. However, For Rawls, an alternative political approach to liberalism can be purposeful if we are to seek for an agreement with all reasonable others concerning the principles of justice and the basic structure of a just society. This agreement is one of the essentials of a pluralistic society because pluralism “is the natural outcome of the activities of human reason under enduring free institutions” (Rawls, 1996, p. xxiv). Therefore, according to Rawls, justification of political principles of justice can be possible within a pluralistic society even under the existence of a reasonable dispute on fundamental moral and metaphysical views. However, this possibility highly depends on the relation between the *reasonable* and the *rational* that will “bring out the bases of the principles of right and justice in practical reason” (Ibid., p. xxx). In this sense, a reasonable agreement requires agents conceived as fellow citizens in a particular sense. A citizen has a political identity which lets him being one of the equal members of a pluralistic society. That sort of classification in his political theory leads Rawls to postulate a set of ideas based on *fair cooperation* and *burdens of judgment* which are also capable of being justified by both rational and reasonable doctrines. Citizens here become a constitutive part of a specific society with the ability “to be normal and cooperating members of society over a complete life” (Ibid., p.81). Rawls, at first, conceives of those citizens who are actually living in a society that is “self-contained and [...] having no relations with other societies. Its members enter it only by birth and leave it only by death” (Ibid., p.12). Then, this society is viewed as;

“[M]ore or less complete and self-sufficient scheme of cooperation, making room within itself for all the necessities and activities of life, from birth until death. A society is also conceived as existing in perpetuity: it produces and reproduces itself and its institutions and culture over generations and that there is no time at which it is expected to wind up its affairs.” (Ibid., p.18)

In Rawlsian formulation, *public reason* requires citizens those who can reasonably be a part of social cooperation thanks to their ability to make decisions using values and standards at a public level, which others could not reasonably reject (Scanlon, 1982,

p.116). For Rawls, public reason is “characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship. The subject of their reason is the good of the public: what the political conception of justice requires of society’s basic structure of institutions, and of the purposes and ends they are to serve” (Rawls, 1996, p.213). In this context, *unreasonable* refers to imposing *comprehensive doctrines* on others in the public sphere. Citizens should exercise public reason in respect of fundamental issues of justice which should also be reasonably accepted by other citizens. That is to say, we come into conflict over the distribution of the advantages and burdens of social cooperation since we have different personalities, different ends and purposes concerning our personal life. Thus, we should not take into account personal *doctrines* when we deal with public issues where full agreement upon comprehensive moral, religious, and philosophical principles is nearly impossible. The idea of public reason represents a particular type of reasoning on public issues, apart from *non-public* ways of reasoning like in religious doctrines or philosophical values; these values and standards are not public and “citizens engaged in certain political activities have a duty of civility to be able to justify their decisions on fundamental political issues by reference only to public values and public standards” (Wenar, 2008).

Accordingly, a well ordered society “is a fair system of social cooperation” (Rawls, 1997, p.774), which is specified through “the principles of justice” (Ibid., p. 778). A fair system of social cooperation requires a publicly –or reasonably– agreed standard which is provided by reciprocal relations. Persons are reasonable when they are “ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so” (Rawls, 1996, p. 49). In *political liberalism*, all citizens reasonably accept the principles that govern the basic institutions of a just society. Therefore, *public reasoning* is the key element in making a reasonable agreement among free and equal citizens within a democratic society; “public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government’s relation to its citizens and their relation to one another” (Rawls, 1997, p.776). However, *fair* social cooperation is

possible only when people are able to exercise some basic capacities of agency within a *basic* structure which is regulated by the principles of justice. In this sense, Rawls places his idea of public reason right in the center of the determination process of the political principles of fair cooperation. This process also implies the existence of a reading public as in the Kantian definition. The basis of a reasonable action of reasonable persons who have a *sense of justice* is justified in the context of a particular understanding of *public*. Accordingly, the sense of justice is “the capacity to understand, to apply and to act from the public conception of justice which characterizes the fair terms of cooperation” (Rawls, 1996, p.19). In this sense, Rawls seems to avoid a possible confusion in his account of justice with those which rely on an individual conception of justice, as in the Kantian concept of *kingdom of nature*; his account of justice is “philosophical not psychological” (Ibid., pp.86-88).

Rawls asserts that public reason holds for citizens when they “vote in elections when constitutional essentials and matters of basic justice are at stake” and “when they engage in political advocacy in the public forum” (Ibid., p.215) to the extend of particular venues associated with governmental power such as members of political parties, candidates and support groups. The matters that should be resolved by the use of public reason are only the most fundamental ones; “matters of constitutional essentials and basic justice” (Ibid., p.224) on which all reasonable people can agree. Accordingly, the comprehensive doctrines which are not included in Rawls’s project are those “that would suppress, if they could, liberty of conscience and freedom of thought” (Ibid., p.64). He stresses that “reasonable persons will think it is unreasonable to use political power, should they possess it, to repress comprehensive views that are not unreasonable, though different from their own” (Ibid., p.60). Following this line of reasoning, Rawls seems to imply a particular political behaviour for the citizens through the concept of *public forum*. However, the idea here is not directly concerned with law and legislation. Public reason is at first a self-imposed principle, a *duty of civility* and, a moral law in Kantian terms, which does not require an (external) enforceable legal framework. It is an idea associated with the *duty of virtue* in the Kantian sense. However, for Rawls, the

duty of civility, should be considered within a political framework rather than an ethical one.¹¹ The point here is that the reason of associations in civil society “is public with respect to their members, but nonpublic with respect to political society and to citizens generally” (Ibid., p.220).

Rawls, here, tends to limit the idea of public reason within the boundaries of a political conception of justice in which the idea itself involves a vision of society as a fair system of social cooperation between citizens those who possess certain basic rights and have equal liberties and opportunities. In this sense Rawls deals with the idea of public reason in the same way as he did in *justice as fairness*: “In justice as fairness, then, the guidelines of public reason and the principles of justice have essentially the same grounds” (Rawls, 1996, pp. 225-226). Indeed, the idea behind the *veil of ignorance*, that leads parties to make their decisions compatible to principle of justice, also dismiss the possibility of various moral and religious tendencies. The purpose here is similar to the one in the idea of public reason in its strictest form which dismisses comprehensive moral, religious, or philosophical doctrines in the public sphere. However, the context of the idea of public reason –and political liberalism as well– does not lead people to resolve all of the political and social questions. Thus, in discussing the idea of public reason, Rawls states that:

“Accepting the idea of public reason and its principle of legitimacy emphatically does not mean, then, accepting a particular liberal conception of justice down to the last details of the principles defining its content. We may differ about these principles and still agree in accepting a conception’s more general features.” (Ibid., p.226)

Rawls, in 1996 paperback edition of the PL, revisited this strictest form of public reason and points out some particular exceptions that comprehensive doctrines “maybe introduced into public reason at any time, provided that in due course public reasons, given by a reasonable political conception are presented sufficient to support whatever

11 On the other hand, one should also try to analyze ethical issues by public reason within a political context. Because for Rawls, such political context is also, in a way, a matter of morals (Rawls, 1996, pp.243-244). The “political” is a domain of the moral, and a political conception of justice is also a moral conception (Ibid., pp.174-175).

the comprehensive doctrines are introduced to support” (Ibid., p. lii). Rawls here seems to allow only *reasonable* comprehensive views in the use of public reason. Accordingly, he defines *reasonable* comprehensive views as doctrines which can support a reasonable balance of political values and which do not run afoul of public reason (Ibid., pp.243-244). In this context, reasonable comprehensive views are particular exceptions those allowed in public forum. However, Rawls also underlines that “a comprehensive doctrine is not as such unreasonable because it leads to an unreasonable conclusion in one or even in several cases. It may still be reasonable most of the time” (Ibid., p.243)

Therefore, a summary of the role of comprehensive doctrines within the use of public reason can be made under three topics; (1) comprehensive doctrines may not have a purpose in application of public reason within a well-ordered society in which the principles of justice applied without any problem, then, (2) in such case, comprehensive doctrines can be applied only if they allow to strengthen mutual trust and public confidence and if they support the principles of political liberalism. In this sense, people may “explain in the public forum how one’s comprehensive doctrine affirms the political values” (Ibid., p.249), then finally, (3) an exception is possible for those situations in which a society either partially well-ordered or disordered. In such a case comprehensive doctrines may be introduced if “the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized” (Ibid., p.251). However even if each citizen follows the principles considered as acceptable to common human reason and stays within the *public* framework, there still remains a variety of values based on the separateness of persons or “individualized impartial concerns” (Nagel, 1991, p.65). The question of resolving or (categorizing) such inevitable conflicts still remain.

2.3.2. Nonpublic Reasoning and Publicity Condition

For Rawls, public reason is not the only way of reasoning while “there are the nonpublic reasons of churches and universities and of many other associations in civil society” (Rawls, 1996, pp.213). Rawls distinguishes his idea with other forms of

reasoning, namely *nonpublic reason*, on the basis of their different scope: “Nonpublic reasons comprise the many reasons of civil society and belong to what I have called the ‘background culture’, in contrast with the public political culture” (Ibid., p.220). The term *nonpublic* here is not a derivative of what he calls *private*. The point here is that in a well-ordered pluralistic society, citizens are able to employ different views (or nonpublic reasons) as members of various groups, associations and families. However, such plurality is not possible if we are to use our reason publicly because for Rawls “there are many nonpublic reasons and but one public reason” (Ibid., p.220).

Rawls, then, postulates three requirements for using reason publicly which he calls “publicity condition”. Fulfilling of these requirements is essential to verify a *public reasoning*. That is to say, a “well-ordered society” in which the public reason has grounds to be applied is also subject to *publicity condition*. In other words, the principles of justice is to be accepted by the citizens in order to govern the basic institutions of this well-ordered society, and so that they “do so on the basis of commonly shared beliefs confirmed by methods of inquiry and ways of reasoning generally accepted as appropriate” (Ibid., p.66). Then, the publicity condition requires a consensus on the interpretation of general beliefs to the public sphere within the framework of accepted principles of justice. These general beliefs should be “supported by publicly shared methods of inquiry and forms of reasoning” (Ibid., p.67). In this sense, public reason incorporates within some certain limits in which the method is “to be familiar from common sense and to include the procedures and conclusions of science and social thought, when these are well established and not controversial” (Ibid., p.67). Rawls here essentially tends to provide a justification for the basic institutions of society in the context of his postulation of well-ordered society. Accordingly, he states that “we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial” (Ibid., p.224-225). Rawls here takes the public reason into consideration in order to set forth a common ground for a political justification and he designates the limits of reasoning in such way to provide a

reasonable basis for a consensus among citizens in a pluralist society. Rawls furthers that:

“[W]e are not to appeal to comprehensive religious and philosophical doctrines –to what we as individuals see as the whole truth– or to elaborate economic theories of general equilibrium, say, if these are in dispute. As far as possible, the knowledge and ways of reasoning that ground our affirming the principles of justice and their application to constitutional essentials and basic justice are to rest on the plain truths now widely accepted, or available, to citizens generally. Otherwise, the political conception would not provide a public basis of justification.” (Ibid., p.224-225)

2.3.3. Beyond Kantian Moral Contractivism

As mentioned above, *public reasoning* leads to a social cooperation among citizens who endorse different fundamental values; or different ways of pursuing *happiness*. Actually, the concept of *pluralism* in fundamental or moral/religious values embodies the abstraction of citizens who make their decisions according to their self interests within the economic context. In this sense, citizens in a *well ordered democratic society* are inevitably going to have their own considerations of good or *utility*. In this sense, the idea of *public reason* appears to be a theoretical framework that is established to combine the idea of individual progress in terms of private concerns and the idea of social justice in terms of public concerns. Therefore, Rawls appears to stand in between of the two *realms* of the Kantian ethics through a political mediation of *kingdom of nature* and *kingdom of ends*. In fact, the interpretation of the idea of *public use of reason* within an economic context could be *reasonable* by reformulating this idea as the *public reason*. If we analyze Rawlsian conception of public reason in a *pure* Kantian way, such a reasoning, as it is based on political ideas, would not be entirely public, nor reasonable. For Kant, thus, a using reason out of the public context is called private use of reason in which the freedom is not a concern in the process of becoming mature. Kant does not primarily deal with a “political” society, so the idea of public use of reason does not require a particular social or political formation. It is the “lawful state” (*Rechtsstaat*) which is the sole political institution in the Kantian analysis of the Enlightenment. In this sense, the idea of public use of reason applies to any *enlightened*

society within the universal dimension of categorical imperatives. Kant's project requires principles of action which can be fully applied to all citizens of a cosmopolitan society. Therefore, if the principle of an action is not based on a *synthetic a priori* proposition, it will basically be out of concern whether people will agree or disagree. In this context, the Rawlsian conception of public reason exceeds the incomplete sense of political analysis of a society that we see in the Kantian idea of public use of reason –or the Rawlsian idea of the original position. Therefore, Rawls's main concern here seems to be the question of the "citizen" in a democratic society:

“[P]ublic reason is characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship [...] [It is] public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public.” (Ibid., p.213)

It is obvious that the idea of public reason involves very little in the individuals' practical life. Rather, It refers to their political life of which an understanding similar to what we see in the *Gelehrter*. Rawls considers the potentialities of human beings in a political society as “an intellectual and moral power, rooted in the capacities of its human members” (Ibid., p.213). Such a conception of justice that is based on the capacities of human members in a well ordered society is indeed more political than metaphysical. My intention here thus is to consider this conception of a pluralistic society, and its members, as a political derivative or a narrower understanding of the Kantian *Gelehrter* and *reading public*. Having said that, Rawls himself, notes four differences between Kant's moral constructivism and the political constructivism of justice as fairness in the PL. Accordingly (1) “The first difference is that Kant's doctrine is a comprehensive moral view in which the ideal of autonomy has a regulative role for all of life. This makes it incompatible with the political liberalism of justice as fairness” (Ibid., p.99), (2) a second difference is based on the distinction between the doctrinal autonomy and the constitutive autonomy. Rawls describes the doctrinal autonomy as; “if a political view is autonomous if it represents, or displays, the order of political values as based on principles of practical reason in union with the appropriate political

conceptions of society and person” (Ibid., p.99). However the constitutive autonomy requires the “order of moral and political values must be made, or itself constituted, by the principles and conceptions of practical reason” (Ibid., p.99). As this deeper understanding of autonomy constitutes the order of values, “political liberalism must, of course, reject Kant’s constitutive autonomy” (Ibid., p.100), (3) the third difference lies in the Kantian understanding of person and society. The essential feature of justice as fairness is that it is based on the use of certain fundamental political ideas. Thus “transcendental idealism and other such metaphysical doctrines play no role in their organization and exposition” (Ibid., p.100); (4) finally the fourth is the difference among the aims of two approaches. The aim of Rawls’s project is to set forth “the public basis of justification on questions of political justice given the fact of reasonable pluralism” (Ibid., p.100). However, “Kant’s view of philosophy rejects any doctrine that undermines the unity and coherence of theoretical and practical reason; it opposes rationalism, empiricism, and skepticism so far as they tend to that result” (Ibid., p.101). Therefore, Rawls seems to stay on the “political” side of the discussion concerning Kant’s influence to his later works.

2.4. THE POLITICAL TURN

2.4.1. “Das John Rawls Problem”

One of the most central argument in the PL is the *stability* issue for which I assume that the most critical point appears to be the discussion regarding *public reason*. The stability question here also constitutes the main theme of Rawls’s “political turn”. In fact Rawls confirms that the problem of stability is resolved by the postulation of his idea of public reason whereas he, in the TJ, used to follow a particular line of reasoning to make an explanation of the *good* concerning his stability analysis. According to this explanation, under certain conditions (original position etc.) we share a common understanding of the good. We recognize the good of each, through a social union founded upon our needs and potentialities, “as an element in the complete activity the whole of which is intended to give pleasure to all” (Rawls, 1971, p.459), our natural sentiments of unity and fellow feeling we have “a desire to express [our] nature as free and equal moral

persons” (Ibid., p.462).

Regarding the stability issue, Rawls mentions the conception of *primary goods* as the essential goods in the pursuit of any rational plan of life. By then he determines “a thin theory of the good” for which he explains the reason behind the desire of these primary goods and the role of principles of justice in guiding the agents in the original position: “We need what I have called the thin theory of the good to explain the rational preference for primary goods and to explicate the notion of rationality underlying the choice of principles in the original position” (Rawls, 1971, p.349). Rationality here is the main concern in the case that (1) if the plan of life is “consistent with the principles of rational choice” (Ibid., p.358) and (2) is chosen “with full deliberative rationality” (Ibid., p.359). Under these conditions, the parties in the original position are expected to easily find a common basis to follow the two principles of justice. In this way, the concept of justice as fairness provides a more stable basis to a well-ordered society than any other options available in the original position; “Other things equal, the preferred conception of justice is the most stable one” (Ibid., p.436). Then in the PL, Rawls figures out that the stability that is needed in a democratic society is a matter of *reasonable pluralism* rather than of comprehensive moral doctrines. Thus, justice as fairness in the TJ, as a comprehensive doctrine, became somehow incompatible with other *reasonable* doctrines. According to Rawls, a comprehensive moral theory includes;

“[C]onceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of but by no means all, nonpolitical values and virtues and is rather loosely articulated.” (Rawls, 1996, p.13)

However, certain fundamental ideas for establishing the basis of a political conception of justice is “latent in the public political culture of a democratic society” (Ibid., p.175). Such a society is a well-ordered one if its “central organizing idea” focuses on “society

as a fair system of cooperation over time, from one generation to the next.” including “the idea of citizens (those engaged in cooperation) as free and equal persons” together with the idea of “a well-ordered society as a society effectively regulated by a political conception of justice” (Ibid., p.175).

2.4.2. Reformulation of Justice as Fairness and the Principles of Justice

Rawls, in his later works, makes some critical modifications in his idea of justice as fairness. He states, in *Kantian Constructivism in Moral Theory*, that *justice as fairness* is not a “Kantian” view. However there are more fundamental similarities in the formulation of his theory with Kantian constructivism compared to other traditional moral conceptions: “Since the eighties, Rawls’s work has seemed to follow two lines: more and more Kantian in his method and less in the objective of the theory he proposes” (Ege and Igersheim, 2008, p.28). Thus, the aim of his inquiry into the availability of the most appropriate principles of freedom and equality is not to “find a conception of justice suitable for all societies regardless of their particular social or historical circumstances” (Rawls, 1999, p.305). Such a doctrine is not concerned with discovering the moral truth. Rather, “the real task of justifying a conception of justice” is the “search for reasonable grounds for reaching agreement rooted in our conception of ourselves and our relation to society” (Ibid., p.306).

On the other hand, the political turn of Rawls can also be better analyzed in the context of the updated form of the idea of justice as fairness as well as in regard with the significant changes in the two principles of justice proposed in the TJ before. Rawls makes changes within the principles of justice in the PL as follows:

a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal basic liberties, and only those liberties, are to be guaranteed their fair value.

b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least

advantaged members of society.” (Rawls, 1996, pp.5-6)

As seen above, *the difference principle* remains unchanged from the TJ to the PL. Actually it is difficult to find an extensive discussion of this principle throughout the PL. On the other hand the most significant changes are made in *the liberty principle* by switching the statement from “each person has an equal right” to “each person has an equal claim” and from “system of basic liberties” to “a fully adequate scheme of equal basic rights and liberties” (Ibid., p.5). Therefore, it appears to be that Rawls needs to change these principles because of the fact that “considering principles of justice as categorical imperatives is irrelevant: they are only hypothetical imperatives” (Ege and Igersheim, 2008, p.26).

Rawls asserts that we have inevitable disagreements on the issues sourced from the clash of opposing doctrines about the good and the truth. This leads us to recognize the existence of various incompatible liberal political conceptions. Such a pluralism causes a shortage in the comprehensive explanation of Rawls’s former theory of justice because of the fact that such a unique way of proposing a conception of “justice as fairness” as a principle of justice is impossible. He claims that his political turn from the TJ to a conception of political liberalism is motivated by the need for an entirely appropriate ground for stability in order to get over the issues of “intractable struggles” those are “confessedly for the sake of the highest think: for religion, for philosophical views of the world, and for different moral conceptions of the good” (Rawls, 1996, p.4). Then, Rawls claims that the idea of public reason cannot be considered within the sole limits of justice as fairness that he postulated in the TJ. Rather, the content of public reason, as the principles, ideals, and standards that may be appealed to, “are those of a family of reasonable political conceptions of justice” (Ibid., p. li). Public reason in the TJ is “given by a comprehensive liberal doctrine” whereas in the PL public reason is considered as a “way of reasoning about political values” (Rawls, 1997, p.807). In this context we can suggest that the central idea behind political liberalism is to find a proper way for an agreement within society in the context of the distinction between what Rawls calls *political* and *metaphysical*. He assumes that “citizens’ overall views

have two parts: one part can be seen to be, or to coincide with, the publicly recognized political conception of justice; the other part is (fully or partially) comprehensive doctrine to which the political conception is in some manner related” (Rawls, 1996, p.38). He thus aims at providing a reasonable response to the question of “how it may be related?”. In this context, Rawls considers the reasonable pluralism as a fruit of reconciliation by the means of public reason. That is to say, “it is essential that the reasonable and the rational be able to coexist, the latter being subordinated to the former. The possibility condition of this reconciliation is political liberalism” (Ege and Igersheim, 2008, p.30)

2.4.3. Hegel’s Influence

For Rawls, there is a certain political purpose in using reason publicly because of the fact that comprehensive doctrines are irreconcilable. As mentioned above, such a political turn in Rawls’s general body of work is actually based on a “political” reconsideration of the Kantian idea of public use of reason, that is, reasoning within a political framework which is assumed to be able to resolve the perplexities in Kantian idea in terms of political life –including economic life–. In this sense Rawls states that “in elaborating his moral theory along somewhat Hegelian lines, Dewey opposes Kant, sometimes quite explicitly, and often at the same places at which justice as fairness also departs from Kant. Therefore “there are a number of important affinities between justice as fairness and Dewey’s moral theory which are explained by the common aim of overcoming the dualisms in Kant’s doctrine” (Rawls, 1999, p. 304). In the end, through the whole story of the course from the TJ to his *Lectures* (Rawls, 2000), I argue that we should also consider the Hegelian influence, at least as much as Kantian influence, especially when we examine Rawls’s turn in terms of his views on the relationship among citizens through social and political institutions. Such institutions are, in a way, forms our social world in Hegelian fashion¹².

12 See Gledhill, 2011, p.10. Gledhill there mentions Michael Hardimon’s (Hardimon, 1994, p.16) analysis of Hegel’s concept of “social world”. For him, Hardimon “employs the term social world as equivalent to Hegel’s ‘ethical world’ and recognizes that as such it is very closely related to Rawls’s idea of the ‘basic structure’.”

Rawls's treatment of Hegel —mostly in the last parts— in the *Lectures* is based on Hegel's major mature work of political philosophy, the *Elements of the Philosophy of Right* (*Grundlinien der Philosophie des Rechts*) where he also occasionally refers to “the Introduction to The Philosophy of History”. In these texts, the understanding, the relation of the individual with the social institutions, the process of reflection, social reproduction and change are widely discussed by Hegel. As these questions are central concerns of Hegel's idealist philosophy, Rawls appears to partly adopts these conceptions into his political liberalism. For him, Hegel's view of freedom is “distinctively institutional” (Rawls, 2000, p.330). Yet, Hegel is a “moderately progressive reform minded liberal, and [...] his liberalism is an important exemplar in the history of moral and political philosophy of the liberalism of freedom” (Ibid., p. 349). On the other hand, for example, Rawls develops an account of reconciliation to express the role of the social world in the task of protecting freedom. In this context, individuals have freedom because the political institutions recognize their dignity “as persons who are free” (Ibid., p. 331). Therefore, I argue that Hegel's influence is evident since the ideas of overlapping consensus, political pluralism and the role of the public reason in establishing properly designed political institutions as the main source of freedom are central in the political liberalism. I stop at this point because I attach this examination –and elaborate further– to the main discussion on the human rights and economics in the Chapter 4.

2.5. THE IDEA OF POLITICAL LIBERALISM FROM ADAM SMITH TO JOHN RAWLS

While the term liberalism refers to a comprehensive idea, the conditions in which the idea of liberalism has raised is much more complicated. Here, there are two quite significant approaches to the idea of liberalism that I am going to examine. In this section, I try to analyze Rawls's idea of public reason in the context of political liberalism by focusing on its relation with Smithian conception of the “impartial spectator” –or it might be called the Smithian theory of justice. My aim is to investigate a possible connection between Adam Smith's *the man within breast* –the impartial

spectator– and John Rawls’ public reason. However although the notion of *sympathy*¹³ has also a central role in Adam Smith’s moral philosophy, the concept of the *impartial spectator* appears to be suggested as an *essential* character of human beings. Since this *essential* character is much more related to the notion of “use of reason”, I tend to focus on the *impartial spectator* rather than *sympathy*. Yet, it is formulated as a measure to weight our actions in order to find out whether they are on virtuous or vicious side. Thus, the impartial spectator provides us the opportunity to have an *opulent* life in which “most vulgar education teaches us to act, upon all important occasions, with some sort of impartiality between ourselves and others, and even the ordinary commerce of the world is capable of adjusting our active principles to some degree of propriety” (Smith, 1759, p.139).

Although there have been plenty of studies on the notion of *impartiality* in history of economic thought, it seems to me that, the majority of the attention has been given to the *impartial spectator* of Adam Smith and the *original position/veil of ignorance* –and *public reason* after his political turn– of Rawls. Both authors are known for placing the *impartiality* in the very center of their theories¹⁴. The Smithian version, of which may be considered as a milestone in economic thought –known as *system of natural liberty*– is broadly based on the idea of *self-interest and rational autonomy*. On the other hand, the Rawlsian version is grounded on the idea of liberalism in the context of a particular conception of justice; the idea of *overlapping consensus in a pluralist society*, as mentioned above, is known as *political liberalism*. What they have in common is that both approaches appear to be concerned with the independence of the individual and, to certain extents, the idea of *self-love* —or self interest. However, in both approaches, the idea of *self-interest* is considered within a general framework of moral principles in order to bring individuals closer and to sustain a certain level of harmony in the society. Thereby, both authors appear to deal with a conception of *virtuous* social organization embedded with individualism, benevolence and reciprocity, even though such a conception has been considered as a “nonsense” (Bentham, 1843) in some views. As we

13 The notion of sympathy refers to a set of interactions among men in terms of fellow-feelings

14 Rawls, 1971 and Smith, 1759.

shall see later, the heart of my examination is much more related to the accounts of Adam Smith and John Rawls regarding the possibility of harmony in a society that is already enclosed in self-interested parties. I tend to consider that the comparison of the criteria they suggest and how these criteria are to be weighted when they yield conflicts in social compact remains unexplored. In this sense, the question that I try to explore in this section is that can public reasoning in Rawlsian political liberalism be considered in the context of Adam Smith's *the man with in breast*? This is the central argument of this section and my aim in making such a connection here is to articulate the idea of human rights with economic thought.

Adam Smith has been generally seen as the pioneer of the capitalist ideology and his idea of “commercial society” has commonly been criticized. Having said that, in this section I tend to suggest that Adam Smith's project appears to ground on a system in which achieving certain political goals through economic relations is not totally restricted but bounded within a moral framework. Smith, through his two significant works *Theory of Moral Sentiments* (TMS) and *The Wealth of Nations* (WN), tends to clarify the emerging question concerning the place of the individual in civil society (generally is referred to the notion of *homo-oeconomicus*) as what Rawls partly aims at in his works *A Theory of Justice* and *Political Liberalism*. Actually, the combination of non-overlapping theories in the WN and the TMS suggests us the fundamentals of a “better” society by pointing out certain dynamics of emerging free market economy or what Smith calls the “system of natural liberty”. Nevertheless, in comparison with Rawlsian theory, to classify Smith's project as “egalitarian” would undoubtedly be so pretentious, however I wish to emphasize that the concepts of mutuality and equality that we are familiar in the Rawlsian theory in some respects are already included in the core of Smith's justification of his own theory. In this sense, for example the TMS is generally considered as “an unqualified doctrine of a harmonious order of nature, under divine guidance, which promotes the welfare of man through the operation of his individual propensities” (Viner, 1991, p.92).

On the other hand, free market and competitive capitalism is often regarded as a threat to equality and fairness because of its tendency to be puzzled by individual passions and interests. Indeed, Adam Smith does not refer to the idea that all men are equal in every respect. However, it is clear that Smith, as most of his fellows in his era, considers humans as fundamentally equal beings particularly in the rational preferences and sentiments. He suggests that similarities in individuals would push them to be in sympathy with others and this would also encourages society to transform into a commercial one: “It is because mankind is disposed to sympathize more entirely with our joy than with our sorrow, that we make parade of our riches, and conceal our poverty [...] it is chiefly from this regard to the sentiments of mankind, that we pursue riches and avoid poverty” (Smith, 1759, p.50). In Smith’s system of natural liberty, the individual do not suffer exclusion which might obstruct him in achieving what he desires. Thus, a commercial –wealthy– society would produce more than any other society and this easily encourages men “for procuring ease of body and tranquility of mind” (Ibid. p.181). Adam Smith asserts that the system of natural liberty evokes “the progress of society” (Smith, 1776a. p.70) because, in such a system, every man, as long as he does not violate the laws of justice, is left free to pursue his own interest his own way. For him, natural liberty is the best system available because it promotes “the great purpose” (Smith, 1776b. p.109), or in other words, “the progress of the society towards real wealth and greatness” (Ibid., p.109).

Smith justifies his account on liberty through society’s wealth and prosperity. Yet, his account on the development of our moral sentiments is essentially self-centered (Coase, 1976, p. 533). In this context, there has been much discussion on the relationship between the TMS and the WN and it has been stressed that Adam Smith asserts two contradictory principles of human action in his two major works: one is *self-interest* which refers to the basic principle of economic activity and the other is the *impartial spectator* –and *mutual sympathy*– that is based on moral concerns. Although the question has been stressed in many views, scholars working on Adam Smith have usually tended to favor one book at the expense of the other. However, there could still

be plenty of research opportunities grounded on both books. This is because, Smith's various works together appear to constitute the central parts of a more general political theory of justice. Nevertheless, concerning the two books, there is still a controversy over the question of how Smith's project of economic activity can be consistent with his moral-ethical concerns, that is, there is still an understanding that Smith had possibly mistaken in his postulation of the moral and philosophical dimensions involved in particularly his former book.

2.5.1. Das Adam Smith Problem

Since human beings are all considered as *fellow-creatures* in the TMS, the principle of sympathy is suggested as a part of a system of moral judgments in which fellow creatures accord their sentiments with each other. However in the WN, such a harmony in the society basically relies on the self-interested nature of people. Because of this contrasted justifications, Adam Smith is claimed to have fundamental inconsistency across his two major texts. This is the fact that has long been called "Das Adam Smith Problem" (See: Teichgraeber III, 1981; Oncken, 2000 [1898]; Zeyss, 1889) in the relevant literature. *Das Adam Smith Problem* is originated from Smith's supposition of human behavior as being governed by two quite different and contradictory principles. However, although Smith argues that self-interested motives of man forms the basis of his theory, he does not attach himself neither primarily to *self-interest*, nor to *equality* for its own sake. He tends to stay in the line of "golden mean" and tries to set forth the possible conditions of a better society that consists of equal and free citizens. Therefore, it is obvious that the aim of Smith is to promote a less authoritarian and more democratic model.

For Smith, persons are governed by the laws of nature, so they unconditionally encounter with the "propagation of the species" (Smith, 1759, p.77). But at the same time they are equally concerned with their own "self-preservation" (Ibid., p.77). Herein, altruistic and self-interested motives are patched up together by the operation of "correspondence of sentiments" (Ibid., p.78). Man is able to make moral judgments

those are based on the correspondence of the feelings of happiness or suffering —*vice-versa*—, namely the “original and immediate instincts of man” (Ibid., p.78). The *correspondence of sentiments* regulates the relations among people while it is still possible that the tendency of individuals to focus on their own interests might make people disharmonious with one another. It is clear that Smith conceives virtuous man in regard to realm of self-interest. But he also claims that each man is bound with the “passions” and “sentiments” of others. People naturally sympathize while making judgments about those passions and sentiments. In this sense, the core idea behind Smith’s broader framework appears to be the idea of *propriety*;

“And hence it is, that to feel much for others and little for ourselves, that to restrain our selfish, and to indulge our benevolent affections, constitutes the perfection of human nature; and can alone produce among mankind that harmony of sentiments and passions in which consists their whole grace and propriety.”
(Ibid., p.25)

The account of propriety is one of the main pillars of Adam Smith’s moral theory which also let us to consider his doubts about the possible problems concerning the concept of *self-interest*. Smith here does not suggest a system that is fully confined with selfishness or greed; neither in the TMS nor in the WN. The purpose of his project is to establish an appropriate institutional framework in which self-interest can be expressed without any significant conflict arising among individuals in society (Campbell, 1967, pp. 571-572). It is important to underline that Smith’s construction of the idea of sympathy and implementation of the impartial spectator into very center of his theory are essential elements of his account of propriety. Smith (unlike some of his fellows like Jeremy Bentham, John Stuart Mill, Henry Sidgwick, Hutcheson, etc.) does not ignore the idea of virtue and its involvement in society, or the capability of mankind to recognize it. Indeed, as mentioned above, particularly the TMS is much more concerned with an inquiry on the “right” and the “wrong” in regard to the conception of *tenor of conduct* (Smith, 1759, p.173) or to *sense of propriety*. The matter here is directly connected to the question moral judgment;

“In treating of the principles of morals there are two questions to be considered.

First, wherein does virtue consist? Or what is the tone of temper, and tenor of conduct, which constitutes the excellent and praise-worthy character, the character which is the natural object of esteem, honour, and approbation? And, secondly, by what power or faculty in the mind is it, that this character, whatever it be, is recommended. to us? Or in other words, how and by what means does it come to pass, that the mind prefers one tenour of conduct to another, denominates the one right and the other wrong; considers the one as the object of approbation, honour, and reward, and the other of blame, censure, and punishment?" (Ibid., p.265)

Smith emphasizes that both benevolence and self-love are to be considered as virtues. Actually this is the point where *Das Adam Smith Problem* has raised. He claims that they do not lead to our moral judgments directly. Sentiments are representing a critical point in establishing the framework for moral judgments. They are the forms of human behavior, however, there is something different which enables moral judgments to be made. According to Smith, it is *sympathy* that lets people to bring home to their selves in the case of others: "Pity and compassion are words appropriated to signify our fellow-feeling with the sorrow of others. Sympathy, though its meaning was, perhaps, originally the same, may now, however, without much impropriety, be made use of to denote our fellow-feeling with any passion whatever" (Ibid., p.10).

The link between sentiments that might belong to other people and me can only become evident if that sentiment has already been enabled inside of me. The capacity of feeling sympathy for our fellow creatures is actually a matter of having a certain level of capacity of making judgments to evaluate another person's passions; "to approve or disapprove of the passions of the other persons, therefore, as suitable to their objects is the same thing as to observe that we entirely sympathize with them; and not to approve of them as such, is the same thing as to observe that we do not entirely sympathize with them" (Ibid., p.16). However, sympathy should not be considered as a demanding notion since we cannot fully sympathize with the others at all. In this sense Smith's account of sympathy appears to be that "we sympathize but only imperfectly, and it's a good thing, too" (Kelleher, 2015, p.45). On the other hand for Smith, we divide ourselves into two persons when we endeavour to examine our own conduct, namely when we "endeavour to pass sentence upon it, and either to approve or condemn it"

(Smith, 1759, p.113). These two persons, of which the first is considered as an examiner and judge while the second is “the person whose conduct is examined into and judged of”, have distinct roles in our human life. But “that the judge should, in every respect, be the same with the person judged of, is as impossible, as that the cause should, in every respect, be the same with the effect” (Ibid., p.113).

In this context, the interaction of the sentiment outside of me and its reflection inside of me constitutes the conception that Smith calls the *impartial spectator* which refers to the ultimate maxim that guides our actions. As we have seen previously in Rawls’s idea of *public reason*, the *impartial spectator* has a role in the society that regulates the economic –private– relations among individuals; and sustains *well being* of people in public level. The impartial spectator, for Smith, is “reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbiter of our conduct” (Ibid., p.137). In this sense the impartial spectator is a human faculty that maintains a *reasonable* cooperation among people. Therefore, as long as one’s judgment is strongly bound to *the man within breast’s* virtuous nature, the exercise of sentiments or self-love is severely curtailed; where, in fact, the point that the birth place of Das Adam Smith Problem is located.

2.5.2. The Man Within Breast and the Idea of Public Reason

Before going further I want to mention some of the key details in Smith’s arguments and formulations regarding how *the man within breast* is attached to the general framework of *the impartial spectator*. First it is better to state that there are some differences in Smith’s usage of *the impartial spectator*; “the terms Smith uses must always be read relatively to their context because he is not always consistent in usage across contexts” (Evensky, 2005, p.22f). As the impartial spectator has a central role in our moral judgments, it is the man who decides the worthiness of whether the actions that we conduct or we are faced with. In this sense, the notion of impartial spectator is used in two different contexts¹⁵ which are either related to our judgments concerning

15 See more in Raphael, 1975. Some other authors refer to the term “demi-god” to describe the third context. See more in Fitzgibbons, 1995; Young, 1986 and Lerach, 2008.

other people or our judgments concerning our doings and beings. The former is meant to put oneself in someone else's place in terms of broad understanding of the notion of sympathy while the latter refers directly to *the man within breast* who in this case keeps a moral "distance" to oneself in order to guide the actions. In this context my use of the term impartial spectator in this dissertation refers to the conception of the man within breast in its second form. Then, the point that I am interested in is the question that Smith asks concerning the impartial spectator;

"When our passive feelings are almost always so sordid and so selfish, how comes it that our active principles should often be so generous and so noble? When we are always so much more deeply affected by whatever concerns ourselves, than by whatever concerns other men; what is it which prompts the generous, upon all occasions, and the mean upon many, to sacrifice their own interests to the greater interests of others?" (Smith, 1759, p.137)

Actually, these questions have much in common with the purpose of Rawls in his idea of public reason and political pluralism. For Smith, it is not benevolence, "the soft power of humanity", "the love of our neighbour" or "the love of mankind" that lead persons to collaborate with each other within society. Indeed, these can be well considered as comprehensive doctrines in the Rawlsian sense. Rather, it is a much stronger power that enables itself in such cases. It is only the impartial spectator who corrects "the natural misrepresentations of self-love" (Ibid., p.137) and who shows us "the propriety of resigning the greatest interests of our own, for the yet greater interests of others" (Ibid., p.137). It is the man within breast who reminds us that "we value ourselves too much and other people too little" (Ibid., p.138). Therefore the authority of the man within breast keeps our self-interested motives within the limits of moderation or propriety. The impartial spectator does not set forth external standards that we ought to follow, rather, it leads us to make our judgments in accordance with the man within breast which is already inherent in us; it is a companion of us until the end of our lives and it "has never dared to forget for one moment the judgment which the impartial spectator would pass upon his sentiments and conduct. He has never dared to suffer the man within the breast to be absent one moment from his attention. With the eyes of this great inmate he has always been accustomed to regard whatever relates to himself"

(Ibid., p.147). Smith suggests a moral framework in which one should govern himself by considering that if *the man within breast* or the other “he” were judging his actions. Therefore, a person’s conduct is not only affected by the sense of self-love, but also directed by *the man within breast* and, as a matter of fact, we need to follow *the man within breast* in order to live a virtuous life.

The idea behind such impartiality is associated with the fact that one should take into account the sentiments of all parties affected by one’s decisions. That is to say, our interests or passions are to be limited, or directed, by the judgment of an abstract third party, which is expected to be not affected by any of the sentiments that the other parties might have. However Smith’s impartial spectator goes beyond the scope of such a third party since it operates neither in the same way that any disinterested party would make, nor as any party which takes into account all of the prevailing point of views. Smith embraces the idea of having distance from some certain sentiments, even from self-love because of “the need to broaden the discussion to avoid local parochialism of values, which might have the effect of ignoring some pertinent arguments, unfamiliar in a particular culture” (Sen, 2009, p.45). My argument is that such impartiality is partly adopted by Rawls into his political liberalism regarding the comprehensive doctrines and overlapping consensus. As mentioned in Section 2, for Rawls, a well ordered society is based on political principles of justice. These principles are determined through public reasoning under a certain level of reasonable pluralism. In this sense, what Smith tries to resolve within his theory is, in a way, the stability concerns that Rawls later had faced. In this context, according to Sen, “one of Smith’s major methodological concerns is the need to invoke a wide variety of view-points and outlooks based on diverse experiences from far and near, rather than remaining contented with encounters —actual or counterfactual— with others living in the same cultural and social milieu, and with the same kind of experiences, prejudices and convictions about what is reasonable and what is not, and even beliefs about what is feasible and what is not” (Ibid., p.45). Then, finally the idea of impartial spectator appears to be “motivated by the object of scrutinizing not only the influence of vested

interest, but also the impact of entrenched tradition and custom” (Ibid., p.45).

We can consider that Rawls gives relatively few references to Adam Smith, however it is clear that the ideas proposed in the TMS and the WN have strongly influenced Rawls in his theory of justice and political liberalism. It seems to me that the role of Smithian ideas within the theories of Rawls is as essential as Kantian influence since Rawls describes his own theory of *justice as fairness* as “highly Kantian in nature” (Rawls, 1971, p.viii). Accordingly, Rawls also stresses that “in its initial stages at least a theory of justice is precisely that, namely, a theory. It is a theory of the moral sentiments (to recall an eighteenth century title) setting out the principles governing our moral powers, or, more specifically, our sense of justice” (Ibid., p.44) On the other hand, there is also a discussion on whether Kant had already known the works of Smith before he started to write *the Groundwork*: “Immanuel Kant too was familiar with The Theory of Moral Sentiments, as we know from his correspondence with Markus Herz in 1771” (Raphael and Macfie, 1975, p.31) This is written earlier than some of Kant’s classic works so “it seems quite likely that Kant was influenced by Smith” (Sen, 2009, p.30). Therefore, my argument is that the Rawlsian idea of public reason has fundamental connections to Adam Smith’s metaphor of *impartial spectator* as they both refer to a particular exercise of reason which leads us to harmonize our “doings” and “beings” that we value with the other parties in the society. This is possible only if we can reasonably limit our interests, passions and desires for the sake of the well ordered society. This is actually not an “extreme generosity” (Buchanan, 1976, pp.33-35) that is demanded through the normative principles, rather it is a potentiality of human beings, a feature that we have throughout our lives.

In this context, I tend to consider the distinction of using reason *publicly* and *nonpublicly* as an important component through the examination of human rights. Thus, my account of human rights and economics inevitably would cover the Smithian idea of *the man within breast*. It is my assumption that, we should go beyond the principle of impartiality to find out more about the liberalisms of Adam Smith and John Rawls.

Although they independently hold two distinctive theories on impartiality, though, they come closer in virtue of the fundamental similarities between *the man within breast* and public reason. In this sense an alternative approach that is based on such similarities would strengthen the ties between human rights and economics. Thus, I see no reason to deny the idea that the man within breast is the person, the other “I”, who encourages us to use our reason publicly. Once we reformulate the question of human rights through such political understanding of the public use of reason, the research area that is believed to be covered by economics also become a concern for the human rights discussion. In fact, there had been a debate regarding the rights of man and economics in the very beginning of the time of so called universal declarations. There are two significant arguments on the role of the rights of man in the civil society and economics which have still been carried out in different forms. Of which, the first one is Jeremy Bentham’s “Anarchical Fallacies” and the other is Karl Marx’s “On the Jewish Question”. I believe that the analysis of these arguments in the context of the idea of public reason would provide further opportunities in the examination of human rights and economics.

CHAPTER 3: THE POLITICAL ECONOMY OF HUMAN RIGHTS

3.1. INTRODUCTION

The concept of inalienable and indivisible rights has been widely known after the so-called universal declarations of rights of man. Such a doctrine has also been shaped by historical influence. While the term “rights of man” refers to a comprehensive idea, the controversy over the idea behind such rights in the context of history of economic thought is much more complicated. Here, I provide a distinct approach through the arguments of Marx and Bentham regarding human rights by reconsidering the idea of public use of reason. I tend to consider the conception of public use of reason as an important component in the justification of the idea of human rights and I analyze the claimed perplexities of human rights in economic thought by focusing particularly on Marx and Bentham’s works. Therefore, at the core of my examination stands an argument based on a political understanding of using reason publicly referring to Kant, Rawls and Smith, which could call for a reconciliation between human rights and political economy.

Economics is, as a matter of fact, mostly concerned with a particular set of motives and relations which are considered to be driven by self-interest and rational autonomy. Although there are different interpretations, the conception of *civil society* has been central to the development of economic thought. Yet, the self-interested parties in *civil society* and the economic relations among them are sometimes considered to be irrelevant to the social justice and some sorts of basic rights. Concerning the debate on *civil society*, Marx, in *On The Jewish Question*, draws a distinction between *species being* and *monad* as a center argument against the conception of human rights in which politically emancipated community is believed to lead man to be a part of material life where man seeks his own interest. On the other hand, Bentham criticizes human rights by pointing out the theoretical errors and “mischiefs” of the idea of natural rights in his manuscript *Anarchical Fallacies* (“Being an Examination of the Declarations of Rights

issued during the French Revolution” in Bentham, 1843b). Therefore, a major controversy emerges in economic thought over the idea of human rights.

This chapter aims at re-examining these two different approaches to human rights in the context of the idea of public use of reason. My main purpose here is to analyze the focal point of the claimed controversy over human rights and then to provide an alternative approach in the investigation of a possible reconciliation between the idea of human rights and economics. This chapter is set as follows. In Section 2, I begin by making a critical review of Bentham’s analysis of natural rights and rights of man. According to his arguments, Bentham seems to disagree with these ideas because of two main issues which are inherent to the French Declaration of the Rights of Man and Citizen (DRM). He states that a natural right is a “contradiction in terms” so that rights of man is “non-sense”. For Bentham, a natural right can not be considered as a legal (real) right which is always determined under actual existing system of law because rights of man are actually *counterfeit rights*; “from real law come real rights [...] from imaginary laws come imaginary ones” (Bentham, 1843b, p.523). Then, second, embracing individual utility should be the central purpose in establishing a legal political system. Thus, the error in formulation of rights of man is to consider such rights as “unalienable and sacred” ones. Such rights however are “simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts” (Ibid., p.501). In this context I analyze his arguments on the basis of (1) the essential problematic in the relation between rights of man and natural rights and (2) his theory of system of law which is essentially based on the utility principle. In Section 3, I further my examination by focusing on the Marxian critique of rights of man where Marx argues the distinction of civil society and state in the context of religion. My concern in this argument is how he elaborates his ideas of *species being* and *human emancipation*. Indeed, Marx suggests a broader context in most of his works in order to clarify his account of human emancipation in relation with civil society. However, in this section I tend to focus on the classification that he attempts to make between political emancipation and human emancipation discussed in his earlier works, particularly in *On The Jewish Question*. Finally, Section

4 attempts to show the idea behind the arguments of Marx concerning the rights of man: Marxist approach offers exciting possibilities including the potential for alternative linkages between the “comprehensive” doctrines mentioned in previous chapters and economics. Thus, in this section I outline the origins of Marxian understanding of alienation, political emancipation including his justification of the relation between the right (*Recht*) and modes of production. Then I conclude by an analysis of the moral backgrounds of human emancipation in which I assert the idea that the concepts of species being and public use of reason partly share the same basis in the context of human rights.

3.2. BENTHAM AND HUMAN RIGHTS

3.2.1. Bentham on the Idea of Rights of Man: Nonsense Upon Stilts

Jeremy Bentham has long been known for his writings on law, economics, politics and philosophy. The foundations of Bentham’s grand project as well as his criticism of rights of man can be easily found in these texts. While he gives more attention to the questions of legislation, system of law and government, he is also concerned with a theory on the principles of utility or *the greatest happiness principle*. For example in his manuscript called *Anarchical Fallacies* he discusses rights of man in the context of natural rights and the utility principle. Bentham, in the *Book of Fallacies*, defines what he meant by the term “fallacy”:

“By the name of fallacy, it is common to designate any argument employed or topic suggested for the purpose, or with the probability of producing the effect of deception, —of causing some erroneous opinion to be entertained by any person to whose mind such an argument may have been presented.” (Bentham, 1843b, p.379)

He furthers his argument by an extensive examination of the 1789 Declaration (DRM). Bentham’s arguments regarding what we now call “human rights” is actually a critique of “natural rights”. Thus, the context of the *Anarchical Fallacies* is much more concerned with a theory of right that is based on a particular understanding of law and legislation. However, it is my claim that the central argument in *Anarchical Fallacies*

has a dual purpose; one is a categorical criticism of the DRM and the other is providing a basis for an alternative theory of rights together with the idea of “greatest happiness”. However the latter is much less mentioned in the text comparing to the former. While Bentham is not the first thinker who sets forth the idea of “the greatest happiness for the greatest number”, there had been already similar expressions from a part of Enlightenment philosophers. It was an era in which western societies were shifting from feudal mode of production to capitalism, though, this process had not been accomplished yet. The idea of free and equal individuals was a newly developing subject as the “modern” states were in the process of flourishing one by one. Nevertheless, Bentham’s utilitarianism has fundamental differences from his contemporaries regarding the idea of natural rights; for him “there is no right, which ought not to be maintained so long as it is upon the whole advantageous to the society that it should be maintained, so there is no right which, when the abolition of it is advantageous to society, should not be abolished” (Ibid., p.501). Auguste Comte, for example, in a letter which he wrote to J. S. Mill, states that Bentham’s works can be considered as “the main origin of what is called political economy” (Letter to Mill, 20th Nov 1841, p.4; quoted in Bonar, 1992, p.219). Indeed, we can claim that there is undoubtedly a strong influence of Bentham’s ideas on most of the classical economists. For Bentham, political economy is “at once a science and an art. The value of the science has for its efficient cause and measure, its subserviency to the art. [*To Adam Smith, the science alone has been the direct and constant object in view: the art the collateral and occasional one]” (Bentham, 1843c, p.33).

Bentham argues that the followers of the DRM would “sow the seeds of anarchy broadcast” (Bentham, 1843b, p.496). Such rights are “the rights of anarchy” and the declaration offers only “the order of chaos” (Ibid., p.522). The message that we get from the declaration is this: “People, behold your rights! If a single article of them be violated, insurrection is not your right only, but the most sacred of your duties” (Ibid., p.496). Bentham seems very certain about the impossibility of imposing such rights as legal rights through government. However, the essential problem is actually not the

“rights of man” but the natural rights discourse is in question here. Accordingly, if a right is not identified in law and not legally protected by the government, this means that there is no such right to be claimed even if it is a “universal” right. His argument begins with the refusal of the statement of “all men are born free” in the DRM. He claims that; “All men, on the contrary, are born in subjection, and the most absolute subjection –the subjection of a helpless child to the parents on whom he depends every moment for his existence” (Ibid., p.498). Bentham’s criticism is essentially based on his understanding of the nature of law. For him, there is a strict distinction within the concept of law. Accordingly, rule of law inhibits unbounded freedom of people where “the men in question are free in one sense, though slaves in another; slaves, and free, at the same time: free in respect of the laws of nature –slaves in respect of the pretended human laws, which, though called laws, are no laws at all, as being contrary to the laws of nature” (Ibid., p.498). For Bentham, rights are created by the law, and law is solely a legit command of the government. He asserts that one could only have a right if it is given by means of positive law. Therefore all rights are legal rights. Accordingly, men are all equals in abstract whereas concrete equality is impossible. Thus, while the DRM tries to eliminate differences of people and suggests a “concrete” equality for all, such equality is impossible in practice:

“The apprentice, then, is equal in rights to his master; he has as much liberty with relation to the master, as the master has with relation to him; he has as much right to command and to punish him; he is as much owner and master of the master’s house, as the master himself.” (Ibid., p.498)

He further makes an analysis of four “natural” rights; *liberty*, *property*, *security* and *resistance to oppression* and he claims that such rights can not be considered without a legal framework. The legal system of government should exactly determine the framework of those rights. However, natural rights are determined out of such governmental decision, thus, they are invalid. Bentham stresses that this could lead to a confusion because such rights might even violate what they claim to assure. These rights are “self-contradictory, in the same breath in which their existence is declared, declared to be imprescriptible” (Ibid., p.502). Then, Bentham focuses on the two

dimensions of the confusion: First, the problems inherent in the idea of natural rights, and second, the confusion on what those rights actually claim. Accordingly, first he argues the right to liberty in terms of its formulation as an unbounded right. In this sense unbounded liberty is “the liberty of doing or not doing on every occasion whatever each man pleases: unbounded property; that is, the right of doing with everything around him (with every thing at least, if not with every person) whatsoever he pleases” (Ibid., p.502). Yet, Bentham’s main argument appears to be directed to the issue of the arbitrary content of right to liberty. He criticizes the determination problem of the limits of one’s liberty because one can never know if he is “at liberty or not to do or to omit doing one act, till I see whether or not there is anybody that may be hurt by it – till I [he] see[s] the whole extent of all its consequences?” (Ibid., p.505). Therefore the privilege of unbounded liberty for one threatens another’s liberty.

Bentham then discusses the *right to property* and asks that “how is property given?”. The answer is simple; “by restraining liberty; that is, by taking it away so far as is necessary for the purpose”. He further states that “how is your house made yours? By debarring every one else from the liberty of entering it without your leave. [...] So that the moment it is acknowledged in relation to any article, that such article is my property, no matter how or when it became so, that moment it is acknowledged that it can never be taken away from me” (Ibid., p.502). Furthermore, the concept of *right to security* also remains perplexed in terms of the fundamental error in its determination within the declaration; “all laws are null and void; [...] all laws which, to preserve the country from pestilence, authorize the immediate execution of a suspected person, in the event of his transgressing certain bounds” (Ibid., p.503). Finally Bentham discusses the right to resist oppression; “What is it that a man has in view when he speaks of oppression? [...] Submit not to any decree or other act of power, of the justice of which you are not yourself perfectly convinced” (Ibid., p.504).

Bentham in the end claims that the idea of rights of man is “anarchical”. Therefore, he tends to support the idea that there will be no liberty, property or security and hence no

rights without a “real” system of law. He deals with the legal duty only in the context of (real) law. So it is not possible that a “real” system of law shall cover such natural duties. He thus ignores the idea of natural rights because of the fact that they are imaginary rights. In this sense, Bentham asserts that these so-called rights of man are in fact “counterfeit rights” (Ibid., p.523).

3.2.2. Utility Principle and Human Rights

For Bentham, happiness is the most important part of legitimacy. Concerning the feelings of pain and pleasure as essential parts of happiness, he states that “pain and pleasure at least are words which a man has no need, we may hope, to go to a Lawyer to know the meaning of” (Bentham, 1843a, p.238). Thus, happiness is a “real entity” as we can experience it directly. However, there are some other entities which Bentham calls “fictitious” that belong to the system of legitimacy such as right, duty, property, obligation, etc. In this context, a real entity is “an entity to which, on the occasion and for the purpose of discourse, existence is really meant to be ascribed” (Bentham, 1843e, p.196). A real entity can be either a real physical entity such as things, animals and plants or a particular psychical entity such as sensations, feelings, impressions and ideas which are based on the reflections of our experiences and observations.

On the other hand a fictitious entity “is an entity to which, though by the grammatical form of the discourse employed in speaking of it existence is ascribed, yet in truth and reality existence is not meant to be ascribed” (Ibid., p.197). Then, propositions concerning fictitious entities should have a reference to the “real entities” as a part of real world otherwise they will be considered as meaningless or false. Legal rights are thus “fictitious entities” (See Bentham, 1843e, pp.192-211) and they are more complex than “real entities”. Bentham here suggests a justification of such complex notions by more basic notions which are based on our experiments and feelings. What he makes is an effort to clarify the purpose of the legal rights and, ultimately, the art of law. In this sense, in so-called natural rights, those complex issues are explained by other complex notions and he basically finds this fact fallacious.

Examination of the relationship between human rights and economics is more complex especially when we consider the role of markets and utility in civil society. Markets, in theory, are institutions formed to maintain economic efficiency since it is considered as a system in which goods and services produced and exchanged in a certain way. In this respect, market is believed to consist of agents who are actually seeking for maximum level of individual utility. Indeed, this seems to be totally irrelevant to the idea of human rights. This is the point where Bentham argues the rights of man in the framework of his grand project that is mainly based on the principle of utility. His theory on the principle of utility is based on an idea developed by the reconsideration of two natural motives. Bentham, in the beginning of *Morals*, writes: “Nature has placed mankind under the governance of two sovereign masters: pain and pleasure. [...] They govern us in all we do, in all we say, in all we think. [...] In words a man may pretend to abjure their empire; but in reality he will remain subject to it all the while” (Bentham, 1843a, p.1). So that, the principle of utility is based on the assumption of a *pain* and *pleasure* duality in accordance with the aim of producing the greatest happiness. Then, *utility* is a “property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness” or “to prevent the happening of mischief, pain, evil, or unhappiness” (Ibid., p.1).

Bentham actually suggests a particular form of society in which the parties will only pursue their own interests where these various interests are not naturally associated with each other. However, he also indicates that these different particular interests of the parties can share a common basis which is called “universal interest”. In this context Bentham draws a distinction between monarchical, aristocratic and democratic types of government. Each of these types have a different understanding of personal interest since monarchy and aristocracy promotes “evil” interests while democracy promotes the universal interest. He defines democratic interest as an interest “which is no other than universal interest” (Bentham, 1843c, p.446). Universal interest here signifies a particular interaction of various personal interests among all members of the society. Therefore the ultimate end of the government is “the advancement of the universal

interest” (Bentham, 1843c, p.446); this is also the case of morals; “to the art and science of morals belongs the indication of the sorts of acts, by which, in the various situations of life, the universal interest is served or disserved” (Bentham, 1843d, p.493). However, although Bentham seems to be in favor of democratic governance, his core utilitarian project does not involve a democratic constitutionalism. Rather, Bentham aims at constituting the basics of a legal system and government in order to maximize greater happiness for the greatest. In this context, actions can only be valuable depending on their capacity to serve *utility*; the good is the maximization of pleasure and the minimization of pain. So, *utility* here is thought as an easy-to-measure device within a more general theory of happiness. Following this line of reasoning, the duty of the government is to maintain *the greatest happiness of the greatest number*. In his famous *greatest happiness* principle, he asserts that happiness is the greatest good to pursue. However; “in proportion to the want of happiness resulting from the want of rights, a reason exists for wishing that there were such things as rights. But reasons for wishing there were such things as rights, are not rights; a reason for wishing that a certain right were established, is not that right –want is not supply– hunger is not bread” (Bentham, 1843b, p.501).

On the other hand, Bentham states that “the feelings of men are sufficiently regular to become the object of a science or an art” (Bentham, 1843a, p.304). Thus, the general form of reasoning can be basically presented by two basic motives; pain and pleasure. On the basis of this consideration Bentham furthers his account of utility principle through the legislative process, “the object or end in view should be the production of the maximum of happiness in a given time in the community in question” (Bentham, 1843c, p.33). The term “maximum” here refers to a measure in which pleasure is considered as a reflexion of positive quantities and the pain is indeed the negative quantities. In this sense, what Bentham calls *the politics* directs the governmental actions while *the morals* is directing the conduct of individuals. However both are concerned with the achievement of happiness. So, “which is politically good cannot be morally bad” (Bentham, 1843a, p.12). In this line of reasoning, we can claim that there

is an implicit tendency in Bentham's idea regarding, to an extent, a reconciliation project between what we call public and private interests. That is to say, there appears to be a natural connection among the parts of this duality in human existence; "in self-love there is a foundation for universal benevolence; there is none for universal malice. And this is in itself evidence of the union between the interest of the individual and that of mankind" (Bentham, 1834b, p.36).

Obviously, Bentham is very well conscious of the "public" dimension of the society as an important fact of co-existence: "the dependence of every man upon other men is so obvious and so intimate that a certain quantity of benevolence is almost a necessary condition of social existence" (Ibid., p.39). However he regards such benevolence as a subsidiary of self-interest where the *art of legitimacy* is responsible, in a sense, in maintaining the harmony of these two. For Bentham, there is neither a particular distinction within the society such as *bourgeois* and *citoyen* nor there exist division of classes within the community; "The wealth of the whole community is composed of the wealth of the several individuals belonging to it taken together" (Bentham, 1843c, p.33). Then, he states that "there cannot be any incompatibility between the wealth of each and the wealth of all" (Ibid., p.71).

Although equality and security are included in the objects of the civil law, there is also an inconsistency in the operation of the two notions in terms of the achievement of the greater sum social happiness. In this sense, equality should only be promoted until the point where it contradicts with the security (liberty). Yet, liberty and equality can not have the same civil law, a reconciliation is hardly possible in some circumstances: "Equality, for example, would require a certain distribution of property which would be incompatible with security" (Bentham, 1843a, p.303). In fact, for Bentham, the most important object among others is security: "When security and equality are in opposition, there should be no hesitation; equality should give away" (Ibid., p.311). In this context, Bentham argues the strict form of the equality principle that is mentioned in the 1789 Declaration. He claims that if equality is considered in such a way, it will

harm the security (i.e. enjoying rights in terms of the principle of utility) and wealth:

“What a man has inherited from his ancestors —what he has himself earned, he hopes to keep; and this hope cannot be interrupted without producing a pain of disappointment. But if, of two persons, the one is to take from the other a portion of the property he possesses today, because he is the poorer; for the same reason, a third should take a portion of such property from both to-morrow, as being poorer than either; and so on, till all security in the possession, of property— all hope of retaining it, were altogether abolished. As no man could, at this rate, be secure of enjoying any thing for two moments together, no man would give himself the trouble to improve anything by his labour: all men would live from hand to mouth.” (Ibid., p.358)

In this context, I tend to partly share Bentham’s approach to natural rights concerning his arguments of rights of man. Providing an adequate justification for human rights requires, to an extent, a measure which inevitably will include the facts of humanity such as autonomy, dignity, liberty and equality. In this sense, my intention is to follow the reasoning that, apart from the natural rights discourse, an idea based on public use of reason can support the examination of human rights by providing a possible reconciliation with economics.

3.2.3. Controversy Over the Idea of Rights of Man

The idea of human rights refers to a specific quality or set of qualities which all human beings essentially possess as a potentiality in which public reasoning plays a central role. Therefore, it appears to me that there are good reasons not to deny the fact that a comprehensive research on human rights requires a moral or ethical justification apart from the justification by the idea of natural rights. Legal inquiries alone, unfortunately, tend to fail providing an adequate justification (or refusal) for human rights such as Bentham’s critics of human rights on the basis of the principle of utility. Because in the context of the utility principle, the idea of (human) right is nonsensical unless it is to be considered as a means to reach the greatest good for the greatest number.

However, in Marxian arguments, human rights, in contrast, are criticized as a part of economic domain in relation with the *utility principle* within the general framework of civil society. This problematic is particularly examined in the Marxian critique of

rights of man in “On The Jewish Question”. Marx argues that *political emancipation*, apart from *human emancipation*, is the level of emancipation where man still remains alienated. He considers the fact of alienation, derived from Feuerbach, as an inevitable part of the politically emancipated state in which man is divided into two parts; first as an abstract *species-being/citoyen* in his socialized life and second as a *monad/bourgeois* in his private life. On the other hand, for example, Marx claims that Bentham “takes the modern shopkeeper, especially the English shopkeeper, as the normal man” (Marx, 1909a, p. 668f). The problem in the view of “shopkeeper’s utility” is that the shopkeeper’s human qualities (including productive and creative abilities) are reduced to a plain exchange item in the marketplace in expense of gaining pleasure (or utility). Then, man itself becomes an exchange (trade) item and that causes each man (and his production force) to be used as a means to satisfy external needs. Thus, the only currency in such an exchange is the possessions and potentialities of man as a humankind which can be used to get a certain amount of satisfaction. In this sense, man must orientate himself as a sales-person to be able to sell everything that belongs to his human person. Such a sales-person “always inserts a third thing between himself and his mode of action—a habit seen in truly classic form in Bentham, whose nose had to have some interest before it would decide to smell anything” (Marx and Engels, 2010, p.213). Man’s “human existence” turns into a means to increase personal “wealth”.

In this context, Marx considers “wealth” as an important part of capitalism that “creates the material elements for the development of the rich individuality which is as all-sided in its production as in its consumption, and whose labour also therefore appears no longer as labour, but as the full development of activity itself, in which natural necessity in its direct form has disappeared; because a historically created need has taken the place of the natural one” (Marx, 1973, p. 251). In the utilitarian approach, wealth is determined by an external conception of utility. Marx explains this fact as follows: “I derive benefit for myself by doing harm to someone else (*exploitation de l’homme par l’homme*); in this case moreover the use that I derive from some relation is entirely extraneous to this relation, as we saw above in connection with ability [*Vermögen*] that

from each ability a product alien to it was demanded, a relation determined by social relations —and this is precisely the relation of utility” (Marx, 2010, pp.409-410). In utilitarian approach, relations —like speech, love, definite manifestations of definite qualities of individuals— are supposed not to have;

“[T]he meaning *peculiar* to them but to be the expression and manifestation of some third relation attributed to them, the relation of utility or utilization. This *paraphrasing* ceases to be meaningless and arbitrary only when these relations have validity for the individual not on their own account, not as spontaneous activity, but rather as disguises, though by no means disguises of the category of Utilization, but of an actual third aim and relation which is called the relation of utility.” (Marx, 2010, p.409)

Indeed, Marx challenges the utilitarian understanding of pleasure and pain as a currency because of the mere abstraction of all human faculties into one single concept. In this context, for Marx, Bentham, as a utilitarian political economist, reduces all capabilities of man and his labor power to one kind; that is capability of maximizing satisfaction. Therefore, all men are considered as *equals* but in having the same sense of utility. Such consideration of equal right is considered in the context of the labor supplied and the pleasure (utility) expected to gain. Thus, all the differences of men, the quality of their labour and the understanding of pleasure are ignored in principle. The main concern in the measurement is the quantity of the “commodity”. Therefore, man’s rightful claim turns into “*a right of inequality, like all right*” (Marx, 1922, p.30). Yet, in *Grundrisse*, Marx criticizes such a commodification referring to Adam Smith:

“Equal quantities of labour must at all times and in all places have the same value for the worker. In his normal state of health, strength and activity, and with the common degree of skill and facility which he may possess, he must always give up *the identical portion of his tranquillity, his freedom, and his happiness*. Whatever may be the quantity or composition of the commodities he obtains in reward of his work, the price he pays is always the same. Of course, this price may buy sometimes a lesser, sometimes a greater quantity of these commodities, but only because their value changes, not the value of the labour which buys them. Labour alone, therefore, never changes its own value. It is therefore the real price of commodities, money is only their nominal value.” (Marx, 1973, pp.533-534)

Marx, then argues Smith’s view in the context of the reduction of human faculties into one single measure: “*Tranquillity* appears as the adequate state, as identical with

freedom and happiness” (Ibid., p.534). Marx defines liberty, freedom, justice or fairness as abstract notions which are employed as a means to maintain the current state of the political order. Hence, these notions, under the general ideological framework of rights of man, are inevitably illusory in such political use. However, there are also some more recent works on the question of human rights providing alternative views from a different Marxist perspective. For example, in such works, we can find various claims concerning the responsibility of the capitalist society in increasing violations of human rights.¹⁶

3.4. EMANCIPATION AND THE RIGHTS OF MAN

3.4.1 Political Emancipation and the Jewish Question

Marx, in his essay “On The Jewish Question”, which is written as an extensive inquiry on Bauer’s “Jewish Question”, examines the deficiencies of *political emancipation* in the context of the *rights of man*. Contrary to Bentham’s arguments, Marx argues that these sort of rights, as egoist man’s rights, lead man to be left alone in civil society. In this sense he draws a distinction between *species being* (public) and *monad* (private) as a center argument against the idea of the rights of man. In fact, Marx seeks to justify the conditions of *human emancipation* which would lead man to emancipate himself from alien powers. Marx, in “On The Jewish Question”, first challenges Bauer’s theological approach and then examines the “Jewish” problem within the framework of *political emancipation*. For Marx, Bauer had erred in his examination because of his confused account of the “religious” state. Thus, he re-shapes the question of religious state by reconsidering it in the context of the “political” state. Marx then attempts to define the political state and the concept of political emancipation:

“The political emancipation of the Jew, the Christian, and, in general, of religious man, is the emancipation of the state from Judaism, from Christianity, from religion in general. In its own form, in the manner characteristic of its nature, the state as a state emancipates itself from religion by emancipating itself from the state religion – that is to say, by the state as a state not professing any religion, but, on the contrary, asserting itself as a state.” (Marx, 1844, p.6)

16 See more in Nordahl, 1995; for an “egalitarian” perspective see Lukes, 1985 and 1993.

According to Marx, emancipation from the “state religion” does not refer to the emancipation from religion on the individual level. State does not determine the individual’s life, rather the individual continues his own life (i.e. being religious) under the rule of a “blind” state. However, the “political” state forces man to live in a two-fold way of which Marx defines as *bourgeois* and *citoyen*. In a politically emancipated community, man is a part of material life and seeks his own interest as an egoist monad who always considers the “others” as a means in his pursuit of happiness. On the other hand, for him, man also has a social character and belongs to the community as an abstract *species-being*. Accordingly, the real man “is recognized only in the shape of the egoistic individual, the true man is recognized only in the shape of the abstract citizen” (Ibid., p.20). He furthers his argument by examining the concept of *human emancipation*. Human emancipation for Marx is an essential achievement in the course of human progress which could only be accomplished by “genuine” *species-beings* rather than abstract *citoyen*:

“Only when the real, individual man re-absorbs in himself the abstract citizen, and as an individual human being has become a species-being in his everyday life, in his particular work, and in his particular situation, only when man has recognized and organized his “own powers” as social powers, and, consequently, no longer separates social power from himself in the shape of political power, only then will human emancipation have been accomplished.” (Ibid, pp.20-21)

Man can only be emancipated (*human emancipation*) through acting in accord with his nature as a social being; by preventing himself from alien powers (egoism and self interest). In this context, It seems to me that, through the idea of *human emancipation*, Marx tends to be concerned with the process of becoming mature as Kant does through the idea of *public use of reason* because such an emancipation can only be achieved if the freedom of species being is secured. As a “genuine” *species being*, man naturally belongs to the public sphere; however, under the political emancipation, man faces contradiction between being an individual as a *monad* and being socialized as a *species being*. Then, man materializes the others in civil society by transforming himself into a monad and finally becomes alien to himself, to his nature.

3.4.2. The Rights of Man and Civil Society

The contradiction mentioned in *On The Jewish Question* among the individual being and the social being is the standpoint of Marx's critique of rights of man. In fact, it has a central role in political emancipation because "the division of the human being into a public man and a private man [...] is not a stage of political emancipation but its completion" (Ibid, pp.9-10). That is to say, political state remains neutral to the private man's life in civil society; either to his cultural life in terms of religion or his material life in terms of private property. Marx here seems to refer to a realm of immaturity in which there is nothing meaningful but only self-interest. Then, he further elaborates his account of political emancipation with an examination of the DRM. In this context, according to the declaration, the private man in civil society has right to be egoist, right to be greedy; he has right to live his "purposeful" life. Therefore "so-called rights of man, the *droits de l'homme* as distinct from the *droits du citoyen*, are nothing but the rights of a member of civil society, i.e. the rights of egoistic man, of man separated from other men and from the community" (Ibid., p.15). However, Marx considers civil society —and the private man as well— as an inevitable level toward achievement of human emancipation: "Political emancipation is, of course, a big step forward. True, it is not the final form of human emancipation in general, but it is the final form of human emancipation within the hitherto existing world order" (Ibid., p.9).

He then examines the concepts of "privilege of faith", "liberty", "equality" and "security" by focusing on the 1789 Declaration and consecutive documents which are relevant to it. He claims that, in the rights of man, "liberty" is considered as "right to private property" —or "right of self interest"— and "equality" is considered as having "equal" right to private property. Marx furthers his argument by pointing out the role of "self-sufficient monad" in civil society and he claims that "right to security" is proposed in order to ensure the egoism of private man. Therefore, in the rights of man, says Marx, "(man) is far from being conceived as a species-being; on the contrary, species-life itself, society, appears as a framework external to the individuals, as a restriction of their original independence. The sole bond holding them together is natural necessity, need

and private interest, the preservation of their property and their egoistic selves” (Ibid., p.17).

3.4.3. Man as a Species-being

Regarding the concept of species-being, we cannot easily find a complete and clear explanation of the self-realized “free” man in Marx’s other works. Indeed, he does not intend to be very decisive at making certain descriptions on human kind in general on a metaphysical basis in his later works. Rather, he makes extensive examinations in detail on the man who is certainly not free at all. What actually Marx claims is that the free man distinguishes himself from the non-free man not only by the actions performed through the social and political institutions, but also by the autonomous nature of self-realization process: “The critique of religion ends with the categorical imperative to overthrow all conditions in which man is a debased, enslaved, neglected, contemptible being” (Marx, 1970, p.137). Such a “categorical imperative” is the only “absolute” command which Marx tends to follow in his entire body of work that considers man as an end in itself. This imperative aims at abandoning any use of man in any means in his whole life. In this respect Marx might well be considered as an “author of the Enlightenment”. Indeed, the political state, where man’s human powers are oppressed by an inhuman order in which man has no control over it, where his real needs and necessities are totally determined independently from his own assessments, and thence where his human life and existence are ignored, is a system in which man is far from being autonomous social being. In this context Marx indirectly suggests a moral framework in a Kantian sense on the question of the conditions of possibility for man to live as a species-being.

In this sense, my claim is that we can find an implicit normative approach to the question of “man” or “human being” in Marx’s writings, especially in early writings, although Wood claims that it is very difficult to find “a concept of man whose character is fundamentally that of an ideal or norm” (Wood, 1972a, p.125) in Marxian discourse. Since the concepts of *monad* and *species-being* have an essential role in his entire

analysis of alienation Marx does not seem to completely deny the idea of having a moral conception of man as a basis for his arguments. Yet, for example in *The Capital*, we can find his philosophical approach to the critical social theory where he believes it must start with a theory of human nature. For instance as an argument to Benthamian utilitarianism, he states that “to know what is useful for a dog, one must study dog nature. This nature itself is not to be deduced from the principle of utility. Applying this to man, he that would criticize all human acts, movements, relations, etc., by the principle of utility, must first deal with human nature in general, and then with human nature as modified in each historical epoch” (Marx, 1909a, p. 668). Following this line of reasoning, it is obvious that the concept of man in Marxian discourse is to be well considered as the concept of *species-being*; that is also endorsed by the certain needs of man in particular historical conditions. There is no further explanation concerning the “human nature” in *Capital*; however, such an account actually was suggested in *1844 Manuscripts*: “The whole character of a species, its species-character, is contained in the character of its life activity; and free, conscious activity is man’s species-character. Life itself appears only as a *means to life*” (Marx, 1959, p.31). In this context, my intention is to follow the views that have had a particular place among Marxian scholars concerning Marx’s coherent body of reasoning starting from the early philosophical texts and consistently continued throughout his later theory of Capital (See McLellan, 1971; Schaff, 1970 and Mandel, 1971). In this sense, for example, Alan G. Nasser asserts that human nature understood as *species-being* partly implies Aristotelian approach to the *good* for man. He claims that Marx employs a version of the Aristotelian concept of *ergon*:

“[T]he general notion of the human good, well-being or happiness, can be given a specific sense only if man’s natural function or *ergon* is first identified. This can be accomplished, Aristotle thinks, by determining the kind of activity that the human species, and only the human species, can perform, taking into account its characteristic structural organization. The good for man will consist in the performance of his function, the exercise of his specifically human powers, throughout a complete life. This form of reasoning, the *ergon* argument, presupposes the following three claims: 1) that it makes sense, and is correct, to say that nature endows man qua man with a special function to perform, 2) that this function can be ascertained by determining the kind of activity that distinguishes

homo sapiens [...] from every other species, and 3) that such activity is (the moral) good for man.” (Nasser, 1975 p.485)

Then the Marxian explanation of *essential being* of any species, although the purpose of the examination is essentially different, is formulated as constitutive as the *ergon* argument in its own form. Marx, in this sense, focuses on the life activities or modes of life in order to distinguish human beings from every other species. He asserts that the most significant feature of man’s activity is shaping nature through the use of social institutions and considers that man and institutions constitute the *whole* together; “man is no abstract being squatting outside the world. Man is the world of man, the state, society” (Marx, 1970, p.131). In this manner, man as an individual –and his actions– cannot be considered as isolated from the society in which he already exists. Since my intention in this section is to examine the general theory of emancipation in Marxian critique of human rights, it can be considered as a very useful guideline to place the idea of public use of reason into political economy together with a critique of *utility principle*. That is to say, the idea of *species-being* and the political consideration of human rights through the idea of public use of reason, can play a key role in a possible reconciliation of human rights with political economy. For example, the social world for Marx is the place where man develops his own powers to realize himself as a species-being. In doing so, man freely transcends the necessity of physical needs and discovers new needs and wants. This fact, for Marx, signifies the essential distinction between animals and humans: “Admittedly animals also produce. They build themselves nests, dwellings, like the bees, beavers, ants, etc. But an animal only produces what it immediately needs for itself or its young. It produces one-sidedly, whilst man produces universally. [...] Man therefore also forms objects in accordance with the laws of beauty” (Marx, 1959, pp.31-32). Marx states that, man, “opposes himself to Nature as one of her own forces, setting in motion arms and legs, head and hands, the natural forces of his body, in order to appropriate Nature’s productions in a form adapted to his own wants. By thus acting on the external world and changing it, he at the same time changes his own nature” (Marx, 1909a, p.197-198). This is actually one possible extension to the idea of becoming mature as man distinguishes himself through his own

activity of productive labor even when he is free from physical need:

“It is just in his work upon the objective world, therefore, that man really proves himself to be a species-being. This production is his active species-life. Through this production, nature appears as his work and his reality. The object of labor is, therefore, the objectification of man’s species-life: for he duplicates himself not only, as in consciousness, intellectually, but also actively, in reality, and therefore he sees himself in a world that he has created. In tearing away from man the object of his production, therefore, estranged labor tears from him his species-life, his real objectivity as a member of the species and transforms his advantage over animals into the disadvantage that his inorganic body, nature, is taken from him.” (Marx, 1959, p.32)

Marx thus claims that the capitalist mode of production together with the formation of the civil society obstructs the functioning of the metabolism of *species being* through private property, which is what he calls *alienation*. Such an alienation drives society into a great inequality of wealth. Conversely, for him, communism is “the real movement which abolishes the present state of things” (Marx, 2010, p.49). In the *present state of the things*, the wealth that is produced by every single man is obtained by one particular part of the society. Therefore, exploitation of labor force becomes the main theme of civil society at the expense of alienation. Such question of unjust distribution of wealth and income (proceeds of labor) is most extensively treated in the *Critique of the Gotha Program*. Marx, suggests two principles of –“distributive” to some extent– justice; (1) from each according to his ability, (2) to each according to his needs. On the other hand, in all these examinations Marx does support the idea that man as a social being has specific historical reasons to enjoy a mode of life which allows him to realize himself through his own creative capabilities which is what Marx describes, in the *Holy Family*, as an activity of pursuing aims: “It is man, real, living man who does all that, who possesses and fights; ‘history’ is not, as it were, a person apart, using man as a means to achieve its own aims; history is nothing but the activity of man pursuing his aims” (Marx and Engels, 1956, p.125). Following this line of reasoning, my claim is that, in a Marxian point of view, we could make a distinction between rights of man and rights of bourgeois as Marx distinguishes political emancipation from human emancipation in *On The Jewish Question*. In this sense, It appears to that what actually

criticized here is not human rights but “bourgeois rights” which drives man into a dehumanization process.

3.5. BEYOND THE DEHUMANIZATION OF MAN

3.5.1. The Origins of Alienation

Marx elaborates his account of alienation at a time when he was still a part of Young Hegelians among which Ludwig Feuerbach was a leading actor in the development of the movement. Thus, the concept of “alienation” that he uses in his early writings is strongly influenced by Feuerbach and his philosophical view that was especially exposed in *The Essence of Christianity* (Feuerbach, 1881). Althusser explains this influence as follows:

“Not only is Marx’s terminology from 1842 and 1845 Feuerbachian (alienation, species being, total being, ‘inversion’ of subject and predicate, etc.) but, what is probably more important, so is the basic philosophical problematic. Articles like *On the Jewish Question* or the *Critique of Hegel’s Philosophy of the State* cannot be understood outside the context of the Feuerbachian problematic.” (Althusser, 2005, p.45)

Feuerbach, as a former student of Hegel, tries to go beyond Hegel’s philosophy through his critical analysis of religion. He argues that the notion of god is a projection of the human mind. In other words, god is nothing else than human. People consider god as a higher being that actually has human qualities like benevolence, sense of justice or wisdom so that in religion “man necessarily places his nature out of himself” (Feuerbach, 1881, p.195). Thus, religion appears as a form of alienation which hinders the realization of species-being. Feuerbach claims that Hegel’s speculative philosophy does also hinder such a realization along with religion:

“All predicates which make God as God real and which make God an actual entity, predicates like power, wisdom, goodness, love, even infinity and personality which have as a condition the distinction from what is finite, these predicates are first supposed in and with human beings. Just as in theology the human being is the truth and reality of God, so in speculative philosophy the truth of the infinite is the finite.” (Feuerbach, 1983, p.160)

However, Marx’s own argument of alienation eventually moves away from

Feuerbachian alienation and targets to Hegel's analysis of civil society. Marx formulates his own distinct position within the framework of what he calls "political economy" in a Hegelian sense:

"The idea is given the status of a subject, and the actual relationship of family and civil society to the state is conceived to be its inner imaginary activity. Family and civil society are the presuppositions of the state; they are the really active things; but in speculative philosophy it is reversed. But if the Idea is made subject, then the real subjects —civil society, family, circumstances, caprice, etc.— become unreal, and take on the different meaning of objective moments of the Idea." (Marx, 1970, p.8)

The issue of alienation is the major concern in his early works like the *1844 Manuscripts* or *On The Jewish Question*. In these works, Marx himself admits Hegel's influence on his view of alienation as he takes Hegel's conception of labor as a reference. Marx especially refers to the concrete nature of labor in Hegelian approach. In this sense, according to him, the remarkable point in *The Phenomenology of Mind* is the way Hegel elaborates the development of human capacities. Hegel "conceives the self-creation of man as a process, conceives objectification as loss of the object, as alienation and as transcendence of this alienation; that he thus grasps the essence of labor and comprehends objective man —true, because real man— as the outcome of man's own labor" (Marx, 1959, p.66). However, Marx claims that Hegel's analysis of alienation is "mystifying" or "abstract" because the concept of alienation in *The Phenomenology of Mind* refers to man's products those as if they are products of abstract mind. "The Phänomenologie", says Marx, "is, therefore, a hidden, mystifying and still uncertain criticism; but inasmuch as it depicts man's estrangement, even though man appears only as mind, there lie concealed in it all the elements of criticism, already prepared and elaborated in a manner often rising far above the Hegelian standpoint" (Ibid., p.66).

According to Marx, the relations within the social production of man's life "constitutes the economic structure of society, the real foundation, on which rises a legal and political superstructure and to which correspond definite forms of social consciousness"

(Marx, 1977, Preface). The political superstructure has two incorporated parts. One is the *mode of production* which determines the consciousness of men; the other is the class struggle between different parts of the society. Marx here uses the term “production” in a particular sense; it is a specific interaction of man with nature through genuine human faculties. This interaction unveils man’s creative powers and steers him toward a “self-realization” as a *species-being*. Man personalizes and humanizes the things of nature through production. Accordingly, he claims that moral structure of the society changes in accord with the changes in the modes of production. This is related to the class structure of society. The explanation of the moral structure of the society in a given mode of production is always made by the ruling class in the society. Thus, the norms attached to such moral structure is, as a matter of fact, associated with the class interests. In this sense, what Marx calls *forms of consciousness* is the forms which the ruling class allows to exist. Yet, the *forms of consciousness* which are determined by the ruling class dramatically differ from those of the non-ruling class; namely proletariat. Therefore, the ruling class has more and more control over the ideas concerning the economic, political and legal structure of society and “hence of the relations which make the one class the ruling one, therefore, the ideas of its dominance” (Marx ad Engels, 2010, p.59).

In this context, the twofold character of the legal and normative standards leads society to develop particular conceptions of freedom and equality that reflect the dominant ideas and class interests. In such a society, “the less you eat, drink and buy books; the less you go to the theater, the dance hall, the public house; the less you think, love, theorize, sing, paint, fence, etc., the more you save –the greater becomes your treasure which neither moths nor rust will devour– your capital. The less you are, the less you express your own life, the more you have, i.e., the greater is your alienated life, the greater is the store of your estranged being” (Marx, 1959, p.51). The question here is the abstraction of mankind in a particular way: “What in the evolution of mankind is the meaning of this reduction of the greater part of mankind to abstract labour?” (Ibid., p.7).

For Marx, considering man as a mere worker is a major confusion. Labor is not a commodity, rather it is an activity of self-creation and the ultimate need for *total man* is therefore self-realization. Man is more than an abstract labor; as a “total man” (*Totaler Mensch*) he is also a social being with various material and moral needs. Even “[t]he rich human being is simultaneously the human being in need of a totality of human manifestations of life –the man in whom his own realization exists as an inner necessity, as need” (Ibid., p.48). Thence, any system that is based on private property, division of labor and classes, forces a mass of people to become dehumanized. Marx calls this dehumanization process “alienation” (*Entfremdung*). Alienation, in Marxian understanding, hinders the self-realization process of man and imposes an alternative conception of wealth which is considered as an end itself. In this sense, wealth becomes a function of labor and labor becomes a mere commodity in the market-place; man “feels at home when he is not working, and when he is working he does not feel at home. His labor is therefore not voluntary, but coerced; it is forced labor” (Ibid., p.30).

We can further Marx’s view of alienation and the characteristics of the species-being through his critics on “vulgar” communism that he mentions in the *1844 Manuscripts*. For Marx, what Proudhon and Fourier propose in their communist theories is the universalization of private property which is irrelevant to the given talents and personality of man. In doing so, they reduce the human powers to a vulgar understanding of labor. However, we can only prevent man’s alienation through “the complete return of man to himself as a social (i.e., human) being –a return accomplished consciously and embracing the entire wealth of previous development” (Ibid., p.43). Such a fully developed society “produces man in this entire richness of his being produces the rich man profoundly endowed with all the senses –as its enduring reality” (Ibid., p.47). In this sense, communism is “the first real emergence, the actual realization for man of man’s essence and of his essence as something real” (Ibid., p.72). Later in the *German Ideology*, Marx suggests the communist political and economic institutions in order to overcome the “contradiction between the interest of the separate individual or the individual family and the communal interest of all individuals who

have intercourse with one another” (Marx and Engels, 2010, p.46). Men become a *whole* through the communist institutions by abolishing the abstract division of production and consumption, intellectual labor and manual labor and in the end, the division of labor in capitalist society.

3.5.2. Political Emancipation and Social Justice

Marx is well known for his argument on social classes that they have to be dissolved because all genuine human qualities are already eliminated by the capitalist mode of production. Marx, makes his analysis of the capitalist economy on the basis of conceptions of alienation and the species-character of man especially in his early writings. In this context he criticizes the political economists concerning the misconceptions in their theories. For example, Marx argues that according to Adam Smith “society is a commercial enterprise. Every one of its members is a salesman. It is evident how political economy established an alienated form of social intercourse, as the true and original form, and that which corresponds to human nature.”¹⁷ Actually this is also the argument that Marx places at the center of the discussion of rights of man. The major problem is the role played by the rights of man in the legal and normative dominance of the ruling class.

Moral structure of the society is a reflection of social and economic conditions. Moral and legal claims are used to justify the licit exercise of power of the ruling class. Thus, the legal system imposed by the ruling class veils the exploitation of the man (as a species-being). Such a system is far from satisfying human needs and potentialities. In *The Capital*, for example, he criticizes the “innate” rights of man in the context of marketplace relations: “This sphere that we are deserting, within whose boundaries the sale and purchase of labour-power goes on, is in fact a very Eden of the innate rights of man. There alone rule Freedom, Equality, Property and Bentham”. He describes the positions in the market as “buyer” and “seller”. Each of them has their own

¹⁷ Marx and Engels, 1932, p. 130 (quoted in West, 1969 and in the "Introduction" to the Adam Smith's Theory of Moral Sentiments, 1976, p.26). West adds “In Capital, however, Marx reminds us that Smith himself was disturbed by the fear of the possibility of the alienation danger in the division of labour.”

commodities; money for the buyer and labor for the seller. However the exchange between the buyer and the seller consists of all other commodities as well. They are all “free” in person in the process of making their own decisions:

“Freedom, because both buyer and seller of a commodity, say of labour-power, are constrained only by their own free will. They contract as free agents, and the agreement they come to, is but the form in which they give legal expression to their common will. Equality, because each enters into relation with the other, as with a simple owner of commodities, and they exchange equivalent for equivalent. Property, because each disposes only of what is his own. And Bentham, because each looks only to himself. The only force that brings them together and puts them in relation with each other, is the selfishness, the gain and the private interests of each.” (Marx, 1909a, p.195)

The seller here is not a slave since he is definitely a free person in the sense of political economy; however, he is also free from property. He is far from owning the means of production in order to live and to produce as a central human activity. Thus, the seller has nothing but labour. Therefore, such a consideration of freedom, equality and property rights leads mankind to live under coercion because of such unequal structure of society. The asymmetric power composition among the seller and the buyer clearly obstructs the human emancipation. For Marx, legal system in such a society is actually not based on free will: “The ruling ideas are nothing more than the ideal expression of the dominant material relations, the dominant material relations grasped as ideas; hence of the relations which make the one class the ruling one, therefore, the ideas of its dominance” (Marx and Engels, 2010, p.59). Contrary to Bentam’s position, the Marxian analysis of legal rights in terms of jurisprudence —as well as the rights of man— is rather provided within a moral framework. In this sense, Karl Popper claims that “*Capital* is, in fact, largely a treatise on social ethics” (Popper, 1967, p.199). Yet, Tucker points out such a “moral” tendency in a more controversial way: “Do they not, then, condemn capitalist society because of its inequalities? And finally, what is the capitalist “exploitation” of labor that Marxism talks about if it is not a relation in which the worker is robbed of what rightfully belongs to him? In all these ways Marxism invites a moral interpretation that sees distributive justice as its central issue” (Tucker, 1969,

p.36)¹⁸. In fact, Marx, in the *Gotha Program*, remarks that:

“I went rather extensively into the ‘unabridged proceeds of labor’ upon the one hand, and the ‘equal right’ and ‘the just distribution’ upon the other, in order to show how mischievous it is on the one hand to attempt to foist upon our party, as axioms, notions that at one time had a meaning, but have now become mere antiquated fustian; and, on the other hand, which pervert the realistic conception — which it has required such labor to impress upon the party, but has now struck root in it— with the ideological flummery of justice, etc.” (Marx, 1922, p.31-32)

Actually, the criticism here is not directed to the ideas of “equal right” and “fair distribution”. Rather, it is claimed that *bourgeois* interpretation of such ideas is an attempt to a crime. For example, in the *Manifesto* (Marx and Engels; 1969), Marx distinguishes the property from *bourgeois* property; freedom from *bourgeois* freedom and so on. And again, for Marx, the capitalist mode of distribution is fair or just only when the capitalist ideas dominates all others in the superstructure. Thus, his main concern is not a better or fair distribution in capitalist society: “An enforced *increase of wages* (disregarding all other difficulties, including the fact that it would only be by force, too, that such an increase, being an anomaly, could be maintained) would therefore be nothing but better *payment for the slave*, and would not win either for the worker or for labor their human status and dignity” (Marx, 1959, p.34).

Nonetheless, Marx seems to be much less interested in the questions of equal right or fair distribution in his later works where this fact is widely examined in influential works of Tucker and Wood¹⁹. Indeed, Marx does not refer to the just institutions through a “social justice” perspective. The justification of the concept of social justice, in Marx’s works, depends on how the mode of production is specified and how the juridical institutions are determined in a given society. Accordingly, for example Engels asserts that “social justice or injustice is decided by the science which deals with the material facts of production and exchange, the science of political economy” (Marx and

18 Tucker attributes to Laski, 1922; Carr, 1934; Lindsay, 1925 and Hook, 1936.

19 See Wood, 1972b and 1979; Tucker, 1961 and 1969. For example Wood says; “[S]o there is no good reason, it seems to me, for the adherents of any particular position in moral philosophy to claim that Marx is one of their number. At any rate, Marx seems to me no more a subscriber to any particular moral philosophy than is the ‘common man’ with whose moral views nearly every moral philosopher claims to be in agreement.” (Wood, 1972b, p.28)

Engels, 1955, p.412; quoted in Allen W. Wood, 1972b, p.131). However, the concept of “justice” alone plays a key role in his analysis of political state. For example, in *Manuscripts*, Marx argues that movement of private property is the fundamental basis of productive activity and “religion, family, state, law, morality, science, art, etc., are only *particular* modes of production, and fall under its general law” (Marx, 1959, p.44). In this context, justice (*Gerechtigkeit*), for Marx, “is fundamentally a juridical or legal (*Rechtlich*) concept, a concept related to the law (*Recht*) and to the rights (*Rechte*) men have under it” (Wood, 1972b, p. 246). In the political state, there is a legal justification for the constitution of institutions since the evaluation of the decisions related to particular actions in the society are based on the specific mode of production. However, these justifications are not based upon “natural” principles of justice which will be forever valid in all places. Marx explains his standpoint regarding the concepts of justice and civil society as follows:

“My inquiry led me to the conclusion that neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but that on the contrary they originate in the material conditions of life, the totality of which Hegel, [...] embraces within the term ‘civil society’; that the anatomy of this civil society, however, has to be sought in political economy.” (Marx, 1977, Preface)

Since the nature of the relation between civil society and the state is the determinant of political economy, any attempt of formalization of comprehensive philosophical principles of justice would be nonsensical within the historical context. However, the concepts of civil society and state here, and their interrelation, are not reduced to simple facts. What Marx calls political economy –and then the “political” state– is a function of civil society that is constituted through the needs of the dominant class. Since the political state is a sphere that alienates and dehumanizes production relations in the society, the legal and moral formation of institutions must be understood within the context of this particular mode of production. In this sense, the concept of justice, apart from “social” justice, is one of the fundamental part of the Marxian analysis of rights of man. Yet, this distinctive point of view is always presented by Marx in his criticisms in relation to *alienation*. For instance, regarding the discussion of the natural justice and

slavery in the *Capital*, he argues the view of Gilbert:

“To speak here of natural justice, as Gilbert does, is nonsense. The justice of the transactions between agents of production rests on the fact that these arise as natural consequences out of the production relationships. The juristic forms in which these economic transactions appear as willful acts of the parties concerned, as expressions of their common will and as contracts that may be enforced by law against some individual party, cannot, being mere forms, determine this content. They merely express it. This content is just whenever it corresponds, is appropriate to the mode of production. It is unjust whenever it contradicts that mode. Slavery on the basis of capitalist production is unjust; likewise fraud in the quality of commodities.” (Marx, 1909c, p.339-340)

It is clear that for Marx the aforementioned notions under the general scheme of rights of man such as liberty, equality or security refer to a particular legal basis for a particular mode of production. This had been actually the most direct connection ever made between the idea of human rights and political economy since the beginning of human rights discussion at that time. Of course, since I seek to establish a relationship between human rights and economics, my interpretation is likely to run afoul of the main concern of Marx in abolishing the contradiction of public and private man. Therefore, I now focus on the moral backgrounds of the course of human emancipation and of the role of species-being.

3.5.3. Moral Backgrounds of Human Emancipation

Marx, especially in his earlier works, appears to admit the fact that man is a part of both private sphere and public sphere, that is, in Kantian words, both kingdom of nature and kingdom of ends. However he is actually more concerned with abolishing such a contradiction by going beyond the limits of political state. Nevertheless, the moral framework in which man is considered as an end itself, as a species-being, has also much in common with the idea of public use of reason . That is to say, it appears to me that species-being in Marxian sense refers to certain potentialities of man. These potentialities constitute man’s value and dignity. In this sense, the discussion of rights of man that Marx involves in could be reconsidered to the extent of both the idea of “rights of species being” and “rights of egoist man”. In fact, Marx asserts in his *Manuscripts*

that man possesses both potentialities in a single united form:

“We must avoid postulating “society” again as an abstraction *vis-à-vis* the individual. The individual is the social being. His manifestations of life—even if they may not appear in the direct form of communal manifestations of life carried out in association with others—are therefore an expression and confirmation of social life. Man’s individual and species-life are not different.” (Marx, 1959, p.45)

It seems to me that the idea of *human emancipation* is reminiscent of the Kantian approach since (1) Marx draws a course of progress in his theory which appears to be similar—in terms of *form* of the progress—with the process of *becoming mature* in the Kantian approach and (2) Marx deals with the idea of *species-life* like Kant does with the idea of “mature” man of Enlightenment. However, Marx hardly follows the “pure” ethical line of reasoning that is already suggested in Kantian discourse. But what is insightful in the Marxian critique of rights of man is the argument that we cannot examine the concept of civil society without addressing the question from a perspective on political economy:

“The first work which I undertook to dispel the doubts assailing me was a critical re-examination of the Hegelian philosophy of law [...] My inquiry led me to the conclusion that neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but that on the contrary they originate in the material conditions of life, the totality of which Hegel, following the example of English and French thinkers of the eighteenth century, embraces within the term “civil society”; that the anatomy of this civil society, however, has to be sought in political economy.” (Marx, 1977, Preface)

Since the important role played by Hegel’s philosophy in this analysis will be examined in Chapter 4, here I just confine myself by the Marxian critique of rights of man. In this context, the idea of human rights in its “political” form, not directly but *indirectly*, assures the pursuit of *happiness* of *bourgeois-life* of man since private concerns constitute an inevitable part of *becoming mature*. The conception of *autonomy* indeed refers to the idea of *emancipation* from external guidance but it also refers to the pursuit of mere private purposes within the framework of *public use of reason*. In this context, the idea of human rights involves in economic thought as, a sort of, regulator of *civil*

society by the guidance of *public use of reason*. In fact, one's pursuit of self-interest in terms of autonomy is not contradicted with the idea of public use reason, and human rights as well, unless such a pursuit obstructs the other's autonomy and freedom of using reason publicly. That is to say, the role of "blamed" self-interested parties in the determination of social and political institutions would have much less importance once we consider human rights as high-priority claims to a certain kind of treatment in order to sustain freedom of using reason publicly. In this context, It seems to me that the Marxian critique of rights of man can provide us an alternative framework in which the analysis of the idea of human rights in the context of political economy is highly possible. Therefore the question of rational choice among the parties in civil society can be re-examined by *reasonably* limiting one's own pursuit of happiness in order to prevent the "other" from remaining only as a monad; in a sense, by transforming the *rational choice* into *reasonable choice*.

I consider using reason "publicly" as an important component through the examination of human rights in the context of economic thought. My claim is that, such an attempt would lead us to avoid the "commodification of man" which has been discussed in Marx's earlier works. The idea of *public use of reason*, thus, is the point where the idea of human rights is connected to political economy in terms of *becoming mature*. In this context, human rights refer to the minimum requirements or demands which are necessary to ensure using reason publicly in the course of making a constitution which shapes the form of interactions among people as mature human beings. Such an understanding requires a shift from *rational choice* into *reasonable choice* under the regulation of principles guided by human rights in order to ensure the freedom of public use of reason.

It is obvious that the concept of human being, as a fundamental element of any discussion regarding human rights, is not simply descriptive but normative. The contribution of Marx and Bentham to the human rights discussion is thus important because of the questions that they had raised. Although there has been many

achievements since their time, particularly in economics, there is still a variety of issues concerning freedom, equality and justice which cannot easily be ignored. These issues, partly discussed in the context of economics, still remain unexplored and therefore should be revisited in order to achieve the objectives of human rights. In this perspective, the capability approach, pioneered by Amartya Sen and Martha Nussbaum, can provide important insights for a discussion on human rights. Since it argues that political policies regarding development and welfare should be designed on the basis of capabilities, that is, “what people are effectively able to do and to be” (Robeyns, 2005, p.94). The fundamental idea of this approach is actually very simple and is used rather in a narrower framework than the idea of human rights. Nevertheless, I believe that capabilities can still be an important component of the discussion concerning human rights and economics, especially when we consider the role of public use of reason. The capability approach thus will be revisited in the context of public reasoning in the next chapter.

CHAPTER 4: TOWARDS A RECONCILIATION PROJECT

4.1. INTRODUCTION

Marx's critique of political emancipation and the emphasis that he placed on the importance of material conditions to live in a "fully human way" has, either directly or indirectly, influenced many of recent theoretical works. The capability approach, among others, is the one that I will deal with in this chapter, as it provides an extensive normative framework in which the main purpose is to assess and compare available social/political arrangements related to various levels of individual well-being(s). This approach in its present form has been pioneered by Amartya Sen (See Sen 1980, 1984, 1985a, 1985b, 1987, 1992, 1993, 1995; Drèze and Sen 2002) and Martha Nussbaum (See Nussbaum 1988, 1992, 1995, 2000, 2002a, 2003a) and it has influenced a broad range of research domains. Although it is also used in technical or applied studies, the discussion has always been more on the philosophical side. The concept of *capability* is essentially based on the question of people's abilities in terms of their "doings" and "beings" rather than fulfillment of desires or self interest in the course of happiness, or to the extent of economics; income, expenditures and consumption. The argument of the capability approach, in brief, is concerned with the question of entitlements provided to people to pursue and embrace their own purposes, that they have reason to value instead of focusing on the maximization of utility alone. In this context, some aspects of the capability approach can be traced back to where the idea of public use of reason has also rooted.²⁰

There is plenty of research showing the relation between the capability approach and the Rawlsian theory of justice. However, it is my claim that the idea of capability is reasonably consistent with Rawlsian political liberalism especially when we consider Nussbaum's updated list of "central capabilities"²¹ and its relation with the political

20 Where Amartya Sen and Martha Nussbaum have agreed on the influence of Aristotle, Adam Smith, John Stuart Mill and Karl Marx (see Nussbaum 1988, 2003b and Sen 1993, 1999)

21 The central capabilities list has been revised; see the latest version in Nussbaum, 2007, pp.76-78.

conception of justice. Despite its “thick vague” origins, I believe that Nussbaum’s “political” project can better serve as a bridge between the idea of human rights and economic thought. In this sense, my intention is to deal with Nussbaum’s version of the capabilities approach and her turn to political liberalism. In this context, one of my purpose in this chapter is to offer a brief overview of the capability approach and its relation with Rawls’s political liberalism.

On the other hand, as earlier chapters were devoted to the development of an alternative account of public use of reason, in this chapter I aim to show a more convincing connection of human rights and economics. To do so, I focus on the origins of “political turns” in which Rawls has a particular position regarding the influence of Hegel over his political thought. However, this chapter hardly attempts to cover a full critique of Hegel’s *philosophy*. Rather, I will try to find out the traces of Hegelian ideas within Rawlsian conceptions of *public reason* and *reasonableness*.

This final chapter is set as follows. In Section 2, my purpose is to outline the capability approach in general. There I focus on the capabilities and the context in which Nussbaum and Sen intend to use this term. I further my review to the extent of functionings and I make an analysis of the relation of functionings with relevant capabilities. Then I study the role of pluralism within the general framework of the capability approach. Therefore this section is an attempt to show the fundamentals of the capability approach. In Section 3, I try to examine two distinct interpretations of the capability approach made by Sen and Nussbaum. My concern here is to focus on the discussion on the list of capabilities. However, I tend to put more emphasis on how Nussbaum develops her version of the capabilities approach through the idea of central capabilities. Therefore, this section inevitably includes an analysis of Rawls’s influence on Nussbaum’s political thought. Section 4 attempts to show how and to what extent the capabilities approach is involved in the discussion of human rights. In this sense, I tend to start by a brief review of the right to development which is adopted within various human rights treaties. Then I respectively examine Sen’s and Nussbaum’s accounts of

human rights. In this section I give particular attention to the role of the “core” capabilities in Nussbaum’s arguments concerning the discussion of human rights. I believe that her approach can provide a suitable basis for an extensive inquiry into the relation of economics and human rights. I conclude this section by a comparative analysis of Nussbaum’s core capabilities with Rawlsian understanding of public reason. Finally, Section 4 is an attempt to better understand the idea behind Rawlsian public reason. This section thus adopts an explicitly Hegelian perspective. In this section, I advance the view that the examination that I have made throughout this dissertation is perhaps best understood in a kind of “social world” framework. Indeed, the view that the Kantian idea of public use of reason is motivated by the same concerns proposed in Hegel’s philosophy is hardly appreciated by relevant academics. Nor my claim goes that direction. However what I try to show in this very final section is that Rawls explicitly follows Hegel’s solution to the “subjectivity” issue by re-framing his political thought through a distinct understanding of public reason. And this understanding, I believe, provides an important perspective on the relationship of human rights and economics.

4.2. THE CAPABILITY APPROACH

4.2.1. Capabilities

The notion of *capability* has been used in different manners within the general framework of the capability approach. For instance Amartya Sen uses this term in its singular form, that is, there is only one capability set available for each individual. This single capability set consists of a combination of various functionings that can be either mere potentialities or actual doings or beings. On the other hand, Martha Nussbaum uses the term in its plural form and considers these potential functionings as *capabilities*. In such use of the term, capabilities are classified within a list in which individual’s overall freedom bonded to a number of more specific capabilities. These two different interpretations of the capability approach will be extensively discussed in the further sections. In first section I tend to focus on the points where they agree concerning the fundamentals of the capability approach. However, as far as the capabilities are concerned, it is important to note that, this approach has been developed

and refined over almost half a century. Many publications have been made across different disciplines, though, there has still been a number of controversies over the capability approach. Since this approach has been examined through various studies within various domains, I try to focus more on the central capabilities in the context of political theory of justice. Thus, the perspective that I am working on hardly includes applied researches on welfare economics or the development issues in certain countries.

As discussed before in Chapter 3, some human functions –“species character” in the Marxian sense– have a particular importance in human life, that is, performing these functions in a fully human way is an essential issue for human beings. The term “fully human way” for example in Marxian discourse refers to “a way infused by reasoning and sociability” (Nussbaum, 2000b, p.72). Such human functions are dependent on external conditions in order to be performed in a fully human way; the way in which human being is able to “do” or “be” whatever he values as a dignified free being who “shapes his or her own life, rather than being passively shaped or pushed around by the world in the manner of a flock or herd animal”(Ibid., p.72). In this sense, each person is considered as an end itself –who may already has different values or purposes in his life– in the capabilities approach; this is actually the moral argument with which the human rights discussion is familiar. The language of capabilities thus has a great potentiality to produce “an account of these necessary elements of truly human functioning that commands a broad cross-cultural consensus, a list that can be endorsed for political purposes by people who otherwise have very different views of what a complete good life for a human being would be” (Nussbaum, 2013, p.267).

The capability approach suggests that development, and relevant capabilities to some extent, cannot be achieved without material prosperity. In this sense, people cannot be “well” without having certain goods. This is pretty much suitable with Marx’s project of human emancipation. Commodities thus have relatively important role among others in achieving certain human functionings. However this may also lead to what Sen calls “commodity fetishism” in a Marxian sense. Therefore the capability approach, says Sen,

focuses on what goods “can do for people, or rather, what people can do with these goods and services” (Sen, 1984, p.510) where “a person’s well being is not really a matter of how *rich* he or she is [...] commodity command is a *means* to the end of well-being, but can scarcely be called an end itself” (Sen, 1985a, p.28). In this sense, wealth, income, and possessions simply can not be ends in themselves. Following this line of reasoning, regarding resource or utility based approaches such as measuring GNP or aggregating level of financial assets and possessions in a given condition, Nussbaum asserts that “It has by now become obvious that this approach is not very illuminating, because it does not even ask about the distribution of wealth and income, and countries with similar aggregate figures can exhibit great distributional variations” (Nussbaum, 2005a, p.60). In such welfare based approaches, essential and instrumental aims in reaching the goal of increased well-being and development are considered analytically the same since there is only one instrumental strategy in achieving the possible highest welfare level, that is, the highest level of utility. However well-being and development have respectively a central importance in the capabilities approach because “affirmative shaping of the material and social environment is required to bring all citizens up to the threshold level of capability” (Nussbaum, 2002, p.133).

In this context, the capability approach is justified on the basis of the distinction between the means and the ends. The main theme of the capability approach consists of the capabilities to function towards individuals’ own potentialities in undertaking the actions and activities that they want to engage in. This broad understanding of self-determination which Sen calls “achieved functionings” (See Sen, 1992) refers to the process that makes a life valuable. The capabilities here are considered as freedoms or effectively possible functionings which are not necessarily achieved but likely to be realized. Freedoms thus are various forms of capabilities that provide elementary opportunities to individuals in order to live their lives as they want, as they value. Such an approach is thus suitable to be used in a wide range of purposes (Nussbaum and Sen, 1993). Because since the capability approach is concerned with the human abilities, or in a sense, “the totality of human manifestations of life” (Marx, 1959, p.45; 48), that

provides a basis for a moral claim that they should be ensured and developed, It can be a part of discussions within political science, philosophy or economics.

For Sen and Nussbaum, the capability approach is an attempt to build up “a philosophical and conceptual framework within which to discuss some urgent problems that arise in the course of ‘development’ especially economic development” (Nussbaum and Sen, 1987, p.1). The problems they are concerned with are both theoretical and practical issues which have been already discussed through a multi-disciplinary perspective. In this sense, they claim that the issues related to economic theory and development studies can be well defined by focusing on what people can achieve in terms of beings and doings. These are covered by the term “functionings” —as well as empowering these functionings through the human capabilities— which constitutes one of the central elements of the capability approach. Sen argues that “the object of public action can be seen to be the enhancement of the capability of people to undertake valuable and valued doings and beings” (Sen and Drèze, 1989, p.12. Quoted in Crocker, 1992, p. 287). The capability approach thus can be best understood not only as a normative development theory but also as a guideline for economic policies. Public policy making processes are therefore to be necessarily carried on the basis of individuals’ quality of life —or obstacles in their lives— and freedom to live any kind of life which people value should be ensured. “The capability approach to a person’s advantage” says Sen “is concerned with evaluating it in terms of his or her actual ability to achieve various valuable functionings as a part of living” (Nussbaum and Sen, 1993, p.30). These valuable functionings constitutes the core of the informational basis for such an evaluation.

4.2.2. Functionings

The capability approach places great emphasis on individuals’ moral judgments contrary to the utilitarian or income and resources based welfare theories. Since utility is placed as the core variable in theoretical work, income or GNP appear to be the only measure in applied research. However, from a capability perspective, GNP can hardly be a

standard indicator of the quality of life even though it is a useful tool in the measurement of relative development levels. In this sense Sen argues that “the informational bases of justice cannot be provided by comparisons of means to freedom (such as ‘primary goods’, ‘resources’ or ‘incomes’)” (Sen, 1990b, p.112). That is to say, in the capability approach, the “crude” understanding of development in economic analysis is judged by “the expansion of substantive human freedoms –not just by economic growth (for example, of the gross national product), or technical progress, or social modernization. This is not to deny, in any way, that advances in the latter fields can be very important, depending on circumstances, as ‘instruments’ for the enhancement of human freedom. But they have to be appraised precisely in that light – in terms of their actual effectiveness in enriching the lives and liberties of people– rather than taking them to be valuable in themselves” (Drèze and Sen, 2002, p.3).

Economic means and possibilities, in the capability approach, can only be a proxy for the functionings and capabilities. Since the economic background of development has an instrumental effect in the capability approach, It is as much as important especially when economic background provides a fair and just social structure for individuals to be able to develop their functionings and capabilities. Functionings or capabilities are essentially related to economic conditions even though they are not directly interrelated regarding Nussbaum’s list of central capabilities that I will analyze later. “Crude” understanding of “well-being” in possession based approaches, which is primarily concerned with goods rather than persons, pays inevitably less attention to the conversion process of goods into functionings that represents the achievements in potential doings and beings through the use of commodities and services available for each individual. Sen asserts that “we must take note that a disabled person may not be able to do many things an able-bodied individual can, with the same bundle of commodities” (Sen, 1985a, p.10). Since a person has goals that are more than the mere satisfaction of preferences, he has ability to judge and evaluate his own purposes on the basis of personal conceptions of the good. These purposes may well go beyond the utility perspective, and therefore, human well-being cannot be defined through utility.

However “being happy and getting what one desires may be *inter alia* valued in the capability approach but unlike in utilitarian traditions, they are not seen as the measure of all values” (Nussbaum and Sen, 1993, p.33, sn.9). In this context, functionings and their relations with capabilities have a central importance in the capability approach. Indeed “the ‘capability perspective’ involves concentration on freedoms to achieve in general and the capabilities to function in particular” (Nussbaum, 1995b, p.266). And Sen adds later in his another work that “while the combination of a person’s functionings reflects her actual achievements, the capability set represents the freedom to achieve: the alternative functioning combinations from which this person can choose” (Sen, 1999a, p.75).

An analysis based on the capability approach can either observe a person’s actual ability of doing things (realized functionings) or the real opportunities consisting of capability set of available alternatives. However “the two give different types of information” says Sen, “the former about the things a person does and the latter about the things a person is substantively free to do” (Ibid., p.75). Functioning, thus, is the way that people use goods in attaining different objectives. Nevertheless, the capability approach is rather concerned with “what persons are actually able to do or be –that is, in their functionings– not in the pounds of rice they consume” (Alkire, 2002, p.6). On the other hand, there is still a difficulty in measuring opportunities instead of outcomes, notably in weighting the individual capabilities compared to functionings. Functionings are positively observable because they are “vector of doings and beings” (Sen, 1985b, p.28) while a person’s capability set is a set of potentialities that is hardly observable. Therefore, income (or GDP/GNP) based welfare analysis has critical shortcomings in the measurement of achieved functionings.

A capability, in this context, is “a set of vectors” (See Sen, 2002) of functionings indicating the individual freedom to achieve (or to choose) personal life plan(s). Indeed the capability approach does not consider the functionings as a central normative measure. Rather, it is more related to the real freedoms, that is, the capability to

function, and not solely the achieved functionings. Therefore, Sen claims that functionings are actually attached to the living conditions since “they are different aspects of living conditions. Capabilities, in contrast, are notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead” (Sen, 1987, p.36). For instance, considering the comparison between the man who is fasting and the man who is starving because of the extreme poverty; although both lacks the achieved functioning of sufficient nourishment, the former has the capability to achieve this functioning while the latter does not. In this context “all the important distinctions” says Nussbaum “can be captured as aspects of the capability/functioning distinction” (Nussbaum; 2000b, p.14). Thus, the capability approach provides an appropriate reasoning to understand the sophisticated relation of the means, functionings and the actual opportunities of people. Indeed, it does not focus on the distribution of resources alone as resources have a relatively limited impact on human functionings; they have value when they are properly converted into functionings. However there can be differences in the capability to function provided by the same set of means such as “physical or mental heterogeneities among persons [...] variations in non-personal resources [...] environmental diversities [...] or different relative positions vis-a-vis others” (Sen, 2005, p.154).

4.2.3. Pluralism and Capabilities

One significant aspect of the capability approach is the way it relies on pluralistic views. The interpersonal assessment in the conversion process of commodities into functionings is taken in the account as personal or socio-environmental factors. Some of these factors can differ due to individual constraints while others differ widely according to class, gender, ethnicity and so on. For instance gender discrimination can affect the conversion of commodities into functionings either in terms of income or other commodities as well. For example considering a man and a woman who have the same educational degree and who want to enable some functionings by such a degree like securing financial autonomy; since gender discrimination leads woman to have less opportunities in the labour market, the degree that this woman already has hardly enable

the functioning of securing financial autonomy compared to the man who has the same degree. Such a discrimination can get even worse with social constraints like prejudices, social norms, habits or traditions. In this context, It is obvious that in the capability approach the great importance is given to personal choice and preferences which are shaped by a diverse range of processes. Thus, the capability approach relies on an egalitarian understanding of equality within a more pluralistic context: “Investigations of equality –theoretical as well as practical– that proceed with the assumption of antecedent uniformity (including the presumption that ‘all men are created equal’) thus miss out on a major aspect of the problem. Human diversity is no secondary complication (to be ignored, or to be introduced ‘later on’); it is a fundamental aspect of our interest in equality” (Sen, 1992, p.xi).

The capability approach then provides a multi dimensional evaluation opportunity when inequality is the main concern in a pluralistic society. This is what welfarist approaches lack in the measurement of inequality. Sen argues that “these standard measures are all basically parasitic on the traditional concentration on the income space and ultimately ignoring the fundamental fact of human diversity and the foundational importance of human freedom” (Ibid., p: 101). Such an account of commodities has also been closely linked to the discussion of the Rawlsian theory of justice in which commodities and possessions are examined regarding the comparison of personal advantages through what Rawls calls “primary goods”. However Rawlsian theory of primary goods is formulated in a different way than other forms of commodity views and thus it has a strong influence on the discussion of human capabilities and functionings. In this context, Sen claims that capabilities, to an extent, have considerably a similar role with the “primary goods” proposed in the Rawlsian theory of justice. However he argues that Rawls misinterprets diversity and relativity of human needs where any index of primary goods –that was actually the former version of the “primary goods– would be insufficient to meet the requirement of providing various amounts and kinds of goods for different people in order to ensure the same levels of well-being or advantage. Therefore once we focus on the individual’s real opportunities to pursue his objectives,

we have to take account of “not only of the primary goods the persons respectively hold, but also of the relevant personal characteristics that govern the conversion of primary goods into the person’s ability to promote her ends” (Sen, 1999a, p.74). Nevertheless, as discussed before in Chapter 2, this “diversity” concern has already been addressed within political liberalism and taken into account in the context of reasonable agreement.

4.3. DIFFERENT INTERPRETATIONS OF THE CAPABILITY APPROACH

Martha Nussbaum, together with Amartya Sen, is no doubt the most widely known author of the capability approach. While normative aspects that both of them hold are very closely related and shares the same fundamental principles, they actually present distinct versions of the capability approach and have different purposes as they have different philosophical accounts. Nussbaum’s “capabilities” theory distinguishes itself from Sen’s in one crucial point, that is, the “issue” of listing the capabilities which leads to further differences like the “basic” capabilities and then human rights. While Nussbaum has attempted to endorse a list of the central capabilities, Sen has always hesitated to provide such a list. Nussbaum appears to deal with the capability approach within a more “political” context in which she considers the capabilities as part of a “thick” theory of justice. She, particularly in her earlier works, contributes to the capability discussion through a –genuinely– Aristotelian political philosophy. In these works, Nussbaum follows a philosophical line which is derived from Aristotle’s account of human nature. However she later tended to “update” Aristotle’s doctrine of distributive justice in a way similar to contemporary egalitarian approaches especially that of Rawlsian political liberalism. In this context, I try to focus on Nussbaum’s version of capabilities during my examination of the differences in the capability approach. In this section, I first outline the “capabilities” approach of Nussbaum then further the analysis on the differences between the basic and central capabilities.

4.3.1. The “Capabilities” Approach

The starting point of Nussbaum’s capabilities approach is an Aristotelian question: “What activities characteristically performed by human beings are so central that they seem definitive of the a life that is truly human?” (Nussbaum, 1993c, p. 738). Nussbaum argues that in moral theory there are various discourses available to deal with the controversies over difficult questions. “There are many promising accounts of how this should be done” says Nussbaum “of which the Aristotelian account I defend is only one”. She therefore suggests that her Aristotelian account of practical reasoning provides a much richer starting point. However she stresses that “the assessment should not be done from a posture of detachment from the actual weight and the sometimes disturbing intensity of practical questions as they arise in the course of an actual human life” (Ibid., p. 743). In this sense, Nussbaum seems to frame her capability approach within a larger philosophical project which reflects her view of practical —and legal— reasoning.

The position she starts from serves the procedures of rational judgment and the systematic thought about human well-being which is again straightforwardly derived from Aristotle. The idea of practical reasoning therefore covers *the emotion of compassion* in “good” public reasoning. In this sense such a project also provides a basis for the use of public reason particularly in the areas of economic policies and legal discussions. Proposing list of capabilities through the guidance of “practical” reasoning allows making a consistent examination of what Nussbaum calls “good” human functioning and ability to function. She argues that “it is possible to give a rational justification for an account of practical reasoning that is, in its most general terms, universal and non-relative, although the justification of the account relies exclusively on historical and experiential criteria” (Ibid., p.717). In this sense, caring for others or what Nussbaum calls *the emotion of compassion* constitutes one of the central elements of human beings which “perhaps that more richly human and appropriately disturbed use of practical reasoning is what we can’t do without —in personal life, in politics, and even in the law” (Ibid., p.744).

She is concerned with a developing theory that is based on an understanding of human beings as using practical reason in the public sphere as rational agents. Nussbaum believes that the basis for defining the public sphere is important and “liberalism does think that the core of rational and moral personhood is something all human beings share, shaped though it may be in different ways by their differing social circumstances. And it does give this core a special salience in political thought, defining the public realm in terms of it” (Nussbaum, 1997b, p.23). Indeed such an approach ignores differences such as gender or class at the public level. That is to say, human beings are claimed to be all equal in dignity and worth and that “the primary source of this worth is a power of moral choice within them” (Sen, 1987, p.57); a choice on the basis of the ability to plan a life through one’s own purposes. This leads people, as equal moral agents, to claim certain types of treatment like respecting and promoting liberty of choice as well as the “equal worth of persons as choosers” (Ibid., p.57). In this context, Nussbaum states that the guiding idea behind her approach is “profoundly a liberal idea and one that lies at the heart of Rawls’s project as well the idea of the citizen as a free and dignified human being” (Ibid., p.57). However, Nussbaum’s view of man in her “former” capabilities approach involves a more detailed elaboration of her “former” theory of justice rather than the one in political liberalism where Rawls has avoided to include comprehensive doctrines because of the stability issues regarding the principle of equal basic liberties that constitute the basic structure of society. However, these concerns are widely discussed within Nussbaum’s “updated” list of central capabilities. I will try to address them further in this chapter.

4.3.2. Basic Capabilities

Sen makes a distinction between capabilities and basic capabilities within the general framework of his version of the capability approach. Accordingly, basic capabilities constitutes a primary subset for all capabilities where this subset refers to the freedom to reach some basic goods and services which are necessary for mankind survival. The main concern of basic capabilities is thus not to rank living standards, but to decide “a cut-off point for the purpose of assessing poverty and deprivation” (Ibid., p.109). While

capabilities refers to a very broad approach, *basic capabilities* determine a threshold level for freedom to do or have things which are necessary for preventing extreme poverty. Basic capabilities are thus considered as an important concept towards an extensive poverty analysis particularly for developing countries because these are much more concerned with capabilities in its broad meaning. The term basic capability “was intended to separate out the ability to satisfy certain crucially important functionings up to certain minimally adequate levels” (Nussbaum and Sen, 1993, p.41). Since Sen’s capability approach is not merely based on income or poverty analysis, it can also establish a conceptual framework for policy analysis in more developed societies. However, “It is important to recognise that” says Sen “the use of the capability approach is not confined to basic capabilities only” (Ibid., p.41).

Nevertheless, Sen’s basic capabilities, in its present form, leads to a conceptual confusion over the capabilities discussion. For instance, there is not enough available evidence of Sen’s main purpose for using the concept of basic capabilities either in his earlier works (particularly the “Equality of What?”) in which the focus is mainly on capabilities in general, or in his later discussion, on the issues of development in which he appears to limit his concern with basic capabilities. Yet, there is also a clear difference in the use of basic capabilities between Sen and Nussbaum. Nussbaum for example defines them as “the innate equipment of individuals that is the necessary basis for developing the more advanced capabilities, and a ground of moral concern. These capabilities are sometimes more or less ready to function: the capability for seeing and hearing is usually like this” (Nussbaum, 2000b, p.84). Nussbaum here tends to set basic capabilities as natural or innate capacities and talents whereas such an argument hardly suggests a theoretical basis for a poverty analysis which defines Sen’s purpose.

In this context, Nussbaum distinguishes three different types of capabilities regarding the relationship between capabilities and rights; (1) basic capabilities, as the innate functions of human beings, already available at birth, such as the basic capability of practical reason and imagination. These functions are necessary for developing further

capabilities; (2) internal capabilities, as “states of the person herself that are, so far as the person herself is concerned, sufficient conditions for the exercise of the requisite functions” (Nussbaum, 1997a, p.289). This type of capability refers to the internal conditions of human persons that provide a “state of readiness” (of body and mind) to choose available functions. –for example, the internal capability for sexual pleasure is only available for a woman who has not suffered genital mutilation–; (3) combined or external capabilities “as internal capabilities combined with suitable external conditions for the exercise of the function” (Ibid., p.290). A combined capability is highly dependent on external conditions provided by political and social institutions. For example, the combined capability to exercise thought and expression is only available for a person who is a member of a democratic society in which relevant freedoms are already guaranteed. In this context the basic capabilities (or what Nussbaum also calls “lower-level” capabilities) are essential capabilities since the lack of such capabilities makes the internal and combined capabilities (or “high-level” capabilities) “fruitless, cut off, in some way but a shadow of themselves” (Nussbaum, 2000c, p.233). Realization of capabilities is therefore bond to a combination of internal and basic capabilities that directly depend upon political and public action in different ways.

4.3.3. List Of Capabilities

Nussbaum respectively proposes a list of “central human capabilities” that might guide to the establishment of a legal framework or constitution. Sen, on the other hand, has not intended to determine any definitive list since he is much more concerned with applied analysis of poverty and development. Sen actually tends to focus on the concept of real/effective opportunity that leads him to enter social choice discussion and social choice theory is indeed one of the most important component of his general body of work. Nussbaum’s *capabilities* are formulated within a more general moral theory in which her approach comes more closer to political philosophy. In this sense, she proposes a list of ten central human capabilities and argues that endorsing such a list is a central requirement to justify a theory of justice as well as “central constitutional principles that citizens have a right to demand from their government” (Nussbaum,

2000b, p.12). Then she elaborates her list by emphasizing the “most central elements” of the central capabilities list. These elements, *practical reason* and *affiliation* –which I call the “core” capabilities–, have a central role in her approach. In fact, It appears to me that the role of these two capabilities goes beyond the limits of the list of central capabilities that Nussbaum’s has intended to propose. The central capabilities are elaborated through a long and extensive list. It is principally attempted to answer “thick” questions of central capabilities. My concern though in this list is to investigate relatively “thin” capabilities particularly the capabilities of *practical reasoning* and *affiliation* which Nussbaum considers as the most central and essential capabilities of the entire list. The list is as follows (Nussbaum, 2003; Reproduced in Nussbaum, 2006, pp.76-77):

“1. Life.

Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.

2. Bodily Health.

Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

3. Bodily Integrity.

Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

4. Senses.

Imagination, and Thought. Being able to use the senses, to imagine, think, and reason-and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.

5. Emotions.

Being able to have attachments to things and people out side ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by fear and anxiety. (Supporting this capability

means supporting forms of human association that can be shown to be crucial in their development.)

6. Practical Reason.

Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

7. Affiliation.

A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

B. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. Other Species.

Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. Play.

Being able to laugh, to play, to enjoy recreational activities.

10. Control over One's Environment.

A. Political. Being able to participate effectively in political choices that govern one's life, having the right of political participation, protections of free speech and association.

B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reasoning and entering into meaningful relationships of mutual recognition with other workers."

Concerning the search for a such canonical list, Sen argues that he has doubts regarding to difficulty of weighting the appropriate combinations of a given set of capabilities in the context of their use under varying conditions and thus to determine the importance of the different capabilities. The weighting of capabilities should depend on the circumstances regarding the abilities those are being realized or violated. The weight given to a capability for a particular exercise is directly related to its social conditions. Thus the priority must be given to urgent deprivation in each particular case. In this

context Nussbaum's attempt of listing capabilities can be useful only when we consider the role of basic rights against deprivation. However "for another practical purpose, we may need quite a different list" (Sen, 2005, p.159). Different lists of capabilities can be formed for various purposes, for example, the "Human Development Index" refers to an understanding of basic quality of life that is based on a limited set of capabilities constituted through a minimal list of capabilities. The purpose of this list is to provide a framework for calculations "in a way that the Gross National Product or Gross Domestic Product failed to capture" (See UNDP Development Report 1990). In this case, listing some relevant capabilities is necessary whereas such a list cannot serve all of the purposes that the capability approach intended to have.

According to Sen, another question that arises concerning the list of capabilities is the tendency to ignore the role of public reasoning in the capability approach. Since the framework of capabilities requires public deliberation and open valuational scrutiny for making social judgements, fixing any list of capabilities would lead to a confusion of "the need for continued public reasoning" (Sen, 2005, p.157). Yet, a "complete" list of capabilities would not be able to respond sufficiently "to public reasoning and to the formation of social values" (Sen, 2005, p.158). Then, "there is also the problem of determining the relative weights and importance of the different capabilities included in the relative list" (Sen, 2005, p.157). Therefore focusing on a list of capabilities or weighting them through a lexicographic order would not be consistent with particular circumstances, that is, "even with a given list the question of valuation cannot be avoided" (Sen, 2005, p.158). In this sense, for Amartya Sen, insisting on a "fixed forever" list of capabilities—which actually is not intended in Nussbaum's "updated" list of "central capabilities"—would lead us to dismiss "the possibility of progress in social understanding" and "the productive role of public discussion, social agitation, and open debates" (Sen, 2005, p.160). Listing some important capabilities over others can help to clarify the complex relation of means and functionings with certain capabilities. However, for Sen, it seems that we should not focus on "one pre-determined canonical list of capabilities" that is assigned by theorists "without any general social discussion

or public reasoning. To have such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why” (Sen, 2005, p.158). Therefore, such an attempt would lead to a denial of democratic society and this would put a certain distance between theory and “the particular social reality that any particular society faces” (Sen, 2005, p.158).

It is important to note that public discussion indeed constitutes one of the central part of Sen’s analysis of the capabilities. He deals with the idea of public deliberation which helps to test “the viability and universality of human rights and of an acceptable specification of capabilities” through “their ability to survive open critical scrutiny in public reasoning” (Sen, 2005, p.163). Impartial scrutiny in terms of public deliberation has an important role in the assessment of practices; either for denying or defending relevant ideas. However my argument is that the public reasoning which Sen deals with appears to be a non-sophisticated interpretation of the idea of public use of reason. Thus, this relatively superficial treatment of the “publicity” condition for both human rights and capabilities leads Sen to limit the extent of his examination within a super-narrow understanding of public deliberation. The idea he is concerned with hardly shares the same background with the idea of public use of reason. Nor, the terminology used by Sen in his arguments on the basic capabilities or list of central capabilities suits those of Nussbaum or Rawls. My argument is that the views Nussbaum suggests through central capabilities provide an insightful perspective on the discussion of human rights and economics. Yet, the idea behind central capabilities has some important connections with the idea of public use of reason. Therefore, my claim is that the analysis of central capabilities has a distinct place within the capabilities discussion.

4.3.4. The Central Capabilities

Nussbaum, in her early works²², explains her account of central capabilities as a “thick” and “vague” theory of the good; it is thick because it covers all possible human ends those are relevant to all areas of life. Then, it is vague because it draws a general outline

22 I refer the works that had been published before Nussbaum, 1997.

of human ends that allows for particular alterations in specific levels depending on the local contexts (see Nussbaum, 1992). Therefore the position that she holds appears to be on the opposite side of Rawlsian “thin theory of the good”. However, Nussbaum in her later works appears to change her understanding of “thick vague theory of the good” concerning the central human capabilities (See Nussbaum, 1997a, 1998a, 1998b, 1999, 2000a, 2000b) in favor of the Rawlsian idea of overlapping consensus (See Rawls 1996; 1997 and 2001). In their “updated” form, Nussbaum’s central capabilities are no longer considered as a part of an Aristotelian understanding of political life, but as a formulation of capabilities on the basis of Rawlsian political liberalism which is framed for “political” purposes only:

“I now understand the list of central human capabilities as a specifically political form of liberalism, in the Rawlsian sense. I imagine that citizens of many different comprehensive conceptions can all endorse the items on the list, as things that are essential to a flourishing human life, whatever else that life also pursues and values. It is neither an exhaustive account of the good nor a metaphysically grounded account.” (Nussbaum, 1998b, p.284)

The list consists of equally important parts in which the requirement of achieving one is not superior to another. However two of them among others, “practical reason” and “affiliation”, “are of special importance because they both organize and suffuse all the other capabilities, making their pursuit truly human” (Nussbaum, 2000a, p.82). Since Nussbaum attaches great importance to practical reason as a good that “both suffuses all the other functions, making them human rather than animal, and figures itself as a central function on the list” (Ibid., p.87), the political goal then is not functionings but central capabilities. Practical reasoning as suggested by Nussbaum in her list of central capabilities refers to a truly human reasoning that leads to relevant decisions, choices and actions towards an end; an ultimate goal. Such a goal is the core motivation of practical reasoning that constitutes the distinct structure of human action. Practical reasoning allows human beings to accommodate various sets of means in order to achieve their own plans, that they value. Politics, in this sense, is the science that is primarily concerned with the political community and the human affairs among the members of this community. Indeed, this is a part of what Nussbaum calls public policy.

Therefore, economics can be very well conceived in the context of “politics” when we consider the role of practical reasoning in economics. For example “political economy” for Adam Smith is “a branch of the science of a statesman or legislator” which “proposes to enrich both the people and the sovereign” (Smith, 1776a, p.347). Following this line of reasoning, the borders between economics as a science and other domains such as ethics and politics is rather a blur one than it is today recognized. In this context “integral human fulfillment” (Alkire, 2002, p.107)²³ as a matter of pursuing basic human goods should be one of the main concerns of political economy. The capability approach, in this sense, provides a wider perspective because it recognizes various human ends. These ends, such as enjoyment, knowledge, health or work participation have relative weights in society since there is already a diversity of individuals views and cultures. Therefore “it becomes impossible to choose ‘rationally’ between options that pursue different set of ends, if one means by rational what is meant by ‘rational choice theory’, namely, the identification and choice of a maximally efficient or productive option, the one (or one of the set) in which the total benefits minus the total costs is the highest possible” (Alkire,2002, pp.85-86).

In this context; the “new version” of the capabilities what Nussbaum calls “the political account” of capabilities is not grounded in “any theory of the human being that goes beneath politics” (Nussbaum, 1998b, p.284). She follows the moral account of Rawls regarding the political conception of the good; that is, “the recognition of reasonable disagreement about the good” (Ibid., p.285) or “the fear of being dictatorial about the good” (Deneulin, 2002, p.11). Such a major change in justification of the capabilities approach leads her to avoid making connections with any comprehensive doctrine. This view is also very similar with what Rawls intends to do by referring to

23 Alkire claims that the fundamental difference between actual economic policies and the capabilities approaches is not primarily methodological but lack of a proper account of *integral human fulfillment*. (For general discussion of “integral human fulfillment” see Finnis, 1980; Boyle and Grisez, 1987). In this context Deneulin stresses that: “In Finnis’ natural law, human fulfillment is a matter of pursuing basic human goods, of which he (Finnis) distinguishes seven categories: life, health and safety; knowledge and aesthetic experience; meaning-giving and value-creation; harmony between and among individuals and groups of persons; harmony between one’s feelings and one’s judgement and choices; harmony between one’s choices and judgements and one’s behaviour (inner peace); harmony between oneself and the wider reaches of reality (harmony with some more-than human source of meaning and value).” (Deneulin, 2005, p.11)

the conception of reasonable pluralism. Nussbaum states that her new list “can be endorsed for political purposes, as the moral basis of central constitutional guarantees, by people who otherwise have very different views of what a complete good life for a human being would be” (Nussbaum, 2000b, p.74). The aim in proposing an “updated” list of central capabilities is to bring her version of capabilities approach, in a sense, “down to earth” by making the wide understanding of capabilities “a little less vague” in order to guide public policy (or constitution):

“Unlike Sen, who prefers to allow the account of the basic capabilities to remain largely implicit in his statements, I have produced an explicit account of the most central capabilities that should be the goal of public policy. The list is continually being revised and adjusted, in accordance with my methodological commitment to cross-cultural deliberation and criticism.” (Nussbaum, 1997a, p.277)

Since Nussbaum’s list is intended to guide political planning, relatively more central human capabilities are selected for this list, those which are supposed to be of central importance for any human life. In this sense “the central capabilities are not just instrumental to further pursuits: They are held to have value in themselves, in making a life fully human” (Ibid., p.286). Central capabilities are essential to use our powers of “practical reason” and “choice”, as these powers are particularly important in pursuing personal purposes. The main purpose of listing the most central capabilities is “to put forward something that people from many different traditions, with many different fuller conceptions of the good, can agree on as the necessary basis for pursuing their good life” (Ibid., p.286). Therefore Nussbaum’s list of central capabilities appears to be an account of political pluralism in a Rawlsian sense as it is formulated in order to have a broad applicability among different comprehensive views and we can claim that she has the same ideal as Rawls concerning the idea of “overlapping consensus” (See Rawls 1987; 1989; 1996 and 2001).

At this point I turn back to Nussbaum’s two “core” capabilities to elaborate this “overlapping” ideal. The first core capability is “practical reason”; it refers to the ability of elaborating a conception of the good in the planning of one’s life. This is the capability of pursuing personal ends thus it is concerned with “me”. The other core

capability is “affiliation” and refers to “living with and toward others” and “engaging in various forms of social interaction” on the basis of “self-respect and non-humiliation”. This is the capability of living within a social compact and it is concerned with the relationship of “me” with “the other” but a relationship of a political kind; citizen alongside other citizens—in the sense of the “updated” approach. Then, the framework of “me”, “others” and our “doings” and “beings” altogether constitutes the essential element of our “truly human” activities. Such a line of reasoning is actually included in Rawls’s project of political liberalism and the framework of “me” and “the other” in his analysis is established on the basis of “public reason”. Since my argument is that the idea of human rights is directly concerned with the conditions of possibility for using reason publicly, then, Nussbaum’s capabilities approach in its updated form provides valuable insight into my examination of human rights. Hence my question concerning Nussbaum’s list of central capabilities is now much more related to the analysis of human rights and capabilities, that is, what is the position of the capabilities in the human rights discussion?

4.4. CAPABILITIES AND HUMAN RIGHTS

Capabilities and human functionings appear as an alternative language and have increasingly become influential in the human rights discussion especially since well-known human development reports of UNDP. Nevertheless, the relationship between human rights and capabilities remains complicated because capabilities are either considered as an appendix to the present theory of human rights, or formulated as a particular theory sharing the same area which the theory of human rights has already captured. In this sense, the need of using the language of human rights over the language of capabilities—or *vice-versa*—is still in question. Nevertheless, the capability approach has long been a part of the discussion of human rights especially when we consider the role of capabilities in terms of recognition of the right to development as a basic right. Therefore, here I tend to further my examination of capabilities and human rights by making an outline of the right to development.

4.4.1. Right To Development

The capability approach has much to say about inequalities or demands for justice in which human rights have already involved especially since the Enlightenment. For example, “the language of rights” says Nussbaum “has been associated historically with political and civil liberties, and only more recently with economic and social entitlements. But the two are not only of comparable importance in human lives, they are also thoroughly intertwined: the liberties of speech and association, for example, have material prerequisites” (Nussbaum, 2002, p.128). So that the capabilities discussed here refer to a particular domain that is already included in the human rights treaties. Yet, the capability approach is formulated, in a sense, as “a complementary with some versions of it” (Ibid., p.133). The right to development in this sense has generally been associated with the capability approach.

In this context, the right to development refers to a process of development which is peculiar to human beings. The right to development is defined in the Declaration on the Right to Development (DRD) as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized” (DRD, Annex) where “the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources” (DRD, Article 1.1) Since all human beings are claimed to be equal in rights as well as in dignity and opportunity, the claims for equal treatment in the course of self determination should be considered as a part of human rights. In fact, it is stated in the annex of the declaration that “recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their states” (DRD, Annex), while promoting and protecting the right to development at the international level “should be accompanied by efforts to establish a new international economic order” (DRD, Annex). Ensuring the

right to development therefore requires appropriate social and economic arrangements.

Recognition of the right to development as a human right is the fruit of a long process of international deliberation which was ended by its adoption in 1986. The story of the right to development actually begins with the Universal Declaration of Human Rights of 1948 in which all basic rights are contained as an integral part of the human rights. Nevertheless the first twenty articles in the *1948 Declaration* are proposed as “civil and political rights” where the rest is considered as “economic, social and cultural rights”. Later, in the covenants on “civil and political rights” and “economic, social and cultural rights” of 1966 (ICCPR and ICESCR), this distinction is elaborated as, “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created where everyone may enjoy his civil and political as well as his economic, social and cultural rights” (ICCPR and ICESCR, Preamble). The statement of two distinct groups of rights leads to a classification of “first generation human rights” and “second generation human rights”. Although later in 1968 such a classification was not accepted within the Proclamation of Teheran (IConfHR) by the -counter- statement of “since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible” (IConfHR, Article 13). Nevertheless, the idea of two different generations of human rights has still been discussed within contemporary human rights analysis.

In this context, the right to development has been considered as a second generation human right and it has become a part of welfare and development debate in which the issues in developing countries are mainly concerned. Later in 1986, the declaration on the right to development was drafted and then declared as an integral part of the human rights that unifies first and second generation rights into one indivisible set of rights without distinction. Finally in 1993, It is again confirmed in the Vienna Declaration (VD) that “the right development, as established in the Declaration, as a universal and inalienable right and an integral part of fundamental human rights” (VD, Article 10).

Fulfillment of the so-called second generation rights is considered, in the end, as an essential requirement in order to ensure first generation rights. Therefore, the central argument of the capability approach that the material and social conditions of human person should be taken together in the analysis of public policies has had an important effect in human rights discussions.

4.4.2. Sen's Analysis of Human Rights

Regarding the human rights debate, Sen is concerned with the question whether human rights can be seen as entitlements to certain basic capabilities, or the capability approach can provide a comprehensive coverage of the content of human rights. He argues that human rights and capabilities are compatible but not complementary concepts. These concepts are not to be confused with each other and not to be solely categorized under the field of another; “the concepts of human rights and human capabilities have something of a common motivation, but they differ in many distinct ways” (Sen, 2005, p.152). There is a wide range of rights covered by human rights which are also well matched with particular capabilities. Since human rights is formulated as a core list of rights to certain freedoms, a basic connection can be established through the analysis of freedoms as capabilities. In this sense, for Sen, it is important to analyze the two conceptions together in order to understand each in its own meaning. Yet, both human rights and capabilities “depend on the process of public reasoning. The methodology of public scrutiny draws on Rawlsian understanding of ‘objectivity’ in ethics, but the impartiality that is needed cannot be confined within the borders of a nation” (Ibid., p.152).

Amartya Sen's conception of capabilities is often characterized as being based on their relation to freedoms. However, this is only a little part of Sen's approach. The relation in question has two aspects, which Sen calls “the opportunity aspect” and “the process aspect” of freedom. Sen asserts that an inquiry on freedom must take note of both aspects where each is weighted no more than the other. First, the opportunity aspect of freedom is concerned with the opportunities that we have in achieving our valuable

objectives. This aspect, thus, is related to actual capabilities to achieve what we value now or later. Second, the autonomy that we have in the process of our choices is included in the process aspect of freedom which is concerned with the “procedure of free decision” (See Sen, 1993) by oneself. Then, regarding human rights discussion, Sen mentions an immediate difficulty within the distinction of “opportunity” and “process” aspects where the importance of each, he claims, deserves specific acknowledgement; “While the opportunity aspect of freedoms would seem to belong to the same kind of territory as capabilities, it is not at all clear that the same can be said about the process aspect of freedom” (Sen, 2005, p.152). Although Sen demonstrates the ambiguous nature of the process aspect of freedom regarding capabilities, I argue that once we consider the public use of reason as the central capability in the Nussbaumian sense, Sen’s analysis of the different aspects of freedom turns out to be more clear, and descriptive concerning the relation of human rights and economics. Furthermore, the examination of such freedoms, and their relation to the market mechanism become less complex because of the instruments that the public use of reason can provide.

While the capability approach can be a part of a more comprehensive theory of justice, it particularly aims to provide an evaluative account that, as a matter of fact, can not fully cover a theory of justice (Nussbaum, 1995b, p. 268). In this context, he argues that a theory of justice must include a principle of fair process of re-distribution and this is actually what the capability approach fails to provide. Accordingly, a capability refers to the “alternative combinations of functionings” in which any combination can be freely chosen due to personal preferences. However, for example, well-nourishment is not a freedom in the language of capabilities. The notion of “freedom” here refers to freedom of choice concerning relevant combination of functionings whereas such a freedom is not related to the actual decisions in choosing one combination over another. Indeed, the opportunity to have any particular functioning is not necessarily followed by actual possession of anything, that is, the person may not be free to make use of this opportunity. In this sense, Sen says that “what a person is free to have –not just what he actually has– is relevant, I have argued, to a theory of justice. A theory of rights also has

reason to be involved with substantive freedoms” (Sen, 2004b, p.332). A theory of justice, or as Sen calls it a “theory of normative social choice”, has to feature two aspects of freedom, that is, (1) the fairness of the processes involved and (2) efficiency of the substantive opportunities that people can enjoy (See Sen, 2005). He describes his account of freedom as follows:

“First, freedom gives us the opportunity to achieve our objectives things that we have reason to value. The opportunity aspect of freedom is, thus, concerned with out actual capability to achieve. It relates to the real opportunities we have of achieving things that we can and do value (no matter what the process is through which that achievement comes about). Second, importance is also attached to the process of autonomous choice —having the levers of control in one’s own hands (no matter whether this enhances the actual opportunities of achieving our objectives). The process aspect of freedom is concerned with the procedure of free decision by oneself.” (Sen, 1993, p.522)

Sen claims that the market mechanism has been evaluated in modern economics on the basis of so-called “fundamental theorem of welfare economics”. In this sense, assessment of competitive markets is entirely made through the achievements of individual welfare e.g. utility-based Pareto optimality, rather than by accomplishments in promoting individual freedom (Ibid., p.519). In fact, the market mechanism, for Sen, has a role in protecting the process aspect of freedom. In a competitive market, individuals have control over their decisions and they are free to operate them as they decide. Hence, this type of “autonomy”, the procedure of free decision, is the constitutive element of the competitive market mechanism without externalities. Since such a freedom-based analysis of competitive markets leads to an understanding based on the importance of individual welfare in the pursuit of the respective self-interest, there suppose to be no place for a discussion of opportunity-freedoms in welfare economics. However, Sen says, “the challenge that the market systems have to face must relate to problems of equity in the distribution of substantive freedoms including opportunity aspect freedom” (Ibid., p.537).

Finally, as mentioned before, for Sen, there is an inevitable difficulty in the “rights” discussion regarding two aspects of freedom –*opportunity* and *process*– which require a

categorical distinction in the course of achievement of basic rights. While the *opportunity aspect* of freedoms shares the same background with the capabilities approach, it is not, he claims, possible to consider the same for the *process aspect* of freedom. Considering the opportunity aspect of freedom in terms of capability leads us to distinguish between the ability of doing things that is personally valued and the means (instruments/permissions) that let people to pursue personal objectives. In such a distinction, the capability approach focuses on the abilities and avoids to “over concentrate” on means. In this sense “the idea of ‘capability’ [...] can be very helpful in understanding the opportunity aspect of freedom and human rights” (Sen, 2005, p.153). The capability approach is thus particularly useful in the evaluation of people’s substantive opportunities compared to income or resource based approaches. This is the point where the capability perspective could contribute to a theory of justice or of human rights and where the capability approach leads to an integration of what Sen calls the “opportunity aspect of freedom” in a theory of human rights.

However, Sen claims that while the capability approach has a considerable importance in the examination of the opportunity aspect of freedom, it is still difficult to think the same for the process aspect of freedom. Since capabilities are reflections of personal preferences and individual advantages, “they fall short of telling us enough about the fairness or equity of the processes involved, or about the freedom of citizens to invoke and utilize procedures that are equitable” (Sen, 2004b, p.336). Capabilities can hardly provide a basis for the procedures in terms of fairness which is necessarily included in normative social choice theory –or in a theory of justice or human rights. For example, the first principle (priority of liberty) and the first part of the second principle (positions and offices be open to all) of the Rawlsian theory of justice have no direct connection to the capability approach. That is to say, these principles of justice –liberty and procedural equity– “can neither be ignored nor be adequately addressed through relying only on the informational base of capabilities” (Ibid., p. 337) while the difference principle features the very same ideas on which the capability approach is already based. However, these arguments are mainly directed to the ideas that belong to Rawls’s “pre-political turn”

works. Since I am concerned with the idea of political liberalism rather than his theory of justice, I do not tend to explore more on Sen's arguments concerning Rawlsian perspectives. Rather, my claim is that, both aspects of freedom that Sen discusses in the context of theories of justice can be well integrated into the framework of human rights especially when we consider the role of public reason in Rawls's political turn. In this context, Nussbaum's analysis of human rights has a central importance since she has had a political turn towards Rawlsian political liberalism.

4.4.3. Nussbaum's Analysis of Human Rights

Regarding the human rights debate, Nussbaum primarily deals with the question of rights to achieve whether a decent level of equality of well-being –or resources and opportunity– or of capabilities depending on different views of relevant rights theories. To do so, Nussbaum, in her early writings, tends to adopt an Aristotelian justification for her version of capabilities in which they represent a particular part of the good life where a certain kind of human flourishing is promoted (See, Nussbaum, 1990b and 1993b). However, through her later works, Nussbaum has integrated her theory in a “thinner” political framework where capabilities are formulated towards a political conception of justice in a more Rawlsian sense. In this way, the issues concerning “diversity” and “pluralism” originated from the understanding of one single account of the good life has been solved. This reformulation thus leads to an understanding of society in which individuals are to identify and pursue their own conception of the good life as free agents.

The capabilities approach in this version is not to “be dictatorial about the good”, rather, “a wide space for important types of choice and meaningful affiliation” (Nussbaum, 2000b, p.69) is left for individuals. The list of capabilities then becomes more consistent with the idea of autonomy together with the diversity of personalities and individual purposes in a pluralistic society since the capabilities are “of central importance in any human life, whatever else the person pursues or chooses” (Ibid., p.74). That is to say, these capabilities are meant to be directly connected to the determination process

through an overlapping consensus.

Nussbaum's own use of capability "language" changes over time in terms of political analysis which was based on Aristotelian understanding of human capability (*dunamis*) and functioning (*energeia*). In this version of capabilities, she emphasizes that the idea of liberty has an important role within her theories as there is a conceptual connection with liberal theories such as John Rawls's one. Thus, the idea behind the capabilities approach is closely linked with the theory of justice, "since one crucial aim of a theory of justice typically is to promote some desired state of people; and in *Aristotelian Social Democracy* I linked it very closely to an account of the proper goal of government, to bring all citizens up to a certain basic minimum level of capability" (Nussbaum, 1997a, p.280). However, as I mentioned before, the capabilities approach should still be analyzed independently from a theory of justice as it has some particular constraints in itself. In this sense, rights discussion in the context of capabilities approach appears to be increasingly appealing especially when we consider the account of the "core" capabilities as Nussbaum intended to propose through her updated list of central capabilities.

Nussbaum argues that the assessment of justice and fairness in the context of social and political institutions is possible if a certain set of capabilities is provided. Such a set represents the ability to engage in "the central elements of truly human functioning" where they are derived directly from the idea of "human worth or dignity" (Nussbaum, 2000b, p.73). These entitlements are ends in themselves thus they are not "instrumental to further pursuits" (Ibid., p.74). However the fact that all human beings have certain rights to do something, to have something or to be free from something is not directly dependent on whether these rights are properly secured or not. The rights claimed under the general framework of human rights, as well as the basic capabilities, should be considered, in the first sense, as fundamental premises of a political theory of justice. In this sense Nussbaum stresses that "it is valuable to understand these rights, insofar as we decide we want to recognize them, in terms of capabilities" (Nussbaum, 1997a,

p.295). Having said that, the language of rights is not necessarily bound to the capabilities. For Nussbaum, such rights have four important functions in public discourse which are not available in the language of capabilities; (1) “appealing to rights communicates more than appealing to basic capabilities: it says what normative conclusions we draw from the fact of the basic capabilities” (Ibid., p.296) because the recognition of the basic capabilities of people is not the same as the recognition of the right that corresponds to the related capability; (2) to propose a list of fundamental rights as “especially urgent set of functions” that is justified by virtue of being human means considerably more than to propose a list of capabilities that has only “a vague normative resonance”; (3) the language of rights helps to place greater emphasis on people’s choice and autonomy; (4) the language of rights provides a space for a wider agreement “while we continue to deliberate about the proper type of analysis at the more specific level” (Ibid., p.297).

In the language of capabilities, political institutions are meant to be responsible of maintaining the conditions that promote a fair level of capabilities for all members of the society. Actually this is also an expression with which we are already familiar in the language of human rights. Reconsidering combined capabilities to function in various ways as a part of the human rights discussion would be a quite insightful attempt as there are actually human rights such as the right to political participation or the freedom of speech which are relevant to the capabilities approach. If we follow this line of reasoning, the ultimate political goal can well be considered as promoting the “combined capabilities”. It is thus necessary to maintain an appropriate environment by providing a decent level of education, care or living standard in order to ensure the exercise of practical reason together with other central functions. In this context, Nussbaum argues that the language of capabilities, in a way, corresponds to the language of rights because of the fact that the treatment that is typically claimed by a right, in general, has been justified in virtue of being “human” which also constitutes the main rationale of the capabilities approach: “It is in this sense that capabilities and rights should be seen to be equivalent: For I have said, combined capabilities are the goals of

public planning” (Ibid., p.294). However, when Nussbaum uses the term “basic capabilities” she is saying that just because of the essential nature of this type of capabilities –for example, “practical reason”– they should be considered lexically prior to other capabilities since they provide a basis for the development of further functions. Thus, “basic capabilities” refer to something very close to the idea of public use of reason examined through political liberalism; “rights theories differ about which basic capabilities of the person are relevant to rights, but the ones most commonly chosen are the power of reasoning, generally understood as moral reasoning, and the power of moral choice” (Ibid., p.294).

Since the enjoyment of capabilities as achieved functionings is a necessary condition for the achievement of any conception of the good life, guaranteeing them within a constitutional framework will lead us to a democratic society in the Rawlsian sense. Capabilities, says Nussbaum, “have a special importance in making any choice of a way of life possible, and so they have a special claim to be supported for political purposes in a pluralistic society” (Nussbaum, 2000b, p.75) and she claims that it is “always rational to want them whatever else one wants” (Ibid., p.88). Therefore the capabilities approach “has a great advantage in this area over traditional liberal approaches that use the idea of a social contract” (Nussbaum, 2000c, p.236). For her, the hypothetical contract situation that these liberal justice theories aims to generate refers to the fictional independent members such as in Rawlsian understanding of “fully cooperating members of society over a complete life” (Rawls, 1996, p.18). This understanding of course is based on the ideas from the “pre-political turn” works of Rawls. However, for example in the general framework of political liberalism, the principles are not to be chosen centrally under the “original position”, rather, they are elaborated through the task of public reasoning under reasonable pluralism. This is actually the central argument that took Nussbaum’s attention and led her to follow the Rawlsian idea of political liberalism. Then she develops a form of core capabilities compatible with the idea of public reason and makes direct connection from human rights to these core capabilities. In fact this is one of the most valuable contributions to

contemporary human rights discussion. Therefore It is my claim that, public reason, in this sense, can well be considered as the concept that Nussbaum intends to elaborate in her version of the capabilities approach.

However there still remains two crucial questions to be explored in order to prove the particular place that the idea of public use of reason holds within the examination of human rights in the context of economics. First is the question of how and in what way Rawls turns to political liberalism? Then the second question is what is the role of the Hegelian philosophy in this political turn? Next section puts under scrutiny these questions. I intend to shed light on the origins of the political conception of “public reasoning” that I have started to discuss from its Kantian origins through an alternative reading of various ideas within economic thought.

4.5. TOWARDS AN ANALYSIS OF POLITICAL ECONOMY

4.5.1. The Political Turn Revisited

As discussed before, Rawls distinguishes *public reasoning* from *non-public* reasoning and the conception of *public reason* leads to a social cooperation among citizens who endorse different fundamental values; or different ways of pursuing their own *happiness*. In this context, the concept of pluralism refers to the idea of a society in which citizens make their decisions through an overlapping consensus since they are inevitably going to have their own considerations of good or utility. This is the general framework of the Rawlsian conception of social cooperation in which *public reasoning* is suggested as the key element in ensuring the freedom of individual progress in terms of self-interest and development under a just and fair democratic order. In this context, I tend to consider that the purpose of Rawls in his political turn is to stand in between of the two *realms* of Kantian ethics by mediating the *kingdom of nature* and the *kingdom of ends*. However, this might sound a nonsense interpretation unless we take into account Hegel’s influence to political liberalism. It is obvious that Rawls himself uses the term “political” in a more Hegelian sense than Kantian. In fact, Rawls’s interpretation of the *public use of reason* through such a political framework could be

reasonable only by reforming the idea as *public reason*. In this sense I tend to consider the line of reasoning that Rawls follows through his political turn and his account of reasonableness, as a key element in my examination of human rights in the context of political economy.

This section is an attempt to better understand the political turn of John Rawls. Although it is obvious that there is a strong Kantian influence upon Rawls and therefore there exists plenty of works and documentation on it, my claim is that –as Rawls also admits it–, there are significant differences between the former and latter works of Rawls. The theory proposed in the TJ is highly Kantian in nature whereas we cannot see such a “nature” especially in the PL. On the other hand, Hegel’s influence on Rawls’s major works appears to be still underestimated. However when we especially consider the idea of justice as fairness (and later, political liberalism) we can trace some core Hegelian ideas in moral and political philosophy of Rawls. Therefore, it is my claim that the examination of Kantian ideas alone would not lead us to fully emphasize the whole story about Rawls and his idea of public reason.

Rawls extensively elaborates his account of political turn particularly in the PL –we may also include the *Dewey Lectures* and the paper *Social Unity and Primary Goods*–, however Hegel’s influence on his body of work is to be seen best in *Lectures on the History of Moral Philosophy* –and to some extent in *Lectures on the History of Political Philosophy*. For example in the foreword of *Lectures*, regarding Hegel’s influence on Rawls’s political thought, Barbara Herman stresses that;

“In a sense, the Hegel lectures sketch the bridge between Kantian moral thought and the liberalism of Rawls’s own work: the view of persons as “*rooted in and fashioned by the system of political and social institutions under which they live*” (*HEGEL 1*), the place of religion in secular society, and the role of philosophy in public ethical life. Unlike many, Rawls reads Hegel as a part of the liberal tradition, and his reading of Hegel helps us to see what the complete shape of that tradition is.” (Rawls, 2000, p.xv)

In this context, the political turn of Rawls that I have already presented in Chapter 2 would be better explained referring to the concepts of democratic citizenship and

deliberative political institutions. Actually, these are ideas that we can also find in Hegel's *Philosophy of Right*: "When a father asked him for advice about the best way of educating his son on ethical matters, a Pythagorean replied, 'Make him the citizen of a state with good laws'" (Hegel, 1991, p.196). We see more references to such institutions in Rawls's later works. For instance he states that: "Hegel wants us to find our moral compass in the institutions and customs of our social world itself, as these institutions and customs have been made part of us as we grow up into them and develop habits of thought and action accordingly" (Rawls, 2000, p.333). This argument also refers to a political perspective that Rawls seems to consider that lack in Kantian moral constructivism. For him, the Kantian formulation of autonomy is incapable to meet the requirements of the *reasonableness*. Rather, *reasonableness*, in the Rawlsian sense, appears to share the fundamental ground of the Hegelian idea of *reconciliation*. In fact this is the point where we clearly see his particular engagement with Hegel. In this context the origins of the idea of *ethical life* (*Sittlichkeit*), in Hegel's philosophy – including "young" Hegel's philosophy–, and its institutions within the modern social world has a central importance in this engagement.

4.5.2. Hegel and The Ethical Life

It is better to note here that we also see a "turn" in Hegel's thought especially when we consider his philosophical views before the time when he had position as an unpaid lecturer in Jena in 1801. Indeed these views appear to be quite unfamiliar compared to his philosophical discourse after the publication of his first major comprehensive work *The Phenomenology of Spirit* in 1807 (*Die Phänomenologie des Geistes*). Actually young Hegel's works give us some historical perspective on his account of civil society. In his youth, Hegel had a keen interest on the ancient Greek cities. Even later in his mature works Hegel "never entirely let go of his admiration for the ancient polis" (See Blunden, 2007). Hegel considers Greek citizens as "happy" people in contrast to "unhappy" jews. He elaborates his account of "unhappiness of consciousness" through the example of Abraham's dilemma and he shows how "reflection shatters a prior and immediate unity" (Hyppolite, 1974, p.161). Accordingly, Abraham separates him from

himself by leaving the land of his fathers', thus, his own life is not him anymore as it abstracts itself as an external entity to him: "His life, and life in general, appears him as an other than himself; yet it is also what is closest to him, what is most intimate and most distant" (Hegel, 1907, p.371ff, quoted in Hyppolite, 1974, p.161). The term of reflection which Hegel uses to describe Abraham's case refers to the separation of the finite and the infinite. It is the consciousness of Abraham where there is no connection between the finite and the infinite anymore. Therefore, In Judaism, man is the symbol of "nothingness" and "God necessarily remains a beyond that is never reached, the only negation of the finite" (Hyppolite, 1974, p.192). This is the point that Abraham fails "to reconcile the idea of the finite with the idea of the infinite" (Wahl, 1929, p. 163 (Quoted in Hyppolite, 1974, p.193). Greek state in contrast is the place where the "good life" is achieved. In this sense Hegel places the Greek states on the opposite side of Abraham's dilemma. Although Greek states are pre-modern political structures, they had already presented the substantial character of ethical life (*Sittlichkeit*), because they consisted of two principal institutions; of which the first, family, is the private realm in which individuals are attached to a natural society, and the other; the state is the universal realm that is shaped by rationality. However we see later a "turn" in Hegel's thought regarding his account of "good life" in Greek states. After that turn, Hegel tends to make an extensive analysis of the civil society in order to show the fundamental confusion in Greek states concerning the absolute priority of the community over the individual. And this is also the time when he starts to make a comparative analysis of ancient and modern states.

For Rosenkranz –one of Hegel's students– Hegel's turn had already started at the time when Hegel first began studying of political economy in 1799, for what the primary purpose is to analyze James Stuart's *An Inquiry into the Principles of Political Economy* (Steuart,1966); "All of Hegel's ideas about the nature of civil society, about need and labour, about the division of labour and the wealth of the estates, about poverty, the police, taxation, etc, are finally concentrated in a commentary on the German translation of Steuart's book on political economy which he wrote between 19

February and 16 May 1799, and which has survived intact. It contains a number of magnificent insights into politics and history and many subtle observations” (Steuart,1966; Quoted in Lukács, 1976, p.170). At this time, Steuart provided insightful ideas across a spectrum of political economic studies to Hegel when he was concerned with the importance of the civil society. In this context Chamley²⁴ argues that Steuart’s influence –and the influence of political economy– is to be found not only in Hegel’s earlier works, but also throughout the development of *The Phenomenology of Mind*.

According to Chamley, Hegel had realized two important facts after he started studying political economy; first, the importance of economic development in “ethical life”. It is important not only because such a development leads to a higher level of individual wealth and comfort, but also it gives people more power to have control over the nature. This is what absolutely lacks in Abraham’s case. Abraham struggles with technical and economical weaknesses because of his limited “production” capacity. Thus he is not able to sustain his control over the nature. However, Hegel realizes that this is also the case in Greek “good life”. Chamley (Chamley, 1963, p.63) argues that Steuart shed light on the miserable poor ancient Greek citizen and this light definitely helps Hegel to see the importance of the economic development. The question of slavery in the ancient Greek states is the second concern that had influenced Hegel. Steuart put great emphasis on the emancipation of labor in his inquiry which led him to suggest abolishing the institution of slavery. Because, slavery is, for Steuart, one of the main causes of economic underdevelopment. Following this line of reasoning, Hegel applies this idea into his beloved “good life” of ancient Greek citizens. He soon became aware of the fact that the ancient Greek citizen is actually very miserable; since the ancient *polis* rested on slavery, citizens did not need to work or produce anything.

The production activity however is the necessity of the modern citizen which regenerates the society. Thus, in Greek realm, says Hegel, “the ultimate decision of the will is not yet assigned to the subjectivity of self-consciousness which has being for

24 See Chamley, 1963. For extensive discussion on the role of political economy in Hegel’s philosophy see Ege, 1999 and 2002

itself, but to a power which stands above and outside it” (Hegel, 1991, p.378). It is only within the modern state that self-consciousness of subjectivity has flourished. “The principle of modern states” for him “has enormous strength and depth because it allows the principle of subjectivity to attain fulfillment in the self-sufficient extreme of personal particularity, while at the same time bringing it back to substantial unity and so preserving this unity in the principle of subjectivity itself” (Ibid., p. 282). Therefore “the lack of subjectivity is really the defect of the Greek ethical idea” (Hegel, 1892-6, p.114-115; quoted in Pelczynski,1984, p.58). Such a defect can only be corrected through a third sort of institution in which the development of individual subjectivity is accomplished. For Hegel it is realm of difference; it is the “civil society”, and, the foundation of its institutional structure is grounded on what Hegel calls the “system of needs”.

In Hegel’s philosophy, there are three interconnected *moments* in the realization of the *ethical life: family, civil society and the state*. According to Hegel, family “has as its determination the spirit’s feeling [*Empfindullg*] of its own unity, which is love” (Hegel, 1991, p.199). Family is not a sphere that rationality takes place since a family member has self-consciousness as a dependent party within the unity of the family (See Hegel, 1991, §158). On the other hand *civil society*, for Hegel, is the realm where the individual engages into the society and “gains satisfaction through the others” (Ibid., p.220). Once we enter the civil society we recognize ourselves as individuals with private interests. *Civil society* consists of the “system of needs”²⁵, meaning the growth of economic relations like exchanging goods etc. among particular persons in order to fulfill personal needs (See Hegel, 1991, §187: §189; §190; §191 and §195). Class division and different forms of labor become apparent together with a more sophisticated form. Nevertheless, civil society is not the sphere of sole egoist ends, but a sphere of a particular end that a person “cannot accomplish the full extent of his ends without reference to others; these others are therefore means to the end of the particular [person]. But through its reference to others, the particular end takes on the form of universality, and gains

25 Together with “*the administration of justice*” and “*the police*”

satisfaction by simultaneously satisfying the welfare of others” (Hegel, 1991, p.220). Any person in civil society is thus ready to recognize his mutual interdependence with the others, that is to say, they are not “fully” isolated monads since such “subjective selfishness turns into a contribution towards the satisfaction of the needs of everyone else” (Ibid., p.233). Therefore, the association of private self-seeking parties is ensured by an external organization called *state* which is established through the “*constitution of the state*” (Ibid., p.198). Unlike the family and the civil society, it is the realm where the ethical idea can only be realized:

“The state is the actuality of concrete freedom. But *concrete freedom* requires that personal individuality [*Einzelheit*] and its particular interests should reach their full *development* and gain *recognition of their right* for itself (within the system of the family and of civil society), and also that they should, on the one hand, *pass over* of their own accord into the interest of the universal, and on the other, knowingly and willingly acknowledge this universal interest even as their own *substantial spirit*, and *actively pursue* it as their *ultimate end*.” (Ibid., p.282)

4.5.3. The Reconciliation Project

Rawls in his *Lectures* considers Hegel’s philosophy as a reconciliation project (Rawls, 2000, p.331) and he asserts that “Hegel thinks that the most appropriate scheme of institutions for the expression of freedom already exists. It stands before our eyes” (Ibid., p.331). In this sense for Rawls we get freedom of will ”through institutions, not in other ways” (Ibid., p.331). So the institutions established through the scheme of ethical life (*Sittlichkeit*) can lead us to a reconciliation with our social world (or external world). Accordingly, for Hegel, reconciliation is a matter of embracing *the whole* social world without isolating any particular part of it. Thus, the conception of *the whole* has a fundamental place in Hegel’s philosophy. Excluding any single part from *the whole*, from *the universal interest* in Rawlsian sense, would lead us to a philosophical error:

“What raises human life above the workaday *bürgerliche* world is the recognition of the universal interest of all citizens in participating in and maintaining the whole system of political and social institutions of the modern state that make their freedom possible. Citizens knowingly and willingly acknowledge this universal (collective) interest as their own, and they give it the highest priority. They are ready to act for it as their ultimate end. This is the goal of the project of

reconciliation.” (Ibid., p.355)

We understand from this statement that Rawls considers the modern social world, and the institutions actualized within the ethical life (*Sittlichkeit*), as the main purpose of such a reconciliation project. Thus “the essential duty of the State and of the reasonable is to ensure the individual’s freedom. The State or the reasonable have to limit the area of their jurisdiction” (Ege and Igersheim, 2008, p.36). In this sense, Rawls classifies Hegel’s idea of ethical life (*Sittlichkeit*) as “distinctively institutional” because of the fact that Hegel considers persons “as rooted in and fashioned by the system of political and social institutions under which they live” (Rawls, 2000, p.330). In this sense he calls Hegel as “a moderately progressive reform-minded liberal, and see(s) his liberalism as an important exemplar in the history of moral and political philosophy of the liberalism of freedom” (Ibid., p.349). What Rawls means by “liberalism of freedom” is a kind of *unity* of rational social institutions “that make freedom possible” (Ibid., p.349). Such a unity consists in philosophy as reconciliation and the idea of ethical life (*Sittlichkeit*). Thus, the *first* principles of liberalism of freedom are “principles of political and civic freedoms and these principles have priority over other principles that may also be invoked” (Ibid., p.330). Freedom here is presented as an institutional concept, in this respect “A Theory of Justice follows Hegel [...] when it takes the basic structure of society as the first subject of justice” (Ibid., p. 366). Therefore the examination of social unity and the conditions which make it possible have increasingly had an important role in Rawls’s later works.

Rawls claims that, the agent’s understanding of social unity, in the end, constitutes the division of the conception of co-ordinal utilitarianism and political conception of justice. Such a *real unity*, which reminds us Hegel’s use of the term, is characterized by publicly shared ends and by the intention to abstain sole *atomistic*²⁶ nature of modern market relations. Citizens thus will consider the political institutions as an essential part

26 The political society he supposes here is not a unity of atomistic individuals but a unity of citizens who have desire to achieve common ends. In this sense, the political turn of Rawls appears to be caused neither through a theory of social atomism nor a selfish individualism. Nevertheless, there has also been an extensive debate on the issue of atomistic attitudes in political liberalism. See Taylor, 1985, 1995; Mulhall and Swift, 1996; Walzer, 2008; MacIntyre, 1978 and 1988.

of social unity –or reconciliation– in the establishment of a well ordered society. This is the most significant point of the re-formulated *justice as fairness* which seems to be inherited from Hegel’s legacy. In this sense, Rawls states in the *Kantian Constructivism* that political institutions have “decisive long-term social effects and importantly shape the character and aims of the members of society, the kinds of persons they are and want to be” (Rawls, 1999, p. 326). He thus finally seems to admit that “the Hegelian liberalism integrates and surpasses the Kantian moment” (Ege and Igersheim, 2008, p.31).

In this context we can find very detailed information about Rawls’s own reconciliation project in political liberalism especially when we analyze his careful inquiry into the differences between Hegel’s and Kant’s thoughts. According to Rawls, the main difference between them is the “desire for the radical purity”. For instance for Hegel, Kant’s moral law reflects such a desire; acting from itself but nothing else. Such a “pure” understanding of human being as mere “moral agents” is both narrow and alienating. It is narrow because this account of morality hardly recognizes the pluralistic nature of “our own social world or of our particular community” (Rawls, 2000, p. 335). Thus there is so little place for the motives which mostly available for a “consistent with good moral character” (Ibid., p. 335). Then It is alienating because “the form of moral life that Kant’s doctrine requires excludes so many of the desires and aspirations of everyday life” (Ibid., p. 335). Thus, such a distance from everyday life that moral law requires us to keep for the sake of “purity” of life “alienates us from ordinary affairs”. We can see such an attitude, a different form of “desire for radical purity” in Marx’s account of human emancipation. Although he is aware of the fact that political economy is the main concern in political society, he aims to surpass the contradictions or great problems caused by the modern state through abolishing the realm of civil society. This is indeed an attempt to draw a pure, smooth-as-silk social world in which man will be able to have a perfect life.

However, Hegel is neither in search of such purity, nor intended to draw a perfect world

through his understanding of the social world. Rather “he wants to allow that the aims of everyday life [...] are fully consistent with ethical life, with what he calls *Sittlichkeit*” (Ibid., p.335). In this Hegelian social world “there are serious social problems that cause great human unhappiness and pain”. There is thus no guarantee for happiness in this world because social and political institutions cannot provide a purity, “no matter how rationally designed” (Ibid., pp.335-336). It is, in a sense, a world of chaos. Then, “the idea which interests Rawls in the Hegelian analysis of civil society is the fact that the emancipation of subjectivity fundamentally needs this apparent chaos” (Ege and Igersheim, 2008, p.35). Because what Hegel’s social world ensures is the conditions of possibility for the realization of freedom –as the greatest good– even though happiness is not guaranteed. Rawls, in the end, simply adopts the political conception of public reason –which is derived from the Kantian idea of public use of reason– in accord with Hegel’s project of social world. And I believe, this is the point where human rights and economics meet on the basis of political liberalism.

CONCLUSION

At the beginning of this thesis, I posed myself the question of how to explain the present form of the idea of human rights within an economic context. I have claimed that this question necessarily invokes the discussion on the conceptions of civil society and public reason. Before such an examination could be attempted, however, the very foundation of the Kantian idea of the public use of reason had to be re-visited. I argued that the idea of *becoming mature* provides in fact one of the extensive explanations for the question of human rights. This analysis led me to explore the origins of *becoming mature* through Kant's practical philosophy in the beginning of this dissertation.

First of all, *maturity* in Kantian philosophy is thought about as the process of using one's own understanding by refusing external determination. This process is straightforwardly used to explain the "enlightened" society. In this context Enlightenment can be achieved once the freedom of using reason is acknowledged as the condition to be ensured principally –or in other words, persons should use their reason in order to free themselves from external necessities. The process of using reason involves two forms: on the one hand, private use of reason, and on the other hand, public use of reason. These two forms, of which public form of reasoning has central importance in the process of becoming mature, constitutes the basis for Kant's inquiry into the question of Enlightenment. Public use of reason refers to a particular type of reasoning that is precisely used within the relationship between *Gelehrter* and reading public. Accordingly *Gelehrter* expresses himself by means of writing to a reading public. *Writing*, here, is the method of *Gelehrter* in postulating his critical thoughts regarding the errors in the public level. Such a relationship leads reading public to actively contribute to the public discussions through using reason publicly. Since all sorts of "mature" agents take part in the deliberation, the model proposed here can be thought of as akin to modern democratic societies. Yet, the key principles underpinning this model can be found further in Kant's philosophy.

The concept of becoming mature has a direct connection with Kant's "moral law", which, in a sense, is adopted to ensure the conditions of availability for using reason publicly: "The criterion of everything that can be agreed upon as a law by a people lies

in this question: Can a people impose such a law on itself?" (Kant, 1784, p.4). This is the central question that Kant examines in the context of "categorical imperatives" in the Groundwork of the Metaphysics of Morals. Accordingly when a rational being enjoys a free will, his actions are guided by the principles of moral law. This is the solution that Kant suggests for the fundamental contradictions of the Kingdom of Ends and the Kingdom of Nature which is inherent to human life. Therefore, Kant's lawful state (*Rechtsstaat*) is an "enlightened" state which is responsible to ensure the freedom of public use of reason through the rule of moral law. This is actually pretty much the same framework that we analyze today as a part of human rights discussions. However, in this model, Kant seems to put much less emphasis on the relations that we see under the general framework of civil society. That is to say, Kant's "moral law" is less concerned with what his contemporaries call "political economy". This led me to follow the "political" steps that Rawls had already passed. Because this lack of political economic concerns in Kant's philosophy seems to take his attention and led him to make his famous "political turn". Rawls's "non-political" project in his former work *A Theory of Justice* actually shares the same background with the moral theories that have emerged throughout the Enlightenment. These theories, to which Kant and Rousseau attach particular importance among others, strongly influenced his moral philosophy. Therein he is concerned with the question of how the distribution of the burdens and benefits of social co-operation can be shared out within the basic structure of society. Since the "basic" structure serves as a system in which all major social institutions fit together, it is regarded as the primary subject of justice. Thus the initial agreement that would constitute the basic structure is to be made in a particular way, that is, within the original position and under a veil of ignorance.

However this Kantian interpretation of social justice has the same "political defects" with that of Kant's moral law. This "defect" is the "practical impossibility of reaching reasonable and workable political agreement in judgment on the truth of comprehensive doctrines" (Rawls, 1996, p.63). Then, he decides to re-form the ideas postulated in the *A Theory Of Justice* which later leads him to a *political turn* –that I tend to call "Das John Rawls Problem" referring to its counterpart in Adam Smith literature. This turn is actually very compelling and intense in itself and I decided to leave its analysis to the end of the dissertation and at first, I tried to focus on the ideas of "reasonable pluralism"

and “overlapping consensus”. Therein, Rawls, interestingly enough, assigns normative priority to another Kantian idea, that is, “public reason” which appears to constitute the most fundamental part of this turn. The basic feature of the idea of public reason is that it allows reasonable disagreement over a wide range of moral, ethical, and other philosophical matters. That is to say, it takes into account the diversity of personal ends and political economic concerns which have essentially the same grounds.

I argued that such an interpretation of Kant’s public use of reason could provide a basis for an extensive examination of human rights in the context of economics especially when we consider human rights as the principles that address the threshold conditions for public reasoning. In other words, the justification of human rights through the idea of public use of reason extends the narrower scope of contemporary human rights discussion. However, it is important to note that the theoretical framework of this justification for human rights is unlikely to cover any “universal” approach. Rather it presumes that the existence of relevant political and social institutions have central importance in ensuring human rights. Thus, the existence of these institutions, that is, the constitutional state and the pluralistic society, is one of the condition of possibility for using reason publicly –and then for human rights. In this sense I hope to show that the starting point of this specific understanding of the pluralistic society is essentially a Kantian idea, however, surpasses it in the extent of political economy. This led me to analyze the function of public reasoning in civil society within the context of Adam Smith’s *impartial spectator –the man within breast–* and “Das Adam Smith Problem”. It was then possible to investigate the role of public reasoning in the discussion of political economy.

Das Adam Smith Problem is originated from Smith’s conception of man that is assumed to be governed by two quite different and contradictory principles. In *The Theory of Moral Sentiments*, he assigns great importance to “virtuous” man, whereas, in the *Wealth of Nations*, the “vicious” man is the main concern. However, in this argument, the role of *the man within breast* regarding Smith’s general body of work is underestimated. Indeed Smith’s “man” is motivated by self-interest, however he is also directed by *the man within breast*. Smith in this sense proposes the notion of *the man within breast* as a human faculty that ensures a *reasonable* cooperation within society.

Therefore, what I tried to show is that Smith's "man" does not completely attach himself neither to self-interest, nor to impartiality. Rather, Smith's grand project put great emphasis on the co-existence of these motives. This conceptual reconciliation project can be then better understood by an analysis of civil society. Once I reformulated my problematic through a political understanding of the public use of reason, I proceed to analyze the discussion on political economy concerning civil society and human rights. There are two significant arguments on the role of the rights of man in civil society which have still been carried out in different forms. Of which, one is Jeremy Bentham's "Anarchical Fallacies" and the other is Karl Marx's "On the Jewish Question". I hope that the analysis of these arguments in the context of the idea of public reason have proved insightful for studying human rights and economics.

Bentham argues that if a right is not identified in law and not legally protected by the government, that means that there is no such right to be claimed even if it is universal or so. Thus, there will be no liberty, property or security and hence no rights without a "real" system of law. So it is not possible that a "real" system of law shall cover any claimed natural duties. Yet, Bentham's utilitarian "man" will only pursue his own interests within a society in which one's self-interest is not necessarily associated with others'. Then, individual utility is the primary subject in a legal political system. Rights of man on the contrary are imaginary rights and they shall by no means address "real" problems of the utilitarian man for whom public reasoning actually is not a concern. On the other hand, in the Marxian critique, rights of man proved to be an integral part of *utility principle* within the general framework of civil society. Political emancipation is the primary subject of rights of man, that is, the moment of emancipation where man is divided into two parts; first as an abstract *citoyen* in his "ethical" life and second as a *bourgeois* in his private life. Although man advanced to a degree of emancipation, he still remains alienated. In this context, Marx's "man" is a species-being who has recognized his own social powers: who has accomplished human emancipation by preventing himself from alienating power such as egoism or private property. I have tried to show that we can at this point see that Marx tends to follow, albeit to a different extent, a variant of the Kantian project of moral law; (1) Marx draws a course of progress in his theory which appears to be similar –in terms of *form* of the progress– with the process of *becoming mature* in the Kantian approach and (2) Marx deals with

the idea of *species-life* like Kant does with the idea of “mature” man of Enlightenment. However Marx hardly follows a “pure” ethical line of reasoning that is already suggested in Kantian discourse. My suggestion was that both Marx’s “species-man” and Bentham’s “utilitarian man” lacks to recognize the framework of “co-existence” that I mentioned in the analysis of public reason and “the man within breast”. For example Colletti explains this fact by referring to the notion of “contradictory reality”:

“I continue to believe that materialism excludes the notion of a contradictory reality: yet there is no doubt that for Marx the capital/wage-labour relationship is a dialectical contradiction. Capitalism is a contradictory reality for Marx, not because being a reality it must therefore be contradictory —as dialectical materialism would have it, but because it is a capsized, inverted, upside-down reality. I am perfectly conscious that the notion of an upside-down reality appears to jar with the precepts of any science. Marx was convinced of the validity of this notion. I do not say that he was necessarily right. I cannot yet state whether the idea of an inverted reality is compatible with a social science.” (Colletti,1977, pp. 337-338)

Nevertheless what I hope to express is that the Marxian critique of rights of man can be considered as a very insightful argument that underlines the fact that we cannot examine the concept of civil society and human rights without addressing the questions of political economy. Yet, Marx’s critique of political emancipation and the emphasis that he placed on the importance of material conditions to live in a “fully human way” has, either directly or indirectly, influenced many of recent theoretical works. Therefore I proceed to the analysis of the capability approach –among others–, as it provides an extensive normative framework in which the main purpose is to assess and compare available social/political arrangements related to various levels of individual well-being(s). I hope to highlight the pluralist dimension of the capabilities approach through a perspective of public reason. Since this approach in its present form has been pioneered by Sen and Nussbaum, I tried to explore their analysis of human rights. I put more emphasis on how Nussbaum develops her version of the capabilities approach through the idea of central capabilities. This led me to overview the discussion of listing capabilities together with Nussbaum’s political turn. Therein, what I hope to show is that Nussbaum’s list of central capabilities is a form of reasonable pluralism to an extent that it is formulated to have broad applicability among different comprehensive views on the basis of two “core” capabilities –which I argued that these capabilities again are a different form of Rawls’s public reason.

It has been the purpose of the preceding examination to argue that the capabilities approach, especially when we consider Nussbaum's version, is one possible extension to political liberalism. And I aimed to show that the "political turns" are of central importance in this analysis because the story about Kant is only a part of the story about the idea of public use of reason. Finally this led me to explore two last questions in order to prove the particular place that the idea of public use of reason holds within the examination of human rights in the context of economics. First is the question of how and in what way Rawls turn to political liberalism? Then what is the role of Hegel's philosophy in this political turn? The very first thing we need to deal with is that Rawls himself uses the term "political" in a more Hegelian sense than a Kantian one. Rawls's use of the term has been refined over time in order to provide a more precise picture of his political theory which is explained by the aim of overcoming the dualisms in Kant's doctrine. This leads him to recast the fundamental ideas of his theory through *Hegelian reconciliation* (Rawls, 2001 p.xv and p.3), that is, the reconciliation of the innate tension of man:

"Hegel cannot have confused the historical alienation of the human spirit with objectification without some valid reasons, other than those one might find in the economic structure of the period and the stage reached by the capitalist system. By objectifying himself in culture, the State, and human labor in general, man at the same time alienates himself, becomes other than himself, and discovers in this objectification an insurmountable degeneration which he must nevertheless try to overcome. *This is a tension inseparable from existence*, and it is Hegel's merit to have drawn attention to it and have preserved it in very center of human self-consciousness. On the other hand, one of the great difficulties of Marxism is its claim to overcome this tension in the more or less near future and hastily to attribute it to a particular phase of history" (Hyppolite, 1969, p.87)

Clearly, this is the point at which Rawls seem turn to political liberalism. Then the position in which Rawls finds himself is on the one hand originally Kantian and on the other hand surpasses it towards a Hegelian direction. What I have tried to accomplish was to integrate this position into one theoretical structure in which public reasoning could serve as a basis for human rights. Because, such a reasoning doesn't claim to overcome the "innate tension" of man. Yet, it is my claim that the material and social conditions for "becoming mature" –or being a *Gelehrter*– should be taken together in the analysis of human rights. Since "emergence from immaturity" requires a certain level of wealth which may prevent man from dependence of external guidance, economic concerns are indeed very much integrated into these material conditions. In

this sense, although the constitutional state is one of the condition of possibility for using reason publicly, it would alone fall short to maintain all the conditions of public reasoning. What is also needed there is to provide persons appropriate material conditions by means of economics in order to ensure freedom of public use of reason. In this context, there is still much to be explored concerning the relationship of civil society and the state especially when we consider the central role of public reasoning in the process of becoming mature. Therefore, I hope that the concept of public reason might prove to be a useful conceptual connection between human rights and economics. Since there might be still many remaining questions, I am totally aware that such an analytical interpretation is only a starting point, rather than the conclusion of a human rights analysis.

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